

Chapter 127

1991 EDITION

Powers of Attorney; Directive to Physician

POWERS OF ATTORNEY

- 127.005 When power of attorney not affected during period of disability; accounting to conservator
- 127.015 Power of attorney not revoked until death known

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

- 127.505 Definitions for ORS 127.505 to 127.585
- 127.510 Designation of attorney-in-fact; duration
- 127.515 Contents of power of attorney; witnesses
- 127.520 Certain persons not to serve as attorney-in-fact
- 127.525 Acceptance of appointment; withdrawal
- 127.530 Form of power of attorney
- 127.535 Authority of attorney-in-fact; duties; objection by principal
- 127.540 Limitations on authority of attorney-in-fact
- 127.545 Revocation of power of attorney; priorities
- 127.550 Procedure for challenging validity of power of attorney and acts of attorney-in-fact
- 127.555 Designation of attending physician; liability of attorney-in-fact and health care provider
- 127.560 Provisions not exclusive
- 127.565 Independent medical judgment of provider; effect of power of attorney on insurance
- 127.570 Mercy killing; attempted suicide
- 127.575 Power of attorney presumed valid

- 127.580 Presumption of consent to artificially administered hydration and nutrition
- 127.585 Penalties

DIRECTIVE TO PHYSICIAN

- 127.605 Definitions for ORS 127.605 to 127.650
- 127.610 Execution and revocation of directive; form; witness qualifications and responsibility
- 127.615 Validity of directive as to physician
- 127.620 Effect of directive
- 127.625 Duties created by directive
- 127.630 Effect of directive on insurance
- 127.635 Withdrawal of life-sustaining procedures; conditions; physician's liability; effect on insurance policy
- 127.640 Withdrawal of life-sustaining procedures from comatose patient who has not executed directive
- 127.645 Construction of ORS 127.605 to 127.650 concerning mercy killing, exclusiveness and suicide
- 127.650 Prohibited acts

OBLIGATIONS OF HEALTH CARE ORGANIZATIONS

(Temporary provisions relating to obligation of health care organizations to supply certain information regarding right to make health care decisions are compiled as notes following ORS 127.650)

PENALTIES

- 127.990 Penalties

GUARDIANS, CONSERVATORS, POWER OF ATTORNEY; TRUSTS

POWERS OF ATTORNEY

127.005 When power of attorney not affected during period of disability; accounting to conservator. (1) When a principal designates another an attorney-in-fact or agent by a power of attorney in writing and the writing does not contain words which otherwise limit the period of time of its effectiveness, the powers of the attorney-in-fact or agent shall be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding the later disability or incompetence of the principal at law.

(2) All acts done by the attorney-in-fact or agent under the power of attorney during any period of disability or incompetence of the principal at law shall have the same effect and shall inure to the benefit of and bind the principal as though the principal were not disabled or incompetent.

(3) If a conservator is appointed thereafter for the principal, the attorney-in-fact or agent, during the continuation of that appointment, shall account to the conservator rather than to the principal. The conservator has the same power that the principal would have, but for the disability or incompetence of the principal, to revoke, suspend or terminate all or any part of the power of attorney or agency. [Formerly 126.407]

127.010 [Repealed by 1969 c.591 §305]

127.015 Power of attorney not revoked until death known. (1) The death of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact or agent who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and heirs, devisees and personal representatives of the principal.

(2) An affidavit, executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [Formerly 126.413]

Note: 127.020, 127.030, 127.040, 127.050, 127.060, 127.070, 127.080, 127.090, 127.100, 127.110, 127.120, 127.130,

127.140, 127.150, 127.160, 127.170, 127.180, 127.190, 127.310, 127.320, 127.330, 127.340 and 127.350 repealed by 1969 c.591 §305.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

127.505 Definitions for ORS 127.505 to 127.585. As used in ORS 127.505 to 127.585:

(1) "Attending physician" means the physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon who has primary responsibility for the care and treatment of the principal.

(2) "Attorney-in-fact" means an adult properly appointed under ORS 127.505 to 127.585 to make health care decisions for a principal under a power of attorney for health care, and includes an alternative attorney-in-fact.

(3) "Directive" shall have the same meaning as provided in ORS 127.605.

(4) "Health care" means treatment or care to cure or ameliorate the effects of disease, injury and degenerative conditions but does not include the withdrawal or withholding of life-sustaining procedures, nutrition or hydration unless specifically authorized by ORS 127.540 or 127.580.

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

(6) "Health care facility" means health care facility as defined in ORS 442.015, domiciliary care facility as defined in ORS 443.205, residential facility as defined in ORS 443.400 or adult foster home as defined in ORS 443.705.

(7) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(8) "Incapable" means that, in the opinion of the court in a guardianship proceeding under ORS chapter 126, or the opinion of the person's attending physician and one other physician, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person presently lacks the capacity to make health care decisions.

(9) "Life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical or other artificial means to sustain, restore or supplant a vital function of a qualified patient that is used to maintain the life of a person suffering from a terminal condition and serves only to artificially prolong the moment of death or when death is imminent whether or not such procedures are used. "Life-sustaining

procedure" does not include the usual care provided to individuals who are in facilities defined in ORS 442.015 (14)(a), which would include routine care necessary to sustain patient comfort and the usual and typical provision of nutrition which in the medical judgment of the attending physician a patient can tolerate.

(10) "Power of attorney for health care" means a power of attorney that authorizes an attorney-in-fact to make health care decisions for the principal when the principal is incapable.

(11) "Principal" means a person who, when 18 years of age or older and not incapable, confers a power of attorney upon another person to make health care decisions for the principal in the event the principal becomes incapable.

(12) "Terminal condition" means an incurable condition caused by injury, disease or illness which, regardless of the application of life-sustaining procedures, would within reasonable medical judgment produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the principal. [1989 c.914 §1; 1991 c.470 §11]

127.510 Designation of attorney-in-fact; duration. (1) A principal may designate in writing a competent adult as attorney-in-fact for health care. In addition, a principal may designate a competent adult as alternative attorney-in-fact if the original designee is unable or unwilling to act as attorney-in-fact at any time after the power of attorney for health care is executed. If the power of attorney is in effect, the attorney-in-fact so appointed shall make health care decisions on behalf of the principal if the principal becomes incapable.

(2) A power of attorney for health care shall continue in effect for a period of seven years, until the principal's death, until revoked pursuant to ORS 127.545 or until both the attorney-in-fact and any alternative attorney-in-fact withdraw pursuant to ORS 127.525. However, if the power of attorney for health care has been invoked and is in effect at the expiration of seven years after its execution, it shall remain effective until the principal is no longer incapable or until the principal's death.

(3) A copy of a power of attorney for health care shall be made a part of the principal's medical record when the existence of the power of attorney becomes known to the principal's health care provider. [1989 c.914 §2]

127.515 Contents of power of attorney; witnesses. (1) A power of attorney for health care executed in this state authorizes the attorney-in-fact named therein to make

health care decisions for the principal only if both of the following requirements are satisfied:

(a) The power of attorney must specifically authorize the attorney-in-fact to make health care decisions; and

(b) The power of attorney must contain the date of its execution and be witnessed by at least two adults, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the principal.

(2) Each witness shall make the written declaration set forth in the form provided in ORS 127.530.

(3)(a) At least one of the witnesses under paragraph (b) of subsection (1) of this section shall be a person who is none of the following:

(A) A relative of the principal by blood, marriage or adoption; or

(B) A person who at the time of execution of the power of attorney would be entitled to any portion of the estate of the principal upon death under any will or by operation of law.

(b)(A) The attorney-in-fact for health care may not be a witness; and

(B) The principal's attending physician at the time of execution of the power of attorney may not be a witness. [1989 c.914 §3]

127.520 Certain persons not to serve as attorney-in-fact. None of the following may serve as attorney-in-fact for health care:

(1) The attending physician or an employee of the attending physician who is unrelated to the principal by blood, marriage or adoption.

(2) A person unrelated to the principal by blood, marriage or adoption who is an owner, operator or employee of a health care facility in which the principal is a patient or resident. [1989 c.914 §4]

127.525 Acceptance of appointment; withdrawal. To be effective, the attorney-in-fact must accept the appointment in writing. Subject to the right of the attorney-in-fact to withdraw, the acceptance creates a duty for the attorney-in-fact to make health care decisions on behalf of the principal at such time as the principal becomes incapable. Until the principal becomes incapable, the attorney-in-fact may withdraw by giving notice to the principal. After the principal becomes incapable, the attorney-in-fact may withdraw by giving notice to the attending physician. The attending physician shall thereupon cause the withdrawal to be made a part of the principal's medical records. [1989 c.914 §5]

127.530 Form of power of attorney. A written power of attorney for health care shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall be in the following form:

principal's attending physician. Witnessed By:

(Signature of Witness/Date) (Printed Name of Witness)

(Signature of Witness/Date) (Printed Name of Witness)

POWER OF ATTORNEY FOR HEALTH CARE

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY

I appoint _____, whose address is _____, and whose telephone number is _____, as my attorney-in-fact for health care decisions. I appoint _____, whose address is _____, and whose telephone number is _____, as my alternative attorney-in-fact for health care decisions. I authorize my attorney-in-fact appointed by this document to make health care decisions for me when I am incapable of making my own health care decisions. I have read the warning below and understand the consequences of appointing a power of attorney for health care.

I accept this appointment and agree to serve as attorney-in-fact for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapable. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner, and that I have a duty to inform the principal's attending physician promptly upon any revocation.

I direct that my attorney-in-fact comply with the following instructions or limitations: _____

(Signature of Attorney-in-fact/Date)

(Printed name)

(Signature of Alternate Attorney-in-fact/Date)

(Printed name)

In addition, I direct that my attorney-in-fact have authority to make decisions regarding the following:

WARNING TO PERSON APPOINTING A POWER OF ATTORNEY FOR HEALTH CARE

_____ Withholding or withdrawal of life-sustaining procedures with the understanding that death may result.

This is an important legal document. It creates a power of attorney for health care. Before signing this document, you should know these important facts:

_____ Withholding or withdrawal of artificially administered hydration or nutrition or both with the understanding that dehydration, malnutrition and death may result.

This document gives the person you designate as your attorney-in-fact the power to make health care decisions for you, subject to any limitations, specifications or statement of your desires that you include in this document.

(Signature of person making appointment/Date)

For this document to be effective, your attorney-in-fact must accept the appointment in writing.

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress, fraud or undue influence, that neither of us is the person appointed as attorney-in-fact by this document or the

The person you designate in this document has a duty to act consistently with your desires as stated in this document or otherwise made known or, if your desires are unknown, to act in a manner consistent with what the person in good faith believes to be in your best interest. The person you designate in this document does, however, have

the right to withdraw from this duty at any time.

This power will continue in effect for a period of seven years unless you become unable to participate in health care decisions for yourself during that period. If this occurs, the power will continue in effect until you are able to participate in those decisions again.

You have the right to revoke the appointment of the person designated in this document at any time by notifying that person or your health care provider of the revocation orally or in writing.

Despite this document, you have the right to make medical and other health care decisions for yourself as long as you are able to participate knowledgeably in those decisions.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This power of attorney will not be valid for making health care decisions unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

[1989 c.914 §6]

127.535 Authority of attorney-in-fact; duties; objection by principal. (1) The attorney-in-fact designated in a power of attorney for health care has all the authority over the principal's health care that the principal would have if not incapable, except that the attorney-in-fact shall not have authority to make decisions regarding withholding or withdrawing a life-sustaining procedure, hydration or nutrition necessary to sustain life unless the power of attorney for health care specifically so provides, or as permitted by ORS 127.540 and 127.580. The attorney-in-fact who is known to the attending physician to be available to make health care decisions has priority over any person other than the principal to act for the principal in all health care decisions. However, the attorney-in-fact does not have authority to make a particular health care decision unless the principal is incapable in the judgment of the attending physician and one other physician.

(2) The attorney-in-fact shall not be personally responsible for the cost of health care provided to the principal.

(3) Except to the extent the right is limited by the power of attorney or any federal law, an attorney-in-fact designated to make health care decisions has the same right as the principal to receive information regard-

ing the proposed health care, to receive and review medical records and to consent to the disclosure of medical records. However, the right to access to medical records is not a waiver of any evidentiary privilege.

(4) In exercising authority under the power of attorney for health care, the attorney-in-fact has a duty to act consistently with the desires of the principal as expressed in the power of attorney unless otherwise made known to the attorney-in-fact at any time. If the principal's desires are unknown, the attorney-in-fact has a duty to act in what the attorney-in-fact in good faith believes to be the best interests of the principal.

(5) Nothing in ORS 127.505 to 127.585 authorizes an attorney-in-fact designated under a power of attorney for health care to consent to health care or to consent to the withholding or withdrawal of health care if the principal, whether or not incapable, manifests an objection to the health care or to the withholding or withdrawal of the health care. Such a case is governed by the law that would apply if there were no power of attorney for health care. [1989 c.914 §7]

127.540 Limitations on authority of attorney-in-fact. A power of attorney for health care does not authorize the attorney-in-fact to consent to any of the following on behalf of the principal:

(1) Commitment to or placement in a mental health treatment facility.

(2) Convulsive treatment.

(3) Psychosurgery.

(4) Sterilization.

(5) Abortion.

(6) Withholding or withdrawing a life-sustaining procedure unless:

(a) The principal has stated otherwise in a written power of attorney for health care; or

(b)(A) The principal is comatose and there is no reasonable possibility that the principal will return to a cognitive sapient state;

(B) It is determined by the attending physician that the principal has a terminal condition; and

(C) There is confirmation of the principal's condition by a committee of physicians, not including the attending physician, appointed by the medical staff of the health facility or, if none, by the health facility in which the person is confined.

(7) Withholding or withdrawing hydration or nutrition, other than hyperalimentation, necessary to sustain life except as provided in ORS 127.580. [1989 c.914 §8]

127.545 Revocation of power of attorney; priorities. (1) A power of attorney for health care or a health care decision by an attorney-in-fact may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to the mental or physical condition of the principal. Revocation shall be effective upon communication by the principal to the attending physician or health care provider, or the attorney-in-fact who shall promptly inform the attending physician, if any, of the revocation.

(2) Upon learning of the revocation of a power of attorney for health care, the attending physician shall cause the revocation to be made a part of the principal's medical records.

(3) Unless the power of attorney provides otherwise, execution by the principal of a valid power of attorney for health care revokes any prior power of attorney for health care.

(4) Unless the power of attorney provides otherwise, a power of attorney for health care executed under ORS 127.505 to 127.585 supersedes:

(a) Any preexisting directive;

(b) Any previously executed power of attorney for health care;

(c) Any guardianship proceedings under ORS chapter 126 to the extent the proceedings involve the right to make health care decisions for the protected person;

(d) Any conservatorship proceedings under ORS chapter 126 to the extent the proceedings involve the right to make health care decisions for the protected person; and

(e) ORS 475.325, relating to persons who may consent to use of experimental drugs.

(5) Unless the power of attorney for health care expressly provides otherwise, a power of attorney for health care naming the principal's spouse as attorney-in-fact is revoked if the principal's marriage is subsequently dissolved or annulled.

(6) If authority granted by a power of attorney for health care is revoked, a health care provider is not subject to criminal prosecution or civil liability nor in violation of any professional oath, affirmation or standard of care for acting in good faith reliance upon the power of attorney unless the person has actual knowledge of the revocation. [1989 c.914 §9]

127.550 Procedure for challenging validity of power of attorney and acts of attorney-in-fact. (1) A petition may be filed under ORS 127.505 to 127.585 for any one or more of the following purposes:

(a) Determining whether the power of attorney for health care is in effect or has been revoked or terminated.

(b) 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 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.

(c) Declaring that 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.

(d) Declaring that 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 manner 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.

(2) A petition may be filed by any of the following:

(a) The principal.

(b) The attorney-in-fact.

(c) The spouse, parent, sibling or adult child of the principal.

(d) A close adult friend of the principal.

(e) The guardian of the principal.

(f) The conservator of the principal.

(g) The attending physician or health care provider.

(3) A petition for a determination under this section shall be filed in the circuit court in the county in which the principal resides or is located. [1989 c.914 §9a]

127.555 Designation of attending physician; liability of attorney-in-fact and health care provider. (1) If there is more than one physician caring for a patient, the physicians, after at least one of them confers with the patient or, if the patient is incapable, with the attorney-in-fact, shall designate one physician as the attending physician.

(2) An attorney-in-fact shall not be guilty of any criminal offense, nor subject to civil

liability, nor in violation of any professional oath, affirmation or standard of care for any action taken in good faith under a power of attorney for health care.

(3) A health care provider or facility acting or declining to act in reliance on the health care decision made by a person who the provider in good faith believes is the attorney-in-fact for the incapable principal pursuant to a power of attorney for health care is not subject to criminal prosecution, civil liability or professional disciplinary action if:

(a) The attending physician believes in good faith that the decision is consistent with the desires of the principal as expressed in the power of attorney for health care or otherwise made known to the attending physician; and

(b) In the event that the decision is to withhold or withdraw life-sustaining procedures, the attending physician has made a good faith effort either before or after the decision was made to determine the desires of the principal to the extent that the principal is able to convey those desires to the attending physician and the results of the effort are made a part of the principal's medical record.

(4) Subsection (3) of this section shall not apply to the manner of administering health care pursuant to a health care decision made by the attorney-in-fact.

(5) An attending physician or health care facility shall promptly notify the attorney-in-fact if for any reason the attending physician or health care facility is unable or unwilling to carry out the wishes of the attorney-in-fact. The attorney-in-fact may then seek to transfer the principal to the care of another physician or health care facility. [1989 c.914 §10]

127.560 Provisions not exclusive. Subject to ORS 127.535 and 127.545, nothing in ORS 127.505 to 127.585 affects any right a person may otherwise have to make health care decisions on behalf of another. [1989 c.914 §11]

127.565 Independent medical judgment of provider; effect of power of attorney on insurance. (1) In following the decision of an attorney-in-fact, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decisions of the principal if the principal were capable.

(2) No person shall be required either to execute or to refrain from executing a power of attorney for health care as a criterion for insurance or as a condition for receiving health care.

(3) No existing or future policy of insurance shall be legally impaired or invalidated in any manner by actions taken under ORS 127.505 to 127.585. No person shall be discriminated against in premium or contract rates because of the existence of a power of attorney for health care or the absence thereof.

(4) Nothing in ORS 127.505 to 127.585 is intended to impair or supersede any conflicting federal statute.

(5) Except as provided in ORS 127.545 (4), nothing in ORS 127.505 to 127.585 shall impair or supersede any special power of attorney in effect prior to October 3, 1989. [1989 c.914 §12]

127.570 Mercy killing; attempted suicide. Nothing in ORS 127.505 to 127.585 is intended to condone, authorize or approve mercy killing, or to permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying. In making a health care decision, an attempted suicide by the principal shall not be construed as any indication of the principal's wishes with regard to health care. [1989 c.914 §14]

127.575 Power of attorney presumed valid. Health care providers are entitled to assume the validity of a power of attorney for health care executed in this state until given actual notice to the contrary. [1989 c.914 §15]

127.580 Presumption of consent to artificially administered hydration and nutrition. (1) It shall be presumed that every person who is temporarily or permanently incapable has consented to artificially administered hydration and nutrition, except hyperalimentation, that are necessary to sustain life unless:

(a) The person while a capable adult clearly and specifically stated that the person would have refused artificially administered hydration or nutrition; or

(b) Administration of such nutrition and hydration is not medically feasible or would itself cause severe, intractable or long-lasting pain; or

(c) The person:

(A) Is permanently incapable;

(B) Is in the final stage of a terminal condition; and

(C) Will die within a reasonably short period of time whether or not such hydration or nutrition is administered.

(2) Delivery of food and water directly to the digestive tract by cup, spoon, baby bottle or drinking straw shall not be considered to be artificially administered hydration and nutrition. [1989 c.914 §16]

127.585 Penalties. (1) It shall be a Class A felony for a person without authorization of the principal to willfully alter or forge a power of attorney or to willfully conceal or destroy a revocation with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures which hastens the death of the principal.

(2) It shall be a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal or destroy a power of attorney or to willfully alter or forge a revocation of a power of attorney. [1989 c.914 §13]

DIRECTIVE TO PHYSICIAN

127.605 Definitions of ORS 127.605 to 127.650. As used in ORS 127.605 to 127.650:

(1) "Attending physician" means the physician with primary responsibility for the care and treatment of a patient.

(2) "Directive" means a written document voluntarily executed by a declarant in accordance with the requirements set forth in ORS 127.610.

(3) "Life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical or other artificial means to sustain, restore or supplant a vital function of a qualified patient that is used to maintain the life of a person suffering from a terminal condition and serves only to artificially prolong the moment of death or when death is imminent whether or not such procedures are used. "Life-sustaining procedure" does not include the usual care provided to individuals who are in facilities defined in ORS 442.015 (14)(a), which would include routine care necessary to sustain patient comfort and the usual and typical provision of nutrition which in the medical judgment of the attending physician a patient can tolerate.

(4) "Physician" means an individual licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(5) "Qualified patient" means an individual, 18 years of age or older, whom the attending physician and one other physician, upon diagnostic examination of the patient, certify to be suffering from a terminal condition.

(6) "Terminal condition" means an incurable condition caused by injury, disease or illness which, regardless of the application of life-sustaining procedures would within reasonable medical judgment produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient. [Formerly 97.050; 1991 c.470 §12]

127.610 Execution and revocation of directive; form; witness qualifications and responsibility. (1) An individual of sound mind and 18 years of age or older may at any time execute or reexecute a directive directing the withholding or withdrawal of life-sustaining procedures should the declarant become a qualified patient. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year). I _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below and do hereby declare:

1. If at any time I should have an incurable injury, disease or illness certified to be a terminal condition by two physicians, one of whom is the attending physician, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____
City, County and State of Residence _____

I hereby witness this directive and attest that:

(1) I personally know the Declarant and believe the Declarant to be of sound mind.

(2) To the best of my knowledge, at the time of the execution of this directive, I:

(a) Am not related to the Declarant by blood or marriage,

(b) Do not have any claim on the estate of the Declarant,

(c) Am not entitled to any portion of the Declarant's estate by any will or by operation of law, and

127.615 GUARDIANS, CONSERVATORS, POWER OF ATTORNEY; TRUSTS

(d) Am not a physician attending the Declarant, a person employed by a physician attending the Declarant or a person employed by a health facility in which the Declarant is a patient.

(3) I understand that if I have not witnessed this directive in good faith I may be responsible for any damages that arise out of giving this directive its intended effect.

Witness _____
Witness _____

(2) A directive made pursuant to subsection (1) of this section is only valid if signed by the declarant in the presence of two attesting witnesses who, at the time the directive is executed, are not:

(a) Related to the declarant by blood or marriage;

(b) Entitled to any portion of the estate of the declarant upon the decease thereof under any will or codicil of the declarant or by operation of law at the time of the execution of the directive;

(c) The attending physician or an employee of the attending physician or of a health facility in which the declarant is a patient; or

(d) Persons who at the time of the execution of the directive have a claim against any portion of the estate of the declarant upon the declarant's decease.

(3) One of the witnesses, if the declarant is a patient in a long term care facility at the time the directive is executed, shall be an individual designated by the Department of Human Resources for the purpose of determining that the declarant is not so insulated from the voluntary decision-making role that the declarant is not capable of willfully and voluntarily executing a directive.

(4) A witness who does not attest a directive in good faith shall be liable for any damages that arise from giving effect to an invalid directive.

(5) A directive made pursuant to ORS 127.605 to 127.650 and 127.990 may be revoked at any time by the declarant without regard to mental state or competency by any of the following methods:

(a) By being burned, torn, canceled, obliterated or otherwise destroyed by the declarant or by some person in the declarant's presence and by direction of the declarant.

(b) By a written revocation of the declarant expressing intent to revoke, signed and dated by the declarant.

(c) By a verbal expression by the declarant of intent to revoke the directive.

(6) Unless revoked, a directive shall be effective from the date of execution. If the declarant has executed more than one directive, the last directive to be executed shall control. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders the declarant able to communicate with the attending physician. [Formerly 97.055]

127.615 Validity of directive as to physician. A directive that is valid on its face is valid as to any physician for the purposes of ORS 127.605 to 127.650 and 127.990 unless the physician has actual knowledge of facts that render the directive invalid or is under the direction of a court not to give effect to the directive. [Formerly 97.060]

127.620 Effect of directive. (1) It shall be lawful for an attending physician or a licensed health professional under the direction of an attending physician, acting in good faith and in accordance with the requirements of ORS 127.605 to 127.650 and 127.990, to withhold or withdraw life-sustaining procedures from a qualified patient who has properly executed a directive in accordance with the requirements of ORS 127.605 to 127.650 and 127.990.

(2) A physician or licensed health professional or health facility under the direction of a physician who, acting in good faith and in accordance with the requirements of ORS 127.605 to 127.650 and 127.990, causes the withholding or withdrawal of life-sustaining procedures shall not be guilty of any criminal offense, shall not be subject to civil liability and shall not be in violation of any professional oath, affirmation or standard of care.

(3) A physician or licensed health professional or health facility shall not be guilty of any criminal offense, shall not be subject to civil liability and shall not be in violation of any professional oath, affirmation or standard of care for failing to assume the duties created by or for failing to give effect to any directive or revocation made pursuant to ORS 127.605 to 127.650 and 127.990 unless that physician has actual knowledge of the directive or revocation. [Formerly 97.065]

127.625 Duties created by directive. (1) Except as provided in this section, no physician, licensed health professional or medical facility shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the withdrawal or withholding of life-sustaining procedures.

(2)(a) An attending physician shall make a directive or a copy of a directive made pursuant to ORS 127.605 to 127.650 and 127.990 part of the patient's medical record.

(b) An attending physician shall record in the patient's medical record the time, date, place and manner of a revocation and the time, date, place and manner, if different, of when the physician received notification of the revocation. If the revocation is written, the attending physician shall make the revocation or a copy of the revocation a part of the patient's medical record.

(3) A physician or medical facility electing for any reason not to participate in the withholding or withdrawal of life-sustaining procedures in accord with a directive made pursuant to ORS 127.605 to 127.650 and 127.990 shall:

(a) Make a reasonable effort to locate a physician or medical facility that will give effect to a qualified patient's directive and shall have a duty to transfer the qualified patient to that physician or facility; or

(b) At the request of a patient or of the patient's family, a physician or medical facility shall transfer the patient to another physician or medical facility that will reconsider circumstances which might make ORS 127.605 to 127.650 and 127.990 applicable to the patient. [Formerly 97.070]

127.630 Effect of directive on insurance. (1) Except as provided in subsection (2) of this section, the making of a directive pursuant to ORS 127.605 to 127.650 and 127.990 shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of insurance, nor shall it be deemed to modify the terms of an existing policy of insurance.

(2) No physician, health facility, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit hospital service plan or other direct or indirect health service provider shall require any person to execute a directive as a condition for being insured for, or receiving, health care services.

(3) No policy of insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient. [Formerly 97.080]

127.635 Withdrawal of life-sustaining procedures; conditions; physician's liability; effect on insurance policy. (1) Life-sustaining procedures as defined in ORS 127.605 (3) which would otherwise be applied to a qualified patient may be withdrawn in accordance with subsections (2) and (3) of this section if a person is comatose and there

is no reasonable possibility that the person will return to a cognitive sapient state and:

(a) It is determined by the attending physician that the person has a terminal condition as defined in ORS 127.605 (6); and

(b) There is confirmation of the person's condition by a committee of physicians, not including the attending physician, appointed by the medical staff of the health facility or, if none, by the health facility in which the person is confined.

(2) If a person's condition has been determined to meet the conditions set forth in subsection (1) of this section and no directive has been executed as provided in ORS 127.610, life-sustaining procedures may be withdrawn upon the direction and under the supervision of the attending physician at the request of the first of the following, in the following order, who can be located upon reasonable effort by the health care facility:

(a) The person's spouse;

(b) A guardian of the person, if any;

(c) A majority of the adult children of the person who can be so located; or

(d) Either parent of the person.

(3) If none of the persons described in subsection (2) of this section is available, then life-sustaining procedures may be withdrawn upon the direction and under the supervision of the attending physician.

(4) A physician or licensed health professional or health facility under the direction of a physician who, acting in good faith and in accordance with the requirements of this section and ORS 127.640, causes the withdrawal of life-sustaining procedures shall not be guilty of any criminal offense, shall not be subject to civil liability and shall not be in violation of any professional oath, affirmation or standard of care.

(5) No policy of insurance shall be legally impaired or invalidated in any manner by the withdrawal of life-sustaining procedures pursuant to this section. [Formerly 97.083]

127.640 Withdrawal of life-sustaining procedures from comatose patient who has not executed directive. Before withdrawing life-sustaining procedures from a patient who is comatose but who has executed no directive, the attending physician shall determine that the conditions of ORS 127.635 (1) to (3) have been met. [Formerly 97.084]

127.645 Construction of ORS 127.605 to 127.650 concerning mercy killing, exclusiveness and suicide. (1) Nothing in ORS 127.605 to 127.650 and 127.990 shall be construed to condone, authorize or approve mercy killing, or to permit any affirmative

or deliberate act or omission to end life other than to permit the natural process of dying as provided in ORS 127.605 to 127.650 and 127.990.

(2) Nothing in ORS 127.605 to 127.650 and 127.990 shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of ORS 127.605 to 127.650 and 127.990 are cumulative.

(3) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of ORS 127.605 to 127.650 and 127.990 shall not, for any purpose, constitute a suicide. [Formerly 97.085]

127.650 Prohibited acts. (1) No person shall by willfully concealing or destroying a revocation or by willfully falsifying or forging a directive cause the withdrawal or withholding of life-sustaining procedures.

(2) No person shall by willfully concealing or destroying a directive or by willfully falsifying or forging a revocation cause an individual's intent with respect to the withholding or withdrawal of life-sustaining procedures not to be given effect. [Formerly 97.090]

OBLIGATIONS OF HEALTH CARE ORGANIZATIONS

Note: Sections 1 to 4, chapter 761, Oregon Laws 1991, take effect on December 1, 1991, and are repealed December 1, 1993. See sections 8 and 9, chapter 761, Oregon Laws 1991. The text is set forth for the user's convenience.

Sec. 1. As used in sections 1 to 4 of this 1991 Act:

(1) "Health care organization" means a home health agency, hospice program, hospital, long term care facility or health maintenance organization.

(2) "Health maintenance organization" has that meaning given in ORS 750.005, except that "health maintenance organization" includes only those organizations that participate in the federal Medicare or Medicaid programs.

(3) "Home health agency" has that meaning given in ORS 443.005.

(4) "Hospice program" has that meaning given in ORS 443.850.

(5) "Hospital" has that meaning given in ORS 442.015 (14), except that "hospital" does not include a special inpatient care facility.

(6) "Long term care facility" has that meaning given in ORS 442.015 (14), except that "long term care facility" does not include an intermediate care facility for individuals with mental retardation. [1991 c.761 §1]

Sec. 2. Subject to the provisions of sections 3 and 4 of this 1991 Act, all health care organizations shall maintain written policies and procedures, applicable to all capable individuals 18 years of age or older who are receiving health care by or through the health care organization, that provide for:

(1) Delivering to those individuals the following information and materials, in written form, without recommendation:

(a) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care;

(b) Information on the policies of the health care organization with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(c) A copy of the directive form set forth in ORS 127.610 and a copy of the power of attorney for health care form set forth in ORS 127.530, along with a disclaimer attached to each form in at least 16-point bold type stating "You do not have to fill out and sign this form."; and

(d) The name of a person who can provide additional information concerning the forms for directives and powers of attorney for health care.

(2) Documenting in a prominent place in the individual's medical record whether the individual has executed a directive or a power of attorney for health care.

(3) Insuring compliance by the health care organization with Oregon law relating to directives and powers of attorney for health care.

(4) Educating the staff and the community on issues relating to directives and powers of attorney for health care. [1991 c.761 §2]

Sec. 3. The written information described in section 2 (1) of this 1991 Act shall be provided:

(1) By hospitals, not later than five days after an individual is admitted as an inpatient, but in any event before discharge;

(2) By long term care facilities, not later than five days after an individual is admitted as a resident, but in any event before discharge;

(3) By a home health agency or a hospice program, not later than 15 days after the initial provision of care by the agency or program but in any event before ceasing to provide care; and

(4) By a health maintenance organization, not later than the time allowed under federal law. [1991 c.761 §3]

Sec. 4. (1) The requirements of sections 1 to 4 of this 1991 Act are in addition to any requirements that may be imposed under federal law, but this 1991 Act shall be interpreted in a fashion consistent with the Patient Self-Determination Act, enacted by sections 4206 and 4751 of Public Law 101-508. Nothing in this 1991 Act requires any health care organization, or any employee or agent of a health care organization, to act in a manner inconsistent with federal law or contrary to individual religious or philosophical beliefs.

(2) No health care organization shall be subject to criminal prosecution or civil liability for failure to comply with this 1991 Act. [1991 c.761 §4]

PENALTIES

127.990 Penalties. (1) Violation of ORS 127.650 (1) is a Class A felony.

(2) Violation of ORS 127.650 (2) is a Class A misdemeanor.

(3) Failure to perform the duties prescribed in ORS 127.625 shall constitute unprofessional conduct for purposes of ORS 677.190. [Formerly part of 97.990]