

REFERENCE TITLE: terminally ill; care choices

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1136

Introduced by
Senators McGuire: Dalessandro, Hobbs; Representative Andrade

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:

4 CHAPTER 33

5 DEATH WITH DIGNITY

6 ARTICLE 1. GENERAL PROVISIONS

7 36-3301 Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER.

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

13 3. "CAPABLE" MEANS THAT IN THE OPINION OF A COURT OR IN THE OPINION OF
14 A PATIENT'S ATTENDING PHYSICIAN OR CONSULTING PHYSICIAN, PSYCHIATRIST OR
15 PSYCHOLOGIST, THE PATIENT HAS THE ABILITY TO MAKE AND COMMUNICATE HEALTH CARE
16 DECISIONS TO HEALTH CARE PROVIDERS, INCLUDING COMMUNICATION THROUGH PERSONS
17 FAMILIAR WITH THE PATIENT'S MANNER OF COMMUNICATING IF THOSE PERSONS ARE
18 AVAILABLE.

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

22 5. "COUNSELING" MEANS ONE OR MORE CONSULTATIONS AS NECESSARY BETWEEN A
23 STATE LICENSED PSYCHIATRIST OR PSYCHOLOGIST AND A PATIENT FOR THE PURPOSE OF
24 DETERMINING THAT THE PATIENT IS CAPABLE AND NOT SUFFERING FROM A PSYCHIATRIC
25 OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

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

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

31 8. "INFORMED DECISION" MEANS A DECISION BY A QUALIFIED PATIENT TO
32 REQUEST AND OBTAIN A PRESCRIPTION TO END THE PATIENT'S LIFE IN A HUMANE AND
33 DIGNIFIED MANNER THAT IS BASED ON AN APPRECIATION OF THE RELEVANT FACTS AND
34 THAT IS MADE AFTER BEING FULLY INFORMED BY THE ATTENDING PHYSICIAN OF ALL OF
35 THE FOLLOWING:

36 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

37 (b) THE PATIENT'S PROGNOSIS.

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

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

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

43 9. "MEDICALLY CONFIRMED" MEANS THE MEDICAL OPINION OF THE ATTENDING
44 PHYSICIAN HAS BEEN CONFIRMED BY A CONSULTING PHYSICIAN WHO HAS EXAMINED THE
45 PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS.

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

2 11. "PHYSICIAN" MEANS AN INDIVIDUAL WHO IS LICENSED PURSUANT TO TITLE
3 32, CHAPTER 13 OR 17.

4 12. "QUALIFIED PATIENT" MEANS A CAPABLE ADULT WHO IS A RESIDENT OF
5 THIS STATE AND WHO HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER TO
6 OBTAIN A PRESCRIPTION FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND
7 DIGNIFIED MANNER.

8 13. "TERMINAL DISEASE" MEANS AN INCURABLE AND IRREVERSIBLE DISEASE
9 THAT HAS BEEN MEDICALLY CONFIRMED AND WILL PRODUCE DEATH, WITH REASONABLE
10 MEDICAL JUDGMENT, WITHIN SIX MONTHS.

11 36-3302. Written request for medication; initiation

12 A. AN ADULT WHO IS CAPABLE, IS A RESIDENT OF THIS STATE AND HAS BEEN
13 DETERMINED BY THE ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO BE
14 SUFFERING FROM A TERMINAL DISEASE, AND WHO HAS VOLUNTARILY EXPRESSED A WISH
15 TO DIE, MAY MAKE A WRITTEN REQUEST FOR MEDICATION FOR THE PURPOSE OF ENDING
16 THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED MANNER IN ACCORDANCE WITH THIS
17 ARTICLE.

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

20 36-3303. Form of request; witnesses; signatures

21 A. A VALID REQUEST FOR MEDICATION UNDER THIS ARTICLE SHALL BE IN
22 SUBSTANTIALLY THE FORM DESCRIBED IN SECTION 36-3321, BE SIGNED AND DATED BY
23 THE PATIENT AND BE WITNESSED BY AT LEAST TWO INDIVIDUALS WHO, IN THE PRESENCE
24 OF THE PATIENT, ATTEST THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THE
25 PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND IS NOT BEING COERCED TO SIGN
26 THE REQUEST.

27 B. ONE OF THE WITNESSES SHALL BE A PERSON WHO IS NOT ANY OF THE
28 FOLLOWING:

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

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

33 3. AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE
34 QUALIFIED PATIENT IS RECEIVING MEDICAL TREATMENT OR IS A RESIDENT.

35 C. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED
36 MAY NOT BE A WITNESS.

37 D. IF THE PATIENT IS A PATIENT IN A LONG TERM CARE FACILITY AT THE
38 TIME THE WRITTEN REQUEST IS MADE, ONE OF THE WITNESSES SHALL BE AN INDIVIDUAL
39 WHO IS DESIGNATED BY THE FACILITY AND WHO HAS THE QUALIFICATIONS SPECIFIED BY
40 THE DEPARTMENT IN RULE.

41 36-3304. Attending physician; requirements

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

43 1. MAKE THE INITIAL DETERMINATION OF WHETHER A PATIENT HAS A TERMINAL
44 DISEASE, IS CAPABLE AND HAS MADE THE REQUEST VOLUNTARILY.

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

3 3. TO ENSURE THAT THE PATIENT IS MAKING AN INFORMED DECISION, INFORM
4 THE PATIENT OF ALL OF THE FOLLOWING:

5 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

6 (b) THE PATIENT'S PROGNOSIS.

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

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

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

12 4. REFER THE PATIENT TO A CONSULTING PHYSICIAN FOR MEDICAL
13 CONFIRMATION OF THE DIAGNOSIS AND FOR A DETERMINATION THAT THE PATIENT IS
14 CAPABLE AND ACTING VOLUNTARILY.

15 5. REFER THE PATIENT FOR COUNSELING IF APPROPRIATE PURSUANT TO SECTION
16 36-3306.

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

18 7. COUNSEL THE PATIENT ABOUT THE IMPORTANCE OF HAVING ANOTHER PERSON
19 PRESENT WHEN THE PATIENT TAKES THE MEDICATION PRESCRIBED PURSUANT TO THIS
20 ARTICLE AND OF NOT TAKING THE MEDICATION IN A PUBLIC PLACE.

21 8. INFORM THE PATIENT THAT THE PATIENT CAN RESCIND THE REQUEST AT ANY
22 TIME AND IN ANY MANNER AND OFFER THE PATIENT AN OPPORTUNITY TO RESCIND AT THE
23 END OF THE FIFTEEN-DAY WAITING PERIOD PURSUANT TO SECTION 36-3309.

24 9. VERIFY, IMMEDIATELY BEFORE WRITING THE PRESCRIPTION FOR MEDICATION
25 UNDER THIS ARTICLE, THAT THE PATIENT IS MAKING AN INFORMED DECISION.

26 10. FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENTS OF SECTION
27 36-3312.

28 11. ENSURE THAT ALL APPROPRIATE STEPS ARE CARRIED OUT IN ACCORDANCE
29 WITH THIS ARTICLE BEFORE WRITING A PRESCRIPTION FOR MEDICATION TO ENABLE A
30 QUALIFIED PATIENT TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

31 12. EITHER:

32 (a) IF THE ATTENDING PHYSICIAN IS AUTHORIZED BY STATE AND FEDERAL LAW
33 TO DISPENSE THE MEDICATION, DISPENSE MEDICATIONS DIRECTLY, INCLUDING
34 ANCILLARY MEDICATIONS INTENDED TO FACILITATE THE DESIRED EFFECT TO MINIMIZE
35 THE PATIENT'S DISCOMFORT.

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

37 (i) CONTACT A PHARMACIST AND INFORM THE PHARMACIST OF THE
38 PRESCRIPTION.

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

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

1 36-3305. Consulting physician confirmation of diagnosis

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

7 36-3306. Counseling referral; prohibition

8 IF, IN THE OPINION OF THE ATTENDING PHYSICIAN OR THE CONSULTING
9 PHYSICIAN, A PATIENT MAY BE SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL
10 DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT, EITHER PHYSICIAN SHALL
11 REFER THE PATIENT FOR COUNSELING. MEDICATION TO END A PATIENT'S LIFE IN A
12 HUMANE AND DIGNIFIED MANNER MAY NOT BE PRESCRIBED UNTIL THE PERSON PERFORMING
13 THE COUNSELING DETERMINES THAT THE PATIENT IS NOT SUFFERING FROM A
14 PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED
15 JUDGMENT.

16 36-3307. Informed decision

17 A PERSON MAY NOT RECEIVE A PRESCRIPTION FOR MEDICATION TO END THE
18 PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER UNLESS THE PERSON HAS MADE AN
19 INFORMED DECISION. IMMEDIATELY BEFORE WRITING A PRESCRIPTION FOR MEDICATION
20 UNDER THIS ARTICLE, THE ATTENDING PHYSICIAN SHALL VERIFY THAT THE PATIENT IS
21 MAKING AN INFORMED DECISION.

22 36-3308. Family notification

23 THE ATTENDING PHYSICIAN SHALL RECOMMEND THAT THE PATIENT NOTIFY THE
24 PATIENT'S NEXT OF KIN OF THE PATIENT'S REQUEST FOR MEDICATION PURSUANT TO
25 THIS ARTICLE. A PATIENT WHO DECLINES OR IS UNABLE TO NOTIFY NEXT OF KIN MAY
26 NOT HAVE THE PATIENT'S REQUEST DENIED FOR THAT REASON.

27 36-3309. Written and oral requests

28 IN ORDER TO RECEIVE A PRESCRIPTION FOR MEDICATION TO END THE PATIENT'S
29 LIFE IN A HUMANE AND DIGNIFIED MANNER, A QUALIFIED PATIENT SHALL HAVE MADE AN
30 ORAL REQUEST AND A WRITTEN REQUEST, AND REITERATE THE ORAL REQUEST TO THE
31 PATIENT'S ATTENDING PHYSICIAN AT LEAST FIFTEEN DAYS AFTER MAKING THE INITIAL
32 ORAL REQUEST. AT THE TIME THE QUALIFIED PATIENT MAKES THE SECOND ORAL
33 REQUEST, THE ATTENDING PHYSICIAN SHALL OFFER THE PATIENT AN OPPORTUNITY TO
34 RESCIND THE REQUEST.

35 36-3310. Right to rescind request

36 A PATIENT MAY RESCIND A REQUEST AT ANY TIME AND IN ANY MANNER WITHOUT
37 REGARD TO THE PATIENT'S MENTAL STATE. A PRESCRIPTION FOR MEDICATION UNDER
38 THIS ARTICLE MAY NOT BE WRITTEN WITHOUT THE ATTENDING PHYSICIAN OFFERING THE
39 QUALIFIED PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.

40 36-3311. Waiting periods

41 AT LEAST FIFTEEN DAYS SHALL ELAPSE BETWEEN THE PATIENT'S INITIAL ORAL
42 REQUEST AND THE WRITING OF A PRESCRIPTION UNDER THIS ARTICLE. AT LEAST
43 FORTY-EIGHT HOURS SHALL ELAPSE BETWEEN THE PATIENT'S WRITTEN REQUEST AND THE
44 WRITING OF A PRESCRIPTION UNDER THIS ARTICLE.

1 36-3312. Medical records; documentation; requirements

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

4 1. ALL ORAL REQUESTS BY A PATIENT FOR MEDICATION TO END THE PATIENT'S
5 LIFE IN A HUMANE AND DIGNIFIED MANNER.

6 2. ALL WRITTEN REQUESTS BY A PATIENT FOR MEDICATION TO END THE
7 PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

8 3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS AND DETERMINATION
9 THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED
10 DECISION.

11 4. THE CONSULTING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS AND VERIFICATION
12 THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED
13 DECISION.

14 5. A REPORT OF THE OUTCOME AND DETERMINATIONS MADE DURING COUNSELING,
15 IF PERFORMED.

16 6. THE ATTENDING PHYSICIAN'S OFFER TO THE PATIENT TO RESCIND THE
17 PATIENT'S REQUEST AT THE TIME OF THE PATIENT'S SECOND ORAL REQUEST PURSUANT
18 TO SECTION 36-3309.

19 7. A NOTE BY THE ATTENDING PHYSICIAN INDICATING THAT ALL REQUIREMENTS
20 UNDER THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS TAKEN TO CARRY OUT
21 THE REQUEST, INCLUDING A NOTATION OF THE MEDICATION PRESCRIBED.

22 36-3313. Residency requirement

23 ONLY REQUESTS MADE BY RESIDENTS OF THIS STATE UNDER THIS ARTICLE MAY BE
24 GRANTED. FACTORS DEMONSTRATING ARIZONA RESIDENCY INCLUDE ANY OF THE
25 FOLLOWING:

26 1. POSSESSION OF AN ARIZONA DRIVER LICENSE.

27 2. REGISTRATION TO VOTE IN THIS STATE.

28 3. EVIDENCE THAT THE PERSON OWNS OR LEASES PROPERTY IN THIS STATE.

29 4. FILING OF AN ARIZONA STATE TAX RETURN FOR THE MOST RECENT TAX YEAR.

30 36-3314. Reporting requirements

31 A. THE DEPARTMENT SHALL ANNUALLY REVIEW A SAMPLE OF RECORDS MAINTAINED
32 PURSUANT TO THIS ARTICLE.

33 B. THE DEPARTMENT SHALL REQUIRE ANY HEALTH CARE PROVIDER ON DISPENSING
34 MEDICATION PURSUANT TO THIS ARTICLE TO FILE A COPY OF THE DISPENSING RECORD
35 WITH THE DEPARTMENT.

36 C. THE DEPARTMENT SHALL ADOPT RULES TO FACILITATE THE COLLECTION OF
37 INFORMATION REGARDING COMPLIANCE WITH THIS ARTICLE. EXCEPT AS OTHERWISE
38 REQUIRED BY LAW, THE INFORMATION COLLECTED IS NOT A PUBLIC RECORD AND MAY NOT
39 BE MADE AVAILABLE FOR INSPECTION BY THE PUBLIC.

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

42 36-3315. Effect on construction of contracts, wills or
43 agreements

44 A. A PROVISION IN A CONTRACT, WILL OR OTHER AGREEMENT, WHETHER WRITTEN
45 OR ORAL, TO THE EXTENT THAT THE PROVISION WOULD AFFECT WHETHER A PERSON MAY

1 MAKE OR RESCIND A REQUEST FOR MEDICATION TO END THE PERSON'S LIFE IN A HUMANE
2 AND DIGNIFIED MANNER, IS INVALID.

3 B. AN OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT MAY NOT
4 BE CONDITIONED ON OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST, BY A
5 PERSON, FOR MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED
6 MANNER.

7 36-3316. Insurance or annuity policies

8 THE SALE, PROCUREMENT OR ISSUANCE OF ANY LIFE, HEALTH OR ACCIDENT
9 INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY MAY NOT BE
10 CONDITIONED ON OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST, BY A
11 PERSON, FOR MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED
12 MANNER. A QUALIFIED PATIENT'S ACT OF INGESTING MEDICATION TO END THE
13 PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER DOES NOT HAVE AN EFFECT ON A
14 LIFE, HEALTH OR ACCIDENT INSURANCE OR ANNUITY POLICY ISSUED OR DELIVERED IN
15 THIS STATE.

16 36-3317. Construction of article

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

22 36-3318. Immunities; prohibiting a health care provider from
23 participation; permissible sanctions; definitions

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

25 1. A PERSON IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR
26 PROFESSIONAL DISCIPLINARY ACTION FOR PARTICIPATING IN GOOD FAITH COMPLIANCE
27 WITH THIS ARTICLE, INCLUDING BEING PRESENT WHEN A QUALIFIED PATIENT TAKES THE
28 PRESCRIBED MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED
29 MANNER.

30 2. A PROFESSIONAL ORGANIZATION OR ASSOCIATION, OR HEALTH CARE
31 PROVIDER, MAY NOT SUBJECT A PERSON TO CENSURE, DISCIPLINE, SUSPENSION, LOSS
32 OF LICENSE, LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR ANY OTHER PENALTY FOR
33 PARTICIPATING OR REFUSING TO PARTICIPATE IN GOOD FAITH COMPLIANCE WITH THIS
34 ARTICLE.

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

39 4. A HEALTH CARE PROVIDER IS NOT UNDER ANY DUTY, WHETHER BY CONTRACT,
40 STATUTE OR ANY OTHER LEGAL REQUIREMENT, TO PARTICIPATE IN THE PROVISION TO A
41 QUALIFIED PATIENT OF MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND
42 DIGNIFIED MANNER. IF A HEALTH CARE PROVIDER IS UNABLE OR UNWILLING TO CARRY
43 OUT A PATIENT'S REQUEST UNDER THIS ARTICLE, AND THE PATIENT TRANSFERS THE
44 PATIENT'S CARE TO A NEW HEALTH CARE PROVIDER, THE PRIOR HEALTH CARE PROVIDER

1 SHALL TRANSFER, ON REQUEST, A COPY OF THE PATIENT'S RELEVANT MEDICAL RECORDS
2 TO THE NEW HEALTH CARE PROVIDER.

3 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HEALTH CARE PROVIDER
4 MAY PROHIBIT ANOTHER HEALTH CARE PROVIDER FROM PARTICIPATING IN THIS ARTICLE
5 ON THE PREMISES OF THE PROHIBITING PROVIDER IF THE PROHIBITING PROVIDER HAS
6 NOTIFIED THE HEALTH CARE PROVIDER OF THE PROHIBITING PROVIDER'S POLICY
7 REGARDING PARTICIPATING IN THIS ARTICLE. THIS PARAGRAPH DOES NOT PREVENT A
8 HEALTH CARE PROVIDER FROM PROVIDING HEALTH CARE SERVICES TO A PATIENT THAT DO
9 NOT CONSTITUTE PARTICIPATION IN THIS ARTICLE.

10 6. NOTWITHSTANDING PARAGRAPHS 1, 2, 3 AND 4 OF THIS SUBSECTION, A
11 HEALTH CARE PROVIDER MAY SUBJECT ANOTHER HEALTH CARE PROVIDER TO ANY OF THE
12 FOLLOWING SANCTIONS IF THE SANCTIONING HEALTH CARE PROVIDER HAS NOTIFIED THE
13 SANCTIONED PROVIDER BEFORE PARTICIPATION IN THIS ARTICLE THAT THE ACTIONS ARE
14 PROHIBITED:

15 (a) LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR ANY OTHER SANCTION
16 PROVIDED PURSUANT TO THE MEDICAL STAFF BYLAWS, POLICIES AND PROCEDURES OF THE
17 SANCTIONING HEALTH CARE PROVIDER IF THE SANCTIONED PROVIDER IS A MEMBER OF
18 THE SANCTIONING HEALTH CARE PROVIDER'S MEDICAL STAFF AND PARTICIPATES IN THIS
19 ARTICLE WHILE ON THE HEALTH CARE FACILITY PREMISES OF THE SANCTIONING HEALTH
20 CARE PROVIDER, BUT NOT INCLUDING THE PRIVATE MEDICAL OFFICE OF A PHYSICIAN OR
21 OTHER PROVIDER.

22 (b) TERMINATION OF LEASE OR OTHER PROPERTY CONTRACT OR OTHER
23 NONMONETARY REMEDIES PROVIDED BY A LEASE CONTRACT, NOT INCLUDING LOSS OR
24 RESTRICTION OF MEDICAL STAFF PRIVILEGES OR EXCLUSION FROM A PROVIDER PANEL,
25 IF THE SANCTIONED PROVIDER PARTICIPATES IN THIS ARTICLE WHILE ON THE PREMISES
26 OF THE SANCTIONING HEALTH CARE PROVIDER OR ON PROPERTY THAT IS OWNED BY OR
27 UNDER THE DIRECT CONTROL OF THE SANCTIONING HEALTH CARE PROVIDER.

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

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

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

40 7. A HEALTH CARE PROVIDER THAT IMPOSES SANCTIONS PURSUANT TO PARAGRAPH
41 6 OF THIS SUBSECTION MUST FOLLOW ALL DUE PROCESS AND OTHER PROCEDURES THE
42 SANCTIONING HEALTH CARE PROVIDER MAY HAVE THAT ARE RELATED TO THE IMPOSITION
43 OF SANCTIONS ON ANOTHER HEALTH CARE PROVIDER.

1 8. ACTION TAKEN PURSUANT TO SECTION 36-3303, 36-3304, 36-3305 OR
2 36-3306 MAY NOT BE THE SOLE BASIS FOR A REPORT OF UNPROFESSIONAL CONDUCT
3 UNDER TITLE 32, CHAPTER 13 OR 17.

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

6 B. FOR THE PURPOSES OF THIS SECTION:

7 1. "NOTIFY" MEANS SPECIFICALLY INFORMING THE HEALTH CARE PROVIDER IN A
8 SEPARATE STATEMENT IN WRITING PRIOR TO THE PROVIDER'S PARTICIPATION IN THIS
9 ARTICLE OF THE SANCTIONING HEALTH CARE PROVIDER'S POLICY ABOUT PARTICIPATION
10 IN ACTIVITIES COVERED BY THIS ARTICLE.

11 2. "PARTICIPATE IN THIS ARTICLE":

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

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

23 36-3319. Violations; classification; liability

24 A. A PERSON WHO WITHOUT AUTHORIZATION OF THE PATIENT WILFULLY ALTERS
25 OR FORGES A REQUEST FOR MEDICATION OR CONCEALS OR DESTROYS A RESCISSION OF
26 THAT REQUEST WITH THE INTENT OR EFFECT OF CAUSING THE PATIENT'S DEATH IS
27 GUILTY OF A CLASS 2 FELONY.

28 B. A PERSON WHO COERCES OR EXERTS UNDUE INFLUENCE ON A PATIENT TO
29 REQUEST MEDICATION FOR THE PURPOSE OF ENDING THE PATIENT'S LIFE, OR TO
30 DESTROY A RESCISSION OF SUCH A REQUEST, IS GUILTY OF A CLASS 2 FELONY.

31 C. THIS ARTICLE DOES NOT LIMIT FURTHER LIABILITY FOR CIVIL DAMAGES
32 RESULTING FROM OTHER NEGLIGENT CONDUCT OR INTENTIONAL MISCONDUCT BY ANY
33 PERSON.

34 D. THE PENALTIES IN THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES
35 APPLICABLE UNDER OTHER LAW FOR CONDUCT THAT IS INCONSISTENT WITH THIS
36 ARTICLE.

37 36-3320. Claims by governmental entity; costs

38 ANY GOVERNMENTAL ENTITY THAT INCURS COSTS RESULTING FROM A PERSON
39 TERMINATING THE PERSON'S LIFE PURSUANT TO THIS ARTICLE IN A PUBLIC PLACE HAS
40 A CLAIM AGAINST THE ESTATE OF THE PERSON TO RECOVER THE COSTS AND REASONABLE
41 ATTORNEY FEES RELATED TO ENFORCING THE CLAIM.

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36-3321. Form of request

A REQUEST FOR A MEDICATION AS AUTHORIZED BY THIS ARTICLE SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE
AND DIGNIFIED MANNER

I, _____, AM AN ADULT OF SOUND MIND.

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

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

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

INITIAL ONE:

_____ I HAVE INFORMED MY FAMILY OF MY DECISION AND TAKEN THEIR OPINIONS INTO CONSIDERATION.

_____ I HAVE DECIDED NOT TO INFORM MY FAMILY OF MY DECISION.

_____ I HAVE NO FAMILY TO INFORM OF MY DECISION.

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

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

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

SIGNED: _____

DATED: _____

DECLARATION OF WITNESSES

WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

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

_____ WITNESS 1/DATE _____

_____ WITNESS 2/DATE _____

1 NOTE: ONE WITNESS MAY NOT BE A RELATIVE (BY BLOOD,
2 MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, MAY
3 NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH
4 AND MAY NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE
5 FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT. IF THE
6 PATIENT IS AN INPATIENT AT A HEALTH CARE FACILITY, ONE OF THE
7 WITNESSES SHALL BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

8 36-3322. Violations: classification

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

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

22 Sec. 2. Severability

23 If a provision of this act or its application to any person or
24 circumstance is held invalid, the invalidity does not affect other provisions
25 or applications of the act that can be given effect without the invalid
26 provision or application, and to this end the provisions of this act are
27 severable.