

1977 Bill 242

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 242

**AN ACT RESPECTING THE WITHHOLDING OR WITHDRAWAL OF
TREATMENT WHERE DEATH IS INEVITABLE**

DR. BUCK

First Reading

Second Reading

Third Reading

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AN ACT RESPECTING THE WITHHOLDING OR WITHDRAWAL OF TREATMENT WHERE DEATH IS INEVITABLE

(Assented to _____ *, 1977)*

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of Alberta, enacts as follows:

1. In this Act,

- (a) "attending physician" means a physician selected by or assigned to a patient and who has responsibility for the treatment and care of the patient;
- (b) "life-sustaining procedure" means a medical procedure or intervention that utilizes mechanical or other artificial means to sustain, restore or supplant a vital function to postpone the moment of death, but does not include a medical procedure or intervention for the purpose of alleviating pain;
- (c) "terminal condition" means an incurable medical or physical condition, determined pursuant to section 4, by reason of which death is imminent and only postponed by a life-sustaining procedure which does not improve the condition.

2. (1) Any person who has attained the age of majority and is mentally competent to consent, able to make a free and informed decision and has, or is deemed to have, consented to medical treatment may, in writing in Form 1 signed by him, direct that the consent does not extend to the application of life-sustaining procedures during a terminal condition.

(2) A direction under subsection (1) is not valid unless the signature is witnessed by two persons neither of whom is a relative or an attending physician or other person engaged in the health care of the person giving the direction.

(3) No person who witnesses a direction under subsection (2) is entitled to any benefit from the estate of the person who gives the direction, except arising from a charge on the estate or a direction for payment of debts.

(4) A direction is valid for five years from the date of its signing unless revoked pursuant to section 3.

Explanatory Notes

General: The purpose of this Bill is to provide a means whereby an individual may limit the effect of a general or implied consent to medical treatment to prevent the use of life-sustaining procedures while in a terminal condition.

The Bill is designed to achieve this purpose by permitting an individual to execute a direction limiting his consent. Once a physician or hospital employee has notice of this direction, there is no defence of consent as a basis to avoid civil liability if the patient is treated with life-sustaining procedures during a period of terminal condition.

1. Definitions.

2. Direction limiting consent.

(5) Notwithstanding subsection (1) a direction made thereunder by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision, is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision, as the case may be.

3. (1) A direction made pursuant to section 2 does not take effect unless it is served on the attending physician of the person giving the direction or, where the person is a patient in a health facility, is served on the attending physician or the health facility.

(2) Upon a direction being served on one of the persons mentioned in subsection (1), the direction or a copy of it shall be included in the medical records of the person giving the direction.

(3) Where the person signing a direction, in any manner and without regard to mental competency, indicates to one of the persons mentioned in subsection (1) an intention to revoke the direction or is pregnant, the direction is thereby revoked and shall be removed immediately from the medical records and destroyed.

4. A terminal condition

- (a) shall be deemed to exist where in the opinion of two physicians, each of whom has made a separate diagnosis in respect of the person giving the direction and neither of whom has any medical responsibility for that person, the terminal condition exists, and
- (b) shall be deemed not to exist where in the opinion of one physician whose opinion is sought for the purposes of clause (a) a terminal condition does not exist.

5. No action or other proceeding for damages lies against any person for any act done or omission made in good faith and without negligence in the observance or intended observance of a direction purporting to be given under this Act.

6. Nothing in this Act shall be construed so as to impose an obligation to provide or perform a life-sustaining procedure where the obligation does not otherwise exist at law.

7. (1) A death that occurs subsequent to the withholding or withdrawal of life-sustaining procedures pursuant

3. Effect, recording and revocation of direction.

4. Terminal condition.

5. Civil liability.

6. Other obligations not affected.

7. Insurance.

to a direction signed under this Act shall not be deemed to be a suicide or self-induced death under any policy of insurance.

(2) A requirement that a person sign a direction as a condition for being insured for or receiving health care services is void.

8. Subject to subsection (3) of section 3, every person who wilfully conceals, cancels, defaces or destroys the direction of another without that person's consent is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for not more than 30 days or to both fine and imprisonment.

9. This Act may be cited as *The Natural Death Act*.

10. This Act comes into force on the day upon which it is assented to.

FORM 1

(The Natural Death Act)

I,, being of sound mind, wilfully and voluntarily, direct that all life-sustaining procedures be withheld or withdrawn if at any time I should be in a terminal condition and where the application of life-sustaining procedures would serve only to postpone the moment of death.

It is my intention that this direction be honoured by my family, physicians and medical staff as the final expression of my legal right to refuse medical or surgical treatment and to die naturally.

Made this day of (month, year)

.....
Signature

The person signing this directive is personally known to me and I believe him/her to be of sound mind.

.....
(Witness)

.....
(Witness)

8. Offences and penalty.

9. Short title.