

The Right To Die—The New Jersey Health Care Directive Act—Senate No. 2067, and Assembly No. 2651.

The New Jersey Health Care Directive Act [hereinafter the Act]¹ recognizes that an individual has the right to decide whether to receive health care and provides two mechanisms to preserve this right if an individual is unable to make a health care decision independently. According to the Act, an individual is unable to make a decision when he is incompetent or cannot express his decision.

The Treatment Directive, or “Living Will,” allows an individual to provide guidelines or directives concerning health care and to require that those directives be followed if he is unable to make the health care decision. Under certain circumstances, a Treatment Directive may not cover all health care decisions due to unforeseen events which may influence such decisions. Therefore, the Act provides for a Medical Decision Power of Attorney.

The Medical Decision Power of Attorney allows an individual to appoint another as an attorney-in-fact to make some or all health care decisions if the individual is unable to make the decision. The Medical Decision Power of Attorney may also include treatment directives, or may refer to or incorporate by reference a separate Treatment Directive. If both documents exist, the attorney-in-fact must make health care decisions consistent with the Treatment Directive.

If an individual wants to grant the attorney-in-fact the authority to decide whether life-sustaining procedures should be withheld or withdrawn, the Medical Decision Power of Attorney must clearly indicate this in the document. However, this is unnecessary if the Medical Decision Power of Attorney makes reference to or includes a Treatment Directive which authorizes the withholding or withdrawal of life-sustaining procedures.

If a woman is pregnant, but has not reached the third trimester, the Treatment Directive or the Medical Decision Power of

¹ The New Jersey Health Care Directive Act, Senate No. 2067, and Assembly No. 2651, was introduced in the New Jersey Senate on February 22, 1988, by Senator Raymond J. Zane (D), and in the New Jersey Assembly on March 7, 1988, by Assemblywoman Elizabeth E. Randall (R), and Assemblyman William P. Schuber (R). As of this writing, the Act is still pending in the legislature.

Attorney will be valid if it contains a provision addressing the contingency of pregnancy and authorizes that the directives or instructions of an attorney-in-fact concerning the withholding or withdrawal of life-sustaining procedures should be followed notwithstanding the pregnancy. If the pregnancy has reached the third trimester or the Treatment Directive or Medical Decision Power of Attorney does not address the contingency of pregnancy, then a medical expert must determine whether the fetus can develop with the continued application of life-sustaining procedures. If it is determined that the fetus is viable, then the Treatment Directive or Medical Decision Power of Attorney will be suspended until after the birth. The Treatment Directive or Power of Attorney will also be suspended after a finding that the fetus has expired or a finding that the fetus is not viable.

The Treatment Directive and Medical Decision Power of Attorney may be executed by any competent adult, known as the declarant. The Treatment Directive must be signed by the declarant, or by another at his direction, in the presence of two witnesses who must also sign the document in the presence of the declarant, or the declarant's signature may be acknowledged by a notary public or another authorized to administer oaths. Likewise, the Medical Decision Power of Attorney must be signed by the declarant, or another at his direction, and acknowledged by a notary public or another authorized to administer oaths. Both documents may be revoked by the declarant, or by another at his direction, in a written instrument executed with the same formalities provided above or by the destruction of the document.

The Act states that its intention is not to require a physician or other health care provider to violate reasonable medical standards and provides immunity from civil and criminal liability and from discipline for unprofessional conduct when there is compliance with either a Treatment Directive or the instructions of an attorney-in-fact. The Act also provides that certain actions are crimes, such as falsifying or forging a Treatment Directive or Medical Decision Power of Attorney. A death, however, does not constitute a suicide, homicide, or aiding a suicide. Likewise, the execution of such a document in no way affects life insurance policies or annuities.

In addition, there is a presumption, in the absence of knowledge to the contrary, that the document is valid. If the health

care provider is unwilling to comply with the Treatment Directive or the instructions of the attorney-in-fact, the health care provider must make reasonable efforts to transfer the individual to a health care provider who is willing to comply.

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