

1 HB40
2 172716-7
3 By Representative Johnson (R)
4 RFD: Health
5 First Read: 02-FEB-16
6 PFD: 01/29/2016

1 "In order that the rights of individuals may be
2 respected even after they are no longer able to participate
3 actively in decisions about themselves, the Legislature
4 hereby declares that the laws of this state shall recognize
5 the right of a competent adult person to make a written
6 declaration instructing his or her physician to provide,
7 withhold, or withdraw life-sustaining treatment and
8 artificially provided nutrition and hydration or designate by
9 lawful written form a health care proxy to make decisions on
10 behalf of the adult person concerning the providing,
11 withholding, or withdrawing of life-sustaining treatment and
12 artificially provided nutrition and hydration in instances of
13 terminal conditions and permanent unconsciousness. The
14 Legislature further desires to provide for the appointment of
15 surrogate decision-makers in instances where the individual
16 has not made such a designation and to allow a health care
17 provider to follow certain portable physician orders provided
18 for in this chapter.

19 "§22-8A-3.

20 "As used in this chapter, the following terms shall
21 have the following meanings, respectively, unless the context
22 clearly indicates otherwise:

23 "(1) ADULT. Any person 19 years of age or over.

24 "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

25 A medical treatment consisting of the administration of food
26 and water through a tube or intravenous line, where the
27 recipient is not required to chew or swallow voluntarily.

1 Artificially provided nutrition and hydration does not include
2 assisted feeding, such as spoon or bottle feeding.

3 "(3) ADVANCE DIRECTIVE FOR HEALTH CARE. A writing
4 executed in accordance with Section 22-8A-4 which may include
5 a living will, the appointment of a health care proxy, or both
6 such living will and appointment of a health care proxy.

7 "(4) ATTENDING PHYSICIAN. The physician selected by,
8 or assigned to, the patient who has primary responsibility for
9 the treatment and care of the patient.

10 "(5) CARDIOPULMONARY CESSATION. A lack of pulse or
11 respiration.

12 "~~(5)~~ (6) COMPETENT ADULT. An adult who is alert,
13 capable of understanding a lay description of medical
14 procedures and able to appreciate the consequences of
15 providing, withholding, or withdrawing medical procedures.

16 "(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A
17 physician's order that resuscitative measures not be provided
18 to a person under a physician's care in the event the person
19 is found with cardiopulmonary cessation. A do not attempt
20 resuscitation order would include, without limitation,
21 physician orders written as "do not resuscitate," "do not
22 allow resuscitation," "do not allow resuscitative measures,"
23 "DNAR," "DNR," "allow natural death," or "AND." A do not
24 attempt resuscitation order must be entered with the consent
25 of the person, if the person is competent; or in accordance
26 with instructions in an advance directive if the person is not
27 competent or is no longer able to understand, appreciate, and

1 direct his or her medical treatment and has no hope of
2 regaining that ability; or with the consent of a health care
3 proxy or surrogate functioning under the provisions in this
4 chapter; or instructions by an attorney in fact under a
5 durable power of attorney that duly grants powers to the
6 attorney in fact to make those decisions described in Section
7 22-8A-4(b) (1) .

8 ~~"(6)~~ (8) HEALTH CARE PROVIDER. A person who is
9 licensed, certified, registered, or otherwise authorized by
10 the law of this state to administer or provide health care in
11 the ordinary course of business or in the practice of a
12 profession.

13 ~~"(7)~~ (9) HEALTH CARE PROXY. Any person designated to
14 act on behalf of an individual pursuant to Section 22-8A-4.

15 ~~"(8)~~ (10) LIFE-SUSTAINING TREATMENT. Any medical
16 treatment, procedure, or intervention that, in the judgment of
17 the attending physician, when applied to the patient, would
18 serve only to prolong the dying process where the patient has
19 a terminal illness or injury, or would serve only to maintain
20 the patient in a condition of permanent unconsciousness. These
21 procedures shall include, but are not limited to, assisted
22 ventilation, cardiopulmonary resuscitation, renal dialysis,
23 surgical procedures, blood transfusions, and the
24 administration of drugs and antibiotics. Life-sustaining
25 treatment shall not include the administration of medication
26 or the performance of any medical treatment where, in the
27 opinion of the attending physician, the medication or

1 treatment is necessary to provide comfort or to alleviate
2 pain.

3 "~~(9)~~ (11) LIVING WILL. A witnessed document in
4 writing, voluntarily executed by the declarant, that gives
5 directions and may appoint a health care proxy, in accordance
6 with the requirements of Section 22-8A-4.

7 "~~(10)~~ (12) PERMANENT UNCONSCIOUSNESS. A condition
8 that, to a reasonable degree of medical certainty:

9 "a. Will last permanently, without improvement; and

10 "b. In which cognitive thought, sensation,
11 purposeful action, social interaction, and awareness of self
12 and environment are absent; and

13 "c. Which condition has existed for a period of time
14 sufficient, in accordance with applicable professional
15 standards, to make such a diagnosis; and

16 "d. Which condition is confirmed by a physician who
17 is qualified and experienced in making such a diagnosis.

18 "~~(11)~~ (13) PERSON. An individual, corporation,
19 business trust, estate, trust, partnership, association, joint
20 venture, government, governmental subdivision or agency, or
21 any other legal or commercial entity.

22 "~~(12)~~ (14) PHYSICIAN. A person licensed to practice
23 medicine and osteopathy in the State of Alabama.

24 "(15) PORTABLE PHYSICIAN DNAR ORDER. A DNAR order
25 entered in the medical record by a physician using the
26 required form designated by the State Board of Health and
27 substantiated by completion of all sections of the form.

1 "(16) RESUSCITATIVE MEASURES. Those measures used to
2 restore or support cardiac or respiratory function in the
3 event of cardiopulmonary cessation.

4 "~~(13)~~(17) SURROGATE. Any person appointed to act on
5 behalf of an individual pursuant to Section 22-8A-11.

6 "~~(14)~~(18) TERMINALLY ILL OR INJURED PATIENT. A
7 patient whose death is imminent or whose condition, to a
8 reasonable degree of medical certainty, is hopeless unless he
9 or she is artificially supported through the use of
10 life-sustaining procedures and which condition is confirmed by
11 a physician who is qualified and experienced in making such a
12 diagnosis.

13 "§22-8A-7.

14 "(a) A competent adult may make decisions regarding
15 life-sustaining treatment and artificially provided nutrition
16 and hydration so long as that individual is able to do so. The
17 desires of an individual shall at all times supersede the
18 effect of an advance directive for health care.

19 "(b) If the individual is not competent at the time
20 of the decision to provide, withhold, or withdraw
21 life-sustaining treatment or artificially provided nutrition
22 and hydration, a living will executed in accordance with
23 Section 22-8A-4(a) or a proxy designation executed in
24 accordance with Section 22-8A-4(b) is presumed to be valid.
25 For the purpose of this chapter, a health care provider may
26 presume in the absence of actual notice to the contrary that
27 an individual who executed an advance directive for health

1 care was competent when it was executed. The fact of an
2 individual's having executed an advance directive for health
3 care shall not be considered as an indication of a declarant's
4 mental incompetency. Advanced age of itself shall not be a bar
5 to a determination of competency.

6 "(c) No physician, licensed health care
7 professional, medical care facility, other health care
8 provider, or any employee thereof who in good faith and
9 pursuant to reasonable medical standards issues or follows a
10 portable physician DNAR order entered in the medical record
11 pursuant to this chapter or causes or participates in the
12 providing, withholding, or withdrawing of life-sustaining
13 treatment or artificially provided nutrition and hydration
14 from a patient pursuant to a living will or designated proxy
15 made in accordance with this chapter or pursuant to the
16 directions of a duly designated surrogate appointed in
17 accordance with this chapter, in the absence of actual
18 knowledge of the revocation thereof, shall, as a result
19 thereof, be subject to criminal or civil liability, or be
20 found to have committed an act of unprofessional conduct.

21 "§22-8A-8.

22 "(a) A health care provider who refuses to comply
23 with a living will or the directions of a duly designated
24 proxy or a duly appointed surrogate or who refuses to honor a
25 portable physician DNAR order executed in compliance with the
26 directives of this chapter and using the form designated by
27 the State Board of Health pursuant to this chapter shall

1 promptly so advise the declarant and any individual designated
2 to act for the declarant, shall not be liable for such
3 refusal, but shall permit the patient to be transferred to
4 another health care provider. Such health care provider shall
5 reasonably cooperate to assist the declarant, or any
6 individual designated to act for the declarant, in the timely
7 transfer of the declarant to another health care provider
8 that will follow the directions of the portable physician DNAR
9 order, living will, health care proxy, or surrogate. During
10 the time for the transfer, all life-sustaining treatments,
11 including resuscitation efforts in the event of
12 cardiopulmonary cessation and artificially provided nutrition
13 and hydration, shall be properly maintained.

14 "(b) No nurse, physician, or other health care
15 provider may be required by law or contract in any
16 circumstances to participate in the withholding or withdrawal
17 of resuscitative measures or ~~of~~ life-sustaining treatment if
18 such person objects to so doing. No person may be
19 discriminated against in employment or professional privileges
20 because of the person's participation or refusal to
21 participate in the withholding or withdrawal of resuscitative
22 measures or life-sustaining treatment.

23 "(c) Any person who willfully conceals, cancels,
24 defaces, obliterates, or damages the portable physician DNAR
25 order or advance directive for health care of another without
26 the declarant's consent or who falsifies or forges a

1 revocation of the advance directive for health care of another
2 shall be guilty of a Class A misdemeanor.

3 "(d) Any person who falsifies or forges the portable
4 physician DNAR order or advance directive for health care of
5 another, or willfully conceals or withholds personal knowledge
6 of the revocation of ~~an~~ a portable physician DNAR order or
7 advance directive for health care, with the intent to cause a
8 withholding or withdrawal of resuscitative measures or
9 life-sustaining treatment or artificially provided nutrition
10 and hydration contrary to the wishes of the declarant, and
11 thereby, because of such act, directly causes life-sustaining
12 treatment or artificially provided nutrition and hydration to
13 be withheld or withdrawn and death to be hastened, shall be
14 guilty of a Class C felony."

15 Section 2. Section 22-8A-4.1 is added to the Code of
16 Alabama 1975, to read as follows:

17 §22-8A-4.1.

18 (a) A completed DNAR order that is properly entered
19 and received is deemed a valid order.

20 (b) (1) The State Board of Health shall adopt by
21 rule the form to be used for a portable DNAR order.

22 (2) The State Board of Health and the Board of
23 Medical Examiners may adopt rules to implement this act.
24 Notwithstanding the foregoing, the Board of Medical Examiners
25 shall have exclusive authority to adopt rules relating to
26 physicians in implementing this act.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 02-FEB-16

Read for the second time and placed
on the calendar 1 amendment 11-FEB-16

Read for the third time and passed
as amended..... 23-FEB-16

Yeas 101, Nays 0, Abstains 0

Jeff Woodard
Clerk