CHAPTER 145B

LIVING WILL

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145B.01 CITATION.

This chapter may be cited as the "Minnesota Living Will Act."

History: *1989 c 3 s 1; 1991 c 148 s 1*

145B.011 APPLICATION OF CHAPTER.

This chapter applies only to living wills executed before August 1, 1998. If a document purporting to be a living will is executed on or after August 1, 1998, its legal sufficiency, interpretation, and enforcement must be determined under the provisions of chapter 145C in effect on the date of its execution.

History: *1998 c 399 s 2*

145B.02 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Living will.** "Living will" means a writing made according to section 145B.03.

Subd. 3. **Health care.** "Health care" means care, treatment, services, or procedures to maintain, diagnose, or treat an individual's physical condition when the individual is in a terminal condition.

Subd. 4. **Health care decision.** "Health care decision" means a decision to begin, continue, increase, limit, discontinue, or not begin any health care.

Subd. 5. **Health care facility.** "Health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58; a nursing home licensed to serve adults under section 144A.02; or a home care provider licensed under sections 144A.43 to 144A.47.

Subd. 6. **Health care provider.** "Health care provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care directly or through an arrangement with other health care providers.

Subd. 7. **HMO.** "HMO" means an organization licensed under sections 62D.01 to 62D.30.

Subd. 8. **Terminal condition.** "Terminal condition" means an incurable or irreversible condition for which the administration of medical treatment will serve only to prolong the dying process.

History: *1989 c 3 s 2; 1991 c 148 s 6; 2008 c 277 art 1 s 17*

145B.03 LIVING WILL.

Subdivision 1. **Scope.** A competent adult may make a living will of preferences or instructions regarding health care. These preferences or instructions may include, but are not limited to, consent to or refusal of any health care, treatment, service, procedure, or placement. A living will may include preferences or instructions regarding health care, the designation of a proxy to make health care decisions on behalf of the declarant, or both.

Subd. 2. **Requirements for executing a living will.** (a) A living will is effective only if it is signed by the declarant and two witnesses or a notary public.

(b) A living will must state:

(1) the declarant's preferences regarding whether the declarant wishes to receive or not receive artificial administration of nutrition and hydration; or

(2) that the declarant wishes the proxy, if any, to make decisions regarding the administering of artificially administered nutrition and hydration for the declarant if the declarant is unable to make health care decisions and the living will becomes operative. If the living will does not state the declarant's preferences regarding artificial administration of nutrition and hydration, the living will shall be enforceable as to all other preferences or instructions regarding health care, and a decision to administer, withhold, or withdraw nutrition and hydration artificially shall be made pursuant to section 145B.13. However, the mere existence of a living will or appointment of a proxy does not, by itself, create a presumption that the declarant wanted the withholding or withdrawing of artificially administered nutrition or hydration.

(c) The living will may be communicated to and then transcribed by one of the witnesses. If the declarant is physically unable to sign the document, one of the witnesses shall sign the document at the declarant's direction.

(d) Neither of the witnesses can be someone who is entitled to any part of the estate of the declarant under a will then existing or by operation of law. Neither of the witnesses nor the notary may be named as a proxy in the living will. Each witness shall substantially make the following declaration on the document:

"I certify that the declarant voluntarily signed this living will in my presence and that the declarant is personally known to me. I am not named as a proxy by the living will."

Subd. 3. **Guardian.** Except as otherwise provided in the living will, designation of a proxy is considered a nomination of a guardian for purposes of sections 524.5-101 to 524.5-502.

History: *1989 c 3 s 3; 1991 c 148 s 6; 2004 c 146 art 3 s 2*

145B.04 SUGGESTED FORM.

A living will executed after August 1, 1989, under this chapter must be substantially in the form in this section. Forms printed for public distribution must be substantially in the form in this section.

"Health Care Living Will

Notice:

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

(a) This document gives your health care providers or your designated proxy the power and guidance to make health care decisions according to your wishes when you are in a terminal condition and cannot do so. This document may include what kind of treatment you want or do not want and under what circumstances you want these decisions to be made. You may state where you want or do not want to receive any treatment.

(b) If you name a proxy in this document and that person agrees to serve as your proxy, that person has a duty to act consistently with your wishes. If the proxy does not know your wishes, the proxy has the duty to act in your best interests. If you do not name a proxy, your health care providers have a duty to act consistently with your instructions or tell you that they are unwilling to do so.

(c) This document will remain valid and in effect until and unless you amend or revoke it. Review this document periodically to make sure it continues to reflect your preferences. You may amend or revoke the living will at any time by notifying your health care providers.

(d) Your named proxy has the same right as you have to examine your medical records and to consent to their disclosure for purposes related to your health care or insurance unless you limit this right in this document.

(e) If there is anything in this document that you do not understand, you should ask for professional help to have it explained to you.

TO MY FAMILY, DOCTORS, AND ALL THOSE CONCERNED WITH MY CARE:

I, ..., born on ..... (birthdate), being an adult of sound mind, willfully and voluntarily make this statement as a directive to be followed if I am in a terminal condition and become unable to participate in decisions regarding my health care. I understand that my health care providers are legally bound to act consistently with my wishes, within the limits of reasonable medical practice and other applicable law. I also understand that I have the right to make medical and health care decisions for myself as long as I am able to do so and to revoke this living will at any time.

(1) The following are my feelings and wishes regarding my health care (you may state the circumstances under which this living will applies):

.....

.....

.....

.....

(2) I particularly want to have all appropriate health care that will help in the following ways (you may give instructions for care you do want):

.....

.....

.....

.....

(3) I particularly do not want the following (you may list specific treatment you do not want in certain circumstances):

.....

.....

(4) I particularly want to have the following kinds of life-sustaining treatment if I am diagnosed to have a terminal condition (you may list the specific types of life-sustaining treatment that you do want if you have a terminal condition):

.....

.....

.....

.....

(5) I particularly do not want the following kinds of life-sustaining treatment if I am diagnosed to have a terminal condition (you may list the specific types of life-sustaining treatment that you do not want if you have a terminal condition):

.....

.....

.....

.....

(6) I recognize that if I reject artificially administered sustenance, then I may die of dehydration or malnutrition rather than from my illness or injury. The following are my feelings and wishes regarding artificially administered sustenance should I have a terminal condition (you may indicate whether you wish to receive food and fluids given to you in some other way than by mouth if you have a terminal condition):

.....

.....

.....

.....

(7) Thoughts I feel are relevant to my instructions. (You may, but need not, give your religious beliefs, philosophy, or other personal values that you feel are important. You may also state preferences concerning the location of your care.)

.....

.....

.....

.....

(8) Proxy Designation. (If you wish, you may name someone to see that your wishes are carried out, but you do not have to do this. You may also name a proxy without including specific instructions regarding your care. If you name a proxy, you should discuss your wishes with that person.)

If I become unable to communicate my instructions, I designate the following person(s) to act on my behalf consistently with my instructions, if any, as stated in this document. Unless I write instructions that limit my proxy's authority, my proxy has full power and authority to make health care decisions for me. If a guardian is to be appointed for me, I nominate my proxy named in this document to act as my guardian.

Name: .....

Address: .....

Phone Number: .....

Relationship: (If any) .....

If the person I have named above refuses or is unable or unavailable to act on my behalf, or if I revoke that person's authority to act as my proxy, I authorize the following person to do so:

Name: .....

Address: .....

Phone Number: .....

Relationship: (If any) .....

I understand that I have the right to revoke the appointment of the persons named above to act on my behalf at any time by communicating that decision to the proxy or my health care provider.

(9) Organ Donation After Death. (If you wish, you may indicate whether you want to be an organ donor upon your death.) Initial the statement which expresses your wish:

..... In the event of my death, I would like to donate my organs. I understand that to become an organ donor, I must be declared brain dead. My organ function may be maintained artificially on a breathing machine, (i.e., artificial ventilation), so that my organs can be removed.

Limitations or special wishes: (If any).....

.....

.....

I understand that, upon my death, my next of kin may be asked permission for donation. Therefore, it is in my best interests to inform my next of kin about my decision ahead of time and ask them to honor my request.

I (have) (have not) agreed in another document or on another form to donate some or all of my organs when I die.

..... I do not wish to become an organ donor upon my death.

DATE: .....

SIGNED: .....

STATE OF .....

.....

COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ..... on this ..... day of ....., ...

.....

NOTARY PUBLIC

OR

(Sign and date here in the presence of two adult witnesses, neither of whom is entitled to any part of your estate under a will or by operation of law, and neither of whom is your proxy.)

I certify that the declarant voluntarily signed this living will in my presence and that the declarant is personally known to me. I am not named as a proxy by the living will, and to the best of my knowledge, I am not entitled to any part of the estate of the declarant under a will or by operation of law.

Witness ..... Address .....

Witness ..... Address .....

Reminder: Keep the signed original with your personal papers.

Give signed copies to your doctors, family, and proxy."

History: *1989 c 3 s 4; 1991 c 148 s 6; 1992 c 535 s 1; 1995 c 211 s 1; 1998 c 254 art 1 s 107; 2005 c 10 art 4 s 2*

145B.05 WHEN OPERATIVE.

A living will becomes operative when it is delivered to the declarant's physician or other health care provider. The physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice and other applicable law, or comply with the notice and transfer provisions of sections 145B.06 and 145B.07. The physician or health care provider shall continue to obtain the declarant's informed consent to all health care decisions if the declarant is capable of informed consent.

History: *1989 c 3 s 5; 1991 c 148 s 6*

145B.06 COMPLIANCE WITH LIVING WILL.

Subdivision 1. **By health care provider.** (a) A physician or other health care provider shall make the living will a part of the declarant's medical record. If the physician or other health care provider is unwilling at any time to comply with the living will, the physician or health care provider must promptly notify the declarant and document the notification in the declarant's medical record. After notification, if a competent

declarant fails to transfer to a different physician or provider, the physician or provider has no duty to transfer the patient.

(b) If a physician or other health care provider receives a living will from a competent declarant and does not advise the declarant of unwillingness to comply, and if the declarant then becomes incompetent or otherwise unable to seek transfer to a different physician or provider, the physician or other health care provider who is unwilling to comply with the living will shall promptly take all reasonable steps to transfer care of the declarant to a physician or other health care provider who is willing to comply with the living will.

Subd. 2. **By proxy.** A proxy designated to make health care decisions and who agrees to serve as proxy may make health care decisions on behalf of a declarant to the same extent that the declarant could make the decision, subject to limitations or conditions stated in the living will. In exercising this authority, the proxy shall act consistently with any desires the declarant expresses in the living will or otherwise makes known to the proxy. If the declarant's desires are unknown, the proxy shall act in the best interests of the declarant.

History: *1989 c 3 s 6; 1991 c 148 s 6*

145B.07 TRANSFER OF CARE.

If a living will is delivered to a physician or other health care provider who transfers care of patients to other health care providers, or if a living will is delivered to a health care provider, including a health care facility or HMO that delivers patient care through an arrangement with individual providers, the physician or other health care provider receiving a living will shall make reasonable efforts:

(1) to ensure that an agreement with the patient to comply with the living will will be honored by others who provide health care to that patient; or

(2) to identify and deliver the living will to the individual providers and facilitate the declarant's discussion with those individuals whose agreement to comply with the living will is required.

History: *1989 c 3 s 7; 1991 c 148 s 6*

145B.08 ACCESS TO MEDICAL INFORMATION BY PROXY.

Unless a living will under this chapter provides otherwise, a proxy has the same rights as the declarant to receive information regarding proposed health care, to receive and review medical records, and to consent to the disclosure of medical records for purposes related to the declarant's health care or insurance.

History: *1989 c 3 s 8; 1991 c 148 s 6*

145B.09 REVOCATION.

Subdivision 1. **General.** A living will under this chapter may be revoked in whole or in part at any time and in any manner by the declarant, without regard to the declarant's physical or mental condition. A revocation is effective when the declarant communicates it to the attending physician or other health care provider. The attending physician or other health care provider shall note the revocation as part of the declarant's medical record.

Subd. 2. **Effect of marriage dissolution or annulment on designation of proxy.** Unless a living will under this chapter expressly provides otherwise, if after executing a living will the declarant's marriage is

dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as a proxy to make health care decisions for the declarant.

History: *1989 c 3 s 9; 1991 c 148 s 6*

145B.10 [Repealed, 1993 c 312 s 17]

145B.105 PENALTIES.

Subdivision 1. **Gross misdemeanor offenses.** Whoever commits any of the following acts is guilty of a gross misdemeanor:

(1) willfully conceals, cancels, defaces, or obliterates a living will of a declarant without the consent of the declarant;

(2) willfully conceals or withholds personal knowledge of a revocation of a living will;

(3) falsifies or forges a living will or a revocation of a living will;

(4) coerces or fraudulently induces another to execute a living will; or

(5) requires or prohibits the execution of a living will as a condition for being insured for or receiving all or some health care services.

Subd. 2. **Felony offenses.** Whoever commits an act prohibited under subdivision 1 is guilty of a felony if the act results in bodily harm to the declarant or to the person who would have been a declarant but for the unlawful act.

History: *1993 c 312 s 1*

145B.11 EFFECT ON INSURANCE.

The making or effectuation of a living will under this chapter does not affect the sale, procurement, issuance, or validity of a policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity or the liability of the party issuing the policy or annuity contract.

History: *1989 c 3 s 11; 1991 c 148 s 6*

145B.12 WHAT IF THERE IS NO LIVING WILL OR PROXY?

Subdivision 1. **No presumption created.** If an individual has not executed or has revoked a living will under this chapter, a presumption is not created with respect to:

(1) the individual's intentions concerning the provision of health care; or

(2) the appropriate health care to be provided.

Subd. 2. **Nutrition or hydration.** Nothing in this chapter shall be construed to authorize or justify the withholding or withdrawal of artificially administered nutrition or hydration from any person who has not issued a living will or designated a proxy under this chapter.

History: *1989 c 3 s 12; 1991 c 148 s 6*

145B.13 REASONABLE MEDICAL PRACTICE REQUIRED.

In reliance on a patient's living will, a decision to administer, withhold, or withdraw medical treatment after the patient has been diagnosed by the attending physician, advanced practice registered nurse, or physician assistant to be in a terminal condition must always be based on reasonable medical practice, including:

(1) continuation of appropriate care to maintain the patient's comfort, hygiene, and human dignity and to alleviate pain;

(2) oral administration of food or water to a patient who accepts it, except for clearly documented medical reasons; and

(3) in the case of a living will of a patient that the attending physician, advanced practice registered nurse, or physician assistant knows is pregnant, the living will must not be given effect as long as it is possible that the fetus could develop to the point of live birth with continued application of life-sustaining treatment.

History: *1989 c 3 s 13; 1991 c 148 s 6; 2020 c 115 art 4 s 67; 2022 c 58 s 78*

145B.14 CERTAIN PRACTICES NOT CONDONED.

Nothing in this chapter may be construed to condone, authorize, or approve mercy killing, euthanasia, suicide, or assisted suicide.

History: *1989 c 3 s 14*

145B.15 RECOGNITION OF PREVIOUSLY EXECUTED LIVING WILL.

A living will that substantially complies with section 145B.03, but is made before August 1, 1989, is an effective living will under this chapter.

History: *1989 c 3 s 15; 1991 c 148 s 6*

145B.16 RECOGNITION OF DOCUMENT EXECUTED IN ANOTHER STATE.

A living will executed in another state is effective if it substantially complies with this chapter.

History: *1989 c 3 s 16; 1991 c 148 s 6*

145B.17 EXISTING RIGHTS.

Nothing in this chapter impairs or supersedes the existing rights of any patient or any other legal right or legal responsibility a person may have to begin, continue, withhold, or withdraw health care. Nothing in this chapter prohibits lawful treatment by spiritual means through prayer in lieu of medical or surgical treatment when treatment by spiritual means has been authorized by the declarant.

History: *1989 c 3 s 17*