

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

8 SYNOPSIS: Under existing law, the Natural Death Act
9 does not specifically define and provide for do not
10 attempt resuscitation orders.

11 This bill would authorize any health care
12 provider to accept a physician's do not attempt
13 resuscitation order which provides that a patient
14 not undergo cardiopulmonary resuscitation when the
15 order is duly entered in the medical record under
16 certain conditions.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to the Natural Death Act; to amend Sections
23 22-8A-2, 22-8A-3, 22-8A-7, and 22-8A-8, Code of Alabama 1975;
24 to add Section 22-8A-4.1 to the Code of Alabama 1975, to
25 authorize health care providers under certain conditions to
26 follow a physician's do not attempt resuscitation order duly
27 entered in the medical record anywhere in the state, even if

1 the person subject to the order has become incapacitated and
2 is unable to direct his or her medical treatment.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 22-8A-2, 22-8A-3, 22-8A-7, and
5 22-8A-8, Code of Alabama 1975, are amended to read as follows:

6 "§22-8A-2.

7 "The Legislature finds that competent adult persons
8 have the right to control the decisions relating to the
9 rendering of their own medical care, including, without
10 limitation, the decision to have medical procedures,
11 life-sustaining treatment, and artificially provided nutrition
12 and hydration provided, withheld, or withdrawn in instances of
13 terminal conditions and permanent unconsciousness.

14 "In order that the rights of individuals may be
15 respected even after they are no longer able to participate
16 actively in decisions about themselves, the Legislature
17 hereby declares that the laws of this state shall recognize
18 the right of a competent adult person to make a written
19 declaration instructing his or her physician to provide,
20 withhold, or withdraw life-sustaining treatment and
21 artificially provided nutrition and hydration or designate by
22 lawful written form a health care proxy to make decisions on
23 behalf of the adult person concerning the providing,
24 withholding, or withdrawing of life-sustaining treatment and
25 artificially provided nutrition and hydration in instances of
26 terminal conditions and permanent unconsciousness. The
27 Legislature further desires to provide for the appointment of

1 surrogate decision-makers in instances where the individual
2 has not made such a designation and to allow a health care
3 provider to follow certain portable physician orders provided
4 for in this chapter.

5 "§22-8A-3.

6 "As used in this chapter, the following terms shall
7 have the following meanings, respectively, unless the context
8 clearly indicates otherwise:

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

10 "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

11 A medical treatment consisting of the administration of food
12 and water through a tube or intravenous line, where the
13 recipient is not required to chew or swallow voluntarily.
14 Artificially provided nutrition and hydration does not include
15 assisted feeding, such as spoon or bottle feeding.

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

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

23 "(5) CARDIOPULMONARY CESSATION. A lack of pulse or
24 respiration.

25 "~~(5)~~ (6) COMPETENT ADULT. An adult who is alert,
26 capable of understanding a lay description of medical

1 procedures and able to appreciate the consequences of
2 providing, withholding, or withdrawing medical procedures.

3 "(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A
4 physician's order that resuscitative measures not be provided
5 to a person under a physician's care in the event the person
6 is found with cardiopulmonary cessation. A do not attempt
7 resuscitation order would include, without limitation,
8 physician orders written as "do not resuscitate," "do not
9 allow resuscitation," "do not allow resuscitative measures,"
10 "DNAR," "DNR," "allow natural death," or "AND." A do not
11 attempt resuscitation order must be entered with the consent
12 of the person, if the person is competent; or in accordance
13 with instructions in an advance directive if the person is not
14 competent or is no longer able to understand, appreciate, and
15 direct his or her medical treatment and has no hope of
16 regaining that ability; or with the consent of a health care
17 proxy or surrogate functioning under the provisions in this
18 chapter; or instructions by an attorney in fact under a
19 durable power of attorney that duly grants powers to the
20 attorney in fact to make those decisions described in Section
21 22-8A-4(b) (1) .

22 "~~(6)~~ (8) HEALTH CARE PROVIDER. A person who is
23 licensed, certified, registered, or otherwise authorized by
24 the law of this state to administer or provide health care in
25 the ordinary course of business or in the practice of a
26 profession.

1 "~~(7)~~(9) HEALTH CARE PROXY. Any person designated to
2 act on behalf of an individual pursuant to Section 22-8A-4.

3 "~~(8)~~(10) LIFE-SUSTAINING TREATMENT. Any medical
4 treatment, procedure, or intervention that, in the judgment of
5 the attending physician, when applied to the patient, would
6 serve only to prolong the dying process where the patient has
7 a terminal illness or injury, or would serve only to maintain
8 the patient in a condition of permanent unconsciousness. These
9 procedures shall include, but are not limited to, assisted
10 ventilation, cardiopulmonary resuscitation, renal dialysis,
11 surgical procedures, blood transfusions, and the
12 administration of drugs and antibiotics. Life-sustaining
13 treatment shall not include the administration of medication
14 or the performance of any medical treatment where, in the
15 opinion of the attending physician, the medication or
16 treatment is necessary to provide comfort or to alleviate
17 pain.

18 "~~(9)~~(11) LIVING WILL. A witnessed document in
19 writing, voluntarily executed by the declarant, that gives
20 directions and may appoint a health care proxy, in accordance
21 with the requirements of Section 22-8A-4.

22 "~~(10)~~(12) PERMANENT UNCONSCIOUSNESS. A condition
23 that, to a reasonable degree of medical certainty:

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

25 "b. In which cognitive thought, sensation,
26 purposeful action, social interaction, and awareness of self
27 and environment are absent; and

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

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

6 "~~(11)~~ (13) PERSON. An individual, corporation,
7 business trust, estate, trust, partnership, association, joint
8 venture, government, governmental subdivision or agency, or
9 any other legal or commercial entity.

10 "~~(12)~~ (14) PHYSICIAN. A person licensed to practice
11 medicine and osteopathy in the State of Alabama.

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

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

19 "~~(13)~~ (17) SURROGATE. Any person appointed to act on
20 behalf of an individual pursuant to Section 22-8A-11.

21 "~~(14)~~ (18) TERMINALLY ILL OR INJURED PATIENT. A
22 patient whose death is imminent or whose condition, to a
23 reasonable degree of medical certainty, is hopeless unless he
24 or she is artificially supported through the use of
25 life-sustaining procedures and which condition is confirmed by
26 a physician who is qualified and experienced in making such a
27 diagnosis.

1 "§22-8A-7.

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

7 "(b) If the individual is not competent at the time
8 of the decision to provide, withhold, or withdraw
9 life-sustaining treatment or artificially provided nutrition
10 and hydration, a living will executed in accordance with
11 Section 22-8A-4(a) or a proxy designation executed in
12 accordance with Section 22-8A-4(b) is presumed to be valid.
13 For the purpose of this chapter, a health care provider may
14 presume in the absence of actual notice to the contrary that
15 an individual who executed an advance directive for health
16 care was competent when it was executed. The fact of an
17 individual's having executed an advance directive for health
18 care shall not be considered as an indication of a declarant's
19 mental incompetency. Advanced age of itself shall not be a bar
20 to a determination of competency.

21 "(c) No physician, licensed health care
22 professional, medical care facility, other health care
23 provider, or any employee thereof who in good faith and
24 pursuant to reasonable medical standards issues or follows a
25 portable physician DNAR order entered in the medical record
26 pursuant to this chapter or causes or participates in the
27 providing, withholding, or withdrawing of life-sustaining

1 treatment or artificially provided nutrition and hydration
2 from a patient pursuant to a living will or designated proxy
3 made in accordance with this chapter or pursuant to the
4 directions of a duly designated surrogate appointed in
5 accordance with this chapter, in the absence of actual
6 knowledge of the revocation thereof, shall, as a result
7 thereof, be subject to criminal or civil liability, or be
8 found to have committed an act of unprofessional conduct.

9 "§22-8A-8.

10 "(a) A health care provider who refuses to comply
11 with a living will or the directions of a duly designated
12 proxy or a duly appointed surrogate or who refuses to honor a
13 portable physician DNAR order executed in compliance with the
14 directives of this chapter and using the form designated by
15 the State Board of Health pursuant to this chapter shall
16 promptly so advise the declarant and any individual designated
17 to act for the declarant, shall not be liable for such
18 refusal, but shall permit the patient to be transferred to
19 another health care provider. Such health care provider shall
20 reasonably cooperate to assist the declarant, or any
21 individual designated to act for the declarant, in the timely
22 transfer of the declarant to another health care provider
23 that will follow the directions of the portable physician DNAR
24 order, living will, health care proxy, or surrogate. During
25 the time for the transfer, all life-sustaining treatments,
26 including resuscitation efforts in the event of

1 cardiopulmonary cessation and artificially provided nutrition
2 and hydration, shall be properly maintained.

3 "(b) No nurse, physician, or other health care
4 provider may be required by law or contract in any
5 circumstances to participate in the withholding or withdrawal
6 resuscitative measures or of life-sustaining treatment if such
7 person objects to so doing. No person may be discriminated
8 against in employment or professional privileges because of
9 the person's participation or refusal to participate in the
10 withholding or withdrawal of resuscitative measures or
11 life-sustaining treatment.

12 "(c) Any person who willfully conceals, cancels,
13 defaces, obliterates, or damages the portable physician DNAR
14 order or advance directive for health care of another without
15 the declarant's consent or who falsifies or forges a
16 revocation of the advance directive for health care of another
17 shall be guilty of a Class A misdemeanor.

18 "(d) Any person who falsifies or forges the portable
19 physician DNAR order or advance directive for health care of
20 another, or willfully conceals or withholds personal knowledge
21 of the revocation of ~~an~~ a portable physician DNAR order or
22 advance directive for health care, with the intent to cause a
23 withholding or withdrawal of resuscitative measures or
24 life-sustaining treatment or artificially provided nutrition
25 and hydration contrary to the wishes of the declarant, and
26 thereby, because of such act, directly causes life-sustaining
27 treatment or artificially provided nutrition and hydration to

1 be withheld or withdrawn and death to be hastened, shall be
2 guilty of a Class C felony."

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

5 §22-8A-4.1.

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

8 (b) The State Board of Health and the Board of
9 Medical Examiners may adopt rules to implement this act.
10 Notwithstanding the foregoing, the Board of Medical Examiners
11 shall have exclusive authority to adopt rules relating to
12 physicians in implementing this act.

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