

A BILL FOR AN ACT

To further amend title 41 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 6-9 and 6-38, by adding a new chapter 9 to establish a procedure for an adult to execute a directive providing that life-sustaining procedures should be withheld or withdrawn if that person becomes terminally ill and such procedures would serve only to prolong the moment of death, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 41 of the Code of the Federated States of
2 Micronesia is hereby further amended by adding a new section 901 of
3 chapter 9 to read as follows:

4 "Section 901. Short title. This act may be cited as the
5 Natural Death Act."

6 Section 2. Title 41 of the Code of the Federated States of
7 Micronesia is hereby further amended by adding a new section 902 of
8 chapter 9 to read as follows:

9 "Section 902. Definitions. As used in this act:

10 (1) 'Attending physician' means the physician
11 selected by, or assigned to, the patient who has primary
12 responsibility for the treatment and care of the patient.

13 (2) 'Directive' means a written document voluntarily
14 executed by the declarant in accordance with the
15 requirements of section 903. The directive, or a copy of
16 the directive, shall be made part of the patient's medical
17 records.

18 (3) 'Life-sustaining procedure' means any medical
19 procedure or intervention which utilizes mechanical or other
20 artificial means to sustain, restore, or supplant a vital
21 function, which, when applied to a qualified patient, would
22 serve only to artificially prolong the moment of death and
23 where, in the judgment of the attending physician, death is
24 imminent whether or not such procedures are utilized.
25 'Life-sustaining procedure' shall not include the

1 administration of medication or the performance of any
2 medical procedure deemed necessary to alleviate pain.

3 (4) 'Physician' means a physician and surgeon
4 licensed by the Board of Medical Quality Assurance or the
5 Board of Osteopathic Examiners.

6 (5) 'Qualified patient' means a patient diagnosed and
7 certified in writing to be afflicted with a terminal
8 condition by two physicians, one of whom shall be the
9 attending physician, who have personally examined the
10 patient.

11 (6) 'Terminal condition' means an incurable condition
12 caused by injury, disease, or illness, which, regardless of
13 the application of life-sustaining procedures, would,
14 within reasonable medical judgment, produce death, and
15 where the application of life-sustaining procedures serve
16 only to postpone the moment of death of the patient."

17 Section 3. Title 41 of the Code of the Federated States of
18 Micronesia is hereby further amended by adding a new section 903 of
19 chapter 9 to read as follows:

20 "Section 903. Executing a directive. Any adult person may
21 execute a directive directing the withholding or withdrawal
22 of life-sustaining procedures in a terminal condition. The
23 directive shall be signed by the declarant in the presence
24 of two witnesses not related to the declarant by blood or
25 marriage and who would not be entitled to any portion of

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Witness [_____]

Witness [_____]"

Section 4. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 904 of
chapter 9 to read as follows:

"Section 904. Restrictions.

(1) A directive shall have no force or effect if the
declarant is a patient in a skilled nursing facility as
may be defined by the appropriate State health authority at
the time the directive is executed unless one of the two
witnesses to the directive is a patient advocate or
ombudsman as may be designated by the appropriate State
health authority agency for this purpose pursuant to any
other applicable provision of law. The patient advocate
or ombudsman shall have the same qualifications as a
witness under section 903.

(2) The intent of this section is to recognize that
some patients in skilled nursing facilities may be so
insulated from a voluntary decision-making role, by virtue
of the custodial nature of their care, as to require special
assurance that they are capable of willfully and
voluntarily executing a directive."

Section 5. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 905 of
chapter 9 to read as follows:

1 "Section 905. Revocation.

2 (1) A directive may be revoked at any time by the
3 declarant, without regard to his mental state or
4 competency, by any of the following methods:

5 (a) By being canceled, defaced, obliterated, or
6 burnt, torn, or otherwise destroyed by the declarant or by
7 some person in his presence and by his direction.

8 (b) By a written revocation of the declarant
9 expressing his intent to revoke, signed and dated by the
10 declarant. Such revocation shall become effective only
11 upon communication to the attending physician by the
12 declarant or by a person acting on behalf of the
13 declarant. The attending physician shall record in the
14 patient's medical record the time and date when he received
15 notification of the written revocation.

16 (c) By a verbal expression by the declarant of
17 his intent to revoke the directive. Such revocation shall
18 become effective only upon communication to the attending
19 physician by the declarant or by a person acting on behalf
20 of the declarant. The attending physician shall record in
21 the patient's medical record the time, date, and place of
22 the revocation and the time, date, and place, if different,
23 of when he received notification of the revocation.

24 (2) There shall be no criminal or civil liability on
25 the part of any person for failure to act upon a revocation

1 made pursuant to this section unless that person has actual
2 knowledge of the revocation."

3 Section 6. Title 41 of the Code of the Federated States of
4 Micronesia is hereby further amended by adding a new section 906 of
5 chapter 9 to read as follows:

6 "Section 906. Expiration of directive. A directive shall
7 be effective for 5 years from the date of execution
8 thereof unless sooner revoked in a manner prescribed in
9 section 905. Nothing in this act shall be construed to
10 prevent a declarant from reexecuting a directive at any
11 time in accordance with the formalities of section 903,
12 including reexecution subsequent to a diagnosis of a
13 terminal condition. If the declarant has executed more
14 than one directive, the time shall be determined from the
15 date of execution of the last directive known to the
16 attending physician. If the declarant becomes comatose or
17 is rendered incapable of communicating with the attending
18 physician, the directive shall remain in effect for the
19 duration of the comatose condition or until such time as
20 the declarant's condition renders him or her able to
21 communicate with the attending physician."

22 Section 7. Title 41 of the Code of the Federated States of
23 Micronesia is hereby further amended by adding a new section 907 of
24 chapter 9 to read as follows:

25 "Section 907. Liability. No physician or health facility

1 which, acting in accordance with the requirements of this
2 act, causes the withholding or withdrawal of life-sustaining
3 procedures from a qualified patient, shall be subject to
4 civil liability therefrom. No licensed health professional,
5 acting under the direction of a physician, who participates
6 in the withholding or withdrawal of life-sustaining
7 procedures in accordance with the provisions of this act
8 shall be subject to any civil liability. No physician, or
9 licensed health professional acting under the direction of a
10 physician, who participates in the withholding or
11 withdrawal of life-sustaining procedures in accordance
12 with the provisions of this act shall be guilty of any
13 criminal act or of unprofessional conduct."

14 Section 8. Title 41 of the Code of the Federated States of
15 Micronesia is hereby further amended by adding a new section 908 of
16 chapter 9 to read as follows:

17 "Section 908. Physician restrictions.

18 (1) Prior to effecting a withholding or withdrawal of
19 life-sustaining procedures from a qualified patient
20 pursuant to the directive, the attending physician shall
21 determine that the directive complies with section 903, and,
22 if the patient is mentally competent, that the directive
23 and all steps proposed by the attending physician to be
24 undertaken are in accord with the desires of the qualified
25 patient.

1 (2) If the declarant was a qualified patient at least
2 14 days prior to executing or reexecuting the directive,
3 the directive shall be conclusively presumed, unless
4 revoked, to be the directions of the patient regarding the
5 withholding or withdrawal of life- sustaining procedures.
6 No physician, and no licensed health professional acting
7 under the direction of a physician, shall be criminally or
8 civilly liable for failing to effectuate the directive
9 of the qualified patient pursuant to this subsection. A
10 failure by a physician to effectuate the directive of a
11 qualified patient pursuant to this act shall constitute
12 unprofessional conduct if the physician refuses to make the
13 necessary arrangements, or fails to take the necessary
14 steps, to effect the transfer of the qualified patient to
15 another physician who will effectuate the directive of the
16 qualified patient.

17 (3) If the declarant becomes a qualified patient
18 subsequent to executing the directive, and has not
19 subsequently reexecuted the directive, the attending
20 physician may give weight to the directive as evidence of
21 the patient's directions regarding the withholding or
22 withdrawal of life-sustaining procedures and may consider
23 other factors, such as information from the affected family
24 or the nature of the patient's illness, injury, or disease,
25 in determining whether the totality of circumstances known

1 to the attending physician justifies effectuating the
 2 directive. No physician, and no licensed health
 3 professional acting under the direction of a physician,
 4 shall be criminally or civilly liable for failing to
 5 effectuate the directive of the qualified patient pursuant
 6 to this subsection."

7 Section 9. Title 41 of the Code of the Federated States of
 8 Micronesia is hereby further amended by adding a new section 909 of
 9 chapter 9 to read as follows:

10 "Section 909. Insurance.

11 (1) The withholding or withdrawal of life-sustaining
 12 procedures from a qualified patient in accordance with the
 13 provisions of this act shall not, for any purpose,
 14 constitute a suicide.

15 (2) The making of a directive pursuant to section 903
 16 shall not restrict, inhibit, or impair in any manner the
 17 sale, procurement, or issuance of any policy of life
 18 insurance; neither shall it be deemed to modify the terms
 19 of an existing policy of life insurance. No policy of life
 20 insurance shall be legally impaired or invalidated in any
 21 manner by the withholding or withdrawal of life-sustaining
 22 procedures from an insured qualified patient,
 23 notwithstanding any term of the policy to the contrary.

24 (3) No physician, health facility, or other health
 25 provider, and no health care service plan, insurer issuing

1 disability insurance, self-insured employee welfare benefit
2 plan, or nonprofit hospital service plan, shall require any
3 person to execute a directive as a condition for being
4 insured for, or receiving, health care services."

5 Section 10. Title 41 of the Code of the Federated States of
6 Micronesia is hereby further amended by adding a new section 910 of
7 chapter 9 to read as follows:

8 "Section 910. Provisions cumulative. Nothing in this act
9 shall impair or supersede any legal right or legal
10 responsibility which any person may have to effect the
11 withholding or withdrawal of life-sustaining procedures in
12 any lawful manner. In such respect the provisions of this
13 act are cumulative."

14 Section 11. Title 41 of the Code of the Federated States of
15 Micronesia is hereby further amended by adding a new section 911 of
16 chapter 9 to read as follows:

17 "Section 911. Protection of the directive. Any person who
18 willfully conceals, cancels, defaces, obliterates, or
19 damages the directive of another without the declarant's
20 consent shall be guilty of a misdemeanor. Any person who,
21 except where justified or excused by law, falsifies or
22 forges the directive of another, or willfully conceals or
23 withholds personal knowledge of a revocation as provided
24 in section 905, with the intent to cause a withholding or
25 withdrawal of life-sustaining procedures contrary to the

1 wishes of the declarant and, thereby, because of any such
2 act, directly causes life-sustaining procedures to be
3 withheld or withdrawn and death to thereby be hastened,
4 shall be subject to prosecution for unlawful homicide as
5 provided by law."

6 Section 12. Title 41 of the Code of the Federated States of
7 Micronesia is hereby further amended by adding a new section 912 of
8 chapter 9 to read as follows:

9 "Section 912. Restrictions. Nothing in this act shall be
10 construed to condone, authorize, or approve mercy killing,
11 or to permit any affirmative or deliberate act or omission
12 to end life other than to permit the natural process of
13 dying as provided in this chapter."

14 Section 13. Title 41 of the Code of the Federated States of
15 Micronesia is hereby further amended by adding a new section 913 of
16 chapter 9 to read as follows:

17 "Section 913. Severability. If any provision of this act
18 or application thereof to any individual or circumstance is
19 held invalid, the invalidity does not effect other
20 provisions or applications of the act which can be given
21 effect without the invalid provision or application; and to
22 this end the provisions of this act are severable."

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1 Section 14. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its becoming
3 law without such approval.

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5 Date: 11-05-90

Introduced by: *Tony Otto*
Tony Otto

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