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REFERENCE TITLE: **terminally ill patients; suffering; control**

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HB 2311

Introduced by
Representatives Lopez L: Aguirre A, Alvarez, Bradley, Cajero Bedford,
Downing, Gallardo, Garcia M, Landrum Taylor, Lujan, Miranda B, Prezelski,
Sinema, Tom, Senators Giffords, Soltero

AN ACT

**AMENDING TITLE 36, CHAPTER 32, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8;
RELATING TO TERMINALLY ILL PATIENTS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 32, Arizona Revised Statutes, is amended
3 by adding article 8, to read:

4 ARTICLE 8. TERMINALLY ILL PATIENTS

5 36-3301. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ADVANCE DIRECTIVE FOR CONTROL OF SUFFERING" MEANS A DIRECTIVE
8 PURSUANT TO THIS CHAPTER THAT HAS LANGUAGE THAT MEETS THE REQUIREMENTS OF
9 SECTION 36-3302, SUBSECTION A, PARAGRAPH 1.

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 DISEASE.

13 3. "CONSULTING PHYSICIAN" MEANS THE PHYSICIAN WHO IS QUALIFIED BY
14 SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS
15 REGARDING THE PATIENT'S DISEASE.

16 4. "HEALTH CARE PROVIDER" MEANS A HEALTH PROFESSIONAL LICENSED
17 PURSUANT TO TITLE 32 OR A HEALTH CARE FACILITY.

18 5. "INCAPABLE" MEANS THAT IN THE OPINION OF A COURT OR THE PATIENT'S
19 ATTENDING OR CONSULTING PHYSICIAN, THE PATIENT LACKS THE ABILITY TO MAKE AND
20 COMMUNICATE HEALTH CARE DECISIONS TO A HEALTH CARE PROVIDER, INCLUDING
21 COMMUNICATION THROUGH PERSONS FAMILIAR WITH THE PATIENT'S MANNER OF
22 COMMUNICATING.

23 6. "INFORMED DECISION" MEANS A DECISION BY A QUALIFIED PATIENT TO
24 REQUEST AND ASSUME CONTROL OF THE PATIENT'S SUFFERING BY OBTAINING A
25 PRESCRIPTION TO PREVENT UNBEARABLE SUFFERING AFTER THAT PATIENT'S ATTENDING
26 PHYSICIAN HAS FULLY INFORMED THE PATIENT OF THE FOLLOWING:

27 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

28 (b) THE PATIENT'S PROGNOSIS.

29 (c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE
30 PRESCRIBED.

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

32 (e) THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE
33 AND PHYSICIAN DIRECTED PAIN MANAGEMENT.

34 7. "MEDICALLY CONFIRMED" MEANS THE MEDICAL OPINION OF THE ATTENDING
35 PHYSICIAN HAS BEEN CONFIRMED BY A CONSULTING PHYSICIAN WHO HAS EXAMINED THE
36 PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS.

37 8. "PHYSICIAN" MEANS A PHYSICIAN LICENSED PURSUANT TO TITLE 32,
38 CHAPTER 13 OR 17.

39 9. "QUALIFIED PATIENT" MEANS AN ADULT WHO IS NOT INCAPABLE.

40 10. "TERMINAL DISEASE" MEANS AN INCURABLE AND IRREVERSIBLE DISEASE THAT
41 HAS BEEN MEDICALLY CONFIRMED AND THAT WILL RESULT, WITHIN REASONABLE MEDICAL
42 JUDGMENT, IN A PERSON'S DEATH WITHIN SIX MONTHS.

1 36-3302. Request for medication: requirements

2 A. A COMPETENT ADULT WHO IS A RESIDENT OF THIS STATE MAY MAKE A
3 WRITTEN REQUEST FOR MEDICATION FOR PATIENT CONTROL OF SUFFERING PURSUANT TO
4 SUBSECTION C IF THAT PERSON:

5 1. AT LEAST THREE MONTHS BEFORE, HAS EXECUTED AN ADVANCE DIRECTIVE FOR
6 CONTROL OF SUFFERING THAT CONTAINS LANGUAGE THAT IS THE SAME OR SUBSTANTIALLY
7 SIMILAR TO THE FOLLOWING:

8 IF I AM DIAGNOSED WITH A TERMINAL ILLNESS, I WANT TO BE
9 ABLE TO CONTROL MY OWN MEDICATION TO LESSEN SUFFERING
10 AND PRESERVE MY DIGNITY AND BE IN CONTROL OF MY OWN PAIN
11 AND SUFFERING.

12 2. HAS BEEN DETERMINED BY THAT PERSON'S ATTENDING PHYSICIAN AND
13 CONSULTING PHYSICIAN TO BE SUFFERING FROM A TERMINAL DISEASE.

14 3. HAS VOLUNTARILY EXPRESSED A WISH TO CONTROL THE SUFFERING FROM THAT
15 DISEASE.

16 B. THE MEDICATION SHALL BE AS AGREED ON BY THE PATIENT AND THE
17 PRESCRIBING PHYSICIAN. THE PHYSICIAN MAY ALLOW THE PRESCRIPTION TO BE
18 REFILLED AS IS NECESSARY FOR THE PATIENT TO CONTROL THE SUFFERING PURSUANT TO
19 THIS ARTICLE.

20 C. THE WRITTEN REQUEST MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:
21 REQUEST FOR MEDICATION TO TAKE CONTROL OF
22 MY OWN MANAGEMENT OF MY OWN SUFFERING

23 I, _____, AM AN ADULT OF SOUND MIND.

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

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

32 I REQUEST THAT MY ATTENDING PHYSICIAN PRESCRIBE MEDICATION
33 THAT WILL ALLOW ME FULL CONTROL OVER MANAGEMENT OF MY SUFFERING.

34 INITIAL ONE:

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

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

39 _____ I HAVE NO FAMILY TO INFORM OF MY DECISION.

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

42 I UNDERSTAND THE FULL IMPORT OF THIS REQUEST AND I
43 UNDERSTAND THAT A SECONDARY EFFECT OF TAKING THE PRESCRIBED
44 MEDICATION IS THAT IT MAY HASTEN DEATH.

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

1 SIGNED: _____

2 DATED: _____

3 DECLARATION OF WITNESSES

4 WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

5 1. IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF
6 IDENTITY.

7 2. SIGNED THIS REQUEST IN OUR PRESENCE.

8 3. APPEARS TO BE OF SOUND MIND AND NOT UNDER DURESS,
9 FRAUD OR UNDUE INFLUENCE.

10 4. IS NOT A PATIENT FOR WHOM EITHER OF US IS ATTENDING
11 PHYSICIAN.

12 _____ WITNESS 1/

13 DATE

16 _____ WITNESS 2/

17 DATE

18 NOTE: ONE WITNESS SHALL NOT BE A RELATIVE (BY BLOOD,
19 MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, SHALL
20 NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH
21 AND SHALL NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE
22 FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT.

23 D. AT LEAST ONE OF THE WITNESSES MUST BE A PERSON WHO IS NOT:

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

25 2. AT THE TIME THE REQUEST IS SIGNED, ENTITLED TO ANY PORTION OF THE
26 PATIENT'S ESTATE.

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

29 E. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED
30 SHALL NOT BE A WITNESS.

31 36-3303. Responsibilities of attending physician

32 ON RECEIVING A REQUEST FROM A PATIENT TO PRESCRIBE MEDICATION TO
33 CONTROL SUFFERING PURSUANT TO THIS ARTICLE, THE ATTENDING PHYSICIAN MUST DO
34 ALL OF THE FOLLOWING BEFORE ISSUING THE PRESCRIPTION:

35 1. CONFIRM THAT THE PATIENT HAS EXECUTED AN ADVANCE DIRECTIVE FOR
36 CONTROL OF SUFFERING.

37 2. DIAGNOSE WHETHER A PATIENT HAS A TERMINAL DISEASE, IS COMPETENT AND
38 HAS MADE THE REQUEST VOLUNTARILY.

39 3. INFORM THE PATIENT OF:

40 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

41 (b) THE PATIENT'S PROGNOSIS.

42 (c) THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE
43 AND TRADITIONAL PHYSICIAN DIRECTED PAIN CONTROL.

44 4. REFER THE PATIENT TO A CONSULTING PHYSICIAN PURSUANT TO SECTION
45 36-3304.

1 5. BEFORE WRITING THE PRESCRIPTION FOR MEDICATION, VERIFY THAT THE
2 PATIENT IS MAKING AN INFORMED DECISION.

3 6. FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENTS OF SECTION
4 36-3307.

5 7. PURSUANT TO SECTION 36-3307, ENSURE THAT ALL APPROPRIATE STEPS ARE
6 CARRIED OUT IN ACCORDANCE WITH THIS ARTICLE BEFORE WRITING THE PRESCRIPTION
7 FOR MEDICATION.

8 36-3304. Consulting physician confirmation

9 BEFORE A PATIENT CAN BE PRESCRIBED MEDICATION PURSUANT TO SECTION
10 36-3303, A CONSULTING PHYSICIAN MUST EXAMINE THE PATIENT AND THE PATIENT'S
11 RELEVANT MEDICAL RECORDS, CONFIRM IN WRITING THE ATTENDING PHYSICIAN'S
12 DIAGNOSIS THAT THE PATIENT IS SUFFERING FROM A TERMINAL DISEASE AND VERIFY
13 THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED
14 DECISION.

15 36-3305. Informed decision

16 A PERSON SHALL NOT RECEIVE A PRESCRIPTION PURSUANT TO THIS ARTICLE
17 UNLESS THAT PERSON HAS MADE AN INFORMED DECISION AS PRESCRIBED BY THIS
18 ARTICLE.

19 36-3306. Family notification

20 A. THE PATIENT'S ATTENDING PHYSICIAN SHALL ASK THE PATIENT TO INFORM
21 THE PATIENT'S NEXT OF KIN OF THE PATIENT'S REQUEST FOR MEDICATION PURSUANT TO
22 THIS ARTICLE.

23 B. A PATIENT WHO DECLINES OR IS UNABLE TO NOTIFY NEXT OF KIN SHALL NOT
24 HAVE THE PATIENT'S REQUEST DENIED FOR THAT REASON.

25 36-3307. Medical record documentation requirements

26 A PHYSICIAN MUST DOCUMENT THE FOLLOWING IN THE PATIENT'S MEDICAL
27 RECORDS:

28 1. A COPY OF THE ADVANCE DIRECTIVE FOR CONTROL OF SUFFERING EXECUTED
29 BY THE PATIENT.

30 2. ALL WRITTEN REQUESTS BY THE PATIENT FOR MEDICATION TO CONTROL THE
31 PATIENT'S OWN SUFFERING.

32 3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND THE
33 DETERMINATION THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS
34 MADE AN INFORMED DECISION.

35 4. THE CONSULTING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND
36 VERIFICATION THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS
37 MADE AN INFORMED DECISION.

38 5. A NOTE BY THE ATTENDING PHYSICIAN INDICATING THAT ALL REQUIREMENTS
39 UNDER THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS TAKEN TO CARRY OUT
40 THE REQUEST, INCLUDING A NOTATION OF THE MEDICATION PRESCRIBED.

41 36-3308. Insurance or annuity policies

42 A. THE SALE, PROCUREMENT OR ISSUANCE OF ANY LIFE, HEALTH OR ACCIDENT
43 INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY SHALL NOT BE
44 CONDITIONED ON OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST BY A
45 PERSON FOR MEDICATION TO CONTROL THAT PERSON'S SUFFERING.

1 B. A QUALIFIED PATIENT'S ACT OF TAKING MEDICATION TO CONTROL THAT
2 PERSON'S OWN SUFFERING SHALL NOT HAVE AN EFFECT ON A LIFE, HEALTH OR ACCIDENT
3 INSURANCE OR ANNUITY POLICY.

4 36-3309. Construction of article

5 A. THIS ARTICLE DOES NOT AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO
6 END ANOTHER PERSON'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE
7 EUTHANASIA. THIS ARTICLE AUTHORIZES A PHYSICIAN TO PRESCRIBE OR ORDER THE
8 MEDICATION AND PERMITS TRAINED MEDICAL PROFESSIONALS TO OFFER ASSISTANCE, BUT
9 THE ACTUAL ACT OF CONTROLLING THE INTAKE OF MEDICATION MUST BE IN THE
10 IMMEDIATE CONTROL OF THE PATIENT.

11 B. IF THE PATIENT'S DECISION TO CONTROL SUFFERING HAS THE SECONDARY
12 EFFECT OF HASTENING DEATH, THIS SHALL NOT FOR ANY PURPOSE BE CONSTITUTED AS
13 SUICIDE, ASSISTED SUICIDE, MERCY KILLING OR HOMICIDE OR BE CAUSE FOR ANY
14 PROFESSIONAL DISCIPLINARY ACTION OR CIVIL OR CRIMINAL PENALTY UNDER THE LAW.

15 C. THIS ARTICLE EXPANDS THE RIGHT OF A PHYSICIAN UNDER CERTAIN
16 CIRCUMSTANCES TO PRESCRIBE OR ORDER MEDICATION TO CONTROL SUFFERING.

17 D. THIS ARTICLE DOES NOT INTERFERE WITH OR LIMIT ANY EXISTING RIGHT OF
18 A PHYSICIAN TO PRESCRIBE MEDICATION.