

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Medical Treatment Bill 1994

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1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Medical Treatment Bill 1994

**A BILL
FOR**

**An Act to make provision with respect to the
withholding or withdrawal of medical treatment
and for related purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Medical Treatment Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

- 10 3. In this Act, unless the contrary intention appears—

“direction” means a written or oral direction made in accordance with Division 1 of Part I;

“health professional” means—

(a) a medical practitioner—

- 5 (i) registered under the *Medical Practitioners Act 1930*;
or
(ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth; or

10 (b) a nurse—

- (i) registered under the *Nurses Act 1988*; or
(ii) deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

15 “medical treatment” means—

- (a) the carrying out of an operation;
(b) the administration of a drug; or
(c) the carrying out of any other medical procedure;

“palliative care” includes—

- 20 (a) the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort; and
(b) the reasonable provision of food and water;

25 “power of attorney” means a power of attorney granted in accordance with Division 2 of Part II;

“superintendent”, in relation to a hospital, hospice or nursing home, means a person who is responsible for the day-to-day running of the hospital, hospice or nursing home.

Objectives of the Act

30 4. The objectives of this Act are—

- (a) to protect the right of patients to refuse unwanted medical treatment; and

- (b) to ensure the right of patients to receive maximum relief from pain and suffering.

Other legal rights not affected

5 (1) This Act does not affect any right of a person under any other law of the Territory to refuse medical treatment.

(2) This Act does not apply to palliative care and does not affect any right, power or duty that a health professional or any other person has in relation to palliative care.

10 (3) The refusal or withdrawal of medical treatment under this Act does not limit any duty of a health professional or other person—

- (a) to advise and inform the patient or the patient's agent or guardian; or
- (b) to provide medical treatment other than the medical treatment that has been refused or withdrawn.

15

PART II—REFUSAL OF TREATMENT

Division 1—Directions

Making of direction

6. A person who is of sound mind and has attained the age of 18 years may make a written or oral direction—

20

- (a) to refuse; or
- (b) for the withdrawal of;

medical treatment;

- (c) generally; or
- (d) of a particular kind.

25

Written directions—requirements

7. Subject to this Act, a written direction is not valid unless—

30

- (a) it is in accordance with Form 1 in the Schedule;
- (b) it is signed by the maker of the direction or by another person in the presence of and at the direction of the person making the direction;
- (c) the signature is witnessed by 2 persons; and
- (d) the witnesses each sign the direction in the presence of each other and the person making the direction.

Oral directions—requirements

8. Subject to sections 5 and 10, an oral direction is not valid unless it is witnessed by 2 health professionals (1 of whom shall be a medical practitioner) present at the same time.

5 Revocation of direction

9. (1) A written or oral direction—

- (a) to refuse; or
- (b) for the withdrawal of;

10 medical treatment may be revoked by the person who gave the direction clearly expressing to a health professional or another person a decision to revoke the direction.

(2) For the purposes of subsection (1), a person may clearly express or indicate a decision in writing, orally or in any other way in which the person can communicate.

15 Competent person to be informed of alternatives etc.

10. (1) Before complying with a direction in respect of a person who is still competent to make a rational judgment, the health professional shall take all reasonable steps to ensure that the person has been informed about—

- 20 (a) the nature of his or her illness;
- (b) any alternative forms of treatment that may be available; and
- (c) the consequences of remaining untreated.

(2) A health professional shall not give effect to the direction unless the person appeared—

- 25 (a) to understand the information provided under subsection (1); and
- (b) to weigh the various options and, as a result of this consideration, to affirm the decision—
 - (i) to refuse medical treatment; or
 - (ii) to have medical treatment withdrawn.

30 Health professional not to proceed if in doubt

11. A health professional shall not withhold or withdraw medical treatment from a person in accordance with a direction unless satisfied that—

- (a) the direction complies with this Act; and

- (b) the person has not revoked the direction or in any way changed his or her decision since making the direction.

Division 2—Powers of Attorney

Granting powers of attorney

5 **12. (1)** A person who is of sound mind and has attained the age of
 18 years (in this Division called the “grantor”) may, by instrument in
 accordance with Form 2 in the Schedule, confer on another person (in this
 Division called the “grantee”) the power to consent, subject to the
 10 instrument, on behalf of the grantor to the withholding or withdrawal of
 medical treatment in the event that the grantor becomes incompetent.

(2) An instrument under subsection (1) is not valid unless—

- (a) the grantee has attained the age of 18 years;
 (b) it is signed by the grantor or by another person in the presence of
 and at the direction of the grantor;
 15 (c) that signature is witnessed by 2 persons, neither of whom is the
 grantee, or a relative of the grantee; and
 (d) the grantee signs the instrument to indicate acceptance.

(3) A power of attorney granted in accordance with this section does not lapse by reason only of the incapacity of the grantor.

20 **Circumstances in which power may be exercised**

13. A grantee is not entitled to exercise a power conferred on him or her under the power of attorney granted pursuant to section 12 unless the grantor is declared by a medical practitioner to be incompetent.

Power of attorney—revocation

25 **14.** Despite any rule of law to the contrary, a power of attorney is not revoked upon the appointment of a guardian under the *Guardianship and Management of Property Act 1991* in respect of the grantor, but is revoked in any other way in which a power of attorney under the *Powers of Attorney Act 1956* may be revoked.

30 **Conditions on exercise of power**

15. (1) Subject to subsection (2), a grantee shall not request the withholding or withdrawal of medical treatment from the grantor unless—

- (a) the grantee has consulted a medical practitioner about—
 (i) the nature of the grantor’s illness;

- (ii) any alternative forms of treatment that may be available to the grantor; and
- (iii) the consequences to the grantor of remaining untreated; and
- 5 (b) the grantee believes on reasonable grounds that if the grantor—
- (i) were capable of making a rational judgment; and
- (ii) were to give serious consideration to his or her own health and wellbeing;
- the grantor would request the withholding or withdrawal of medical treatment from himself or herself.

10 (2) Where the grantee is—

- (a) aware the grantor has made a direction; and
- (b) not aware that the direction has been revoked;

the grantee may request the withholding or withdrawal of medical treatment from the grantor in accordance with the direction.

15 **Health professional to ensure attorney's decision is informed etc.**

16. A health professional shall not comply with the request of a grantee to withhold or withdraw medical treatment from the grantor unless satisfied that—

- 20 (a) the power of attorney under which the grantee's request is made complies with this Act; and
- (b) the grantee—
- (i) understands the information given under subsection 15 (1); and
- 25 (ii) has weighed the various options and, as a result, affirms his or her request.

PART III—GENERAL PROVISIONS

Effect of direction or power of attorney on other instruments

17. (1) Where—

- 30 (a) a person has made a direction or granted a power of attorney; and
- (b) a medical practitioner declares that the person has become incompetent;

then—

- (c) any power of a guardian to consent to medical treatment, where that guardian was appointed for the person under the *Guardianship and Management of Property Act 1991* after the direction was made or the power of attorney was granted; and
- 5 (d) any power of an attorney to consent to medical treatment under an enduring power of attorney created by the person under the *Powers of Attorney Act 1956* before or after the direction was made or the power of attorney was granted under this Act;

shall be taken to be revoked.

- 10 (2) A person for whom a guardian is appointed under the *Guardianship and Management of Property Act 1991* is deemed not to have the capacity to make a direction or grant a power of attorney.

Direction obtained by fraud etc.

- 15 18. (1) A person who, by any deception, fraud, mis-statement or undue influence, procures or obtains a direction or power of attorney, whether directly or indirectly, from another person is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years, or both.

- 20 (2) Any direction or power of attorney so procured or obtained shall be void.

(3) This section is in addition to any other penalty in respect of the deception, fraud, mis-statement or undue influence under any other law in force in the Territory.

Copies or notification of decisions

- 25 19. (1) A health professional or other person who becomes aware that a patient in a hospital, hospice or nursing home—

- (a) has made a direction or granted a power of attorney; or
- (b) having made the direction or granted the power of attorney, has revoked it;

- 30 shall notify the superintendent of that fact and the circumstances in which the direction or power of attorney was made, granted or revoked.

(2) A superintendent who is notified under subsection (1) shall take reasonable steps to ensure that—

- (a) a copy of the direction, power of attorney or revocation; or
- 35 (b) if it is not possible to obtain a copy of the direction, power of attorney or revocation—a notation of the direction, power of attorney or revocation;

is placed with the patient's file.

Health professional not liable for certain decisions

20. A health professional incurs no liability for a decision made by him or her in good faith and without negligence as to whether a person—

- 5 (a) revoked, or intended to revoke, a direction or power of attorney;
or
(b) was, or was not, at the time of making a direction or granting a power of attorney, capable of understanding the nature and consequences of the direction or power of attorney.

10 Protection of health professionals relying on decision

21. A health professional or a person acting under the direction of a health professional who, in good faith and in reliance on a decision that he or she believes on reasonable grounds complies with this Act, withholds or withdraws medical treatment from a person is not—

- 15 (a) guilty of unsatisfactory professional conduct under any law of the Territory;
(b) guilty of an offence against any law of the Territory; or
(c) liable in any civil proceedings;

in connection with the withholding or withdrawal of medical treatment.

20 Adequate pain relief

22. (1) Notwithstanding the provisions of any other law of the Territory, a patient under the care of a health professional has a right to receive maximum relief from pain and suffering.

- 25 (2) In providing relief from pain and suffering to a patient, a health professional shall pay due regard to the patient's account of his or her level of pain and suffering.

Regulations

23. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- 30 (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

FORM 1

Section 7

WRITTEN DIRECTION UNDER THE MEDICAL TREATMENT ACT 1994

1. I, (name) of (address) DIRECT that—

- *(a) medical treatment generally be withheld or withdrawn; or
*(b) medical treatment, being (specify particular kind of medical treatment), be withheld or withdrawn.

2. I REVOKE all other directions previously made by me under the Medical Treatment Act 1994.

3. I CERTIFY that this direction is made voluntarily and without inducement or compulsion.

4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

Signature of person making the direction (or of another person signing in the presence of and by the direction of the maker of the direction)

DATED:

Signature of witness

DATED:

Signature of witness

*Delete whichever is not applicable

FORM 2

Section 12

POWER OF ATTORNEY UNDER THE MEDICAL TREATMENT ACT 1994

1. I, (name of grantor) of (address) APPOINT (name of grantee) of (address) to be my attorney for the purposes of the Medical Treatment Act 1994.

2. I AUTHORISE my attorney, if I become incompetent, to request that—

- *(a) medical treatment generally be withheld or withdrawn; or
*(b) medical treatment, being (specify particular kind of medical treatment), be withheld or withdrawn;

SCHEDULE—continued

if he or she believes on reasonable grounds that, if I were capable of making a rational judgment and were to give serious consideration to my health and wellbeing, I would make that request.

3. I REVOKE all other powers of attorney previously granted by me under the *Medical Treatment Act 1994*.

4. I CERTIFY that I am of sound mind and have attained the age of 18 years.

DATED:

.....
Signature of person giving the power (or of another person signing in the presence of and by the direction of the person giving the power)

DATED:

.....
Signature of witness [*not related to the grantee*]

DATED:

.....
Signature of witness [*not related to the grantee*]

ACCEPTANCE BY GRANTEE

I have read this power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the *Medical Treatment Act 1994*.

DATED:

.....
Signature of grantee

*Delete whichever is not applicable

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