

REFERENCE TITLE: terminally ill patients; care choices

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1781

Introduced by
Senators Gonzales: Peshlakai

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 33;
RELATING TO END-OF-LIFE DECISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 36, Arizona Revised Statutes, is amended by adding
3 chapter 33, to read:

CHAPTER 33

DEATH WITH DIGNITY

ARTICLE 1. GENERAL PROVISIONS

36-3301. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ADULT" MEANS AN INDIVIDUAL WHO IS AT LEAST EIGHTEEN YEARS OF AGE.

2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY RESPONSIBILITY FOR THE CARE OF A PATIENT AND TREATMENT OF THE PATIENT'S TERMINAL DISEASE.

3. "CAPABLE" MEANS THAT, IN THE OPINION OF A COURT OR A PATIENT'S ATTENDING PHYSICIAN OR CONSULTING PHYSICIAN, PSYCHIATRIST OR PSYCHOLOGIST, THE PATIENT IS ABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS TO HEALTH CARE PROVIDERS, INCLUDING COMMUNICATING THROUGH PERSONS WHO ARE FAMILIAR WITH THE PATIENT'S MANNER OF COMMUNICATING IF THOSE PERSONS ARE AVAILABLE.

4. "CONSULTING PHYSICIAN" MEANS A PHYSICIAN WHO IS QUALIFIED BY SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS REGARDING A PATIENT'S DISEASE.

5. "COUNSELING" MEANS ONE OR MORE CONSULTATIONS AS NECESSARY BETWEEN A STATE-LICENSED PSYCHIATRIST OR PSYCHOLOGIST AND A PATIENT TO DETERMINE WHETHER THE PATIENT IS CAPABLE AND NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

6. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

7. "HEALTH CARE PROVIDER" MEANS A PERSON WHO IS LICENSED, CERTIFIED OR OTHERWISE AUTHORIZED OR ALLOWED BY THE LAWS OF THIS STATE TO ADMINISTER HEALTH CARE OR DISPENSE MEDICATION IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION, AND INCLUDES A HEALTH CARE FACILITY.

8. "INFORMED DECISION" MEANS A DECISION THAT IS MADE BY A QUALIFIED PATIENT TO REQUEST AND OBTAIN A PRESCRIPTION FOR MEDICATION, THAT IS BASED ON AN APPRECIATION OF THE RELEVANT FACTS AND THAT IS MADE AFTER THE ATTENDING PHYSICIAN FULLY INFORMS THE PATIENT OF ALL OF THE FOLLOWING:

(a) THE PATIENT'S MEDICAL DIAGNOSIS.

(b) THE PATIENT'S PROGNOSIS.

(c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE PRESCRIBED.

(d) THE PROBABLE RESULT OF TAKING THE MEDICATION TO BE PRESCRIBED.

(e) FEASIBLE ALTERNATIVES TO TAKING THE MEDICATION, INCLUDING
HOSPICE CARE, HOSPICE CARE AND PAIN CONTROL.

1 9. "MEDICALLY CONFIRM" MEANS THAT A CONSULTING PHYSICIAN WHO HAS
2 EXAMINED THE PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS CONFIRMS
3 THE MEDICAL OPINION OF THE ATTENDING PHYSICIAN.

4 10. "PATIENT" MEANS A PERSON WHO IS UNDER THE CARE OF A PHYSICIAN.

5 11. "PHYSICIAN" MEANS AN INDIVIDUAL WHO IS LICENSED PURSUANT TO
6 TITLE 32, CHAPTER 13 OR 17.

7 12. "PRESCRIPTION FOR MEDICATION" MEANS A PRESCRIPTION THAT IS
8 WRITTEN BY AN ATTENDING PHYSICIAN FOR MEDICATION TO END A PATIENT'S LIFE
9 IN A HUMANE AND DIGNIFIED MANNER IN ACCORDANCE WITH THIS ARTICLE.

10 13. "QUALIFIED PATIENT" MEANS A CAPABLE ADULT WHO IS A RESIDENT OF
11 THIS STATE AND WHO HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER
12 TO OBTAIN A PRESCRIPTION FOR MEDICATION.

13 14. "TERMINAL DISEASE" MEANS AN INCURABLE AND IRREVERSIBLE DISEASE
14 THAT HAS BEEN MEDICALLY CONFIRMED AND THAT WILL RESULT IN DEATH, WITH
15 REASONABLE MEDICAL JUDGMENT, WITHIN SIX MONTHS.

16 36-3302. Written request for a prescription for medication;
17 initiation; language interpreter

18 A. AN ADULT WHO IS CAPABLE, WHO IS A RESIDENT OF THIS STATE, WHOM
19 THE ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN HAVE DETERMINED IS
20 SUFFERING FROM A TERMINAL DISEASE AND WHO HAS VOLUNTARILY EXPRESSED A WISH
21 TO DIE MAY MAKE A WRITTEN REQUEST FOR A PRESCRIPTION FOR MEDICATION.

22 B. A PERSON DOES NOT QUALIFY UNDER THIS ARTICLE SOLELY BECAUSE OF
23 AGE OR DISABILITY.

24 C. A PERSON WHO DOES NOT SPEAK ENGLISH MAY USE A LANGUAGE
25 INTERPRETER TO INITIATE THE PROCESS UNDER THIS ARTICLE AND TO MAKE ANY
26 ORAL REQUESTS REQUIRED BY THIS ARTICLE.

27 36-3303. Form of request; translation; witnesses; signatures

28 A. A VALID REQUEST FOR A PRESCRIPTION FOR MEDICATION MUST BE IN
29 SUBSTANTIALLY THE FORM DESCRIBED IN SECTION 36-3321, BE SIGNED AND DATED
30 BY THE PATIENT AND BE WITNESSED BY AT LEAST TWO INDIVIDUALS WHO, IN THE
31 PRESENCE OF THE PATIENT, ATTEST THAT TO THE BEST OF THEIR KNOWLEDGE AND
32 BELIEF THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND IS NOT BEING
33 COERCED TO SIGN THE REQUEST. A PERSON WHO DOES NOT SPEAK ENGLISH MAY HAVE
34 THE WRITTEN REQUEST FORM TRANSLATED INTO THE PERSON'S PRIMARY LANGUAGE FOR
35 SIGNATURE.

36 B. ONE OF THE WITNESSES MUST BE AN INDIVIDUAL WHO IS NOT ANY OF THE
37 FOLLOWING:

38 1. A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION.

39 2. AT THE TIME THE REQUEST IS SIGNED, ENTITLED TO ANY PORTION OF
40 THE QUALIFIED PATIENT'S ESTATE ON THE PATIENT'S DEATH UNDER ANY WILL OR BY
41 OPERATION OF LAW.

42 3. AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE
43 THE QUALIFIED PATIENT RESIDES OR IS RECEIVING MEDICAL TREATMENT.

44 4. AT THE TIME THE REQUEST IS SIGNED, THE PATIENT'S ATTENDING
45 PHYSICIAN.

1 C. IF THE PATIENT RESIDES IN OR IS RECEIVING MEDICAL TREATMENT IN A
2 LONG-TERM CARE FACILITY AT THE TIME THE WRITTEN REQUEST IS MADE, ONE OF
3 THE WITNESSES MUST BE AN INDIVIDUAL WHO IS DESIGNATED BY THE FACILITY AND
4 WHO HAS THE QUALIFICATIONS SPECIFIED BY THE DEPARTMENT IN RULE.

5 36-3304. Attending physician; requirements; death certificate

6 A. THE ATTENDING PHYSICIAN SHALL DO ALL OF THE FOLLOWING:

7 1. MAKE THE INITIAL DETERMINATION WHETHER A PATIENT HAS A TERMINAL
8 DISEASE, IS CAPABLE AND HAS MADE THE REQUEST VOLUNTARILY.

9 2. REQUEST THE PATIENT TO DEMONSTRATE RESIDENCY IN THIS STATE
10 PURSUANT TO SECTION 36-3313.

11 3. ENSURE THAT THE PATIENT IS MAKING AN INFORMED DECISION BY
12 INFORMING THE PATIENT OF ALL OF THE FOLLOWING:

13 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

14 (b) THE PATIENT'S PROGNOSIS.

15 (c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE
16 PRESCRIBED.

17 (d) THE PROBABLE RESULT OF TAKING THE MEDICATION TO BE PRESCRIBED.

18 (e) FEASIBLE ALTERNATIVES TO TAKING THE MEDICATION, INCLUDING
19 COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.

20 4. REFER THE PATIENT TO A CONSULTING PHYSICIAN TO MEDICALLY CONFIRM
21 THE DIAGNOSIS AND TO DETERMINE THAT THE PATIENT IS CAPABLE AND ACTING
22 VOLUNTARILY.

23 5. REFER THE PATIENT FOR COUNSELING IF APPROPRIATE PURSUANT TO
24 SECTION 36-3306.

25 6. RECOMMEND THAT THE PATIENT NOTIFY THE PATIENT'S NEXT OF KIN.

26 7. COUNSEL THE PATIENT ABOUT THE IMPORTANCE OF HAVING ANOTHER
27 PERSON PRESENT WHEN THE PATIENT TAKES THE MEDICATION AND OF NOT TAKING THE
28 MEDICATION IN A PUBLIC PLACE.

29 8. INFORM THE PATIENT THAT THE PATIENT MAY RESCIND THE REQUEST AT
30 ANY TIME AND IN ANY MANNER AND OFFER THE PATIENT AN OPPORTUNITY TO RESCIND
31 AT THE END OF THE FIFTEEN-DAY WAITING PERIOD PURSUANT TO SECTION 36-3309.

32 9. IMMEDIATELY BEFORE WRITING THE PRESCRIPTION FOR MEDICATION,
33 VERIFY THAT THE PATIENT IS MAKING AN INFORMED DECISION.

34 10. DOCUMENT THE MEDICAL RECORDS REQUIREMENTS OF SECTION 36-3312.

35 11. ENSURE THAT ALL APPROPRIATE STEPS ARE CARRIED OUT IN ACCORDANCE
36 WITH THIS ARTICLE BEFORE WRITING A PRESCRIPTION FOR MEDICATION.

37 12. EITHER:

38 (a) IF THE ATTENDING PHYSICIAN IS AUTHORIZED BY STATE AND FEDERAL
39 LAW TO DISPENSE THE MEDICATION, DISPENSE THE MEDICATION DIRECTLY,
40 INCLUDING ANY ANCILLARY MEDICATIONS INTENDED TO MINIMIZE THE PATIENT'S
41 DISCOMFORT.

42 (b) WITH THE PATIENT'S WRITTEN CONSENT, DO BOTH OF THE FOLLOWING:

43 (i) CONTACT A PHARMACIST AND INFORM THE PHARMACIST OF THE
44 PRESCRIPTION.

(ii) DELIVER THE WRITTEN PRESCRIPTION PERSONALLY OR BY OTHER MEANS TO THE PHARMACIST, WHO WILL DISPENSE THE MEDICATIONS TO EITHER THE PATIENT, THE ATTENDING PHYSICIAN OR AN EXPRESSLY IDENTIFIED AGENT OF THE PATIENT.

13. ALLOW ANYONE THE PATIENT CHOOSES TO BE PRESENT WHEN THE PATIENT TAKES THE MEDICATION.

B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE ATTENDING PHYSICIAN MAY SIGN THE PATIENT'S DEATH CERTIFICATE.

36-3305. Consulting physician; confirmation of diagnosis

BEFORE A PATIENT IS DEEMED QUALIFIED UNDER THIS ARTICLE, A CONSULTING PHYSICIAN SHALL EXAMINE THE PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS, SHALL CONFIRM IN WRITING THE ATTENDING PHYSICIAN'S DIAGNOSIS THAT THE PATIENT IS SUFFERING FROM A TERMINAL DISEASE AND SHALL VERIFY THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED DECISION.

36-3306. Counseling referral; prohibition

IF THE ATTENDING PHYSICIAN OR THE CONSULTING PHYSICIAN BELIEVES A PATIENT MAY BE SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT, EITHER PHYSICIAN SHALL REFER THE PATIENT FOR COUNSELING. THE ATTENDING PHYSICIAN MAY NOT WRITE A PRESCRIPTION FOR MEDICATION UNTIL THE PERSON PERFORMING THE COUNSELING DETERMINES THAT THE PATIENT IS NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

36-3307. Informed decision required; verification

THE ATTENDING PHYSICIAN MAY NOT WRITE A PRESCRIPTION FOR MEDICATION UNLESS THE PATIENT HAS MADE AN INFORMED DECISION. IMMEDIATELY BEFORE WRITING A PRESCRIPTION FOR MEDICATION, THE ATTENDING PHYSICIAN SHALL VERIFY THAT THE PATIENT IS MAKING AN INFORMED DECISION.

36-3308. Family notification

THE ATTENDING PHYSICIAN SHALL RECOMMEND THAT THE PATIENT NOTIFY THE PATIENT'S NEXT OF KIN REGARDING THE PATIENT'S REQUEST FOR A PRESCRIPTION FOR MEDICATION. IF THE PATIENT DECLINES OR IS UNABLE TO NOTIFY NEXT OF KIN, THE ATTENDING PHYSICIAN MAY NOT DENY THE PATIENT'S REQUEST FOR THAT REASON.

36-3309. Written and oral requests; opportunity to rescind

IN ORDER TO RECEIVE A PRESCRIPTION FOR MEDICATION, A QUALIFIED PATIENT MUST MAKE AN ORAL REQUEST AND A WRITTEN REQUEST TO THE PATIENT'S ATTENDING PHYSICIAN AND MUST MAKE A SECOND ORAL REQUEST AT LEAST FIFTEEN DAYS AFTER MAKING THE INITIAL ORAL REQUEST. WHEN THE QUALIFIED PATIENT MAKES THE SECOND ORAL REQUEST, THE ATTENDING PHYSICIAN SHALL OFFER THE PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.

36-3310. Right to rescind request; disposal of unused medication

A. A PATIENT MAY RESCIND A REQUEST AT ANY TIME AND IN ANY MANNER WITHOUT REGARD TO THE PATIENT'S MENTAL STATE. THE ATTENDING PHYSICIAN MAY

1 NOT WRITE A PRESCRIPTION FOR MEDICATION WITHOUT OFFERING THE QUALIFIED
2 PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.

3 B. IF THE ATTENDING PHYSICIAN WRITES A PRESCRIPTION FOR MEDICATION
4 AND THE PATIENT DECIDES NOT TO USE THE MEDICATION TO END THE PATIENT'S
5 LIFE, THE PATIENT SHALL DISPOSE OF ANY UNUSED MEDICATION USING A UNITED
6 STATES DRUG ENFORCEMENT ADMINISTRATION AUTHORIZED COLLECTOR.

7 36-3311. Waiting periods

8 AT LEAST FIFTEEN DAYS MUST ELAPSE BETWEEN THE PATIENT'S INITIAL ORAL
9 REQUEST AND THE WRITING OF A PRESCRIPTION FOR MEDICATION.

10 36-3312. Medical records; documentation; requirements

11 ALL OF THE FOLLOWING SHALL BE DOCUMENTED OR FILED IN THE PATIENT'S
12 MEDICAL RECORD:

13 1. ALL ORAL REQUESTS BY A PATIENT FOR A PRESCRIPTION FOR
14 MEDICATION.

15 2. ALL WRITTEN REQUESTS BY A PATIENT FOR A PRESCRIPTION FOR
16 MEDICATION.

17 3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS AND
18 DETERMINATION THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS
19 MADE AN INFORMED DECISION.

20 4. THE CONSULTING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS AND
21 VERIFICATION THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS
22 MADE AN INFORMED DECISION.

23 5. A REPORT OF THE OUTCOME AND DETERMINATIONS MADE DURING
24 COUNSELING, IF PERFORMED.

25 6. THE ATTENDING PHYSICIAN'S OFFER TO THE PATIENT TO RESCIND THE
26 PATIENT'S REQUEST AT THE TIME OF THE PATIENT'S SECOND ORAL REQUEST
27 PURSUANT TO SECTION 36-3309.

28 7. A NOTE FROM THE ATTENDING PHYSICIAN INDICATING THAT ALL
29 REQUIREMENTS UNDER THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS
30 TAKEN TO CARRY OUT THE REQUEST, INCLUDING A NOTATION OF ANY MEDICATIONS
31 PRESCRIBED.

32 36-3313. Residency requirement

33 THE ATTENDING PHYSICIAN MAY GRANT A PATIENT'S REQUEST UNDER THIS
34 ARTICLE ONLY IF THE PATIENT IS A RESIDENT OF THIS STATE. ARIZONA
35 RESIDENCY IS ESTABLISHED IF THE PATIENT DOES ANY OF THE FOLLOWING:

36 1. POSSESSES AN ARIZONA DRIVER LICENSE.

37 2. REGISTERS TO VOTE IN THIS STATE.

38 3. OWNS OR LEASES PROPERTY IN THIS STATE.

39 4. FILES AN ARIZONA STATE TAX RETURN FOR THE MOST RECENT TAX YEAR.

1 36-3314. Reporting requirements: confidentiality: rules:
2 report

3 A. THE DEPARTMENT SHALL ANNUALLY REVIEW A SAMPLE OF RECORDS
4 MAINTAINED PURSUANT TO THIS ARTICLE.

5 B. THE DEPARTMENT SHALL REQUIRE A HEALTH CARE PROVIDER, ON
6 DISPENSING MEDICATION PURSUANT TO THIS ARTICLE, TO FILE A COPY OF THE
7 DISPENSING RECORD WITH THE DEPARTMENT.

8 C. THE DEPARTMENT SHALL ADOPT RULES TO FACILITATE THE COLLECTION OF
9 INFORMATION REGARDING COMPLIANCE WITH THIS ARTICLE. EXCEPT AS OTHERWISE
10 REQUIRED BY LAW, THE INFORMATION COLLECTED IS NOT A PUBLIC RECORD AND IS
11 NOT AVAILABLE FOR INSPECTION BY THE PUBLIC.

12 D. THE DEPARTMENT SHALL GENERATE AND MAKE AVAILABLE TO THE PUBLIC
13 AN ANNUAL STATISTICAL REPORT OF INFORMATION COLLECTED UNDER THIS SECTION.

14 36-3315. Effect on construction of contracts, wills or
15 agreements

16 A. A PROVISION IN A CONTRACT, WILL OR OTHER AGREEMENT, WHETHER
17 WRITTEN OR ORAL, IS INVALID TO THE EXTENT THAT THE PROVISION WOULD AFFECT
18 WHETHER A PERSON MAY MAKE OR RESCIND A REQUEST FOR A PRESCRIPTION FOR
19 MEDICATION.

20 B. AN OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT MAY
21 NOT BE CONDITIONED ON OR AFFECTED BY THE MAKING OR RESCINDING OF A
22 REQUEST, BY A PERSON, FOR A PRESCRIPTION FOR MEDICATION.

23 36-3316. Insurance or annuity policies

24 THE SALE, PROCUREMENT OR ISSUANCE OF A LIFE, HEALTH OR ACCIDENT
25 INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR A POLICY MAY NOT BE
26 CONDITIONED ON OR AFFECTED BY A PATIENT MAKING OR RESCINDING A REQUEST FOR
27 A PRESCRIPTION FOR MEDICATION. A QUALIFIED PATIENT'S ACT OF INGESTING
28 MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER DOES
29 NOT AFFECT A LIFE, HEALTH OR ACCIDENT INSURANCE OR ANNUITY POLICY ISSUED
30 OR DELIVERED IN THIS STATE.

31 36-3317. Construction of article

32 THIS ARTICLE DOES NOT AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO
33 END A PATIENT'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE
34 EUTHANASIA. ACTIONS TAKEN IN ACCORDANCE WITH THIS ARTICLE DO NOT, FOR ANY
35 PURPOSE, CONSTITUTE SUICIDE, ASSISTED SUICIDE, MERCY KILLING OR HOMICIDE
36 UNDER THE LAW.

37 36-3318. Immunities; prohibiting a health care provider from
38 participation; permissible sanctions; definitions

39 A. EXCEPT AS PROVIDED IN SECTION 36-3319:

40 1. A PERSON IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR
41 PROFESSIONAL DISCIPLINARY ACTION FOR PARTICIPATING IN GOOD FAITH
42 COMPLIANCE WITH ACTIVITIES COVERED BY THIS ARTICLE, INCLUDING BEING
43 PRESENT WHEN A QUALIFIED PATIENT TAKES THE PRESCRIBED MEDICATION TO END
44 THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

1 2. A PROFESSIONAL ORGANIZATION OR ASSOCIATION OR A HEALTH CARE
2 PROVIDER MAY NOT SUBJECT A PERSON TO CENSURE, DISCIPLINE, SUSPENSION, LOSS
3 OF LICENSE, LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR ANY OTHER PENALTY
4 FOR PARTICIPATING OR REFUSING TO PARTICIPATE IN GOOD FAITH COMPLIANCE WITH
5 ACTIVITIES COVERED BY THIS ARTICLE.

6 3. A REQUEST BY A PATIENT FOR OR PROVISION BY AN ATTENDING
7 PHYSICIAN OF MEDICATION IN GOOD FAITH COMPLIANCE WITH THIS ARTICLE DOES
8 NOT CONSTITUTE NEGLECT FOR ANY PURPOSE OF LAW OR PROVIDE THE SOLE BASIS
9 FOR THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR.

10 4. A HEALTH CARE PROVIDER IS NOT UNDER ANY DUTY, WHETHER BY
11 CONTRACT, STATUTE OR ANY OTHER LEGAL REQUIREMENT, TO PARTICIPATE IN
12 PROVIDING A QUALIFIED PATIENT PRESCRIBED MEDICATION TO END THE PATIENT'S
13 LIFE. IF A HEALTH CARE PROVIDER IS UNABLE OR UNWILLING TO CARRY OUT A
14 PATIENT'S REQUEST UNDER THIS ARTICLE, AND THE PATIENT TRANSFERS THE
15 PATIENT'S CARE TO A NEW HEALTH CARE PROVIDER, THE PRIOR HEALTH CARE
16 PROVIDER SHALL TRANSFER, ON REQUEST, A COPY OF THE PATIENT'S RELEVANT
17 MEDICAL RECORDS TO THE NEW HEALTH CARE PROVIDER.

18 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HEALTH CARE
19 PROVIDER MAY PROHIBIT ANOTHER HEALTH CARE PROVIDER FROM PARTICIPATING IN
20 ACTIVITIES COVERED BY THIS ARTICLE ON THE PREMISES OF THE PROHIBITING
21 PROVIDER IF THE PROHIBITING PROVIDER HAS NOTIFIED THE HEALTH CARE PROVIDER
22 OF THE PROHIBITING PROVIDER'S POLICY REGARDING PARTICIPATING IN ACTIVITIES
23 COVERED BY THIS ARTICLE. THIS PARAGRAPH DOES NOT PREVENT A HEALTH CARE
24 PROVIDER FROM PROVIDING A PATIENT WITH HEALTH CARE SERVICES THAT DO NOT
25 CONSTITUTE PARTICIPATION IN ACTIVITIES COVERED BY THIS ARTICLE.

26 6. NOTWITHSTANDING PARAGRAPHS 1, 2, 3 AND 4 OF THIS SUBSECTION, A
27 HEALTH CARE PROVIDER MAY SUBJECT ANOTHER HEALTH CARE PROVIDER TO ANY OF
28 THE FOLLOWING SANCTIONS IF THE SANCTIONING HEALTH CARE PROVIDER HAS
29 NOTIFIED THE SANCTIONED HEALTH CARE PROVIDER BEFORE PARTICIPATING IN
30 ACTIVITIES COVERED BY THIS ARTICLE THAT THE ACTIONS ARE PROHIBITED:

31 (a) LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR ANY OTHER SANCTION
32 PROVIDED PURSUANT TO THE MEDICAL STAFF BYLAWS, POLICIES AND PROCEDURES OF
33 THE SANCTIONING HEALTH CARE PROVIDER IF THE SANCTIONED HEALTH CARE
34 PROVIDER IS A MEMBER OF THE SANCTIONING HEALTH CARE PROVIDER'S MEDICAL
35 STAFF AND PARTICIPATES IN ACTIVITIES COVERED BY THIS ARTICLE WHILE ON THE
36 HEALTH CARE FACILITY PREMISES OF THE SANCTIONING HEALTH CARE PROVIDER, BUT
37 NOT INCLUDING THE PRIVATE MEDICAL OFFICE OF A PHYSICIAN OR OTHER PROVIDER.

38 (b) TERMINATION OF LEASE OR OTHER PROPERTY CONTRACT OR OTHER
39 NONMONETARY REMEDIES PROVIDED BY A LEASE CONTRACT, NOT INCLUDING LOSS OR
40 RESTRICTION OF MEDICAL STAFF PRIVILEGES OR EXCLUSION FROM A PROVIDER
41 PANEL, IF THE SANCTIONED HEALTH CARE PROVIDER PARTICIPATES IN ACTIVITIES
42 COVERED BY THIS ARTICLE WHILE ON THE PREMISES OF THE SANCTIONING HEALTH
43 CARE PROVIDER OR ON PROPERTY THAT IS OWNED BY OR UNDER THE DIRECT CONTROL
44 OF THE SANCTIONING HEALTH CARE PROVIDER.

(c) TERMINATION OF CONTRACT OR OTHER NONMONETARY REMEDIES PROVIDED BY CONTRACT IF THE SANCTIONED HEALTH CARE PROVIDER PARTICIPATES IN ACTIVITIES COVERED BY THIS ARTICLE WHILE ACTING IN THE COURSE AND SCOPE OF THE SANCTIONED HEALTH CARE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER. THIS PARAGRAPH DOES NOT PREVENT EITHER OF THE FOLLOWING:

(i) A HEALTH CARE PROVIDER FROM PARTICIPATING IN ACTIVITIES COVERED BY THIS ARTICLE WHILE ACTING OUTSIDE THE COURSE AND SCOPE OF THE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR.

(ii) A PATIENT FROM CONTRACTING WITH THE PATIENT'S ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO ACT OUTSIDE THE COURSE AND SCOPE OF THE HEALTH CARE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER.

7. A HEALTH CARE PROVIDER THAT IMPOSES SANCTIONS PURSUANT TO PARAGRAPH 6 OF THIS SUBSECTION MUST FOLLOW ALL DUE PROCESS AND OTHER PROCEDURES THE SANCTIONING HEALTH CARE PROVIDER MAY HAVE THAT ARE RELATED TO IMPOSING SANCTIONS ON ANOTHER HEALTH CARE PROVIDER.

8. ACTION TAKEN PURSUANT TO SECTION 36-3303, 36-3304, 36-3305 OR 36-3306 MAY NOT BE THE SOLE BASIS FOR A REPORT OF UNPROFESSIONAL CONDUCT UNDER TITLE 32, CHAPTER 13 OR 17.

9. THIS ARTICLE DOES NOT ALLOW A LOWER STANDARD OF CARE FOR PATIENTS IN THE COMMUNITY WHERE THE PATIENT IS TREATED OR A SIMILAR COMMUNITY.

B. FOR THE PURPOSES OF THIS SECTION:

1. "NOTIFY" MEANS THAT A SANCTIONING HEALTH CARE PROVIDER SPECIFICALLY INFORMS A HEALTH CARE PROVIDER IN A SEPARATE STATEMENT IN WRITING OF THE SANCTIONING HEALTH CARE PROVIDER'S POLICY ABOUT PARTICIPATION IN ACTIVITIES COVERED BY THIS ARTICLE BEFORE THE HEALTH CARE PROVIDER PARTICIPATES IN ACTIVITIES COVERED BY THIS ARTICLE.

2. "PARTICIPATE IN ACTIVITIES COVERED BY THIS ARTICLE":

(a) MEANS TO PERFORM THE DUTIES OF AN ATTENDING PHYSICIAN PURSUANT TO SECTION 36-3304 OR A CONSULTING PHYSICIAN PURSUANT TO SECTION 36-3305 OR THE COUNSELING FUNCTION PURSUANT TO SECTION 36-3306.

(b) DOES NOT INCLUDE MAKING AN INITIAL DETERMINATION THAT A PATIENT HAS A TERMINAL DISEASE AND INFORMING THE PATIENT OF THE MEDICAL PROGNOSIS, PROVIDING INFORMATION ABOUT THIS ARTICLE TO A PATIENT ON THE PATIENT'S REQUEST OR PROVIDING A PATIENT, ON THE PATIENT'S REQUEST, WITH A REFERRAL TO ANOTHER PHYSICIAN OR A PATIENT CONTRACTING WITH THE PATIENT'S ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO ACT OUTSIDE OF THE COURSE AND SCOPE OF THE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER.

1 36-3319. Violations: classification; liability

2 A. A PERSON IS GUILTY OF A CLASS 2 FELONY WHO, WITHOUT THE
3 PATIENT'S AUTHORIZATION, WILFULLY ALTERS OR FORGES A REQUEST FOR A
4 PRESCRIPTION FOR MEDICATION OR CONCEALS OR DESTROYS A RESCISSION OF THAT
5 REQUEST WITH THE INTENT OR EFFECT OF CAUSING THE PATIENT'S DEATH.

6 B. A PERSON IS GUILTY OF A CLASS 2 FELONY WHO COERCES OR EXERTS
7 UNDUE INFLUENCE ON A PATIENT TO REQUEST A PRESCRIPTION FOR MEDICATION TO
8 END THE PATIENT'S LIFE OR TO DESTROY A RESCISSION OF SUCH A REQUEST.

9 C. A PERSON IS GUILTY OF A CLASS 2 FELONY WHO, WITHOUT
10 AUTHORIZATION OF THE PRINCIPAL, WILFULLY ALTERS, FORGES, CONCEALS OR
11 DESTROYS AN INSTRUMENT, THE REINSTATEMENT OR REVOCATION OF AN INSTRUMENT
12 OR ANY OTHER EVIDENCE OR DOCUMENT REFLECTING THE PRINCIPAL'S DESIRES AND
13 INTERESTS, WITH THE INTENT AND EFFECT OF CAUSING A WITHHOLDING OR
14 WITHDRAWAL OF LIFE-SUSTAINING PROCEDURES OR ARTIFICIALLY ADMINISTERED
15 NUTRITION AND HYDRATION THAT HASTENS THE DEATH OF THE PRINCIPAL.

16 D. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, A PERSON IS
17 GUILTY OF A CLASS 1 MISDEMEANOR WHO, WITHOUT AUTHORIZATION OF THE
18 PRINCIPAL, WILFULLY ALTERS, FORGES, CONCEALS OR DESTROYS AN INSTRUMENT,
19 THE REINSTATEMENT OR REVOCATION OF AN INSTRUMENT OR ANY OTHER EVIDENCE OR
20 DOCUMENT REFLECTING THE PRINCIPAL'S DESIRES AND INTERESTS WITH THE INTENT
21 OR EFFECT OF AFFECTING A HEALTH CARE DECISION OF THE PRINCIPAL.

22 E. THIS ARTICLE DOES NOT LIMIT FURTHER LIABILITY FOR CIVIL DAMAGES
23 RESULTING FROM OTHER NEGLIGENT CONDUCT OR INTENTIONAL MISCONDUCT BY ANY
24 PERSON.

25 F. THE PENALTIES IN THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES
26 APPLICABLE UNDER OTHER LAW FOR CONDUCT THAT IS INCONSISTENT WITH THIS
27 ARTICLE.

28 36-3320. Claims by governmental entity: costs

29 A GOVERNMENTAL ENTITY THAT INCURS COSTS RESULTING FROM A PERSON
30 TERMINATING THE PERSON'S LIFE PURSUANT TO THIS ARTICLE IN A PUBLIC PLACE
31 HAS A CLAIM AGAINST THE ESTATE OF THE PERSON TO RECOVER THE COSTS AND
32 REASONABLE ATTORNEY FEES RELATED TO ENFORCING THE CLAIM.

33 36-3321. Form of request

34 A REQUEST FOR A PRESCRIPTION FOR MEDICATION AS AUTHORIZED BY THIS
35 ARTICLE MAY BE TRANSLATED INTO A PATIENT'S PRIMARY LANGUAGE IF THE PATIENT
36 DOES NOT SPEAK ENGLISH AND SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

37 REQUEST FOR A PRESCRIPTION FOR MEDICATION

38 TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

39 I, _____, AM AN ADULT OF SOUND MIND.

40 I AM SUFFERING FROM _____, WHICH MY ATTENDING
41 PHYSICIAN HAS DETERMINED IS A TERMINAL DISEASE AND WHICH A
42 CONSULTING PHYSICIAN HAS MEDICALLY CONFIRMED.

1 I HAVE BEEN FULLY INFORMED OF MY DIAGNOSIS, MY
2 PROGNOSIS, THE NATURE OF MEDICATION TO BE PRESCRIBED AND
3 POTENTIAL ASSOCIATED RISKS, THE EXPECTED RESULT AND THE
4 FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE
5 AND PAIN CONTROL.

6 I REQUEST THAT MY ATTENDING PHYSICIAN PRESCRIBE
7 MEDICATION THAT WILL END MY LIFE IN A HUMANE AND DIGNIFIED
8 MANNER.

9 INITIAL ONE:

10 ____ I HAVE INFORMED MY FAMILY MEMBERS OF MY DECISION
11 AND TAKEN THEIR OPINIONS INTO CONSIDERATION.

12 ____ I HAVE DECIDED NOT TO INFORM MY FAMILY MEMBERS OF
13 MY DECISION.

14 ____ I HAVE NO FAMILY MEMBERS TO INFORM OF MY DECISION.

15 I UNDERSTAND THAT I HAVE THE RIGHT TO RESCIND THIS
16 REQUEST AT ANY TIME.

17 I UNDERSTAND THE FULL IMPORT OF THIS REQUEST AND I
18 EXPECT TO DIE WHEN I TAKE THE MEDICATION TO BE PRESCRIBED. I
19 FURTHER UNDERSTAND THAT ALTHOUGH MOST DEATHS OCCUR WITHIN
20 THREE HOURS, MY DEATH MAY TAKE LONGER AND MY PHYSICIAN HAS
21 COUNSELED ME ABOUT THIS POSSIBILITY.

22 I MAKE THIS REQUEST VOLUNTARILY AND WITHOUT RESERVATION,
23 AND I ACCEPT FULL MORAL RESPONSIBILITY FOR MY ACTIONS.

24 SIGNED: _____

25 DATED: _____

26 DECLARATION OF WITNESSES

27 WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

- 28 1. IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF
29 IDENTITY.
- 30 2. SIGNED THIS REQUEST IN OUR PRESENCE.
- 31 3. APPEARS TO BE OF SOUND MIND AND TO NOT BE UNDER
32 DURESS, FRAUD OR UNDUE INFLUENCE.
- 33 4. IS NOT A PATIENT FOR WHOM EITHER OF US IS THE
34 ATTENDING PHYSICIAN.

35 ____ WITNESS 1/DATE _____

36 ____ WITNESS 2/DATE _____

37 NOTE: ONE WITNESS MUST NOT BE A RELATIVE (BY BLOOD,
38 MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, MUST
39 NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH
40 AND MUST NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE
41 FACILITY WHERE THE PERSON RESIDES OR IS A PATIENT. IF THE
42 PATIENT IS AN INPATIENT AT A HEALTH CARE FACILITY, ONE WITNESS
43 MUST BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

1 Sec. 2. Severability

2 If a provision of this act or its application to any person or
3 circumstance is held invalid, the invalidity does not affect other
4 provisions or applications of the act that can be given effect without the
5 invalid provision or application, and to this end the provisions of this
6 act are severable.

7 Sec. 3. Short title

8 This act may be cited as the "Death with Dignity Act".