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Redrafting Ohio's Advance Directive Laws

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REDRAFTING OHIO'S ADVANCE DIRECTIVE LAWS

by

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INTRODUCTION

The Bioethics Network of Ohio (BENO) held its second annual conference on June 12, 1992 at Ohio Dominican College, Columbus, Ohio. Attendees recommended that a Task Force¹ review Ohio's Durable Power of Attorney for Health Care (DPAHC) and Modified Uniform Rights for the Terminally Ill (MURTIA) laws and suggest changes that would retain the basic structure of these provisions but also simplify and clarify their meaning. The Task Force completed a draft in six months and circulated it to approximately 450 individual and institutional BENO members. About one hundred members responded and this article incorporates most of their comments.

TASK FORCE OBJECTIVE: PATIENT-CENTERED LAWS

The Task Force studied similar laws in other states² and reviewed the Uniform Rights of the Terminally Ill Act,³ which formed the basis for Ohio's living will and non-declarant Provisions.⁴ These comparisons clarified our belief that Ohio's advance directive laws are not sufficiently patient-centered.

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²All states and the District of Columbia have now enacted some form of Advanced Directive Provision. One member of the Task Force collected and studied these laws, and provided charts that compared Ohio's provisions with those in other jurisdictions.

³UNIF. RIGHTS OF THE TERMINALLY ILL ACT (1989). [Hereinafter cited as URTIA]. Uniform laws are recommended by the National Conference of Commissioners on State Laws, a group of knowledgeable practicing attorneys, judges, and legal scholars who advocate uniformity in state laws in private subject law areas where people interact without governmental interference. Ohio, like most other states, has adopted over four dozen of these proposed Uniform laws. See Lee McCorkle, *Celebrating 100 Years of Excellence: The National Conference of Commissioners on Uniform State Laws*, OHIO LAWYER 16 (May-June 1992).

⁴See OHIO REV. CODE ANN. §§ 2133.01-.15 (Anderson 1991).

Accordingly, it became our objective to draft revisions to the laws which would make them so.⁵ Bearing in mind that objective, four key goals emerged:

"Respect": Our laws should effectively respect the expressed and known or unexpressed and inferred wishes, interests and values of patients.

"Permission": Our laws should clearly permit designated surrogates in certain situations to activate processes and make decisions for implementing, withholding and withdrawing medical treatments.

"Simplicity": Our laws should be sufficiently simple so that patients, surrogates, physicians, and facilities can understand and reasonably comply with them.

"Protection": Our laws should protect vulnerable, incommunicative patients from many evils, including negligence, fraud, greed and malice, as well as guard the same patients against the evils of "overtreatment": unwanted, ineffective, artificial, end-stage medical treatment.

In light of these key goals, patient-centered Ohio advance directive laws should guarantee competent citizens of majority age the right to a living will that expresses their wishes about medical treatment when they are incompetent and in a terminal condition or in a permanently unconscious state. The laws should also permit appropriate surrogates to consent to or refuse medical treatment for non-declarant patients to whom the laws apply. The laws should also afford Ohio citizens the right to appoint an attorney-in-fact empowered to make medical decisions on their behalf whenever that person loses decisionmaking capacity.

The general structure of Ohio's current advanced directive laws do address these concerns. One set of provisions recognizes the validity of living wills that allow competent patients to speak concerning future end-of-life medical decisions.⁶ Another set of provisions, called durable power for health care, offers competent adults a form to designate another person to make medical decisions on their behalf if they become incapacitated.⁷ A final section recognizes a hierarchy of appropriate decisionmakers for those seriously ill non-declarants who have not executed a document.⁸

⁵The complete version of our proposed changes to Ohio's Durable Power of Attorney law, §§ 1337.13-.17, can be found in Appendix A, *infra*. The complete version of our proposed changes to Ohio's living will and non-declarant law, §§ 2133.01-.15, can be found in Appendix B, *infra*.

⁶§§ 2133.02-.07, .11-.15.

⁷§§ 1337.11-.17.

⁸§ 2133.08(B).

Although the basic structure found in current Ohio law is sound, many of the actual provisions contain excessive, burdensome and often incomprehensible restrictions on complying with a patient's or surrogate's requests to avoid aggressive, end-of-life medical heroics. These provisions improperly bury specific permissions for patients and surrogates beneath stifling restrictions on them and their physicians and facilities, creating an idiosyncratic web of regulation not found in any other state's advanced directive provisions.⁹ Our suggested revisions retain the structure and gist of the important safeguards of current Ohio law. We also propose, however, both deletions and additions that will more clearly grant permission for patients to execute documents, permission for physicians to comply with documents and permission for appropriate surrogates to decide in the absence of documents.¹⁰

PROPOSED GENERAL REVISIONS OF CURRENT LAWS

A. *Objection Procedures*

Comparing Ohio's law to that of fifty other jurisdictions reveals several obvious contrasts. Most striking is the fact that Ohio's provisions are at least two to three times longer than those of any other jurisdiction. Most of the extra verbiage in Ohio law describes a complex and cumbersome probate court procedure that may be invoked by relatives of a terminally ill patient to object to the validity of that person's written document.

Our task force recognizes that there will be situations where a concerned individual believes that a proposed decision does not comport with the patient's interests. We discovered, however, that all other states respond to this concern with general guardianship laws which permit an interested person to seek review of a surrogate decision at any time by requesting a guardianship hearing in a probate court.¹¹ Following this more straightforward approach of all other

⁹Several recent articles compare existing state advance directive laws. See e.g., Charles P. Sabatino, *Death in the Legislature: Inventing Legal Tools for Autonomy*, 19 REVIEW OF LAW AND SOCIAL CHANGE 309 (1991-92); Cathaleen A. Roach, *Paradox and Pandora's Box: The Tragedy of Current Right-to-Die Jurisprudence*, 25 U. MICH. J. L. REF. 133 (1991).

¹⁰The Prefatory Note to the Uniform Rights of the Terminally Ill Act identifies the same goals:

"The purposes of the Act are (1) to establish a procedure which is simple, effective and acceptable to persons who desire to execute a declaration, (2) to provide a statutory framework that is acceptable to physicians and health care facilities whose conduct will be affected, (3) to provide for the effectiveness of a declaration in states other than the state in which it is executed through uniformity of scope and procedure, and (4) to avoid the inconsistency in approach that has characterized early statutes in the area."

URTIA, *supra* note 3, prefatory note (1992).

¹¹See OHIO REV. CODE ANN. § 2111.02(A)(Anderson 1991).

jurisdictions, we have drafted substitute language that grants those who wish to object a probate court hearing.¹²

B. Notification Provisions

Ohio's current laws require physicians to notify certain persons before complying with valid advance directives as a means of allowing them to object to the implementation of the patient's wishes.¹³ In the case of a patient with a valid Ohio living will, however, we would retain the requirement that the attending physician notify the person(s) named in the document of his or her intention to comply with the directive.¹⁴ Only a handful of other states impose such notification duties on attending physicians.¹⁵ We propose that these stipulations regarding notification and waiting periods, except notification of a named person in a living will, be deleted from both the DPAHC and MURTI laws¹⁶ because these duties are burdensome, unclear, intrusive and unnecessary.

Consider first the person who executes a durable power of attorney for health care, naming another person as attorney-in- fact. When an individual executes such a document the named attorney-in-fact is the declarant's legitimate surrogate. The attending physician should be able to elicit informed consent from the attorney-in-fact in compliance with the document. The current statutory requirement that the physician notify additional persons upon the patient's deterioration into a "terminal condition" or "permanently unconscious state" suggests otherwise.¹⁷ This requirement is confusing and excessively restrictive, both because it undermines the patient's naming of a specific, trusted surrogate, and because there is no obvious need for communication with additional persons when the attorney-in-fact is present and accountable. Any additional notification duties unnecessarily delay, complicate and discourage compliance by physicians with advance directives or surrogate decision-makers.

As previously noted, current Ohio laws also allow a person who executed a living will to name a person to be notified if the declarant is subsequently diagnosed as suffering from either "terminal condition" or "permanently unconscious state" (PUS).¹⁸ This provision respects patient autonomy and should be retained. However, other sections in the current living will law mandates additional consultation with third parties even when a declarant has not named

¹²See proposed § 1337.16(E) *infra* Appendix A. See also proposed § 2133.08(F) *infra* Appendix B.

¹³OHIO REV. CODE ANN. §§ 2133.05(A)(2)(1)-(3), 2133.08(E)(1) (Anderson 1991).

¹⁴§ 2133.05(A)(2)(a)(i).

¹⁵COLO. REV. STAT. ANN. § 15-18-107 (1989); CONN. GEN. STAT. ANN. § 91-283(8) (West 1991); ILL. REV. STAT. ANN. ch. 755, § 40/25 (Smith-Hurd 1992); NEB. REV. STAT. § 30-3414 (1992).

¹⁶See *supra* note 18.

¹⁷OHIO REV. CODE ANN. § 1337.16(D)(1),(E) (Anderson 1991).

¹⁸§ 2133.05(A)(2)(a)(i).

them.¹⁹ This requirement causes confusion because it fundamentally contradicts legitimate assumptions and expectations about living wills. Individuals who execute living wills typically understand the document to be a statement directed to their physicians that expresses their rights, wishes, interests and values. Declarants expect that their living wills will speak for them when they are permanently unconscious or in a terminal condition and unable to communicate their wishes. They draft the document to assure that all persons involved will comply with their wishes. We believe these assumptions and expectations on the part of declarants are accurate, reasonable and justified.

Current Ohio laws add an additional burden to patient wishes by forbidding the withholding or withdrawing of life-sustaining interventions for 48 hours following an otherwise legally legitimate decision to comply with a valid advance directive.²⁰ The practical effect of this requirement is that patients who have already declared personally or through a designated surrogate that they wish to forego life-sustaining-treatment must be resuscitated and/or otherwise aggressively treated until 48 hours pass, only after which time any available medical treatments be withheld and withdrawn.

This legal requirement is both too permissive and too restrictive. Usually, these provisions unnecessarily restrict patient wishes, because they force patients to accept medical care that they may legitimately refuse and often already have. It also forces Ohio's physicians to implement aggressive life-sustaining medical treatments which they otherwise legitimately would not implement, and which they will generally withdraw after 48 hours.²¹ In a situation where a concerned person expresses worry over whether a proposed decision really respects the patient's wishes, however, a physician need wait only two days for dissent. As long as no formal complaint is filed, the doctor may then proceed to remove life supports immune from scrutiny.

We prefer an objection right framed instead by Ohio's general guardianship laws, which are not limited by such restrictive time periods.²² We have drafted language for the living will, durable power of attorney and non-declarant laws that clarifies the availability of his guardianship option without time limit.²³ Our language is borrowed from that of similar Nebraska and Oregon provisions²⁴ and

¹⁹ §§ 2133.05(A)(2)(a)(ii)-(B).

²⁰ § 1337.16(D)(3)-(4), § 2133.05(A)(3)-(B).

²¹ This problem may be especially acute in emergency situations. Some states expressly provide for this circumstance in their advance directive laws. *See e.g.*, UTAH CODE ANN. § 75-2-4-05.5 (1993) [Special firm to direct emergency medical service providers to withhold all life-sustaining procedures]. *Cf.* OHIO REV. CODE ANN. § 1337.16 (C); § 2133.141 (C) (4) (Anderson 1991).

²² *See* OHIO REV. CODE ANN. § 2111.02 (A) (Anderson 1991).

²³ *See* proposed § 1337.16(E); *infra* Appendix A; proposed §§ 2133.05 (B), 2133.08 (F) *infra* Appendix B.

²⁴ NEB. REV. STAT. § 30-3421, 22 (1992); ORE. REV. STAT. § 127.550 (1989).

parallels the group of specific persons listed in current Ohio law who have standing to object.²⁵

C. *Non-related Decisionmakers*

We propose that "adult with a significant personal relationship" be added to the prioritized list of surrogates and objectors. The priority of surrogates in the current laws, spouse, children, parents, adult siblings and nearest adult relative,²⁶ does not provide for patients who have none of these relationships, or who have them but whose interests, wishes and values are not served by these relationships. There are patients, in short, whose only or best surrogate is an adult with whom they have a significant personal relationship.²⁷

D. *Do Not Resuscitate Orders*

We recommend that specific language authorizing Do Not Resuscitate (DNR) Orders be added.²⁸ Prior to the passage of our current advance directive laws, it was customary and accepted in Ohio that physicians could write and implement DNR Orders following informed communication with a patient or legitimate surrogate. The current laws cast legal doubt upon this custom by requiring 48 hours to pass between consent to withhold or withdraw life-sustaining interventions and implementation of such consent.

Any time-based limitation on implementing DNR orders is burdensome and unnecessarily restrictive. DNR orders represent a decision not to redress cardio-pulmonary arrest, a condition unique among life-threatening events by virtue of its suddenness. Physicians cannot often predict it, nor can they "postpone" it by "managing" it for 48 hours. Indeed, physicians are discouraged by their profession from "semi-aggressively managing" cardio-pulmonary arrest: the "slow code" is now considered bad medicine.²⁹

Cardio-pulmonary arrest must be either immediately treated or immediately allowed to occur via DNR Orders. To delay the implementation of DNR orders for any period of time often means starting other aggressive life-sustaining measures such as the ventilator and its accompanying technologies, with the

²⁵ OHIO REV. CODE ANN. § 1331.16(D); § 2133.05(A); § 2133.08(A).

²⁶ OHIO REV. CODE ANN. § 2133.08(B) (Anderson 1991).

²⁷ Several other states have similar provisions. *See, e.g.*, FLA. STAT. ANN. § 765.401 (West Supp. 1993); ILL. ANN. STAT. ch. 755, § 40/25 (Smith-Hurd 1992).

²⁸ DPA: *See* proposed § 1337.16(D) *infra* Appendix A. Nondeclarant: *See* proposed § 2133.08(E) *infra* Appendix B. Living Will: *See* proposed § 2133.12(D) *infra* Appendix B. The language in these provisions was adapted from N.J. REV. STAT. ANN. § 26:2H-68 (West Supp. 1993).

²⁹ *See* Andrew L. Evans & Baeuch A. Brody, *The Do-Not-Resuscitate Order in Teaching Hospitals*, 253 JAMA 2236 (1985); Stuart J. Youngner et. al, *Do Not Resuscitate Orders, Incidents and Implications in a Medical Intensive Care Unit*, 253 JAMA 5 (1985).

potential that everything will later have to be withdrawn. In customary clinical practice, DNR Orders take effect at the moment they are written. Ohio's laws should reflect this, and should not impose a legal delay in implementation of the orders.

E. Duty to Transfer

In cases of a physician's or facility's non-compliance with an effective document, we suggest that language creating an affirmative duty to assist in transfer of care should replace the current language which establishes a duty not to obstruct transfer.³⁰ Such language would be consistent with the statutes in all states that follow URTIA which include in their advance directives laws an affirmative duty to transfer care.³¹ We believe that the current limited duty not to obstruct transfer of care of the patient to another physician and/or facility is not sufficiently patient-centered because many patients and surrogates are uninformed, reluctant, intimidated, or otherwise handicapped in requesting and effecting transfer of care. We believe that creating an affirmative duty for the non-compliant physician or facility to take reasonable measures to find another physician or facility better serves the rights, wishes, interests and values of patients and surrogates in these cases.

PROPOSED SPECIFIC REVISIONS

In addition to the overall problems created by provisions that appear throughout Ohio's advanced directive laws described in the last section, our task force also found specific remediable problems in each set of provisions regarding the durable power of attorney for health care, living will and non-declarant provisions of current Ohio law.

A. Durable Powers of Attorney for Health Care: The Scope of the Attorney-in-Fact's Authority

Ohio's durable power of attorney for health care law limits the power of designated surrogates to make decisions regarding life-sustaining treatment to patients who suffer from either a "terminal condition" or "permanently unconscious state."³² While these restrictions are typically found in state living will and non-declarant laws, the durable power of attorney for health care statutes

³⁰ OHIO REV. CODE ANN. §§ 1337.16(B)(2)(a); 2133.10(A) (Anderson 1991).

³¹ URTIA, *supra* note 3, § 8 provides: "An attending physician or other health-care provider who is unwilling to comply with this [Act] shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health-care provider who is willing to do so."

³² OHIO REV. CODE ANN. § 1337.13(B)(1).

of thirty-nine other states are not so limited.³³ These states have enacted true health care proxy laws that afford citizens the right to appoint a surrogate to act whenever that person loses capacity to direct his or her own medical care.

Health care proxy and living will laws differ in important ways. The former allows a citizen to grant and restrict the authority of a surrogate decisionmaker. The latter allows a person to express wishes about life-sustaining treatment at the end of life to caregivers without reliance on a surrogate. Ohio currently confuses these two kinds of laws by including "living will" restrictions in our durable power of attorney for health care provisions. The practical impact of this confusion is that Ohio citizens are deprived legitimate choice between two kinds of documents.

There is good reason why other jurisdictions do not limit the appointed surrogate's scope of authority.³⁴ They recognize that patients can and often do lose decisionmaking capacity intermittently throughout their lives. This potentiality motivates persons who execute durable powers of attorney for health care to be able to control their own grant of decisionmaking authority. The vast majority of states legitimize such an expectation by providing that the appointed surrogate will have the same power to make all health care decisions the principal possesses, subject to any limitations or statement of desires expressed by the principal in the document.³⁵ Ohio's law does allow the *principal* to impose

³³ ARIZ. REV. STAT. ANN. § 36-3223 (Supp. 1992); Cal. Civil Code §§ 2432(a)(1), 2433 (West 1993); COLO. REV. STAT. ANN. § 15-14-506 (West Supp. 1992); DEL. CODE ANN. tit. 16 § 2502(b) & (c) (1983); D.C. CODE ANN. §§ 21-2205, 21-2206 (1989); FLA. STAT. ANN. §§ 765.202, 765.203 (West Supp. 1993); GA. CODE ANN. § 31-36-4 (1991); HAW. REV. STAT. § 551D-2.5(c)(Supp. 1992); IDAHO CODE § 39-4505 (1993); ILL. ANN. STAT. ch. 755 ILCS 45/4-3 (Smith-Hurd 1992); IND. CODE ANN. §§ 30-5-5-16(2), 30-5-5-17 (West Supp. 1992); IOWA CODE ANN. §§ 144B.1, 144B.2 (West Supp. 1993); KAN. STAT. ANN. § 58-629 (Supp. 1992); KY. REV. STAT. ANN. §§ 311.970(6), 311.978 (Supp. 1992); 1993 MD. LAWS 372, §§ 5-602, 5-603 (Form II); MASS. GEN. LAWS ANN. ch. 201D, § 5 (West Supp. 1993); MICH. COMP. LAWS ANN. § 700.496 (West Supp. 1993); MISS. CODE ANN. § 41-41-165 (Supp. 1992); MO. ANN. STAT. § 404.820 (Vernon Supp. 1993); MONT. CODE ANN. § 50-9-103 (1991); NEV. REV. STAT. § 449.850(2) (1989); N.H. REV. STAT. ANN. §§ 137-j:2, 137-j:14 (Supp. 1992); N.J. STAT. ANN. § 26:2H-53 (West Supp. 1993) (Michie 1993) N.M. STAT. ANN. § 45-5-501; N.Y. PUB. HEALTH LAW § 2982 (McKinney Supp. 1993); N.C. GEN. STAT. § 32A-19 (1992); N.D. CENT. CODE § 23-06.5-03 (1991 & Supp. 1993); OR. REV. STAT. § 127.540 (1989); R.I. GEN. LAWS § 23-4.10-2 (1989); S.C. CODE ANN. § 62-5-504(D) (Law. Co-op. Supp. 1992); S.D. CODIFIED LAWS ANN. § 59-7-2.5 (Supp. 1992); TENN. CODE ANN. §§ 34-6-204, 34-6-205 (1991); TEX. CIV. PRAC. & REM. CODE ANN. § 135.002 (West Supp. 1993); VT. STAT. ANN. tit. 14 §§ 3453, 3465 (1989 & Supp. 1992); VA. CODE ANN. § 54.1-2984 (1991 & Supp. 1993); WASH. REV. CODE ANN. § 11.94.010(3) (West Supp. 1993); W. VA. CODE § 16-30A-4 (1991); WIS. STAT. ANN. § 155.20 (West Supp. 1993); WYO. STAT. § 3-5-202 (1993).

³⁴ The only other limitation found in both Ohio's law and the statutes of the vast majority of their jurisdictions creates a special decision making standard for principals who are pregnant. OHIO REV. CODE ANN. § 1337.13 (D).

³⁵ A few of these jurisdictions require that a patient who wishes to grant the power to make decisions concerning life-sustaining treatment or artificial nutrition and hydration expressly state his or her intent in the document. See e.g., MICH. COMP. LAWS ANN. § 700.496(7)(d) (West Supp. 1993); MO. ANN. STAT. § 404.820 (Vernon Supp. 1993); N.Y. PUB. HEALTH LAW § 2982(2) (McKinney Supp. 1993); OR. REV. STAT. § 127.540(6)(1989). These are reasonable provisions in a living will law and we have retained them in our suggested redraft of Ohio's Living Will law. See proposed §§ 2133.02 (2), (3)(a) *infra* Appendix B. Required

restrictions on the attorney-in-fact and we agree that this grant of power respects the individuality of different persons in different situations. We find Ohio's law objectionable, however, because it additionally imposes restrictions on the principal that prevent a transfer of decisionmaking authority regarding life-sustaining treatment to surrogates unless a patient is in a terminal condition or permanently unconscious state.³⁶

We observe that these restrictions in Ohio's durable power of attorney law provoke an odd, undesirable and unnecessary state of affairs. Citizens who write durable powers of attorney for health care in Ohio intend to preserve personal rights, but they lose them when they execute this document. The restrictions in Ohio's durable power for health care law arbitrarily confine the expression of the common-law right to refuse life-sustaining medical treatment to possession of decisional capacity, thereby compelling medical treatments for decisionally incapacitated patients that they might have refused when they could still speak for themselves.

Consider the tragically common situations of cancer, heart disease and nursing home placement. A diagnosis of cancer is often accompanied by recommendations of treatments such as surgery, chemotherapy and radiation. These interventions might or might not prove effective for recovery or comfort. Ohio's decisionally capacitated cancer patients may accept or refuse them. But Ohio's decisionally incapacitated cancer patients who have written durable powers of attorney for health care lose their rights to refuse these treatments through their appointed surrogates until they enter into either a "terminal condition" or "permanently unconscious state." Even refusals expressed while they were decisionally capacitated cannot be effectively represented by the surrogate until judgments of "terminal condition" or "permanently unconscious state" are made on the medical records.

Ohio's cardiac, stroke and other seriously ill patients regrettably are similarly situated. They might want to refuse invasive, aggressive cardiac or neurological medical treatments. They might want to refuse placement in a nursing home. Indeed, they might have clearly, consistently expressed these refusals. But if they execute a durable power of attorney for health care and then lose decisional capacity, respect for their refusals as represented by their appointed surrogates must itself be refused, and the host of available life-sustaining treatments imposed, until they are judged "terminal" or "permanently unconscious."

restrictions are unnecessary, however, in a health care proxy law, where citizens who want restrictions can include them in the document.

³⁶ OHIO REV. CODE ANN § 1337.13(B) (Anderson 1991).

Ohio's citizens deserve revisions of the durable power of attorney for health care law that enable them to retain common-law rights by controlling their attorney-in-fact's scope of authority upon their own decisional incapacity. Our current durable power law, therefore, should be amended to facilitate surrogate decisionmaking whenever a patient designates a health care attorney-in-fact to act. This amendment would allow Ohio citizens a real choice to write a health care proxy or a living will advance directive. Those who wish to express only their wishes about life-sustaining medical treatments near death can execute an Ohio living will. Those who choose to grant any decisionmaking authority to an appointed surrogate for all or a limited number of medical choices upon incapacity can use an Ohio durable power of attorney for health care.

Thus, we believe that a better alternative to Ohio's current restrictive provisions would preserve a wider range of choice across an immense variety of individuated wishes and circumstances, by enabling Ohio's citizens to write durable powers of attorney for health care in which they, but not the state, may limit the authority of the designated attorney-in-fact. Our current durable power of attorney for health care law should be amended to conform with the health care proxy laws of other jurisdictions.³⁷

B. *Living Wills*

1. The Definition of "Terminal Condition"

Unlike health care powers of attorney, living wills law address to a narrow circumstance: decisions about life-sustaining treatment when a patient is decisionally incapacitated and his or her condition is irreversible and incurable. Living wills express this limited effect by becoming operative when such a patient's condition is judged "terminal." We agree with this restriction of "terminal condition" as a prerequisite to complying with a living will. Ohio's current definition of "terminal condition," however, is the most restrictive such provision found in any state law, because our definition says that a patient's condition must be "untreatable" as well as "irreversible and incurable" to be judged "terminal."

Use of the word "untreatable" in this context is multiply problematic. Consider just two objections. First, "untreatable" echoes the ethically discredited "technological imperative" that available medical treatments must be started and continued regardless of the patient's condition, prognosis, wishes, interests and values simply because they are available. Second, "untreatable" creates an excessive restriction on Ohio's citizens and physicians because it is never

³⁷ See proposed §§ 1337.1.11, .13, .15, .16, and .17 *infra* Appendix A.

clinically, ethically or legally necessary to implement all available treatments and see them fail in order to diagnose a "terminal condition."

Most of the states which define "terminal condition" in their advance directive laws include Ohio's "irreversible and incurable" phrase but none add "untreatable."³⁸ Ohio's current definition's inclusion of "untreatable" is misguided and excessively restrictive, because irreversible and incurable conditions remain "treatable," yet the intention of citizens who execute living wills is to forego unhelpful and burdensome medical treatments. The word "untreatable" therefore should be deleted from the definition of "terminal condition" in the MURTI law,³⁹ bringing this definition into conformity with URTIA⁴⁰ and the statutes in at least twenty other states.⁴¹

2. Artificial Hydration and Nutrition

Additional provisions in Ohio's living will law mandate a probate court hearing before removing Artificial Hydration and Nutrition (AHN) from permanently unconscious patients who have executed valid Ohio living wills but have not checked and initialed a capitalized statement on their documents.⁴² The law also requires a probate court hearing for permanently unconscious patients from other states who have not written documents or who executed documents which do not include these statements.⁴³ For reasons discussed in the next section, we believe these restrictions are also unreasonable and unnecessary and should be repealed.

³⁸ *Id.* See, e.g. COLO. REV. STAT. § 15-18-103(10) (1989); D.C. CODE ANN. § 6-2421(6) (1989); ILL. REV. STAT. Ch. 755, § 3512(h)(Smith-Hurd 1992); LA. REV. STAT. ANN. § 40:1299.58.2(10) (West 1992); MINN. STAT. § 145B.02(8) (West Supp. 1993); N.H. REV. STAT. ANN. § 137-H:2(VI) (1990); OR. REV. STAT. § 127.605(6) (1990); UTAH CODE ANN. § 75-2-1103(7) (1993); VT. STAT. ANN. tit. 18, § 5252(5) (1987); WIS. STAT. § 154.01(8) (West 1989). See also *infra* note 41.

³⁹ § 2133.01(AA)(Anderson Supp. 1992)..

⁴⁰ See, e.g., URTIA, *supra* note 3, § 1(9) which defines "terminal condition" as: "an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time."

⁴¹ See, e.g., ALASKA STAT. § 18.12.100(7) (1991); ARK. CODE ANN. § 20-17-201(9) (Michie 1991); CAL. HEALTH & SAFETY CODE § 7186(j) (Deering 1991); COLO. REV. STAT. ANN. § 15-18-104(10)(1989); CONN. GEN. STAT. ANN. § 19a-570(3) (West 1991); HAW. REV. STAT. § 327D-2 (Supp. 1992); IOWA CODE § 144A.2(8) (West Supp. 1993); KY. REV. STAT. ANN. § 311.624(8) (Baldwin 1991); ME. REV. STAT. ANN. tit. 18-A, § 5-701(b) (West Supp. 1992); MINN. STAT. § 145B.02 (1991); MONT. CODE ANN. § 50-9-102(14) (1992); MO. REV. STAT. § 459.0101(6)(1985); NEB. REV. STAT. § 20-403(11) (1992); NEV. REV. STAT. § 449.590 (Michie 1991); N.J. STAT. ANN. § 26:2H-55 (1992); N.D. CENT. CODE § 23-06.4-02(7) (1991); OKLA. STAT. ANN. § 3101.3 (12)(1992); R.I. GEN. LAWS § 23-4.11-2(h) (Supp. 1992); S.C. CODE ANN. § 44-77-20 (4)(1993); S. D. CODIFIED LAWS ANN. § 34-12D1(8) (1991); TEX. HEALTH & SAFETY CODE ANN. § 672.002(9) (West 1992); WASH. REV. CODE § 70.122.020(9) (West 1993); W.VA. CODE § 16-30-2(10) (Supp. 1992).

⁴² § 2133.15(B).

⁴³ § 2133.15(B). This makes § 2133.15(A) consistent with current § 2133.14 which recognizes the validity of another state's advanced directive.

C. *Non-Declarant Provisions*

1. Permanently Unconscious Patients

Current Ohio law mandates a 12-month period of providing all possible life-sustaining treatments for patients in a PUS who have not executed an advance directive.⁴⁴ It also requires a probate court order before removing artificial hydration and nutrition (AHN) from the same patients.⁴⁵ Similar limitations apply to permanently unconscious patients who have an otherwise valid living will but have not checked or included this statement in their document.⁴⁶

These requirements typify Ohio's singular approach to advance directives. First, no other state burdens and restricts visitors from other states by imposing idiosyncratic requirements for which these visitors cannot have planned.⁴⁷ Second, for Ohio's patients and surrogates, the mandatory 12-month requirement that all life-sustaining treatment be provided is equally burdensome, unnecessary and restrictive.

PUS is a progressive⁴⁸ and irreversible condition for which life-sustaining treatments including AHN offer neither recovery nor comfort. We say so because PUS as defined in Ohio law requires a finding of a serious and irreversible condition in which "(1) the patient is irreversibly unaware of self and environment, and (2) there is a total loss of cerebral cortical functioning, resulting in the patient's having no capacity to experience pain and suffering."⁴⁹

⁴⁴ OHIO REV. CODE ANN. §§ 2133.08(A)(1)(a),(2), 2133.09 (Anderson 1991).

⁴⁵ § 2133.09.

⁴⁶ See notes 43-44 and accompanying text, *supra*.

⁴⁷ Many statutes follow the lead of URTIA, including permanent unconscious states in their statutory definitions of terminal condition. See URTIA *supra* note 3, § 1; ARIZ. REV. STAT. ANN. § 36-3201(6) (1986)(amended 1992); FLA. STAT. 765.101(17) (West Supp. 1993); IDAHO CODE § 39-4503(3) (1985)(amended 1988); IOWA CODE § 144A.2.8 (West Supp. 1993); TENN. CODE ANN. § 32-11-103(8) (1992). Others, like Ohio, separately define PUS. See OHIO REV. CODE ANN. §§ 1337.11(T), 2133.01. Once defined, however, all states *except* Ohio treat PUS and terminal condition identically. See *e.g.*, ARK. CODE ANN. § 20-17-201(11) (Michie 1991); CAL. HEALTH & SAFETY CODE § 7186(c) (Deering 1991); CONN. GEN. STAT. § 19a-570(3) (West 1991); GA. CODE ANN. § 31-32-2(9) (Michie 1992); ME. REV. STAT. ANN. tit. 18-A, § 5-701(b) (10)(West Supp. 1992); NEB. REV. STAT. § 20-403(6) (1992); N.H. REV. STAT. ANN. § 137-H:2(VII) (1990); N.J. REV. STAT. § 26:2H-55 (West Supp. 1993); N.C. GEN. STAT. § 90-321(a)(4) (Supp. 1992); 20 PA. CONS. STAT. § 5403 (Supp. 1993); S.C. CODE ANN. § 62-5-504(7) (Law. Co-op. 1992); S.D. CODIFIED LAWS ANN. § 34-12D-1(8) (Supp. 1993); VA. CODE ANN. § 54.1-2982 (Michie 1992); WASH. REV. CODE § 70.122.020(6) (West Supp. 1993); W.VA. CODE § 16-30-2(10) (Supp. 1992); WYO. STAT. § 35-22-101 (Supp. 1992).

⁴⁸ Patients in a PUS continue to deteriorate physically.. Their muscles lose tone, their bones become more brittle and skin breaks down causing bed sores. Any remaining brain tissue deteriorates. Death eventually occurs from infection brought on by this continuing physical deterioration and increasing immunity to antibiotics. In re Guardianship of Myers, Case No. 692-12-049 (Summit County Probate Court Jan. 29, 1993), See also Persistent Vegetative State and the Decision to Withdraw or Withhold Life Support, 263 JAMA 426 (Jan. 19, 1990).

⁴⁹ §§ 1337.11(T); 2133.01(U).

Typical life-sustaining treatments used to prolong a PUS include surgery, placement in intensive care, cardio-pulmonary resuscitation, intubation and ventilation, drug therapies, dialysis, blood transfusions, intravenous fluids, enteral feedings or hyperalimentation. Under current laws, Ohio's physicians must provide all of these life-sustaining treatments to patients without advance directives for at least one year following the diagnosis of permanent unconsciousness.⁵⁰ Only then is a patient's surrogate empowered to consent to the withdrawing of life-sustaining treatment. Further, if the surrogate decides that the patient would want AHN withdrawn, that person must petition the probate court to withdraw this life sustaining measure.⁵¹

The American Academy of Neurology and the American Medical Association have recently issued position papers about care of patients in PUS.⁵² Both organizations say that once diagnosed, PUS is an irreversible and progressive condition for which available medical technologies only prolong the unconscious and deteriorating status quo. They say medical treatments legitimately can be withheld and withdrawn.⁵³

These organizations additionally indicate that permanent unconsciousness takes three to six months to diagnose. An Ohio family who receives this bad news must wait the required year beyond the date of diagnosis. Implementation of Ohio's rules will therefore often require more than a year and a half of invasive medical care. This imposes significant burdens on irreversibly ill patients, their caregivers, and also on their surrogates who often know the patient's wishes, interests and values and know that the patient would not wish any of a vast array of life-sustaining treatments in these circumstances.⁵⁴

The 12-month and filing provisions thus are excessively restrictive. In all other states, appropriate surrogates can decide, or can seek judicial review of care

⁵⁰ OHIO REV. CODE ANN. § 2133.08(A)(1)(a) (Anderson 1991).

⁵¹ 48 § 2133.09.

⁵² Executive Board of the American Academy of Neurology, *Position of the American Academy of Neurology on Certain Aspects of the Care and Maintenance of the Persistent Vegetative State Patient*, 39 *Neurology* 125 (1989)[hereinafter American Academy of Neurology]; Council on Scientific Affairs and Council on Ethical and Judicial Affairs, American Academy of Medicine, *Persistent Vegetative State and the Decision to Withdraw or Withhold Life Support*, 263 *JAMA* 426 (1990)[hereinafter American Medical Association].

⁵³ American Academy of Neurology, *supra* note 52, at 126; American Medical Association, *supra* note 52, at 429.

⁵⁴ Recognizing this burden to the patient, the vast majority of cases hold that artificial life supports, including AHN, can be withdrawn from a patient in a persistent vegetative state. *See, e.g., In re guardianship of Myers*, 610 N.E.2d 663 (Summit County P. Ct., Ohio 1993); *Guardianship of Doe*, 583 N.E.2d 1263 (Mass. 1992) *cert. denied*, 112 S. Ct. 1512 (1992); *Rosebush v. Oakland County Prosecutor (In re Rosebush)*, 491 N.W.2d 633 (Mich. Ct. App. 1992); *Lenz v. L.E. Phillips Career Dev. Ctr. (In re Guardianship of L.W.)*, 482 N.W.2d 60 (Wis. 1992), *In re Guardianship of McInnis*, 548 N.E.2d 1389 (Stark County P. Ct. 1991); *In re Guardianship of Crum*, 580 N.E.2d 876 (Franklin County P. Ct. 1991); *(In re Guardianship of Browning)*, 568 So. 2d 4 (Fla. 1990); *In re Estate of Greenspan*, 558 N.E. 2d 1194 (Ill. 1990). For cases decided before *Cruzan*, see Susan R. Martynt & Henry J. Bourguignon, *Coming to Terms with Death: The Cruzan Case*, 42 *HASTINGS L.J.* 817, 828 n.59 (1991).

decisions for patients in a PUS once it is diagnosed. Only in Ohio, must surrogates accept excessive and heroic medical care for a minimum of 12 months before being heard.⁵⁵

2. Written Consent

Ohio law requires a written, witnessed consent for withholding and withdrawing life-sustaining interventions from nondeclarant patients who are incapacitated and in a terminal condition or PUS.⁵⁶ This requirement is burdensome to families who often ask why, after they have given informed consent to forego medical treatments, they should have to review the situation all over again and sign a form. Furthermore, this requirement exceeds Ohio's current legal standard of informed consent. For all other medical decisionmaking in Ohio, oral informed consent from the patient or surrogate is legally sufficient.⁵⁷ Once again, Ohio is one of only a few states that require written, witnessed consent in these situations.⁵⁸

3. Decisionmaking Standards

The current DPAHC law includes both "substituted judgment" and "best interests" as standards of surrogate decisionmaking.⁵⁹ We recommend that the best interests standard be added to the substituted judgment standard for surrogate decisionmaking on behalf of non-declarants.

The substituted judgment standard permits surrogate decisionmaking for non-declarants based on the previously expressed, known or inferred wishes,

⁵⁵ Because § 2133.08 and .09 completely deny a patient the right to be heard through an appropriate surrogate, it probably poses constitutional problems. See *Cruzan v. Director Mo. Dep't of Health*, 497 U.S. 261, 289-90 (1990) (O'Connor, J., concurring).

⁵⁶ OHIO REV. CODE ANN. § 2133.08(A) (Anderson 1991).

⁵⁷ See § 2317.54(C) [written consent is presumed valid but that oral consent is sufficient if recognized by common law]. Ohio's Supreme Court has recognized such a common law right. See *Nickell v. Gonzalez*, 477 N.E. 2d 1145, 1148 (Ohio 1985).

⁵⁸ Although a few states require a writing, see, e.g., ARK. CODE ANN. § 20-17-214 (Michie 1991); IOWA CODE ANN. § 144A.7 (West 1989); MASS. GEN. LAWS. ANN. ch. 201D, § 16 (West Supp. 1993); TEX. HEALTH & SAFETY CODE ANN. § 672.009 (West 1991); UTAH CODE ANN. §§ 75-2-1105, 75-2-1107 (1993); most states require "consent" without specifying its form. See, e.g., COLO. REV. STAT. ANN. § 15-18.5.103(3), (4) (Supp. 1992); CONN. GEN. STAT. ANN. § 19a-571 (West Supp. 1993); D.C. CODE ANN. § 21-2210 (1989 & Supp. 1992); FLA. STAT. ANN. § 765.401 (West Supp. 1993); GA. CODE ANN. § 31-9-2 (Michie 1991); HAW. REV. STAT. § 327D-21 (Supp. 1992); ILL. ANN.. STAT. Ch. 755, § 40/25 (Smith-Hurd 1992); IND. CODE ANN. § 16-8-12-4 (West 1992); LA. REV. STAT. ANN. §§ 40:1299.53, 40:1299.58.5 (West 1992); ME. REV. STAT. ANN. tit. 18-A, § 5-707 (West Supp. 1992); MD. HEALTH-GEN. CODE ANN. § 20-107(d) (1991); MONT. CODE ANN. § 50-9-106(1991); NEV. REV. STAT. ANN. § 449.626 (Michie 1991); N.M. STAT. ANN. § 24-7-8.1 (Michie 1991); N.C. GEN. STAT. § 90-322 (Supp. 1992); OR. REV. STAT. § 127.635(2) (1990); S.C. CODE ANN. § 44-66-30 (Law Co-Op 1990); VA. CODE ANN. § 54.1-2986 (Michie 1992); WASH. REV. CODE ANN. § 7.70.065 (West 1992); WYO. STAT. §§ 3-5-209, 35-22-105 (Supp. 1992).

⁵⁹ OHIO REV. CODE ANN. § 1337.13(A)(1) (Anderson 1991).

interests and values of the patient.⁶⁰ Substituted judgment is the preferred legal standard for surrogate decisionmaking when there is no advance directive; however, it is not readily applicable in cases in which the patient's wishes, interests and values are not known. We can attest from experience that many patients and their surrogates "never talked about it", and many other patients are without close surrogates. These cases require use of the best interests standard for surrogate decisionmaking.

"Best interests" means that the appropriate legal surrogate, fully informed of the facts of the case -- e.g., the patient's condition and prognosis, and the benefits and harms of utilizing or forgoing available medical treatments for the patient -- makes a decision based on what is in the best interest of the patient. We note that the best interests standard is an established legal standard for a wide range of decisionmaking, and that, in Ohio, surrogates such as guardians and parents legally must make best interests decisions for their wards and children.⁶¹

CONCLUSION

We have attempted on the foregoing pages to capsulize our work during the past year and to provide the reader with an understanding of the reasoning behind these proposals. We feel that the need is critical and the time is at hand to implement revisions that focus on the goal of patient centered advance directive laws for Ohio. While the enactment of the Ohio DPAHC and MURTIA laws was a major step in the right direction, practical experience in dealing with the laws as enacted has shown that they require qualification, focus and consistency of purpose. It is the hope of this Task Force that the revisions we have suggested will lay the groundwork for that redrafting.

⁶⁰ See, e.g., *In Re Milton*, 505 N.E.2d 255 (Ohio 1987), cert. denied, 484 U.S. 820 (1987).

⁶¹ See, e.g., OHIO REV. CODE ANN. § 2111.50(C) (Anderson 1991); *In re Guardianship of Myers*, Case No. 692-12-049 (Summit County P. Ct. 1993).

Appendix A

[DURABLE POWER FOR HEALTH CARE]

Section

- 1337.11 Definitions.
- 1337.12 Durable power of attorney for health care; witnesses acknowledge.
- 1337.13 Authority of attorney in fact.
- 1337.14 Revocation of power.
- 1337.15 Immunity of physicians and other persons.
- 1337.16 Health care benefits not to be affected; refused to follow instructions; transfer to willing physician or facility; emergencies; notification of certain persons; complaint by objecting person; power executed in another state.
- 1337.17 Use of printed form; notice to principal.

1337.11 Definitions.

As used in sections 1337.11 to 1337.17 of the Revised Code:

(A) "Adult" means a person who is eighteen years of age or older.

(B) "Attending physician" means the physician to whom a principal or his family has assigned primary responsibility for the treatment or care of the principal or, if the principal or his family has not assigned that responsibility, the physician who has accepted that responsibility.

(C) "Comfort care" means ~~any of the following:~~

~~—(1) Nutrition when administered to diminish the pain or discomfort of a principal, not to postpone his death;~~

~~—(2) Hydration when administered to diminish the pain or discomfort of a principal, not to postpone his death;~~

~~—(3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a principal, not to postpone his death.~~

(D) "Consulting physician" means a physician who, in conjunction with the attending physician of a principal, makes one or more determinations that are required to be made by the attending physician, or to be made by the attending physician and one other physician, by an applicable provision of sections 1337.11 to 1337.17 of the Revised Code, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(E) "Guardian" means a person appointed by a probate court pursuant to Chapter 2111. of the Revised Code to have the care and management of the person of an incompetent.

(F) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

(G) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.

(H) "Health care facility" means any of the following:

(1) A hospital;

(2) A hospice care program or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;

(3) A nursing home;

(4) A home health agency;

(5) An intermediate care facility for the mentally retarded.

(I) "Health care personnel" means physicians, nurses, physician's assistants, emergency medical technicians-ambulance, advanced emergency medical technicians-ambulance, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.

(J) "Home health agency" has the same meaning as in section 3701.88 of the Revised Code.

(K) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

(L) "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.

~~(M) "Hydration" means fluids that are artificially or technologically administered.~~

~~(N)~~ (M) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.

~~(O)~~ (N) "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.

~~(P) "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a principal, will serve principally to prolong the process of dying.~~

~~(Q)~~ (O) "Medical claim" has the same meaning as in section 2305.11 of the Revised Code.

~~(R)~~ (P) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.

~~(S) "Nutrition" means sustenance that is artificially or technologically administered.~~

~~(T) "Permanently unconscious state" means a state of permanent unconsciousness in a principal that, to a reasonable degree of medical certainty is determined in accordance with reasonable medical standards by the principal's attending physician and one other physician who has examined the principal, is characterized by both of the following:~~

~~(1) The principal is irreversibly unaware of himself and his environment.~~

~~—(2) There is a total loss of cerebral cortical functioning, resulting in the principal having no capacity to experience pain or suffering.~~

(U) (Q) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes political subdivisions and governmental agencies, boards, commissions, departments, institutions, offices, and other instrumentalities.

(V) (R) "Physician" means a person who is licensed under Chapter 4731. of the Revised Code to practice medicine or surgery or osteopathic medicine and surgery, or a person who otherwise is authorized to practice medicine or surgery or osteopathic medicine and surgery in this state.

(W) (S) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(X) (T) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including the state medical board and the board of nursing.

~~(Y) "Terminal condition" means an irreversible, AND incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a principal's attending physician, and one other physician who has examined the principal, both of the following apply:~~

~~—(1) There can be no recovery.~~

~~—(2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.~~

(Z) (U) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons.

1337.12 Durable power of attorney for health care; witnesses; acknowledgment.

(A)(1) An adult who is of sound mind voluntarily may create a valid durable power of attorney for health care by executing a durable power of attorney, in accordance with division (B) of section 1337.09 of the Revised Code, that authorizes an attorney in fact as described in division (A)(2) of this section to make health care decisions for the principal at any time that the attending physician of the principal determines that he has lost the capacity to make informed health care decisions for himself. Except as otherwise provided in divisions (B) to (F) of section 1337.13 of the Revised Code, the authorization may include the right to give informed consent, to refuse to give informed consent, or to withdraw informed consent, to any health care that is being or could be provided to the principal. Additionally, to be valid, a durable power of attorney for health care shall satisfy both of the following:

(a) It shall be signed by the principal and state the date of its execution.

(b) It shall be witnessed in accordance with division (B) of this section or be acknowledged by the principal in accordance with division (C) of this section.

(2) Except as otherwise provided in this division, a durable power of attorney for health care may designate any competent adult as the attorney in fact. The attending physician of the principal and an administrator of any nursing home in which the principal is receiving care shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable power of attorney for health care. An employee or agent of the attending physician of the principal and an employee or agent of any health care facility in which the principal is being treated shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable power of attorney for health care, except that these limitations do not preclude a principal from designating either type of employee or agent as his attorney in fact if the individual is a competent adult and related to the principal by blood, marriage, or adoption, or if the individual is a competent adult and the principal and the individual are members of the same religious order.

(3) A durable power of attorney for health care shall not expire, unless the principal specifies an expiration date in the instrument. However, when a durable power of attorney contains an expiration date, if the principal lacks the capacity to make informed health care decisions for himself on the expiration date, the instrument shall continue in effect until the principal regains the capacity to make informed health care decisions for himself.

(B) If witnessed for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be witnessed by at least two individuals who are adults and who are not ineligible to be witnesses under this division. Any person who is related to the principal by blood, marriage, or adoption, any person who is designated as the attorney in fact in the instrument, the attending physician of the principal, and the administrator of any nursing home in which the principal is receiving care are ineligible to be witnesses.

The witnessing of a durable power of attorney for health care shall involve the principal signing, or acknowledging his signature on, the instrument in the presence of each witness. Then, each witness shall subscribe his signature on the durable power of attorney for health care and, by doing so, attest to his belief that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

(C) If acknowledged for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be acknowledged before a notary public, who shall make the certification described in section 147.53 of the Revised Code and also shall attest that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

1337.13 Authority of attorney in fact.

(A)(1) An attorney in fact under a durable power of attorney for health care shall make health care decisions for the principal only if the instrument substantially complies with section 1337.12 of the Revised Code and specifically authorizes the attorney in fact to make health care decisions for the principal, and only if the attending physician of the principal determines that he has lost the capacity to make informed health care decisions for himself. Except as otherwise provided in divisions (B) to (F) (D) of this section and subject to any specific limitations in the instrument, the attorney in fact may make health care decisions for the principal to the same extent as the principal could make those decisions for himself if he had the capacity to do so. Except as otherwise provided in divisions (B) to (F) of this section, in exercising his authority, the attorney in fact shall act consistently with the desires of the principal or, if the desires of the principal are unknown, shall act in the best interest of the principal.

(2) This section does not affect, and shall not be construed as affecting, any right that the person designated as attorney in fact in a durable power of attorney for health care may have, apart from the instrument, to make or participate in the making of health care decisions on behalf of the principal.

(3) Unless the right is limited in a durable power of attorney for health care, when acting pursuant to the instrument, the attorney in fact has the same right as the principal to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

~~(B)(1) An attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to life-sustaining treatment, unless the principal is in a terminal condition or in a permanently unconscious state and unless the applicable requirements of divisions (B)(2) and (3) of this section are satisfied.~~

~~(2) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a permanently unconscious state, the consulting physician associated with the determination that the principal is in the permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state.~~

~~(3) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal shall determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable~~

~~possibility that the principal will regain the capacity to make informed health care decisions for himself.~~

~~(C) (B) Except as otherwise provided in this division, an attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This division does not preclude, and shall not be construed as precluding, an attorney in fact under a durable power of attorney for health care from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under the circumstances described in division (E) of this section, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.~~

~~(D) (C) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.~~

~~(E) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless the following apply:~~

~~(1) The principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.~~

~~(2) If the principal is in a permanently unconscious state, the principal has authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to him when he is in a permanently unconscious state by doing both of the following in the durable power of attorney for health care:~~

~~(a) Including a statement in capital letters that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to the principal if he is in a permanently unconscious state and if the determination described in division (E)(1) of this section is made, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a durable power of attorney for health care;~~

~~(b) Placing his initials or signature underneath or adjacent to the statement, check, or other mark described in division (E)(2)(a) of this section.~~

~~(3) If the principal is in a permanently unconscious state, his attending physician determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to him when he is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of this section.~~

~~(F)~~ (D) An attorney in fact under a durable power of attorney for health care does not have authority to withdraw informed consent to any health care to which the principal previously consented, unless at least one of the following applies:

(1) A change in the physical condition of the principal has significantly decreased the benefit of that health care to the principal.

(2) The health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

1337.14 Revocation of power.

(A) A principal who creates a valid durable power of attorney for health care may revoke that instrument or the designation of the attorney in fact under it. The principal may so revoke at any time and in any manner. The revocation shall be effective when the principal expresses his intention to so revoke, except that, if the principal made his attending physician aware of the durable power of attorney for health care, the revocation shall be effective upon its communication to the attending physician by the principal himself, a witness to the revocation, or other health care personnel to whom the revocation is communicated by such a witness. Absent actual knowledge to the contrary, the attending physician of the principal and other health care personnel who are informed of the revocation of a durable power of attorney for health care by an alleged witness may rely on the information and act in accordance with the revocation.

(B) Upon the communication as described in division (A) of this section to the attending physician of a principal of the fact that his durable power of attorney for health care has been revoked, the attending physician or other health care personnel acting under the direction of the attending physician shall make the fact a part of the principal's medical record.

(C) Unless the instrument provides otherwise, a valid durable power of attorney for health care revokes a prior, valid durable power of attorney for health care.

1337.15 Immunity of physicians and other persons.

(A) Subject to division ~~(H)~~ (G) of this section, an attending physician of a principal is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action for actions taken

in good faith and in reliance on a health care decision when all of the following are satisfied:

(1) The decision is made by an attorney in fact under a durable power of attorney for health care after he receives information sufficient to satisfy the requirements of informed consent or refusal or withdrawal of informed consent, and the attending physician, in good faith, believes that the attorney in fact is authorized to make the decision.

(2) The attending physician, in good faith, believes that the decision is consistent with the desires of the principal, or the attorney in fact informs the attending physician that the desires of the principal are unknown and the attending physician, in good faith, believes that the desires of the principal are unknown and that the decision is in the best interest of the principal.

(3) The attending physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the principal has lost the capacity to make informed health care decisions for himself.

~~(4) If the decision is to withhold or withdraw life-sustaining treatment, the attending physician attempts, in good faith, to determine the desires of the principal to the extent that the principal is able to convey them and places a report of the attempt in the health care records of the principal.~~

~~(5) If the decision is to withhold or withdraw life-sustaining treatment, the attending physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that both of the following apply:~~

~~(a) The principal is in a terminal condition or in a permanently unconscious state.~~

~~(b) There is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for himself.~~

(6) (5) If the decision pertains to a principal who is pregnant and if the withholding or withdrawal of health care would terminate the pregnancy, the attending physician makes, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, a determination whether or not the pregnancy or health care involved would pose a substantial risk to the life of the principal, or a determination whether or not the fetus would be born alive.

~~(7) If the decision pertains to the provision of nutrition or hydration to a principal who is in a terminal condition or in a permanently unconscious state, the attending physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.~~

~~(8) If the decision pertains to the provision of nutrition or hydration to a principal who is in a permanently unconscious state, the attending physician determines, in good faith, that the principal authorized the attorney in fact to~~

~~refuse or withdraw informed consent to the provision of nutrition or hydration to him when he is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of section 1337.13 of the Revised Code.~~

~~(B) Notwithstanding the health care decision of the attorney in fact, subject to division (H) of this section, an attending physician of a principal is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action for providing or for failing to withdraw life-sustaining treatment.~~

~~(C) (B) Subject to division (H) (G) of this section, a consulting physician is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action as follows:~~

~~(1) If the health care decision involved is one other than the health care decision described in division (C)(2), (3), or (4) of this section, the consulting physician made a determination, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, in conjunction with the attending physician of a principal.~~

~~(2) If the decision is to withhold or withdraw life-sustaining treatment, the consulting physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, after examining the principal, that the principal is in a terminal condition or in a permanently unconscious state.~~

~~(3) (2) If the health care decision involved pertains to a principal who is pregnant and if the withholding or withdrawal of health care would terminate the pregnancy, the consulting physician makes, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, a determination whether or not the pregnancy or health care involved would pose a substantial risk to the life of the principal, or a determination whether or not the fetus would be born alive.~~

~~(4) If the decision pertains to the provision of nutrition or hydration to a principal who is in a terminal condition or in a permanently unconscious state, the consulting physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.~~

~~(D) (C) Subject to division (H) (G) of this section, a person is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action for actions taken, in good faith, while relying on a durable power of attorney for health care if the person does not have actual knowledge of either of the following facts:~~

~~(1) The durable power of attorney has been revoked pursuant to section 1337.14 of the Revised Code.~~

~~(2) The durable power of attorney does not substantially comply with sections 1337.11 to 1337.17 of the Revised Code.~~

~~(E)~~ (D) Subject to division ~~(H)~~ (G) of this section, a consulting physician, an employee or agent of any health care facility or the attending physician of a principal, and health care personnel acting under the direction of the attending physician of a principal are not subject to criminal prosecution or professional disciplinary action, and are not liable in damages in a tort or other civil action for any action described in division (A), (B), (C), or (D) of this section that was undertaken, in good faith, pursuant to the direction of the attending physician of the principal.

~~(F)~~ (E) Subject to division ~~(H)~~ (G) of this section, a health care facility is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action for any action that properly was undertaken pursuant to division (A), (B), (C), (D), or (E) of this section.

~~(G)~~ (F) Subject to division ~~(H)~~ (G) of this section, an attorney in fact is not subject to criminal prosecution or professional disciplinary action, and is not liable in damages in a tort or other civil action for health care decisions made in good faith while acting pursuant to his authority under a durable power of attorney for health care.

~~(H)~~ (G) (1) Sections 1337.11 to 1337.17 of the Revised Code, and a durable power of attorney for health care, do not affect or limit, and shall not be construed as affecting or limiting, any potential tort or other civil liability of an attending or consulting physician, an employee or agent of a health care facility or an attending physician, health care personnel acting under the direction of an attending physician, a health care facility, an attorney in fact, or any other person, including, but not limited to, liability associated with a medical claim, that satisfies both of the following:

(a) The liability arises but of a negligent action or omission in connection with the medical diagnosis, care, or treatment of a principal under a durable power of attorney for health care, or arises out of any deviation from reasonable medical standards.

(b) The liability is based on the fact that the negligent action or omission, or the deviation, as described in division ~~(H)(G)(1)(a)~~ of this section caused or contributed to the principal under the durable power of attorney for health care ~~having a terminal condition or being in a permanently unconscious state, or otherwise caused or contributed to any injury to or the wrongful death of the principal.~~

(2) Sections 1337.11 to 1337.17 of the Revised Code, and a durable power of attorney for health care, do not grant, and shall not be construed as granting, an immunity from criminal or civil liability or from professional disciplinary action to health care personnel for actions that are outside the scope of their authority.

1337.16 Health care benefits not to be affected; refusal to follow instructions; transfer to willing physician or facility; emergencies; notification of certain persons; complaint by objecting person; power executed in another state.

(A) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX [39] of the Revised Code, medical care corporation, health care corporation, health maintenance organization, other health care plan, or legal entity that is self-insured and provides benefits to its employees or members shall require an individual to create or refrain from creating a durable power of attorney for health care, or shall require an individual to revoke or refrain from revoking a durable power of attorney for health care, as a condition of being admitted to a health care facility, being provided health care, being insured, or being the recipient of benefits.

(B)(1) Subject to division (B)(2) of this section, an attending physician of a principal or a health care facility in which a principal is confined may refuse to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience or on another basis. An employee or agent of an attending physician of a principal or of a health care facility in which a principal is confined may refuse to comply with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience.

(2)(a) An attending physician of a principal who, or health care facility in which a principal is confined that, is not willing or not able to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care to use or continue, or to withhold or withdraw, health care that were given under division (A) of section 1337.13 of the Revised Code, or with any probate court reevaluation order issued pursuant to division (E)(6) of this section, SHALL TAKE REASONABLE STEPS AS PROMPTLY AS PRACTICABLE TO TRANSFER CARE OF THE DECLARANT TO ANOTHER PHYSICIAN OR HEALTH CARE FACILITY WHO IS WILLING TO DO SO. ~~shall not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the principal to the care of a physician who, or a health care facility that, is willing and able to so comply, or allow compliance.~~

(b) If the instruction of an attorney in fact under a durable power of attorney for health care that is given under division (A) of section 1337.13 of the Revised Code is to use or continue HEALTH CARE life-sustaining treatment in connection with a principal who is in a terminal condition or in a permanently unconscious state, then the attending physician of the principal who, or health care facility in which the principal is confined that, is not willing or not able to comply or allow compliance with that instruction shall use or continue the

HEALTH CARE ~~life-sustaining treatment~~ or cause it to be used or continued until a transfer as described in division (B)(2)(a) of this section is made.

(C) Sections 1337.11 to 1337.17 of the Revised Code, and a durable power of attorney for health care created under section 1337.12 of the Revised Code, do not affect or limit, and shall not be construed as affecting or limiting, the authority of a physician or a health care facility to provide or not to provide health care to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D) SECTIONS 1337.11 TO 1337.17 OF THE REVISED CODE, AND A DURABLE POWER OF ATTORNEY FOR HEALTH CARE CREATED UNDER SECTION 1337.12 OF THE REVISED CODE, DO NOT IMPAIR AND SHALL NOT BE CONSTRUED AS IMPAIRING, THE AUTHORITY OF A PHYSICIAN OR A HEALTH CARE FACILITY TO ISSUE A DO NOT RESUSCITATE ORDER WHETHER OR NOT THE PATIENT HAS EXECUTED A DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

(E)(~~D~~) A PETITION MAY BE FILED UNDER SECTION 2101.24 FOR ANY ONE OR MORE OF THE FOLLOWING PURPOSES;

(1) DETERMINING WHETHER THE POWER OF ATTORNEY FOR HEALTH CARE IS IN EFFECT OF HAS BEEN REVOKED OR TERMINATED.

(2) DETERMINING WHETHER THE ACTS OR PROPOSED ACTS OF THE ATTORNEY-IN-FACT ARE CONSISTENT WITH THE WISHES OF THE PRINCIPAL AS EXPRESSED IN THE POWER OF ATTORNEY FOR HEALTH CARE OR AS INFERRED FROM THE LIFESTYLE AND CHARACTER OF THE PRINCIPAL, AND FROM OTHER EVIDENCE OF THE DESIRES OF THE PRINCIPAL, PRIOR TO HIS BECOMING NO LONGER ABLE TO MAKE INFORMED DECISIONS OR WHERE THE WISHES OF THE PRINCIPAL ARE UNKNOWN OR UNCLEAR, WHETHER THE ACTS OR PROPOSED ACTS OF THE ATTORNEY-IN-FACT ARE CLEARLY CONTRARY TO THE BEST INTERESTS OF THE PRINCIPAL.

(3) DETERMINING WHETHER THE POWER OF ATTORNEY FOR HEALTH CARE WAS EXECUTED WHEN THE PRINCIPAL WAS NOT OF SOUND MIND OR WAS UNDER OR SUBJECT TO DURESS, FRAUD OR UNDUE INFLUENCE.

(4) DETERMINING WHETHER THE POWER OF ATTORNEY FOR HEALTH CARE IS REVOKED UPON A DETERMINATION BY THE COURT THAT THE ATTORNEY-IN-FACT HAS MADE A HEALTH CARE DECISION FOR THE PRINCIPAL THAT AUTHORIZED ANYTHING ILLEGAL; PROVIDED, HOWEVER, THE REVOCATION OF A POWER OF ATTORNEY UNDER THIS SUBSECTION SHALL BE IN THE DISCRETION OF THE COURT.

(5) DETERMINING WHETHER THE POWER OF ATTORNEY FOR HEALTH CARE IS REVOKED UPON A DETERMINATION BY THE COURT OF BOTH OF THE FOLLOWING:

(a) The attorney-in-fact has violated, failed to perform or is unable to perform the duty under the power of attorney for health care to act in a matter consistent with the desires of the principal or where the desires of the principal are unknown or unclear, is acting in a manner that is clearly contrary to the best interests of the principal; and

(b) AT THE TIME OF THE DETERMINATION BY THE COURT, THE PRINCIPAL LACKS THE CAPACITY TO REVOKE THE POWER OF ATTORNEY FOR HEALTH CARE.

(6) A PETITION MAY BE FILED BY ANY OF THE FOLLOWING:

(a) THE PRINCIPAL.

(b) THE ATTORNEY-IN-FACT.

(c) THE GUARDIAN OF THE PRINCIPAL.

(d) THE SPOUSE, ADULT CHILD, PARENT OR SIBLING OF THE PRINCIPAL.

(e) AN ADULT WITH A SIGNIFICANT PERSONAL RELATIONSHIP TO THE PRINCIPAL

(f) THE ATTENDING PHYSICIAN OR HEALTH CARE PROVIDER OF THE PRINCIPAL.

~~(F)(1) If the attending physician of a principal and one other physician who examines the principal determine that he is in a terminal condition or in a permanently unconscious state, if the attending physician additionally determines that the principal has lost the capacity to make informed health care decisions for himself and that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for himself, and if the attorney in fact under the principal's durable power of attorney for health care makes a health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment, then the attending physician shall do all of the following:~~

~~(a) Record the determinations and health care decision in the principal's medical record.~~

~~(b) Make a good faith effort, and use reasonable diligence, to notify the appropriate individual or individuals, in accordance with the following descending order of priority, of the determinations and health care decision:~~

~~(i) If any, the guardian of the principal. This division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the principal.~~

~~(ii) The principal's spouse;~~

~~(iii) The principal's adult children who are available within a reasonable period of time for consultation with the principal's attending physician;~~

~~(iv) The principal's parents;~~

~~(v) An adult sibling of the principal or, if there is more than one adult sibling, a majority of the principal's adult siblings who are available within a reasonable period of time for such consultation;~~

~~(c) Record in the principal's medical record the names of the individual or individuals notified pursuant to division (D)(1)(b) of this section and the manner of notification;~~

~~(d) Afford time for the individual or individuals notified pursuant to division (D)(1)(b) of this section to object in the manner described in division (D)(3)(a) of this section.~~

~~(2)(a) If, despite making a good faith effort, and despite using reasonable diligence, to notify the appropriate individual or individuals described in division (D)(1)(b) of this section, the attending physician cannot notify the individual or individuals of the determinations and health care decision because the individual or individuals are deceased, cannot be located, or cannot be notified for some other reason, then the requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal. However, the attending physician shall record in the principal's medical record information pertaining to the reason for the failure to provide the requisite notices and information pertaining to the nature of the good faith effort and reasonable diligence used.~~

~~(b) The requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal if only one individual would have to be notified pursuant to division (D)(1)(b) of this section and that individual is the attorney in fact under the durable power of attorney for health care. However, the attending physician of the principal shall record in the principal's medical record information indicating that no notice was given pursuant to division (D)(1)(b) of this section because of the provisions of division (D)(2)(b) of this section.~~

~~(3)(a) Within forty eight hours after receipt of a notice pursuant to division (D)(1) of this section, any individual so notified shall advise the attending physician of the principal whether he objects on a basis specified in division (D)(4)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the individual shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the individual fails to so file a complaint, his objections as described in division (D)(4)(c) of this section shall be considered to be void.~~

~~(b) Within forty eight hours after the priority individual or any member of a priority class of individual receives a notice pursuant to division (D)(1) of this section or within forty eight hours after information pertaining to an unnotified priority individual or unnotified priority class of individuals is recorded in a principal's medical record pursuant to division (D)(2)(a) or (b) of this section, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth in divisions (D)(1)(b)(i) to (v) of this section shall advise the attending physician of the~~

~~principal whether he or they object on a basis specified in division (D)(4)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the objecting individual or majority shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the objecting individual or majority fails to file a complaint, his or their objections as described in division (D)(4)(c) of this section shall be considered to be void.~~

~~(4) A complaint of an individual that is filed in accordance with division (D)(3)(a) of this section or of an individual or majority of individuals that is filed in accordance with division (D)(3)(b) of this section shall satisfy all of the following:~~

~~(a) Name any health care facility in which the principal is confined;~~

~~(b) Name the principal, his attending physician, and the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state;~~

~~(c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:~~

~~(i) To the attending physician's determination that the principal has lost the capacity to make informed health care decisions for himself;~~

~~(ii) To the attending physician's determination that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for himself;~~

~~(iii) That, in exercising his authority, the attorney in fact is not acting consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal;~~

~~(iv) That the durable power of attorney for health care has expired or otherwise is no longer effective;~~

~~(v) To the attending physician's and consulting physician's determinations that the principal is in a terminal condition or in a permanently unconscious state;~~

~~(vi) That the attorney in fact's health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment is not authorized by the durable power of attorney for health care or is prohibited under section 1337.13 of the Revised Code;~~

~~(vii) That the durable power of attorney for health care was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence;~~

~~(viii) That the durable power of attorney for health care otherwise does not substantially comply with section 1337.12 of the Revised Code.~~

~~(d) Request the probate court to issue one or more of the following types of orders:~~

~~(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the principal has lost the capacity to make informed health care decisions for himself, the determination that the principal is~~

~~in a terminal condition or in a permanently unconscious state, or the determination that there is no reasonable possibility that the principal shall regain the capacity to make informed health care decisions for himself;~~

~~(ii) An order to the attorney in fact to act consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal in exercising his authority, or to make only health care decisions pertaining to life-sustaining treatment that are authorized by the durable power of attorney for health care and that are not prohibited under section 1337.13 of the Revised Code;~~

~~(iii) An order invalidating the durable power of attorney for health care because it has expired or otherwise is no longer effective, it was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence, or it otherwise does not substantially comply with section 1337.12 of the Revised Code;~~

~~(e) Be accompanied by an affidavit of the plaintiff or plaintiffs that includes averments relative to whether he is an individual or they are individuals as described in division (D)(1)(b)(i), (ii), (iii), (iv), or (v) of this section and to the factual basis for his or their objections;~~

~~(f) Name any individuals who were notified by the attending physician in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs;~~

~~(g) Name, in the caption of the complaint, as defendants the attending physician of the principal, the attorney in fact under the durable power of attorney for health care, the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state, any health care facility in which the principal is confined, and any individuals who were notified by the attending physician in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs.~~

~~(5) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than an objecting individual as described in division (D)(3)(a) of this section, other than an objecting individual or majority of individuals as described in division (D)(3)(b) of this section, and other than persons described in division (D)(4)(g) of this section are prohibited from commencing a civil action under division (D) of this section and from joining or being joined as parties to an action commenced under division (D) of this section, including joining by way of intervention.~~

~~(6)(a) A probate court in which a complaint as described in division (D)(4) of this section is filed within the period specified in division (D)(3)(a) or (b) of this section shall conduct a hearing on the complaint after a copy of it and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the~~

~~filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after such service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether a requested order will be issued.~~

~~(b) If the health care decision of the attorney in fact authorized the use or continuation of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.~~

~~(c) If the health care decision of the attorney in fact authorized the withholding or withdrawal of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.~~

~~(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (D)(4)(d)(iii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.~~

~~(e) If the court issues a reevaluation order to the principal's attending physician pursuant to division (D)(6)(b) or (c) of this section, then the attending physician shall make the requisite reevaluation. If, after doing so, the attending physician again determines that the principal has lost the capacity to make informed health care decisions for himself, that the principal is in a terminal condition or in a permanently unconscious state, or that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for himself, then he shall notify the court in writing of the determination and comply with division (B)(2) of this section.~~

~~(E) If, at any time, a priority individual or any member of a priority class of individuals under division (D)(1)(b) of this section or if, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth in that division, believes in good faith that both of the following circumstances apply, then the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the principal may commence an action in the probate court of the county in which a principal who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of~~

~~comfort care in connection with the principal in a manner that is consistent with sections 1337.11 to 1337.17 of the Revised Code:~~

~~(1) Comfort care is not being used or continued in connection with the principal.~~

~~(2) The withholding or withdrawal of the comfort care is contrary to sections 1337.11 to 1337.17 of the Revised Code.~~

~~(F) Except as provided in divisions (D) and (E) of this section in connection with principals who are in a terminal condition or in a permanently unconscious state, sections 1337.11 to 1337.17 of the Revised Code do not authorize, and shall not be construed as authorizing, the commencement of any civil action in a probate court or court of common pleas for the purpose of obtaining an order relative to a health care decision made by an attorney in fact under a durable power of attorney for health care.~~

~~(G) A durable power of attorney for health care, or other document, that is similar to a durable power of attorney for health care authorized by sections 1337.11 to 1337.17 of the Revised Code, that is or has been executed under the law of another state prior to, on, or after the effective date of this amendment, and that substantially complies with that law or with sections 1337.11 to 1337.17 of the Revised Code shall be considered to be valid for purposes of those sections.~~

1337.17 Use of printed form; notice to principal.

A printed form of durable power of attorney for health care may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of such a printed form, a principal may authorize an attorney in fact to make health care decisions on his behalf, but the printed form shall not be used as an instrument for granting authority for any other decisions. Any printed form that is sold or otherwise distributed in this state for the purpose described in this section shall include the following notice:

"Notice to Adult Executing This Document

This is an important legal document. Before, executing this document, you should know these facts:

This document gives the person you designate (the attorney in fact) the power to make most* health care decisions for you if you lose the capacity to make informed health care decisions for yourself. This power is effective only when your attending physician determines that you have lost the capacity to make informed health care decisions for yourself and, notwithstanding this document, as long as you have the capacity to make informed health care

decisions for yourself, you retain the right to make all medical and other health care decisions for yourself.

You may include specific limitations in this document on the authority of the attorney in fact to make health care decisions for you.

Subject to any specific limitations you include in this document, if your attending physician determines that you have lost the capacity to make an informed decision on a health care matter, the attorney in fact generally* will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the attorney in fact to make health care decisions for you generally* will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

However*, even if the attorney in fact has general authority to make health care decisions for you under this document, the attorney in fact never will be authorized to do any of the following:

~~(1) Refuse or withdraw informed consent to life-sustaining treatment (unless your attending physician and one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that either of the following applies:~~

~~(a) You are suffering from an irreversible, AND incurable, and untreatable condition caused by disease, illness, or injury from which (i) there can be no recovery and (ii) your death is likely to occur within a relatively short time if life-sustaining treatment is not administered, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself.~~

~~(b) You are in a state of permanent unconsciousness that is characterized by you being irreversibly unaware of yourself and your environment and by a total loss of cerebral cortical functioning, resulting in you having no capacity to experience pain or suffering, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself);~~

~~(2) (1) Refuse or withdraw informed consent to health care necessary to provide you with comfort care (except that, if he is not prohibited from doing so under (4) below, the attorney in fact could refuse or withdraw informed consent to the provision of nutrition or hydration to you as described under (4) below).~~

~~(You should understand that comfort care is defined in Ohio law to mean artificially or technologically administered sustenance (nutrition) or fluids (hydration) when administered to diminish your pain or discomfort, not to postpone your death, and any other medical or nursing procedure, treatment, intervention, or other measure that would be taken to diminish your pain or discomfort, not to postpone your death. Consequently, if your attending physician were to determine that a previously described medical or nursing procedure, treatment, intervention, or other measure all not or no longer will serve to provide comfort to you or alleviate your pain, then, subject to (4) below, your attorney in fact would be authorized to refuse or withdraw informed consent to the procedure, treatment, intervention, or other measure.*);~~

~~(3) (2) Refuse or withdraw informed consent to health care for you if you are pregnant and if the refusal or withdrawal would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to your life, or unless your attending physician and at least one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive);~~

~~(4) Refuse or withdraw informed consent to the provision of artificially or technologically administered sustenance (nutrition) or fluids (hydration) to you, unless:~~

~~(a) You are in a terminal condition or in a permanently unconscious state.~~

~~(b) Your attending physician and at least one other physician who has examined you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain.~~

~~(c) If, but only if, you are in a permanently unconscious state, you authorize the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you by doing both of the following in this document:~~

~~(i) Including a statement in capital letters that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state and if the determination that nutrition or hydration all not or no longer will serve to provide comfort to you or alleviate your pain is made, or checking or otherwise marking a box or line (if any) that is adjacent to a similar statement on this document;~~

~~(ii) Placing your initials or signature underneath or adjacent to the statement, check, or other mark previously described.~~

~~(d) Your attending physician determines, in good faith, that you authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state by complying with the requirements of (4)(c)(i) and (ii) above.~~

~~(5) (3) Withdraw informed consent to any health care to which you previously consented, unless a change in your physical condition has significantly decreased the benefit of that health care to you, or unless the health~~

care is not, or is no longer, significantly effective in achieving the purposes for which you consented to its use.

Additionally, when exercising his authority to make health care decisions for you, the attorney in fact will have to act consistently with your desires or, if your desires are unknown, to act in your best interest. You may express your desires to the attorney in fact by including them in this document or by making them known to him in another manner.

When acting pursuant to this document, the attorney in fact generally* will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records. You can limit that right in this document if you so choose.

Generally, you may designate any competent adult as the attorney in fact under this document. However, you cannot* designate your attending physician or the administrator of any nursing home in which you are receiving care as the attorney in fact under this document. Additionally, you cannot* designate an employee or agent of your attending physician, or an employee or agent of a health care facility at which you are being treated, as the attorney in fact under this document, unless either type of employee or agent is a competent adult and related to you by blood, marriage, or adoption, or unless either type of employee or agent is a competent adult and you and the employee or agent are members of the same religious order.

This document has no expiration date under Ohio law, but you may choose to specify a date upon which your durable power of attorney for health care generally will expire. However, if you specify an expiration date and then lack the capacity to make informed health care decisions for yourself on that date, the document and the power it grants to your attorney in fact will continue in effect until you regain the capacity to make informed health care decisions for yourself.

You have the right to revoke the designation of the attorney in fact and the right to revoke this entire document at any time and in any manner. Any such revocation generally will be effective when you express your intention to make the revocation. However, if you made your attending physician aware of this document, any such revocation will be effective only when you communicate it to your attending physician, or when a witness to the revocation or other health care personnel to whom the revocation is communicated by such a witness communicate it to your attending physician.

If you execute this document and create a valid durable power of attorney for health care with it, it will revoke any prior, valid durable power of attorney for health care that you created, unless you indicate otherwise in this document.

This document is not valid as a durable power of attorney for health care unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when you sign or acknowledge your signature. No person who is related to you by blood, marriage, or adoption may be a witness. The attorney in fact, your attending physician, and the administrator of any nursing home in which you are receiving care also are ineligible to be witnesses.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you." In the preceding notice, the single words, and the two sentences in the second set of parentheses in paragraph (2), followed by an asterisk and all of paragraph (4) should appear in the printed form in capital letters.

Appendix B

CHAPTER 2133: MODIFIED UNIFORM RIGHTS OF THE TERMINALLY ILL ACT

Section	
2133.01	Definitions.
2133.02	Declaration governing use or continuation, or withholding or withdrawal, of life sustaining treatment; refusal to comply.
2133.03	When declaration becomes operative; declaration supersedes general consent to treatment or durable power of attorney for health care.
2133.04	Revocation of declaration.
2133.05	Duties of attending physician when declaration becomes operative; Notice to certain persons; complaint by objecting person.
2133.06	Patient may make decisions as long as able; effect of pregnancy.
2133.07	Use of printed form.
2133.08	Certain persons may consent to withholding or withdrawing life-sustaining treatment from patient; complaint by objecting person.
2133.09	Conditions for withholding or withdrawing nutrition and hydration from patient who has been in a permanently unconscious state for at least twelve months.
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2133.11	Immunity from civil or criminal liability or professional disciplinary action.
2133.12	Death is not a suicide or homicide; health or life insurance or annuity rights not affected; no presumption created; limitations on effect of chapter; comfort care.
2133.13	Assumption of validity of declaration.
2133.14	Out-of-state declaration valid.
2133.15	Application to document executed prior to effective date of provisions.

2133.01 Definitions.

Unless the context otherwise requires, as used in this chapter:

(A) "Adult" means an individual who is eighteen years of age or older.

(B) "Attending physician" means the physician to whom a declarant or other patient, or his family, has assigned primary responsibility for the treatment or care of the declarant or other patient, or, if the declarant or other patient, or his family, has not assigned that responsibility, the physician who has accepted that responsibility.

(C) "Comfort care" means any of the following:

(1) Nutrition when administered to diminish the pain or discomfort of declarant or other patient, not to postpone his death;

(2) Hydration when administered to diminish the pain or discomfort of a declarant or other patient, not to postpone his death;

(3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a declarant or other patient, not to postpone his death.

(D) "Consulting physician" means a physician who, in conjunction with the attending physician of a declarant or other patient, makes one or more determinations that are required to be made by the attending physician, or to be made by the attending physician and one other physician, by an applicable provision of this chapter, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(E) "Declarant" means any adult who has executed a declaration in accordance with section 2133.02 of the Revised Code.

(F) "Declaration" means a written document executed in accordance with section 2133.02 of the Revised Code.

(G) "Durable power of attorney for health care" means a document created pursuant to sections 1337.11 to 1337.17 of the Revised Code.

(H) "Guardian" means a person appointed by a probate court pursuant to Chapter 2111 of the Revised Code to have the care and management of the person of an incompetent.

(I) "Health care facility" means any of the following:

(1) A hospital;

(2) A hospice care program or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;

(3) A nursing home;

(4) A home health agency;

(5) An intermediate care facility for the mentally retarded.

(J) "Health care personnel" means physicians, nurses, physician's assistants, emergency medical technicians-ambulance, advanced emergency medical technicians-ambulance, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.

(K) "Home health agency" has the same meaning as in section 3701.88 of the Revised Code.

(L) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

(M) "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.

(N) "Hydration" means fluids that are artificially or technologically administered.

(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.

(P) "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.

(Q) "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying.

(R) "Nurse" means a person who is licensed to practice nursing as a registered nurse or to practice practical nursing as a licensed practical nurse pursuant to Chapter 4723. of the Revised Code.

(S) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.

(T) "Nutrition" means sustenance that is artificially or technologically administered.

(U) "Permanently unconscious state" means a state of permanent unconsciousness in a declarant or other patient that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, is characterized by both of the following:

(1) The declarant or other patient is irreversibly unaware of himself and his environment.

(2) There is a total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering.

(V) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes political subdivisions and governmental agencies, boards, commissions, departments, institutions, offices, and other instrumentalities.

(W) "Physician" means a person who is licensed to practice medicine or surgery or osteopathic medicine and surgery pursuant to Chapter 4731. of the Revised Code, or a person who otherwise is authorized to practice medicine or surgery or osteopathic medicine and surgery in this state.

(X) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(Y) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including the state medical board and the board of nursing.

(Z) "Qualified patient" means an adult who has executed a declaration and has been determined to be in a terminal condition or in a permanently unconscious state.

(AA) "Terminal condition" means an irreversible, AND incurable, ~~and untreatable~~ condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician, and one other physician who has examined the declarant or other patient, both of the following apply:

(1) There can be no recovery.

(2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

(BB) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for breach of a contract or another agreement between persons.

2133.02 Declaration governing use or continuation, or withholding or withdrawal, of life sustaining treatment; refusal to comply.

(A)(1) An adult who is of sound mind voluntarily may execute at any time a declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment. The declaration shall be signed by the declarant or by another individual at the direction of the declarant, state the date of its execution, and either be witnessed as described in division (B)(1) of this section or be acknowledged by the declarant in accordance with division (B)(2) of this section. The declaration may include a designation by the declarant of one or more persons who are to be notified by the declarant's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration.

(2) Depending upon whether the declarant intends his declaration to apply when he is in a terminal condition, in a permanently unconscious state or in either a terminal condition or a permanently unconscious state, his declaration shall use either or both of the terms "terminal condition" and "permanently unconscious state," and shall define or otherwise explain those terms in capital letters and in a manner that is substantially consistent with the provisions of section 2133.01 of the Revised Code.

(3)(a) If a declarant who has authorized the withholding or withdrawal of life-sustaining treatment intends that his attending physician withhold or withdraw nutrition or hydration when he is in a permanently unconscious state and when the nutrition and hydration will not or no longer will serve to provide comfort to him or alleviate his pain, then the declarant shall authorize his attending physician to withhold or withdraw nutrition or hydration when he is in the permanently unconscious state by doing both of the following in the declaration:

(i) Including a statement in capital letters that is attending physician may withhold or withdraw nutrition and hydration if he is in a permanently unconscious state and if his attending physician and at least one other physician who has examined him determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to him or alleviate his pain, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a declaration;

(ii) Placing his initials or signature underneath or adjacent to the statement check, or other mark described in division (A)(3)(a)(i) of this section.

(b) Division (A)(3)(a) of this section does not apply, and shall not be construed as applying, to the extent that a declaration authorizes the withholding or withdrawal of life-sustaining treatment when a declarant is in a terminal condition. The provisions of division (E) of section 2133.12 of the Revised Code pertaining to comfort care shall apply to a declarant in a terminal condition.

(B)(1) If witnessed for purposes of division (A) of this section, a declaration shall be witnessed by two individuals as described in this division in whose presence the declarant, or another individual at the direction of the declarant, signed the declaration. The witnesses to a declaration shall be adults who are not related to the declarant by blood, marriage, or adoption, who are not the attending

physician of the declarant, and who are not the administrator of any nursing home in which the declarant is receiving care. Each witness shall subscribe his signature on the declaration and, by doing so, attest to his belief that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

(2) If acknowledged for purposes of division (A) of this section, a declaration shall be acknowledged before a notary public, who shall make the certification described in section 147.53 of the Revised Code and also shall attest that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

(C) An attending physician, or other health care personnel acting under the direction of an attending physician, who is furnished a copy of a declaration shall make it a part of the declarant's medical record and, when section 2133.05 of the Revised Code is applicable, also shall comply with that section.

(D)(1) Subject to division (D)(2) of this section, an attending physician of a declarant or a health care facility in which a declarant is confined may refuse to comply or allow compliance with the declarant's declaration on the basis of a matter of conscience or on another basis. An employee or agent of an attending physician of a declarant or of a health care facility in which a declarant is confined may refuse to comply with the declarant's declaration on the basis of a matter of conscience.

(2) If an attending physician of a declarant or a health care facility in which a declarant is confined is not willing or not able to comply or allow compliance with the declarant's declaration, the physician or facility promptly shall so advise the declarant and comply with the provisions of section 2133.10 of the Revised Code, or, if the declaration has become operative as described in division (A) of section 2133.03 of the Revised Code, shall comply with the provisions of section 2133.10 of the Revised Code.

2133.03 When declaration becomes operative, declaration supersedes general to treatment or durable power of attorney for health care.

(A)(1) A declaration becomes operative when it is communicated to the attending physician of the declarant, the attending physician and one other physician who examines the declarant determine that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, the applicable requirement of divisions (A)(2) and (3) of this section are satisfied, and the attending physician determines that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment. When the declaration becomes operative, the attending physician and health care facilities shall act in accordance with its provisions or comply with the provisions of section 2133.10 of the Revised Code.

(2) In order for a declaration to become operative in connection with a declarant who is in a permanently unconscious state, the consulting physician associated with the determination that the declarant is in the permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies,

or branches of medicine or surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine or surgery or osteopathic medicine and surgery, is qualified to determine whether the declarant is in a permanently unconscious state.

(3) In order for a declaration to become operative in connection with a declarant who is in a terminal condition or in a permanently unconscious state, the attending physician of the declarant shall determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

(B)(1) A declaration supersedes any general consent to treatment form signed by or on behalf of the declarant prior to, upon, or after his admission to a health care facility to the extent there is a conflict between the declaration and the form, even if the form is signed after the execution of the declaration. To the extent that the provisions of a declaration and a general consent to treatment form do not conflict, both documents shall govern the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and other medical or nursing procedures, treatments, preventions, or other measures in connection with the declarant. This division does not apply if a declaration is revoked pursuant to section 2133.04 of the Revised Code after the signing of a general consent to treatment form.

(2) If a declarant has both a valid durable power of attorney for health care and a valid declaration, the declaration supersedes the durable power of attorney for health care to the extent that the provisions of the documents would conflict if the declarant should be in a terminal condition or in a permanently unconscious state. This division does not apply if the declarant revokes his declaration pursuant to section 2133.04 of the Revised Code.

2133.04 Revocation of declaration.

(A) A declarant may revoke a declaration at any time and in any manner. The revocation shall be effective when the declarant expresses his intention to revoke the declaration, except that, if the declarant made his attending physician aware of the declaration, the revocation shall be effective upon its communication to the attending physician of the declarant by the declarant himself, a witness to the revocation, or other health care personnel to whom the revocation is communicated by such a witness. Absent actual knowledge to the contrary, the attending physician of a declarant and other health care personnel who are informed of the revocation of a declaration by an alleged witness may rely on the information and act in accordance with the revocation.

(B) Upon the communication as described in division (A) of this section to the attending physician of a declarant of the fact that his declaration has been revoked, the attending physician or other health care personnel acting under the direction of the attending physician shall make the fact a part of the declarant's medical record.

2133.05 Complaint by objecting person.

(A) If the attending physician of a declarant and one other physician who examines the declarant determine that he is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, if the attending physician additionally determines that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment for himself and that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions for himself, and if the attending physician is aware of the existence of the declarant's declaration, then the attending physician shall do all of the following:

(1) Record the determinations, together with the terms of the declaration or any copy of the declaration acquired as described in division (C) of section 2133.02 of the Revised Code, in the declarant's medical record;

~~(2)(a)(i)~~ If the declarant designated in his declaration one or more persons to be notified at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration, make a good faith effort, and use reasonable diligence, to notify that person or those persons; ~~either of the following of the determinations:~~

~~(ii) If division (A)(2)(a)(i) of this section is not applicable, the appropriate individual or individuals, in accordance with the following descending order of priority: if any, the guardian of the declarant, but this division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the declarant; the declarant's spouse; the declarant's adult children who are available within a reasonable period of time for consultation with the declarant's attending physician; the declarant's parents; or an adult sibling of the declarant or, if there is more than one adult sibling, a majority of the declarant's adult siblings who are available within a reasonable period of time for such consultation.~~

~~(b) The attending physician shall record in the declarant's medical record the names of the individual or individuals notified pursuant to division (A)(2)(a) of this section and the manner of notification.~~

~~(c) If, despite making a good faith effort, and despite using reasonable diligence, to notify the appropriate individual or individuals described in division (A)(2)(a) of this section, the attending physician cannot notify the individual or individuals of the determinations because the individual or individuals are deceased, cannot be located, or cannot be notified for some other reason, then the requirements of divisions (A)(2)(a) and (b) and (3) of this section and, except as provided in division (B) (1) (b) of this section, the provisions of division (B) of this section shall not apply in connection with the declarant and his declaration. However, the attending physician shall record in the declarant's medical record information pertaining to the reason for the failure to provide the requisite notices and information pertaining to the nature of the good faith effort and reasonable diligence used.~~

~~(3) Afford time for the individual or individuals notified in accordance with division (A)(2) of this section to object in the manner described in division (B)(1)(a) of this section.~~

(B) A PETITION MAY BE FILED UNDER SECTION 2101.24 FOR ANY ONE OR MORE OF THE FOLLOWING PURPOSES;

(1) DETERMINING WHETHER THE DECLARATION IS IN EFFECT OR HAS BEEN REVOKED OR TERMINATED.

(2) DETERMINING WHETHER THE COURSE OF ACTION PROPOSED TO BE UNDERTAKEN BY THE ATTENDING PHYSICIAN IS AUTHORIZED BY THE DECLARANT'S DECLARATION.

(3) DETERMINING WHETHER THE DECLARATION WAS EXECUTED WHEN THE DECLARANT WAS NOT OF SOUND MIND OR WAS UNDER OR SUBJECT TO DURESS, FRAUD, OR UNDUE INFLUENCE.

(4) DETERMINING WHETHER THE DECLARATION OTHERWISE DOES NOT SUBSTANTIALLY COMPLY WITH THIS CHAPTER.

(5) A PETITION MAY BE FILED BY ANY OF THE FOLLOWING:

(a) THE DECLARANT.

(b) THE ATTORNEY-IN-FACT OR DESIGNEE OF THE DECLARANT.

(c) THE GUARDIAN OF THE DECLARANT.

(d) THE SPOUSE, ADULT CHILD, PARENT, OR SIBLING OF THE DECLARANT.

(e) AN ADULT WITH A SIGNIFICANT PERSONAL RELATIONSHIP TO THE DECLARANT.

(f) THE ATTENDING PHYSICIAN OR HEALTH CARE PROVIDER OF THE DECLARANT.

~~(B)(1)(a) Within forty eight hours after receipt of a notice pursuant to division (A)(2) of this section, any individual so notified shall advise the attending physician of the declarant whether he objects on a basis specified in division (B)(2)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the individual shall file a complaint as described in division (B)(2) of this section in the probate court of the county in which the declarant is located. If the individual fails to so file a complaint, his objections as described in division (B)(2)(c) of this section shall be considered to be void.~~

~~(b) Within forty eight hours after a person described in division (A)(2)(a)(i) of this section or a priority individual or any member of a priority class of individuals described in division (A)(2)(a)(ii) of this section receives a notice pursuant to division (A)(2) of this section or within forty eight hours after information pertaining to an unnotified person described in division (A)(2)(a)(i) of this section or an unnotified priority individual or unnotified priority class of individuals described in division (A)(2)(a)(ii) of this section is recorded in a declarant's medical record pursuant to division (A)(2)(e) of this section, either of the following shall advise the attending physician of the declarant whether he or they object on a basis specified in division (B)(2)(c) of this section:~~

~~(i) If a person described in division (A)(2)(a)(i) of this section was notified pursuant to division (A)(2) of this section or was the subject of a recordation under division (A)(2)(e) of this section, then the objection shall be communicated by the individual or a majority of the individuals in either of the first two classes of individuals that pertain to the declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of this section.~~

~~(ii) If an individual or individuals in the descending order of priority set forth in division (A)(2)(a)(ii) of this section were notified pursuant to division (A)(2) of this section or were the subject of a recodation under division (A)(2)(c) of this section, then the objection shall be communicated by the individual or a majority of the individuals in the next class of individuals that pertains to the declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of this section.~~

~~If an objection as described in division (B)(2)(e) of this section is communicated to the attending physician in accordance with division (B)(1)(b)(i) or (ii) of this section, then, within two business days after the communication, the objecting individual or majority shall file a complaint as described in division (B)(2) of this section in the probate court of the county in which the declarant is located. If the objecting individual or majority fails to file a complaint, his or their objections as described in division (B)(2)(e) of this section shall be considered to be void.~~

~~(2) A complaint of an individual that is filed in accordance with division (B)(1)(a) of this section or of an individual or majority of individuals that is filed in accordance with division (B)(1)(b) of this section shall satisfy all of the following:~~

~~(a) Name any health care facility in which the declarant is confined;~~
~~(b) Name the declarant, his attending physician, and the consulting physician associated with the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;~~

~~(c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:~~

~~(i) To the attending physician's and consulting physician's determinations that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;~~

~~(ii) To the attending physician's determination that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment;~~

~~(iii) To the attending physician's determination that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment;~~

~~(iv) That the course of action proposed to be undertaken by the attending physician is not authorized by the declarant's declaration;~~

~~(v) That the declaration was executed when the declarant was not of sound mind or was under or subject to duress, fraud, or undue influence;~~

~~(vi) That the declaration otherwise does not substantially comply with this chapter.~~

~~(d) Request the probate court to issue one of the following types of orders:~~

~~(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, the determination that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment, the determination that there is no reasonable possibility that the declarant will regain the capacity to~~

~~make those informed decisions, or the course of action proposed to be undertaken;~~

~~(ii) An order invalidating the declaration because it was executed when the declarant was not of sound mind or was under or subject to duress, fraud, or undue influence, or because it otherwise does not substantially comply with this chapter;~~

~~(e) Be accompanied by an affidavit of the plaintiff or plaintiffs that includes averments relative to whether he is an individual or they are individuals as described in division (A)(2)(a)(i) or (ii) of this section and to the factual basis for his or their objections;~~

~~(f) Name any individuals who were notified by the attending physician in accordance with division (A)(2)(a) of this section and who are not joining in the complaint as plaintiffs;~~

~~(g) Name, in the caption of the complaint, as defendants the attending physician of the declarant, the consulting physician associated with the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, any health care facility in which the declarant is confined, and any individuals who were notified by the attending physician in accordance with division (A)(2)(a) of this section and who are not joining in the complaint as plaintiffs.~~

~~(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than an objecting individual as described in division (B)(1)(a) of this section, other than an objecting individual or majority of individuals as described in division (B)(2)(b)(i) or (ii) of this section, and other than persons described in division (B)(2)(g) of this section are prohibited from commencing a civil action under this section and from joining or being joined as parties to an action commenced under this section, including joining by way of intervention.~~

~~(4)(a) A probate court in which a complaint as described in division (B)(2) of this section is filed within the period specified in division (B)(1)(a) or (b) of this section shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after such service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether a requested order will be issued.~~

~~(b) If the declarant's declaration authorized the use or continuation of life-sustaining treatment should he be in a terminal condition or in a permanently unconscious state and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the declarant as described in division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.~~

~~(c) If the declarant's declaration authorized the withholding or withdrawal of life-sustaining treatment should he be in a terminal condition or in a permanently unconscious state and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the declarant as described in division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.~~

~~(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (B) (2) (d) (ii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.~~

~~(e) If the court issues a reevaluation order to the declarant's attending physician pursuant to division (B)(4)(b) or (c) of this section, then the attending physician shall make the requisite reevaluation. If, after doing so, the attending physician again determines that the declarant is in a terminal condition or in a permanently unconscious state, that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment, that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions, or that he would undertake the same proposed course of action, then he shall notify the court in writing of the determination to comply with the provisions of section 2133.10 of the Revised Code.~~

2133.06 Patient may make decisions as long as able; effect of pregnancy.

(A) As long as a qualified patient is able to make informed decisions regarding the administration of life-sustaining treatment, he may continue to do so.

(B) Life-sustaining treatment shall not be withheld or withdrawn from a declarant pursuant to a declaration if she is pregnant and if the withholding or withdrawal of the treatment would terminate the pregnancy, unless the declarant's attending physician and one other physician who has examined the declarant determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

2133.07 Use of printed form.

A printed form of a declaration may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of such a printed form, a declarant may authorize the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should he be in a terminal condition, a permanently unconscious state, or either a terminal condition or a permanently unconscious state, may authorize the withholding or withdrawal of nutrition or hydration should he be in a permanently unconscious state as described in division (A)(3)(a) of section 2133.02 of the Revised Code, and may

designate one or more persons who are to be notified by his attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration. The printed form shall not be used as an instrument for granting any other type of authority or for making any other type of designation.

2133.08 Certain persons may consent to withholding or withdrawing life sustaining treatment from patient; complaint by objecting person.

(A)(1) If ~~written~~ consent to the withholding or withdrawal of life-sustaining treatment, ~~witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of section 2133.02 of the Revised Code,~~ is given by the appropriate individual or individuals as specified in division (B) of this section to the attending physician of a patient who is an adult, and if all of the following apply in connection with the patient, then, ~~subject to section 2133.09 of the Revised Code,~~ his attending physician may withhold or withdraw the life-sustaining treatment:

(a) The attending physician and one other physician who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient is in a terminal condition or the patient currently is ~~and for at least the immediately preceding twelve months has been~~ in a permanently unconscious state, and the attending physician additionally determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment and that there is no reasonable possibility that the patient will regain the capacity to make those informed decisions.

(b) The patient does not have a declaration that addresses his intent should he be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a durable power of attorney for health care, or has a document that purports to be such a declaration or durable power of attorney for health care but that document is not legally effective.

(c) THE PATIENT HAS A VALID DECLARATION OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE THAT DOES NOT CHECK OR OTHERWISE MARK A BOX OR LINE THAT IS ADJACENT TO A STATEMENT THAT AUTHORIZES THE REFUSAL OR WITHDRAWAL OF INFORMED CONSENT TO THE PROVISION OF NUTRITION OR HYDRATION TO HIM WHEN HE IS IN A PERMANENTLY UNCONSCIOUS STATE.

(d)(e) The consent of the appropriate individual or individuals is given after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(e)(d) The appropriate individual or individuals who give a consent are of sound mind and voluntarily give the consent.

~~(e) If a consent would be given under division (B)(3) of this section, the attending physician made a good faith effort, and used reasonable diligence, to notify the patient's adult children who are available within a reasonable period of time for consultation as described in division (A)(1)(e) of this section.~~

(2) The consulting physician under division (A)(1)(a) of this section associated with a patient allegedly in a permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine or surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine or surgery or osteopathic medicine and surgery, is qualified to determine whether the patient currently is ~~and for at least the immediately preceding twelve months has been in a~~ permanently unconscious state.

(B) For purposes of division (A) of this section, a consent to withhold or withdraw life-sustaining treatment may be given by the appropriate individual or individuals, in accordance with the following descending order of priority:

(1) If any, the guardian of the patient. This division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the patient.

(2) The patient's spouse;

(3) An adult child of the patient or, if there is more than one adult child, a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician;

(4) The patient's parents;

(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the patient's adult siblings who are available within a reasonable period of time for such consultation;

(6) The nearest adult who is not described in divisions (B)(1) to (5) of this section, who is related to the patient by blood or adoption, and who is available within a reasonable period of time for such situation.

(7) AN ADULT WITH A SIGNIFICANT PERSONAL RELATIONSHIP TO THE PATIENT.

(C) If an appropriate individual or class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is not available within a reasonable period of time for such consultation and competent to so decide, or declines to so decide, then the next priority individual or class of individuals specified in that division is authorized to make the decision. However, an equal division in a priority class of individuals under that division does not authorize the next class of individuals specified in that division to make the decision. If an equal division in a priority class of individuals under that division occurs, no written consent to the withholding or withdrawal of life-sustaining treatment from the patient can be given pursuant to this section.

(D)(1) A decision to consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient shall be made in good faith.

(2) Except as provided in division (D)(4) of this section, if the patient previously expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should he subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, a consent given pursuant to this section shall be valid only if it is consistent with that previously expressed intention.

(3) Except as provided in division (D)(4) of this section, if the patient did not previously express his intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should he subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, as inferred from the lifestyle and character of the patient, and from any other evidence of the desires of the patient, prior to his becoming no longer able to make informed decisions regarding the administration of life-sustaining treatment, OR WHERE THE WISHES OF THE PATIENT ARE UNKNOWN OR UNCLEAR, WHETHER A CONSENT PURSUANT TO THIS SECTION IS CONSISTENT WITH THE BEST INTERESTS OF THE PATIENT. The Rules of Evidence shall not be binding for purposes of this division.

(4)(a) The attending physician of the patient, and other health care personnel acting under the direction of the attending physician, who do not have actual knowledge of a previously expressed intention as described in division (D)(2) of this section or who do not have actual knowledge that the patient would have made a different type of informed consent decision under the circumstances described in division (D)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (F) of this section.

(b) The immunity conferred by division (C)(4) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient under division (B) of this section if the individual gives the consent in good faith and without actual knowledge, at the time of giving the consent, of either a contrary previously expressed intention of the patient, or a previously expressed intention of the patient, as described in division (C)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.

(E) THIS CHAPTER DOES NOT IMPAIR, AND SHALL NOT BE CONSTRUED AS IMPAIRING, ANY EXISTING AUTHORITY TO ISSUE A DO NOT RESUSCITATE ORDER WHEN THE PATIENT HAS NOT EXECUTED AN ADVANCE DIRECTIVE.

~~(E)(1) Within forty-eight hours after a priority individual or class of individuals gives a consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and communicates the consent to the patient's attending physician, any individual described in divisions (B)(1) to (5) of this section who objects to the application of this section to the patient shall advise the attending physician of the grounds for the objection. If an objection is so communicated to the attending physician, then, within two business days after that communication, the objecting individual shall file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician associated with the determination that the patient is in a terminal condition or that the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state, in the probate court of the county in which the patient is located for the issuance of an order reversing the consent of the priority individual or class of individuals. If the objecting individual fails to so file a complaint, his objections shall be considered to be void. A probate court in which a complaint is filed in accordance with this division shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after such service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether the decision of the priority individual or class of individuals to consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with the patient will be confirmed or reversed.~~

~~(2) If the decision of the priority individual or class of individuals was to consent to the use or continuation of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with the applicable standards, one or more of the following:~~

~~(F)(E)(1) A PETITION MAY BE FILED UNDER SECTION 2101.24 FOR ANY ONE OR MORE OF THE FOLLOWING PURPOSES:~~

~~(a) DETERMINING WHETHER the patient is able to make informed decisions regarding the administration of life-sustaining treatment.~~

~~(b) DETERMINING WHETHER THE PATIENT IS IN A TERMINAL CONDITION OR PERMANENT UNCONSCIOUS STATE.~~

~~(b) The patient has a legally effective declaration that addresses his intent should he be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.~~

~~(c) DETERMINING WHETHER the decision to use or continue life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.~~

(d) DETERMINING WHETHER the decision to use or continue life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if he previously had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should he subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment or THE BEST INTERESTS OF THE PATIENT as described in division (D)(3) of this section.

(e) DETERMINING WHETHER the decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(f) DETERMINING WHETHER the priority individual, or any member of the priority class of individuals, who made the decision to use or continue life-sustaining treatment was not of sound mind or did not voluntarily make the decision.

~~(g) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(e) of this section.~~

~~(h) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with this section.~~

~~(3) If the decision of the priority individual or class of individuals was to consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:~~

~~(a) The patient is not in a terminal condition, the patient is not in a permanently unconscious state, or the patient has not been in a permanently unconscious state for at least the immediately preceding twelve months.~~

~~(b) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.~~

~~(c) There is a reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.~~

~~(d) The patient has a legally effective declaration that addresses his intent should he be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.~~

~~(e) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.~~

~~(f) The decision to withhold or withdraw life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have~~

~~made if he previously had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should he subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as described in division (D)(3) of this section.~~

~~(g) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.~~

~~(h) The priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not of sound mind or did not voluntarily make the decision.~~

~~(i) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(e) of this section.~~

~~(j) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with this section.~~

~~(D)(2) A PETITION MAY BE FILED BY ANY OF THE FOLLOWING:~~

~~(a) THE PATIENT~~

~~(b) THE ATTORNEY-IN-FACT OR DESIGNEE OF THE PATIENT.~~

~~(c) THE GUARDIAN OF THE PATIENT.~~

~~(d) THE SPOUSE, ADULT CHILD, PARENT OR SIBLING OF THE PATIENT.~~

~~(e) AN ADULT WITH A SIGNIFICANT PERSONAL RELATIONSHIP TO THE PATIENT.~~

~~(f) THE ATTENDING PHYSICIAN OR HEALTH CARE PROVIDER OF THE PATIENT.~~

~~(4)(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in divisions (F)(2) (B)(1) to (5) of this section are prohibited from filing a complaint under division (E) (F) of this section and from joining or being joined as parties to a hearing conducted under division (E) (F) of this section, including joining by way of intervention.~~

~~(G)(F) A valid consent given in accordance with this section supersedes any general consent to treatment form signed by or on behalf of the patient prior to, upon, or after his admission to a health care facility to the extent there is a conflict between the consent and the form.~~

~~(H)(G) Life-sustaining treatment shall not be withheld or withdrawn from a patient pursuant to a consent given in accordance with this section if she is pregnant and if the withholding or withdrawal of the treatment would terminate the pregnancy, unless the patient's attending physician and one other physician who has examined the patient determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.~~

~~2133.09 Conditions for withholding or withdrawing nutrition and hydration from patient who has been in a permanently unconscious state for at least twelve months.~~

~~(A) The attending physician of a patient who is an adult and who currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state may withhold or withdraw nutrition and hydration in connection with the patient only if all of the following apply:~~

~~(1) Written consent to the withholding or withdrawal of life sustaining treatment in connection with the patient has been given by an appropriate individual or individuals in accordance with section 2133.08 of the Revised Code, and divisions (A) (1) (a) to (e) and (2) of that section have been satisfied.~~

~~(2) A probate court has not reversed the consent to the withholding or withdrawal of life sustaining treatment in connection with the patient pursuant to division (E) of section 2133.08 of the Revised Code.~~

~~(3) The attending physician of the patient and one other physician as described in division (A)(2) of section 2133.08 of the Revised Code who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.~~

~~(4) Written consent to the withholding or withdrawal of nutrition and hydration in connection with the patient, witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of section 2133.02 of the Revised Code, is given to the attending physician of the patient by an appropriate individual or individuals as specified in division (B) of section 2133.08 of the Revised Code.~~

~~(5) The written consent to the withholding or withdrawal of the nutrition and hydration in connection with the patient is given in accordance with division (B) of this section.~~

~~(6) The probate court of the county in which the patient is located issues an order to withhold or withdraw the nutrition and hydration in connection with the patient pursuant to division (C) of this section.~~

~~(B)(1) A decision to consent pursuant to this section to the withholding or withdrawal of nutrition and hydration in connection with a patient shall be made in good faith.~~

~~(2) Except as provided in division (B)(4) of this section, if the patient previously expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, a consent given pursuant to this section shall be valid only if it is consistent with that previously expressed intention.~~

~~(3) Except as provided in division (B)(4) of this section, if the patient did not previously express his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, a consent~~

~~given pursuant to this section shall be valid only if it is consistent with the type of informed consent decision that the patient would have made if he previously had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, as inferred from the lifestyle and character of the patient, and from any other evidence of the desires of the patient, prior to his becoming no longer able to make informed decisions regarding the administration of nutrition and hydration. The Rules of Evidence shall not be binding for purposes of this division.~~

~~(4)(a) The attending physician of the patient, and other health care personnel acting under the direction of the attending physician, who do not have actual knowledge of a previously expressed intention as described in division (B)(2) of this section or who do not have actual knowledge that the patient would have made a different type of informed consent decision under the circumstances described in division (B)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (C) of this section.~~

~~(b) The immunity conferred by division (C)(2) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient under division (A)(4) of this section if the individual gives the consent in good faith and without actual knowledge, at the time of giving the consent, of either a contrary previously expressed intention of the patient, or a previously expressed intention of the patient, as described in division (B)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.~~

~~(C)(1) Prior to the withholding or withdrawal of nutrition and hydration in connection with a patient pursuant to this section, the priority individual or class of individuals that consented to the withholding or withdrawal of the nutrition and hydration shall apply to the probate court of the county in which the patient is located for the issuance of an order that authorizes the attending physician of the patient to commence the withholding or withdrawal of the nutrition and hydration in connection with the patient. Upon the filing of the application, the clerk of the probate court shall schedule a hearing on it and cause a copy of it and a notice of the hearing to be served in accordance with the Rules of Civil Procedure upon the applicant, the attending physician, the consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient, and the individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who are not applicants, which service shall be made, if possible, within three days after the filing of the application. The hearing shall be conducted at the earliest possible time, but no sooner than the thirtieth business day, and no later than the sixtieth business day, after such service has been completed. At the hearing, any individual described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who is not an applicant and who disagrees with the decision of the priority individual or class of individuals to consent to the withholding or withdrawal of nutrition and hydration in connection with the patient shall be permitted to testify and present evidence relative to the use or~~

~~continuation of nutrition and hydration in connection with the patient. Immediately following the hearing, the court shall enter on its journal its determination whether the requested order will be issued.~~

~~(2) The court shall issue an order that authorizes the patient's attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the patient only if the applicants establish, by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, all of the following:~~

~~(a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.~~

~~(b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment.~~

~~(c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.~~

~~(d) The conditions specified in divisions (A)(1) to (4) of this section have been satisfied.~~

~~(e) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient as described in division (B)(2) of this section or is consistent with the type of informed consent decision that the patient would have made if he previously had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration as described in division (B)(3) of this section.~~

~~(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in division (A)(4) of this section or in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician and consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including joining by way of intervention.~~

~~(D) A valid consent given in accordance with this section supersedes any general consent to treatment form signed by or on behalf of the patient prior to, upon, or after his admission to a health care facility to the extent there is a conflict between the consent and the form.~~

2133.10 Transfer of patient to physician or facility willing to comply.

(A) An attending physician who, or a health care facility in which a qualified patient or other patient is confined that, is not willing or not able to comply or allow compliance with a declaration of a qualified patient, with a consent given in accordance with section 2133.08 ~~or 2133.09~~ of the Revised Code, with any probate court order issued pursuant to section 2133.05;

OR 2133.08, ~~or 2133.09~~ of the Revised Code, or with any other applicable provision of this chapter shall ~~not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay,~~ the transfer of the qualified patient or other patient to the care of a physician who, ~~or a health care facility that, is willing and able to so comply or allow compliance.~~ TAKE REASONABLE STEPS AS PROMPTLY AS PRACTICABLE TO TRANSFER CARE OF THE PATIENT TO ANOTHER PHYSICIAN OR HEALTH CARE FACILITY WHO IS WILLING TO DO SO.

(B) If a declaration provides for the use or continuation of life-sustaining treatment should its declarant subsequently be in a terminal condition or in a permanently unconscious state, if a consent decision of a priority individual or class of individuals under section 2133.08 of the Revised Code is to use or continue life-sustaining treatment in connection with a patient described in that section, or if a probate court issues a ~~reevaluation~~ order pursuant to section 2133.05 or 2133.08 of the Revised Code that is intended to result in the use or continuation of life-sustaining treatment in connection with a qualified patient or other patient, then the attending physician of the qualified patient or other patient who, or health care facility in which the qualified patient or other patient is confined that, is not willing or not able to comply or allow compliance with the declaration, consent decision, or ~~reevaluation~~ order shall use or continue the life-sustaining treatment or cause it to be used or continued until a transfer as described in division (A) of this section is made.

2133.11 Immunity from civil or criminal liability or professional disciplinary action.

(A) Subject to division (D) of this section, an attending physician, consulting physician, health care facility, and health care personnel acting under the direction of an attending physician are not subject to criminal prosecution, are not liable in damages in a tort or other civil action, and are not subject to professional disciplinary action for any of the following:

(1) Giving effect to a declaration, if the physician, facility, or personnel gives effect to the declaration in good faith and does not have actual knowledge that the declaration has been revoked or does not substantially comply with this chapter;

(2) Giving effect to a consent under the circumstances described in section 2133.08 of the Revised Code, if the physician, facility, or personnel gives effect to the consent in good faith and does not have actual knowledge that the consent is invalid under that section and if a probate court has not issued an order reversing the consent pursuant to division (F)~~(E)~~ of that section;

~~(3) Giving effect to a consent under the circumstances described in section 2133.09 of the Revised Code, if the physician, facility, or personnel gives effect to the consent in good faith and does not have actual knowledge that the consent is invalid under that section and if the appropriate probate court has issued an order authorizing the withholding or withdrawal of nutrition and hydration in connection with the patient in question;~~

(3)(4) Refusing to or not being able to comply or allow compliance with a declaration of a qualified patient, with a consent given in accordance with section 2133.08 ~~or 2133.09~~ of the Revised Code, with a probate court order issued pursuant to section 2133.05; OR 2133.08, ~~or 2133.09~~ of the Revised Code, or with another applicable provision of this chapter, if the refusal or inability to comply or allow compliance is in good faith, provided that, in the case of an attending physician or health care facility, whichever of the following apply are satisfied:

(a) THE ATTENDING PHYSICIAN OR HEALTH CARE FACILITY HAS TAKEN REASONABLE STEPS AS PROMPTLY AS PRACTICABLE TO TRANSFER CARE OF THE PATIENT TO ANOTHER PHYSICIAN OR HEALTH CARE FACILITY WHO IS WILLING TO DO SO. ~~does not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the qualified patient or other patients to the care of a physician who, or a health care facility that, is willing and able to so comply or allow compliance.~~

(b) If the declaration of the qualified patient provided for the use or continuation of life-sustaining treatment should the declarant subsequently be in a terminal condition or in a permanently unconscious state, if the consent decision of a priority individual or class of individuals under section 2133.08 of the Revised Code was to use or continue life-sustaining treatment in connection with the patient described in that section, or if the probate court issued a ~~reevaluation~~ order pursuant to section 2133.05 or 2133.08 of the Revised Code that was intended to result in the use or continuation of life-sustaining treatment in connection with the qualified patient or other patient, then the attending physician or health care facility used or continued the life-sustaining treatment or caused it to be used or continued until a transfer as described in division (A)(4)(a) of this section was made.

(4)(5) Making determinations other than those described in division (B) of this section, or otherwise acting under this chapter, if the determinations or other actions are made in good faith and in accordance with reasonable medical standards.

(B) Subject to division (D) of this section, an attending or consulting physician is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action if the physician makes any of the following determinations in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards:

(1) A determination that a declarant or a patient as described in section 2133.08 of the Revised Code is in a terminal condition;

(2) A determination that a declarant is in a permanently unconscious state;

(3) A determination that a patient as described in section 2133.08 of the Revised Code currently is ~~and for at least the immediately preceding twelve months has been~~ in a permanently unconscious state;

(4) A determination that a declarant or a patient as described in section 2133.08 of the Revised Code no longer is able to make informed decisions regarding the administration of life-sustaining treatment;

(5) A determination that there is no reasonable possibility that a declarant or a patient as described in section 2133.08 of the Revised Code will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment;

~~(6) A determination that nutrition or hydration will not or no longer will provide comfort or alleviate pain in connection with a patient as described in section 2133.09 of the Revised Code.~~

(C)(4) Subject to division (D) of this section, an individual who is authorized to give a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment under division (B) of section 2133.08 of the Revised Code and who makes his decision in good faith is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action in connection with that decision.

~~(2) Subject to division (D) of this section, an individual who is authorized to give a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient under division (A)(4) of section 2133.09 of the Revised Code and who gives the consent in good faith is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action in connection with that consent.~~

(D) This section does not grant, and shall not be construed as granting, an immunity from criminal or civil liability or from professional disciplinary action to health care personnel for actions that are outside the scope of their authority.

2133.12 Death is not a suicide or homicide; health or life insurance or annuity rights not affected; no presumption created; limitations on effect of chapter; comfort care.

(A) The death of a qualified patient or other patient resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute a suicide, aggravated murder, murder, or any other homicide offense for any purpose.

(B)(1) The execution of a declaration shall not do either of the following:

(a) Affect the sale, procurement, issuance, or renewal of any policy of life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary;

(b) Be deemed to modify or invalidate the terms of any policy of life insurance or annuity that is in effect on the effective date of this section.

(2) Notwithstanding any term of a policy of life insurance or annuity to the contrary, the withholding or withdrawal of life-sustaining treatment from an insured, qualified patient or other patient in accordance with this chapter shall not impair or invalidate any policy of life insurance or annuity.

(3) Notwithstanding any term of a policy or plan to the contrary, the use or continuation, or the withholding or withdrawal, of life-sustaining treatment from an insured, qualified patient or other patient in accordance with this chapter shall not impair or invalidate any policy of health insurance or any health care benefit plan.

(4) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX [39] of the Revised Code, medical care corporation, health care corporation, health maintenance organization, other health care plan, legal entity that is self-insured and provides benefits to its employees or members, or other person shall require any individual to execute or refrain from executing a declaration, or shall require an individual to revoke or refrain from revoking a declaration, as a condition of being insured or of receiving health care benefits or services.

(C)(1) This chapter does not create, and shall not be construed as creating, any presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if he should be in a terminal condition or in a permanently unconscious state at any time.

(2) This chapter does not affect, and shall not be construed as affecting, the right of a qualified patient or other patient to make informed decisions regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment as long as he is able to make those decisions.

(3) This chapter does not require, and shall not be construed as requiring, a physician, other health care personnel, or a health care facility to take action that is contrary to reasonable medical standards.

(4) This chapter and, if applicable, a declaration do not affect or limit, and shall not be construed as affecting or limiting, the authority of a physician or a health care facility to provide or not to provide life-sustaining treatment to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D) CONSISTENT WITH THE PROVISIONS OF THIS CHAPTER, THE ATTENDING PHYSICIAN MAY ISSUE A DO NOT RESUSCITATE ORDER.

(E)(D) Nothing in this chapter condones, authorizes, or approves of mercy killing, assisted suicide, or euthanasia.

(F)(E)(1) This chapter does not affect, and shall not be construed as affecting, the responsibility of the attending physician of a qualified patient or other patient, or other health care personnel authorized to do so, to provide comfort care to the patient.

~~(2)(a) If, at any time, a person described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code or the individual or a majority of the individuals in either of the first two classes of individuals that pertain to a declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of section 2133.05 of the Revised Code believes in good faith that both of the following circumstances apply, then the person or the individual or majority of individuals in either of the first two classes of individuals may commence an action in the probate court of the county in which a declarant who is a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (F)(1) of this section:~~

~~(i) Comfort care is not being used or continued in connection with the declarant.~~

~~(ii) The withholding or withdrawal of the comfort care is contrary to division (F) (1) of this section:~~

~~(b) If a declarant did not designate in his declaration a person as described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code and if, at any time, a priority individual or any member of a priority class of individuals under division (A)(2)(a)(ii) of section 2133.05 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the declarant in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, then the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the declarant may commence an action in the probate court of the county in which a declarant who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (F)(1) of this section:~~

~~(i) Comfort care is not being used or continued in connection with the declarant.~~

~~(ii) The withholding or withdrawal of the comfort care is contrary to division (F) (1) of this section:~~

~~(e) If, at any time, a priority individual or any member of a priority class of individuals under division (B) of section 2133.08 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the patient in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, then the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the patient may commence an action in the probate court of the county in which a patient as described in division (A) of section 2133.08 of the Revised Code is located for the issuance of an order mandating the use or continuation of comfort care in connection with the patient in a manner that is consistent with division (F)(1) of this section:~~

~~(i) Comfort care is not being used or continued in connection with the patient.~~

~~(ii) The withholding or withdrawal of the comfort care is contrary to division (F) (1) of this section:~~

2133.13 Assumption of validity of declaration.

In the absence of actual knowledge to the contrary and if acting in good faith, an attending or consulting physician, other health care personnel, and health care facilities may assume that a declaration complies with this chapter and is valid.

2133.14 Out-of-state declaration valid.

A declaration executed under the law of another state in compliance with that law or in substantial compliance with this chapter shall be considered to be valid for purposes of this chapter.

.2133.15 Application to document executed prior to effective date of provisions.

(A) This chapter shall apply to any written document that was executed anywhere prior to the effective date of this section, that voluntarily was so executed by an adult who was of sound mind, that was signed by the adult or by another individual at the direction of the adult, that was or was not witnessed or acknowledged before a notary public as described in division (B) of section 2133.02 of the Revised Code, and that specifies the adult's intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if he is at any time in a terminal condition, in a permanently unconscious state, or in either a terminal condition or a permanently unconscious state, if he is at that time no longer able to make informed decisions regarding the administration of life-sustaining treatment, and if at that time there is no reasonable possibility that he will regain the capacity to make those informed decisions. The document shall be considered to be a declaration, shall be given effect as if it had been executed after the effective date of this section in accordance with this chapter, and, except as otherwise provided in ~~division (C) of this section~~ 2133.08(A)(1)(c), shall be subject to all provisions of this chapter pertaining to declarations.

~~(B)(1) If a declaration as described in division (A) of this section does not state that, or does not contain a checked or marked box or line adjacent to a statement indicating that, the declarant authorizes his attending physician to withhold or withdraw nutrition or hydration when he is in a permanently unconscious state and when his attending physician and at least one other physician who has examined him determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to him or alleviate his pain, then, if the declaration becomes operative under section 2133.03 of the Revised Code because the declarant is in a permanently unconscious state, the attending physician of the declarant shall apply to the probate court of the county in which the declarant is located for the issuance of an order whether or not the attending physician is required to provide the declarant with nutrition and hydration for as long as the declarant is in the permanently unconscious state. Upon the filing of the application, the clerk of the probate court shall schedule a hearing on it and cause a copy of it and a notice of the hearing to be served in accordance with the Rules of Civil Procedure upon the attending physician and the individuals described in divisions (B) (1) to (5) of section 2133.08 of the Revised Code, which service shall be made, if possible, within three days after the filing of the application. The hearing shall be conducted at the earliest~~

possible time, but no sooner than the thirtieth business day, and no later than the sixtieth business day, after such service has been completed.

~~(2) At the hearing, the attending physician and any individual described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code shall be permitted to testify and present evidence relative to the use or continuation, or the withholding or withdrawal, of nutrition and hydration for as long as the declarant is in the permanently unconscious state. Immediately following the hearing, the court shall enter on its journal its determination, based on the evidence presented by all of the parties at the hearing on the application and subject to division (C)(3) of this section 2133.08, whether or not the attending physician is required to provide the declarant with nutrition and hydration for as long as he is in the permanently unconscious state.~~

~~(3) The court shall issue an order that authorizes the declarant's attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the declarant only if the applicant establishes, by clear and convincing evidence, that the order would be consistent with one of the following:~~

~~(a) The declarant's previously expressed intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration;~~

~~(b) In the absence of such a previously expressed intention, the type of informed consent decision that the declarant would have made if he had expressed his intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should he subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, as inferred from the lifestyle and character of the declarant, and from any other evidence of the declarant's desires, prior to his becoming no longer able to make informed decisions regarding the administration of nutrition and hydration. The Rules of Evidence shall not be binding for purposes of this division.~~

~~(4) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician of the declarant are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including joining by way of intervention.~~