

IC 16-36-4

Chapter 4. Living Wills and Life Prolonging Procedures

IC 16-36-4-1

Life prolonging procedure defined

Sec. 1. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:

(1) Uses mechanical or other artificial means to sustain, restore, or supplant a vital function.

(2) Serves to prolong the dying process.

(b) The term does not include the performance or provision of any medical procedure or medication necessary to provide comfort care or to alleviate pain.

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.1.

IC 16-36-4-2

Life prolonging procedures will declarant defined

Sec. 2. As used in this chapter, "life prolonging procedures will declarant" means a person who has executed a life prolonging procedures will declaration under section 11 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-3

Living will declarant defined

Sec. 3. As used in this chapter, "living will declarant" means a person who has executed a living will declaration under section 10 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-4

Qualified patient defined

Sec. 4. As used in this chapter, "qualified patient" means a patient who has been certified as a qualified patient under section 13 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-5

Terminal condition defined

Sec. 5. As used in this chapter, "terminal condition" means a condition caused by injury, disease, or illness from which, to a reasonable degree of medical certainty:

(1) there can be no recovery; and

(2) death will occur from the terminal condition within a short period of time without the provision of life prolonging procedures.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-6

Policy

Sec. 6. A competent adult has the right to control the decisions relating to the competent adult's medical care, including the decision to have medical or surgical means or procedures calculated to prolong the competent adult's life provided, withheld, or withdrawn. *As added by P.L.2-1993, SEC.19.*

IC 16-36-4-7

Consent to medical treatment; immunity from liability for failure to treat patient after refusal of treatment

Sec. 7. (a) A competent person may consent to or refuse consent for medical treatment, including life prolonging procedures.

(b) No health care provider is required to provide medical treatment to a patient who has refused medical treatment under this section.

(c) No civil or criminal liability is imposed on a health care provider for the failure to provide medical treatment to a patient who has refused the treatment in accordance with this section.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-8

Life prolonging procedures will declarations; living will declarations

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a life prolonging procedures will declaration under section 11 of this chapter or a living will declaration under section 10 of this chapter.

(b) A declaration under section 10 or 11 of this chapter must meet the following conditions:

- (1) Be voluntary.
- (2) Be in writing.
- (3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.
- (4) Be dated.
- (5) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) A witness to a living will declaration under subsection (b)(5) may not meet any of the following conditions:

- (1) Be the person who signed the declaration on behalf of and at the direction of the declarant.
- (2) Be a parent, spouse, or child of the declarant.
- (3) Be entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including whether the witness could take from the declarant's estate if the declarant's will is declared invalid.
- (4) Be directly financially responsible for the declarant's medical care.

For the purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the

estate in the declarant's will.

(d) The living will declaration of a person diagnosed as pregnant by the attending physician has no effect during the person's pregnancy.

(e) The life prolonging procedures will declarant or the living will declarant shall notify the declarant's attending physician of the existence of the declaration. An attending physician who is notified shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(f) A living will declaration under section 10 of this chapter:

(1) does not require the physician to use, withhold, or withdraw life prolonging procedures but is presumptive evidence of the patient's desires concerning the use, withholding, or withdrawal of life prolonging procedures under this chapter; and

(2) shall be given great weight by the physician in determining the intent of the patient who is mentally incompetent.

(g) A life prolonging procedures will declaration under section 11 of this chapter does require the physician to use life prolonging procedures as requested.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-9

Forms of declaration; requisites

Sec. 9. A declaration must be substantially in the form set forth in either section 10 or 11 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific directions does not affect the validity of the declaration.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-10

Form of living will declaration

Sec. 10. The following is the living will declaration form:

LIVING WILL DECLARATION

Declaration made this ____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, and I declare:

If at any time my attending physician certifies in writing that: (1) I have an incurable injury, disease, or illness; (2) my death will occur within a short time; and (3) the use of life prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the performance or provision of any medical procedure or medication necessary to provide me with comfort care or to alleviate pain, and, if I have so indicated below, the provision of artificially supplied nutrition and hydration. (Indicate your choice by initialling or making your mark before signing this declaration):

_____ I wish to receive artificially supplied nutrition and hydration, even if the effort to sustain life is futile or excessively burdensome to me.

_____ I do not wish to receive artificially supplied nutrition and hydration, if the effort to sustain life is futile or excessively burdensome to me.

_____ I intentionally make no decision concerning artificially supplied nutrition and hydration, leaving the decision to my health care representative appointed under IC 16-36-1-7 or my attorney in fact with health care powers under IC 30-5-5.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of the refusal.

I understand the full import of this declaration.

Signed _____

City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate or directly financially responsible for the declarant's medical care. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.2.

IC 16-36-4-11

Form of life prolonging procedures will declaration

Sec. 11. The following is the life prolonging procedures will declaration form:

LIFE PROLONGING PROCEDURES DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desire that if at any time I have an incurable injury, disease, or illness determined to be a terminal condition I request the use of life prolonging procedures that would extend my life. This includes appropriate nutrition and hydration, the administration of medication, and the performance of all other medical procedures necessary to extend my life, to provide comfort care, or to alleviate pain.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to request medical or surgical treatment and accept the consequences of the request.

I understand the full import of this declaration.

Signed _____

City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.2-1993, SEC.19.

IC 16-36-4-12

Revocation of living will declaration or life prolonging procedures will declaration

Sec. 12. (a) A living will declaration or a life prolonging procedures will declaration may be revoked at any time by the declarant by any of the following:

- (1) A signed, dated writing.
- (2) Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction.
- (3) An oral expression of intent to revoke.

(b) A revocation is effective when communicated to the attending physician.

(c) No civil or criminal liability is imposed upon a person for failure to act upon a revocation unless the person had actual knowledge of the revocation.

(d) The revocation of a life prolonging procedures will declaration is not evidence that the declarant desires to have life prolonging procedures withheld or withdrawn.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-13

Certification of qualified patient; procedure where physician refuses to honor declaration

Sec. 13. (a) The attending physician shall immediately certify in writing that a person is a qualified patient if the following conditions are met:

- (1) The attending physician has diagnosed the patient as having a terminal condition.
- (2) The patient has executed a living will declaration or a life prolonging procedures will declaration in accordance with this chapter and was of sound mind at the time of the execution.

(b) The attending physician shall include a copy of the certificate in the patient's medical records.

(c) It is lawful for the attending physician to withhold or withdraw life prolonging procedures from a qualified patient if that patient properly executed a living will declaration under this chapter.

(d) A health care provider or an employee under the direction of a health care provider who:

(1) in good faith; and
(2) in accordance with reasonable medical standards;
participates in the withholding or withdrawal of life prolonging procedures from a qualified patient who has executed a living will declaration in accordance with this chapter is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct.

(e) An attending physician who refuses to use, withhold, or withdraw life prolonging procedures from a qualified patient shall transfer the qualified patient to another physician who will honor the patient's living will declaration or life prolonging procedures will declaration unless:

- (1) the physician has reason to believe the declaration was not validly executed or there is evidence that the patient no longer intends the declaration to be enforced; and
- (2) the patient is presently unable to validate the declaration.

(f) If the attending physician, after reasonable investigation, finds no other physician willing to honor the patient's declaration, the attending physician may refuse to withhold or withdraw life prolonging procedures.

(g) If the attending physician does not transfer a patient for the reason set forth in subsection (e), the physician shall attempt to ascertain the patient's intention and attempt to determine the validity of the declaration by consulting with any of the following individuals who are reasonably available, willing, and competent to act:

- (1) The judicially appointed guardian of the person of the patient if one has been appointed. This subdivision does not require the appointment of a guardian so that a treatment decision can be made under this section.
- (2) The person or persons designated by the patient in writing to make the treatment decision.
- (3) The patient's spouse.
- (4) An adult child of the patient or, if the patient has more than one (1) adult child, by a majority of the children who are reasonably available for consultation.
- (5) The parents of the patient.
- (6) An adult sibling of the patient or, if the patient has more than one (1) adult sibling, by a majority of the siblings who are reasonably available for consultation.
- (7) The patient's clergy or others with firsthand knowledge of the patient's intention.

The individuals described in subdivisions (1) through (7) shall act in the best interest of the patient and shall be guided by the patient's express or implied intentions, if known.

(h) The physician shall list the names of the individuals described in subsection (g) who were consulted and the information received in the patient's medical records.

(i) If the attending physician determines from the information received under subsection (g) that the qualified patient intended to execute a valid living will declaration, the physician may either:

- (1) withhold or withdraw life prolonging procedures, with the concurrence of one (1) other physician, as documented in the patient's medical records; or
- (2) request a court of competent jurisdiction to appoint a guardian for the patient to make the consent decision on behalf of the patient.

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.3.

IC 16-36-4-14

Presumptions

Sec. 14. If the qualified patient who executed a living will declaration is incompetent at the time of the decision to withhold or withdraw life prolonging procedures, a living will declaration executed in accordance with this chapter is presumed to be valid. For purposes of this chapter, a health care provider may presume in the absence of actual notice to the contrary that the declarant was of sound mind when the living will declaration was executed. The fact that the declarant executed a declaration may not be considered as an indication of a declarant's mental incompetency.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-15

Cancellation or destruction of declaration; falsification or forgery of revocation of another's declaration; offense

Sec. 15. A person who knowingly or intentionally:

- (1) physically cancels or destroys a living will declaration or a life prolonging procedures will declaration without the declarant's consent; or
- (2) falsifies or forges a revocation of another person's living will declaration or life prolonging procedures will declaration;

commits a Class D felony.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-16

Falsification or forgery of declaration; concealment or withholding of revocation of declaration; offense

Sec. 16. A person who knowingly or intentionally:

- (1) falsifies or forges the living will declaration of another person with intent to cause withholding or withdrawal of life prolonging procedures; or
- (2) conceals or withholds personal knowledge of the revocation of a living will declaration with intent to cause a withholding or withdrawal of life prolonging procedures;

commits a Class C felony.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-17

Effect of living will or life prolonging procedures will declaration; suicide; life insurance

Sec. 17. (a) A death caused by the withholding or withdrawal of

life prolonging procedures in accordance with this chapter does not constitute a suicide.

(b) The execution of a living will declaration or a life prolonging procedures will declaration under this chapter does not:

- (1) affect the sale or issuance of any life insurance policy; or
- (2) modify the terms of a policy in force when the declaration is executed.

(c) A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life prolonging procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(d) A person may not require another person to execute a living will declaration or a life prolonging procedures will declaration as a condition for being insured for or receiving health care services.

(e) This chapter does not impair or supersede any legal right or legal responsibility that any person may have to effect the withholding or withdrawal of life prolonging procedures in any lawful manner.

(f) A person who has been found:

- (1) guilty; or
- (2) guilty but mentally ill;

of an offense described in section 16 of this chapter is subject to IC 29-1-2-12.1.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-18

Presumption of intent to consent to withholding or withdrawal of life prolonging procedures

Sec. 18. This chapter creates no presumption concerning the intention of a person who has not executed a living will declaration to consent to the withholding or withdrawal of life prolonging procedures if a terminal condition exists.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-19

Euthanasia distinguished

Sec. 19. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying, including the withholding or withdrawing of life prolonging procedures under this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-20

Intervening forces; proximate causation

Sec. 20. The act of withholding or withdrawing life prolonging procedures, when done under:

- (1) a living will declaration made under this chapter;
- (2) a court order or decision of a court appointed guardian; or
- (3) a good faith medical decision by the attending physician that the patient has a terminal condition;

is not an intervening force and does not affect the chain of proximate cause between the conduct of any person that placed the patient in a terminal condition and the patient's death.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-21

Chapter violations by physician; discipline

Sec. 21. A physician who knowingly violates this chapter is subject to disciplinary sanctions under IC 25-1-9 as if the physician had knowingly violated a rule adopted by the medical licensing board under IC 25-22.5-2-7.

As added by P.L.2-1993, SEC.19.