Chapter 127

2003 EDITION

Powers of Attorney; Advance Directives for Health Care; Declarations for Mental Health Treatment; Death with Dignity

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POWERS OF ATTORNEY

127.005 When power of attorney in effect; 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 that otherwise limit the period of time of its effectiveness:

(a) The power of attorney shall remain in effect until the power is revoked by the principal;

(b) The powers of the attorney-in-fact or agent are unaffected by the passage of time; and

(c) 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.

(4) This section does not apply to powers of attorney for health care executed under ORS 127.505 to 127.660 and 127.995. [Formerly 126.407; 1993 c.767 §25; 2001 c.395 §4]

127.010 [Repealed by 1969 c.591 §305]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]

127.020 [Repealed by 1969 c.591 §305]

127.025 Authority under power of attorney recognizable regardless of date of execution. A person may not refuse to recognize the authority of an attorney-in-fact or agent under a power of attorney based solely on the passage of time since the power of attorney was executed. [2001 c.395 §1]

127.030 [Repealed by 1969 c.591 §305]

127.035 Limitations on liability of person reasonably relying on power of attorney. Any person who reasonably relies in good faith on the authority of an attorney-in-fact or agent under a power of attorney is not liable to any other person based on that reliance, and is not required to ensure that assets of the principal that are paid or delivered to the attorney-in-fact or agent are properly applied. Any person who has not received actual notice of revocation of a power of attorney is not liable to any other person by reason of relying on a power of attorney that has been revoked. [2001 c.395 §2]

127.040 [Repealed by 1969 c.591 §305]

127.045 Duty of attorney-in-fact or agent under power of attorney. Unless otherwise provided in the power of attorney document, an attorney-in-fact or agent must use the property of the principal for the benefit of the principal. [2001 c.395 §3]

127.050 [Repealed by 1969 c.591 §305]
127.060 [Repealed by 1969 c.591 §305]
127.070 [Repealed by 1969 c.591 §305]
127.080 [Repealed by 1969 c.591 §305]
127.090 [Repealed by 1969 c.591 §305]
127.100 [Repealed by 1969 c.591 §305]
127.110 [Repealed by 1969 c.591 §305]
127.120 [Repealed by 1969 c.591 §305]
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127.320 [Repealed by 1969 c.591 §305]
127.330 [Repealed by 1969 c.591 §305]
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127.350 [Repealed by 1969 c.591 §305]

ADVANCE DIRECTIVES FOR HEALTH CARE

(Definitions)

127.505 Definitions for ORS 127.505 to 127.660. As used in ORS 127.505 to 127.660 and 127.995:

(1) "Adult" means an individual who is 18 years of age or older, who has been adjudicated an emancipated minor or who is married.

(2) "Advance directive" means a document that contains a health care instruction or a power of attorney for health care.

(3) "Appointment" means a power of attorney for health care, letters of guardianship or a court order appointing a health care representative.

(4) "Artificially administered nutrition and hydration" means a medical intervention to provide food and water by tube, mechanical device or other medically assisted method. "Artificially administered nutrition and hydration" does not include the usual and typical provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand, bottle, drinking straw or eating utensil.

(5) "Attending physician" means the physician who has primary responsibility for the care and treatment of the principal.

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

(7) "Health care" means diagnosis, treatment or care of disease, injury and congenital or degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, maintenance, withdrawal or withholding of artificially administered nutrition and hydration.

(8) "Health care decision" means consent, refusal of consent or withholding or withdrawal of consent to health care, and includes decisions relating to admission to or discharge from a health care facility.

(9) "Health care facility" means a health care facility as defined in ORS 442.015, a domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

(10) "Health care instruction" or "instruction" means a document executed by a principal to indicate the principal's instructions regarding health care decisions.

(11) "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, and includes a health care facility.

(12) "Health care representative" means:

(a) An attorney-in-fact;

(b) A person who has authority to make health care decisions for a principal under the provisions of ORS 127.635 (2) or (3); or

(c) A guardian or other person, appointed by a court to make health care decisions for a principal.

(13) "Incapable" means that in the opinion of the court in a proceeding to appoint or confirm authority of a health care representative, or in the opinion of the principal's attending physician, a principal lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the principal's manner of communicating if those persons are available. "Capable" means not incapable.

(14) "Instrument" means an advance directive, acceptance, disqualification, withdrawal, court order, court appointment or other document governing health care decisions.

(15) "Life support" means life-sustaining procedures.

(16) "Life-sustaining procedure" means any medical procedure, pharmaceutical, medical device or medical intervention that maintains life by sustaining, restoring or supplanting a vital function. "Life-sustaining procedure" does not include routine care necessary to sustain patient cleanliness and comfort.

(17) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a second physician who has examined the patient and who has clinical privileges or expertise with respect to the condition to be confirmed.

(18) "Permanently unconscious" means completely lacking an awareness of self and external environment, with no reasonable possibility of a return to a conscious state, and that condition has been medically confirmed by a neurological specialist who is an expert in the examination of unresponsive individuals.

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

(20) "Power of attorney for health care" means a power of attorney document that authorizes an attorney-in-fact to make health

care decisions for the principal when the principal is incapable.

(21) "Principal" means:

(a) An adult who has executed an advance directive;

(b) A person of any age who has a health care representative;

(c) A person for whom a health care representative is sought; or

(d) A person being evaluated for capability who will have a health care representative if the person is determined to be incapable.

(22) "Terminal condition" means a health condition in which death is imminent irrespective of treatment, and where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death of the principal.

(23) "Tube feeding" means artificially administered nutrition and hydration. [1989 c.914 §1; 1991 c.470 §11; 1993 c.767 §1]

(Health Care Decisions Generally)

127.507 Capable adults may make own health care decisions. Capable adults may make their own health care decisions. [1993 c.767 §2]

(Formalities of Executing Advance Directive)

127.510 Designation of attorney-in-fact; execution of health care instruction; duration. (1) A capable adult may designate in writing a competent adult to serve as attorney-in-fact for health care. A capable adult may also designate a competent adult to serve as alternative attorney-in-fact if the original designee is unavailable, unable or unwilling to serve as attorney-in-fact at any time after the power of attorney for health care is executed. The power of attorney for health care is effective when it is signed, witnessed and accepted as required by ORS 127.505 to 127.660 and 127.995. The attorney-in-fact so appointed shall make health care decisions on behalf of the principal if the principal becomes incapable.

(2) A capable adult may execute a health care instruction. The instruction shall be effective when it is signed and witnessed as required by ORS 127.505 to 127.660 and 127.995.

(3) Unless the period of time that an advance directive is to be effective is limited by the terms of the advance directive, the advance directive shall continue in effect until:

(a) The principal dies; or

(b) The advance directive is revoked, suspended or superseded pursuant to ORS 127.545.

(4) Notwithstanding subsection (3) of this section, if the principal is incapable at the expiration of the term of the advance directive, the advance directive continues in effect until:

(a) The principal is no longer incapable;

(b) The principal dies; or

(c) The advance directive is revoked, suspended or superseded pursuant to the provisions of ORS 127.545.

(5) A health care provider shall make a copy of an advance directive and any other instrument a part of the principal's medical record when a copy of that instrument is provided to the principal's health care provider.

(6) Notwithstanding subsections (3) and (4) of this section, an anatomical gift, as defined in ORS 97.950, made on an advance directive is effective. [1989 c.914 §2; 1993 c.767 §3; 1995 c.717 §13]

127.515 Manner of executing advance directive; forms; witnesses; directives executed out of state. (1) An advance directive may be executed by a resident or nonresident adult of this state in the manner provided by ORS 127.505 to 127.660 and 127.995.

(2) A power of attorney for health care must be in the form provided by Part B of the advance directive form set forth in ORS 127.531, or must be in the form provided by ORS 127.530 (1991 Edition).

(3) A health care instruction must be in the form provided by Part C of the advance directive form set forth in ORS 127.531, or must be in the form provided by ORS 127.610 (1991 Edition).

(4) An advance directive must reflect the date of the principal's signature. To be valid, an advance directive must be witnessed by at least two adults as follows:

(a) Each witness shall witness either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the principal.

(b) Each witness shall make the written declaration as set forth in the form provided in ORS 127.531.

(c) One of the witnesses shall be a person who is not:

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

(B) A person who at the time the advance directive is signed would be entitled to any portion of the estate of the principal upon death under any will or by operation of law; or

(C) An owner, operator or employee of a health care facility where the principal is a patient or resident.

(d) The attorney-in-fact for health care or alternative attorney-in-fact may not be a witness. The principal's attending physician at the time the advance directive is signed may not be a witness.

(e) If the principal is a patient in a long term care facility at the time the advance directive is executed, one of the witnesses must be an individual designated by the facility and having any qualifications that may be specified by the Department of Human Services by rule.

(5) Notwithstanding subsections (2) to (4) of this section, an advance directive executed by an adult who at the time of execution resided in another state, in compliance with the formalities of execution required by the laws of that state, the laws of the state where the principal was located at the time of execution or the laws of this state, is validly executed for the purposes of ORS 127.505 to 127.660 and 127.995 and may be given effect in accordance with its provisions, subject to the laws of this state. [1989 c.914 §3; 1993 c.767 §4]

127.520 Persons not eligible to serve as attorney-in-fact; manner of disqualifying persons for service as attorney-in-fact. (1) Except as provided in ORS 127.635 or as may be allowed by court order, the following persons may not serve as health care representatives if unrelated to the principal by blood, marriage or adoption:

(a) The attending physician or an employee of the attending physician.

(b) An owner, operator or employee of a health care facility in which the principal is a patient or resident, unless the health care representative was appointed before the principal's admission to the facility.

(2) A capable adult may disqualify any other person from making health care decisions for the capable adult. The disqualification must be in writing and signed by the capable adult. The disqualification must specifically designate those persons who are disqualified.

(3) A health care representative whose authority has been revoked by a court is disqualified.

(4) A health care provider who has actual knowledge of a disqualification may not accept a health care decision from a disqualified individual.

(5) A person who has been disqualified from making health care decisions for a principal, and who is aware of that disqualification, may not make health care decisions for the principal. [1989 c.914 §4; 1993 c.767 §5]

127.525 Acceptance of appointment; withdrawal. For an appointment under a power of attorney for health care 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 imposes a duty on 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 health care provider. [1989 c.914 §5; 1993 c.767 §6]

(Form of Advance Directive)

127.530 [1989 c.914 §6; repealed by 1993 c.767 §7 (127.531 enacted in lieu of 127.530)]

127.531 Form of advance directive. (1) The form of an advance directive executed by an Oregon resident must be the same as the form set forth in this section to be valid. In any place in the form that requires the initials of the principal, any mark by the principal is effective to indicate the principal's intent.

(2) An advance directive shall be in the following form:

ADVANCE DIRECTIVE

YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE

This is an important legal document. It can control critical decisions about your health care. Before signing, consider these important facts:

Facts About Part B

(Appointing a Health Care Representative)

You have the right to name a person to direct your health care when you cannot do so. This person is called your "health care

representative." You can do this by using Part B of this form. Your representative must accept on Part E of this form.

You can write in this document any restrictions you want on how your representative will make decisions for you. Your representative must follow your desires as stated in this document or otherwise made known. If your desires are unknown, your representative must try to act in your best interest. Your representative can resign at any time.

Facts About Part C

(Giving Health Care Instructions)

You also have the right to give instructions for health care providers to follow if you become unable to direct your care. You can do this by using Part C of this form.

Facts About Completing This Form

This form is valid only if you sign it voluntarily and when you are of sound mind. If you do not want an advance directive, you do not have to sign this form.

Unless you have limited the duration of this advance directive, it will not expire. If you have set an expiration date, and you become unable to direct your health care before that date, this advance directive will not expire until you are able to make those decisions again.

You may revoke this document at any time. To do so, notify your representative and your health care provider of the revocation.

Despite this document, you have the right to decide your own health care as long as you are able to do so.

If there is anything in this document that you do not understand, ask a lawyer to explain it to you.

You may sign PART B, PART C, or both parts. You may cross out words that don't express your wishes or add words that better express your wishes. Witnesses must sign PART D.

Print your NAME, BIRTHDATE AND ADDRESS here:

_____

(Name)

_____

(Birthdate)

_____

_____

(Address)

Unless revoked or suspended, this advance directive will continue for:

INITIAL ONE:

___ My entire life

___ Other period (___ Years)

PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

I appoint _____ as my health care representative. My representative's address is _____ and telephone number is _____.

I appoint _____ as my alternate health care representative. My alternate's address is _____ and telephone number is _____.

I authorize my representative (or alternate) to direct my health care when I can't do so.

NOTE: You may not appoint your doctor, an employee of your doctor, or an owner, operator or employee of your health care facility, unless that person is related to you by blood, marriage or adoption or that person was appointed before your admission into the health care facility.

1. Limits. Special Conditions or Instructions:

_____

_____

_____

INITIAL IF THIS APPLIES:

___ I have executed a Health Care Instruction or Directive to Physicians. My representative is to honor it.

2. Life Support. "Life support" refers to any medical means for maintaining life, including procedures, devices and medications. If you refuse life support, you will still get routine measures to keep you clean and comfortable.

INITIAL IF THIS APPLIES:

___ My representative MAY decide about life support for me. (If you don't initial this space, then your representative MAY NOT decide about life support.)

3. Tube Feeding. One sort of life support is food and water supplied artificially by medical device, known as tube feeding.

INITIAL IF THIS APPLIES:

___ My representative MAY decide about tube feeding for me. (If you don't initial this space, then your representative MAY NOT decide about tube feeding.)

_____

(Date)

SIGN HERE TO APPOINT A HEALTH CARE REPRESENTATIVE

_____

(Signature of person making appointment)

PART C: HEALTH CARE INSTRUCTIONS

NOTE: In filling out these instructions, keep the following in mind:

- The term "as my physician recommends" means that you want your physician to try life support if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms.
- "Life support" and "tube feeding" are defined in Part B above.
- If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.
- You will get care for your comfort and cleanliness, no matter what choices you make.
- You may either give specific instructions by filling out Items 1 to 4 below, or you may use the general instruction provided by Item 5.

Here are my desires about my health care if my doctor and another knowledgeable doctor confirm that I am in a medical condition described below:

1. Close to Death. If I am close to death and life support would only postpone the moment of my death:

A. INITIAL ONE:

__ I want to receive tube feeding.

__ I want tube feeding only as my physician recommends.

__ I DO NOT WANT tube feeding.

B. INITIAL ONE:

__ I want any other life support that may apply.

__ I want life support only as my physician recommends.

__ I want NO life support.

2. Permanently Unconscious. If I am unconscious and it is very unlikely that I will ever become conscious again:

A. INITIAL ONE:

__ I want to receive tube feeding.

__ I want tube feeding only as my physician recommends.

__ I DO NOT WANT tube feeding.

B. INITIAL ONE:

__ I want any other life support that may apply.

__ I want life support only as my physician recommends.

__ I want NO life support.

3. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an advanced stage, and I am consistently and permanently unable to communicate by any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve:

A. INITIAL ONE:

__ I want to receive tube feeding.

__ I want tube feeding only as my physician recommends.

__ I DO NOT WANT tube feeding.

B. INITIAL ONE:

__ I want any other life support that may apply.

__ I want life support only as my physician recommends.

__ I want NO life support.

4. Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain:

A. INITIAL ONE:

__ I want to receive tube feeding.

__ I want tube feeding only as my physician recommends.

__ I DO NOT WANT tube feeding.

B. INITIAL ONE:

__ I want any other life support that may apply.

__ I want life support only as my physician recommends.

__ I want NO life support.

5. General Instruction.

INITIAL IF THIS APPLIES:

___ I do not want my life to be prolonged by life support. I also do not want tube feeding as life support. I want my doctors to allow me to die naturally if my doctor and another knowledgeable doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.

6. Additional Conditions or Instructions.

_____

_____

_____

(Insert description of what you want done.)

7. Other Documents. A "health care power of attorney" is any document you may have signed to appoint a representative to make health care decisions for you.

INITIAL ONE:

___ I have previously signed a health care power of attorney. I want it to remain in effect unless I appointed a health care representative after signing the health care power of attorney.

___ I have a health care power of attorney, and I REVOKE IT.

___ I DO NOT have a health care power of attorney.

_____

(Date)

SIGN HERE TO GIVE INSTRUCTIONS

_____

(Signature)

_____

PART D: DECLARATION OF WITNESSES

We declare that the person signing this advance directive:

(a) Is personally known to us or has provided proof of identity;

(b) Signed or acknowledged that person's signature on this advance directive in our presence;

(c) Appears to be of sound mind and not under duress, fraud or undue influence;

(d) Has not appointed either of us as health care representative or alternative representative; and

(e) Is not a patient for whom either of us is attending physician.

Witnessed By:

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

NOTE: One witness must not be a relative (by blood, marriage or adoption) of the person signing this advance directive. That witness must also not be entitled to any portion of the person's estate upon death. That witness must also not own, operate or be employed at a health care facility where the person is a patient or resident.

_____

PART E: ACCEPTANCE BY HEALTH CARE REPRESENTATIVE

I accept this appointment and agree to serve as health care representative. I understand I must act consistently with the desires of the person I represent, as expressed in this advance directive or otherwise made known to me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document allows me to decide about that person's health care only while that person cannot do so. I understand that the person who appointed me may revoke this appointment. If I learn that this document has been suspended or revoked, I will inform the person's current health care provider if known to me.

_____

(Signature of Health Care Representative/Date)

_____

(Printed name)

_____

(Signature of Alternate Health Care Representative/Date)

_____

(Printed name)

_____

[1993 c.767 §8 (enacted in lieu of 127.530)]

(Effect of Executing Advance Directive)

127.535 Authority of health care representative; duties; objection by principal. (1) The health care representative has all the authority over the principal's health care that the principal would have if not incapable, subject to the limitations of the appointment and ORS 127.540 and 127.580. A health care representative who is known to the health care provider 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. A health care representative has authority to make a health care decision for a principal only when the principal is incapable.

(2) A health care representative is not personally responsible for the cost of health care provided to the principal solely because the health care representative makes health care decisions for the principal.

(3) Except to the extent the right is limited by the appointment or any federal law, a health care representative for an incapable principal has the same right as the principal to receive information regarding the proposed health care, to receive and review medical records and to consent to the disclosure of medical records. The right of the health care representative to receive this information is not a waiver of any evidentiary privilege or any right to assert confidentiality with respect to others.

(4) In making health care decisions, the health care representative has a duty to act consistently with the desires of the principal as expressed in the principal's advance directive, or as otherwise made known by the principal to the health care representative at any time. If the principal's desires are unknown, the health care representative has a duty to act in what the health care representative in good faith believes to be the best interests of the principal.

(5) ORS 127.505 to 127.660 and 127.995 do not authorize a health care representative or health care provider to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hydration in any situation if the principal manifests an objection to the health care decision. If the principal objects to such a health care decision, the health care provider shall proceed as though the principal were capable for the purposes of the health care decision objected to.

(6) An instrument that would be a valid advance directive except that the instrument is not a form described in ORS 127.515, has expired, is not properly witnessed or otherwise fails to meet the formal requirements of ORS 127.505 to 127.660 and 127.995 shall constitute evidence of the patient's desires and interests. [1989 c.914 §7; 1993 c.767 §9]

127.540 Limitations on authority of health care representative. ORS 127.505 to 127.660 and 127.995 do not authorize an appointed health care representative to make a health care decision with respect to any of the following on behalf of the principal:

(1) Admission to or retention in a health care facility for care or treatment of mental illness.

(2) Convulsive treatment.

(3) Psychosurgery.

(4) Sterilization.

(5) Abortion.

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

(a) The appointed health care representative has been given authority to make decisions on withholding or withdrawing life-sustaining procedures; or

(b) The principal has been medically confirmed to be in one of the following conditions:

(A) A terminal condition.

(B) Permanently unconscious.

(C) A condition in which administration of life-sustaining procedures would not benefit the principal's medical condition and would cause permanent and severe pain.

(D) A progressive, debilitating illness that will be fatal and is in its advanced stages, and the principal is consistently and permanently unable to communicate, swallow food and water safely, care for the principal, and recognize the principal's family and other people, and there is no reasonable chance that the principal's underlying condition will improve.

(7) Withholding or withdrawing artificially administered nutrition and hydration, other than hyperalimentation, necessary to sustain life except as provided in ORS 127.580. [1989 c.914 §8; 1993 c.442 §18; 1993 c.767 §10]

(Provisions Generally Applicable to Advance Directives and Health Care Decisions)

127.545 Revocation of advance directive or health care decision; when revocation effective; effect of executing power of attorney for health care. (1) An advance directive or a health care decision by a health care representative may:

(a) If it involves the decision to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hydration, be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke; or

(b) Be revoked at any time and in any manner by a capable principal.

(2) Revocation is effective upon communication by the principal to the attending physician or health care provider, or to the health care representative. If the communication is to the health care representative, and the principal is incapable and is under the care of a health care provider known to the representative, the health care representative must promptly inform the attending

physician or health care provider of the revocation.

(3) Upon learning of the revocation, the health care provider or attending physician shall cause the revocation to be made a part of the principal's medical records.

(4) Execution of a valid power of attorney for health care revokes any prior power of attorney for health care. Unless the health care instruction provides otherwise, execution of a valid health care instruction revokes any prior health care instruction.

(5) Unless the advance directive provides otherwise, the directions as to health care decisions in a valid advance directive supersede:

(a) Any directions contained in a previous court appointment or advance directive; and

(b) Any prior inconsistent expression of desires with respect to health care decisions.

(6) Unless the power of attorney for health care provides otherwise, valid appointment of an attorney-in-fact for health care supersedes:

(a) Any power of a guardian or other person appointed by a court to make health care decisions for the protected person; and

(b) Any other prior appointment or designation of a health care representative.

(7) Unless the power of attorney for health care expressly provides otherwise, a power of attorney for health care is suspended:

(a) If both the attorney-in-fact and the alternative attorney-in-fact have withdrawn; or

(b) If the power of attorney names the principal's spouse as attorney-in-fact, a petition for dissolution or annulment of marriage is filed and the principal does not reaffirm the appointment in writing after the filing of the petition.

(8) If the principal has both a valid health care instruction and a valid power of attorney for health care, and the directions reflected in those documents are inconsistent, the document last executed governs to the extent of the inconsistency.

(9) Any reinstatement of an advance directive must be in writing. [1989 c.914 §9; 1993 c.571 §26a; 1993 c.767 §12]

127.550 Petition for judicial review of advance directives; scope of review; authority to file petition. (1) A health care decision made by an individual who is authorized to make the decision under ORS 127.505 to 127.660 and 127.995 is effective immediately and does not require judicial approval.

(2) A petition may be filed under ORS 127.505 to 127.660 and 127.995 for any one or more of the following purposes:

(a) Determining whether a principal is incapable.

(b) Determining whether an appointment of the health care representative or a health care instruction is valid or has been suspended, reinstated, revoked or terminated.

(c) Determining whether the acts or proposed acts of the health care representative breach any duty of the representative and whether those acts should be enjoined.

(d) Declaring that an individual is authorized to act as a health care representative.

(e) Disqualifying the health care representative upon a determination of the court that the health care representative has violated, failed to perform or is unable to perform the duties under ORS 127.535 (4).

(f) Approving any health care decision that by law requires court approval.

(g) Determining whether the acts or proposed acts of the health care representative are clearly inconsistent with the desires of the principal as made known to the health care representative, or where the desires of the principal are unknown or unclear, whether the acts or proposed acts of the health care representative are clearly contrary to the best interests of the principal.

(h) Declaring that a 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. A suspension or revocation of a power of attorney under this paragraph shall be in the discretion of the court.

(i) Considering any other matter that the court determines needs to be decided for the protection of the principal.

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

(a) The principal.

(b) The health care representative.

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

(d) An adult relative or adult friend of the principal who is familiar with the desires of the principal.

(e) The guardian of the principal.

(f) The conservator of the principal.

(g) The attending physician or health care provider of the principal.

(4) A petition under this section shall be filed in the circuit court in the county in which the principal resides or is located.

(5) Any of the determinations described in this section may be made by the court as a part of a protective proceeding under ORS chapter 125 if a guardian or temporary guardian has been appointed for the principal, or if the petition seeks the appointment of a guardian or a temporary guardian for the principal. [1989 c.914 §9a; 1993 c.767 §13; 2001 c.396 §2]

127.555 Designation of attending physician; liability of health care representative and health care provider. (1) If there is more than one physician caring for a principal, the principal shall designate one physician as the attending physician. If the principal is incapable, the health care representative for the principal shall designate the attending physician.

(2) Health care representatives, and persons who are acting under a reasonable belief that they are health care representatives, shall not be guilty of any criminal offense, or subject to civil liability, or in violation of any professional oath, affirmation or standard of care for any action taken in good faith as a health care representative.

(3) A health care provider acting or declining to act in reliance on the health care decision made in an advance directive, made by an attending physician under ORS 127.635 (3), or made by a person who the provider believes is the health care representative for an incapable principal, is not subject to criminal prosecution, civil liability or professional disciplinary action on the grounds that the health care decision is unauthorized unless the provider:

(a) Fails to satisfy a duty that ORS 127.505 to 127.660 and 127.995 places on the provider;

(b) Acts without medical confirmation as required under ORS 127.505 to 127.660 and 127.995;

(c) Knows or has reason to know that the requirements of ORS 127.505 to 127.660 and 127.995 have not been satisfied; or

(d) Acts after receiving notice that:

(A) The authority or decision on which the provider relied is revoked, suspended, superseded or subject to other legal infirmity;

(B) A court challenge to the health care decision or the authority relied on in making the health care decision is pending; or

(C) The health care representative has withdrawn or has been disqualified.

(4) The immunities provided by this section do not apply to:

(a) The manner of administering health care pursuant to a health care decision made by the health care representative or by a health care instruction; or

(b) The manner of determining the health condition or incapacity of the principal.

(5) A health care provider who determines that a principal is incapable is not subject to criminal prosecution, civil liability or professional disciplinary action for failing to follow that principal's direction except for a failure to follow a principal's manifestation of an objection to a health care decision under ORS 127.535 (5). [1989 c.914 §10; 1993 c.767 §14]

127.560 Provisions not exclusive; effect of provisions on civil and criminal liability of health care representative and provider. (1) Except as otherwise specifically provided, ORS 127.505 to 127.660 and 127.995 do not impair or supersede the laws of this state relating to:

(a) Any requirement of notice to others of proposed health care;

(b) The standard of care required of a health care provider in the administration of health care;

(c) Whether consent is required for health care;

(d) The elements of informed consent for health care under ORS 677.097 or other law;

(e) The provision of health care in an emergency;

(f) Any right a capable person may have to consent or withhold consent to health care administered in good faith pursuant to religious tenets of the individual requiring health care;

(g) Delegation of authority by a health care representative;

(h) Any legal right or responsibility any person may have to effect the withholding or withdrawal of life-sustaining procedures including artificially administered nutrition and hydration in any lawful manner;

(i) Guardianship or conservatorship proceedings; or

(j) Any right persons may otherwise have to make their own health care decisions, or to make health care decisions for another.

(2) The provisions of ORS 127.505 to 127.660 and 127.995 do not in themselves impose civil or criminal liability on a health care representative or health care provider who withholds or withdraws or directs the withholding or withdrawal of life-sustaining procedures or artificially administered nutrition and hydration when a principal is in a health condition other than those conditions described in ORS 127.540 (6)(b), 127.580 or 127.635 (1). The provisions of ORS 127.505 to 127.660 and 127.995 do not abolish or limit the civil or criminal liability of a health care

representative under other statutory or common law if the health care representative withholds or withdraws or directs the withholding or withdrawal of life-sustaining procedures or artificially administered nutrition and hydration when a principal is in a health condition other than those conditions described in ORS 127.540 (6)(b), 127.580 or 127.635 (1). [1989 c.914 §11; 1993 c.767 §15]

127.565 Independent medical judgment of provider; effect of advance directive on insurance. (1) In following a health care instruction or the decision of a health care representative, 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 an advance directive as a criterion for insurance. No health care provider shall condition the provision of health care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(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 127.660 and 127.995. No person shall be discriminated against in premium or contract rates because of the existence or absence of an advance directive or appointment of a health care representative.

(4) Nothing in ORS 127.505 to 127.660 and 127.995 is intended to impair or supersede any conflicting federal statute. [1989 c.914 §12; 1993 c.767 §16]

127.570 Mercy killing; suicide. (1) Nothing in ORS 127.505 to 127.660 and 127.995 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, a health care representative may not consider an attempted suicide by the principal as any indication of the principal's wishes with regard to health care.

(2) The withholding or withdrawing of a life-sustaining procedure or of artificially administered nutrition and hydration in accordance with the provisions of ORS 127.505 to 127.660 and 127.995 does not, for any purpose, constitute a suicide, assisting a suicide, mercy killing or assisted homicide. [1989 c.914 §14; 1993 c.767 §17]

127.575 Instrument presumed valid. A health care provider has no duty to give effect to any instrument unless the provider has received a copy of the instrument. Health care providers are entitled to assume the validity and enforceability of an advance directive if the directive on its face is in compliance with ORS 127.505 to 127.660 and 127.995, and the provider has not been given notice of a suspension, reinstatement, revocation, superseding document, disqualification, withdrawal, dispute or other legal infirmity raising a question as to the validity or enforceability of the directive. Health care providers are entitled to assume the validity and enforceability of any other instrument if the provider has not been given notice of a suspension, reinstatement, revocation, superseding document, disqualification, withdrawal, dispute or other legal infirmity raising a question as to the validity or enforceability of the instrument. [1989 c.914 §15; 1993 c.767 §18]

127.580 Presumption of consent to artificially administered nutrition and hydration; exceptions. (1) It shall be presumed that every person who is temporarily or permanently incapable has consented to artificially administered nutrition and hydration, other than hyperalimentation, that are necessary to sustain life except in one or more of the following circumstances:

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

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

(c) The person has an appointed health care representative who has been given authority to make decisions on the use, maintenance, withholding or withdrawing of artificially administered nutrition and hydration.

(d) The person does not have an appointed health care representative or an advance directive that clearly states that the person did not want artificially administered nutrition and hydration, and the person is permanently unconscious.

(e) The person does not have an appointed health care representative or an advance directive that clearly states that the person did not want artificially administered nutrition and hydration, the person is incapable, and the person has a terminal condition.

(f) The person has a progressive illness that will be fatal and is in an advanced stage, the person is consistently and permanently unable to communicate by any means, swallow food and water safely, care for the person's self and recognize the person's family and other people, and it is very unlikely

that the person's condition will substantially improve.

(2) If a person does not have an appointed health care representative or an advance directive that clearly states that the person did not want artificially administered nutrition and hydration, but the presumption established by this section has been overcome under the provisions of subsection (1)(a), (b), (d), (e) or (f) of this section, artificially administered nutrition and hydration may be withheld or withdrawn under the provisions of ORS 127.635 (2), (3) and (4).

(3) The medical conditions specified in subsection (1)(b), (d), (e) and (f) of this section must be medically confirmed to overcome the presumption established by subsection (1) of this section. [1989 c.914 §16; 1993 c.767 §18a]

127.585 [1989 c.914 §13; 1993 c.767 §19; renumbered 127.995 in 1993]

127.605 [Formerly 97.050; 1991 c.470 §12; repealed by 1993 c.767 §29]

127.610 [Formerly 97.055; repealed by 1993 c.767 §29]

127.615 [Formerly 97.060; repealed by 1993 c.767 §29]

127.620 [Formerly 97.065; repealed by 1993 c.767 §29]

127.625 Providers under no duty to participate in withdrawal or withholding of certain health care; duty of provider who is unwilling to participate. (1) No health care provider 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 or of artificially administered nutrition or hydration.

(2) If a health care provider is unable or unwilling to carry out a health care instruction or the decisions of the health care representative, the following provisions apply:

(a) The health care provider shall promptly notify the health care representative, if there is a health care representative;

(b) If the authority or decision of the health care representative is in dispute, the health care representative or provider may seek the guidance of the court in the manner provided in ORS 127.550;

(c) If the representative's authority or decision is not in dispute, the representative shall make a reasonable effort to transfer the principal to the care of another physician or health care provider; and

(d) If there is no health care representative for an incapable patient, and the health care decisions are not in dispute, the health care provider shall, without abandoning the patient, either discharge the patient or make a reasonable effort to locate a different health care provider and authorize the transfer of the patient to that provider. [Formerly 97.070; 1993 c.767 §20]

127.630 [Formerly 97.080; repealed by 1993 c.767 §29]

127.635 Withdrawal of life-sustaining procedures; conditions; selection of health care representative in certain cases; required consultation. (1) Life-sustaining procedures as defined in ORS 127.505 which would otherwise be applied to an incapable principal who does not have an appointed health care representative or applicable valid advance directive may be withheld or withdrawn in accordance with subsections (2) and (3) of this section if the principal has been medically confirmed to be in one of the following conditions:

(a) A terminal condition;

(b) Permanently unconscious;

(c) A condition in which administration of life-sustaining procedures would not benefit the principal's medical condition and would cause permanent and severe pain; or

(d) The person has a progressive illness that will be fatal and is in an advanced stage, the person is consistently and permanently unable to communicate by any means, swallow food and water safely, care for the person's self and recognize the person's family and other people, and it is very unlikely that the person's condition will substantially improve.

(2) If a principal's condition has been determined to meet one of the conditions set forth in subsection (1) of this section, and the principal does not have an appointed health care representative or applicable advance directive, the principal's health care representative shall be the first of the following, in the following order, who can be located upon reasonable effort by the health care facility and who is willing to serve as the health care representative:

(a) A guardian of the principal who is authorized to make health care decisions, if any;

(b) The principal's spouse;

(c) An adult designated by the others listed in this subsection who can be so located, if no person listed in this subsection objects to the designation;

(d) A majority of the adult children of the principal who can be so located;

(e) Either parent of the principal;

(f) A majority of the adult siblings of the principal who can be located with reasonable effort; or

(g) Any adult relative or adult friend.

(3) If none of the persons described in subsection (2) of this section is available, then life-sustaining procedures may be with-

held or withdrawn upon the direction and under the supervision of the attending physician.

(4) Life-sustaining procedures may be withheld or withdrawn upon the direction and under the supervision of the attending physician at the request of a person designated the health care representative under subsections (2) and (3) of this section only after the person has consulted with concerned family and close friends, and if the principal has a case manager, as defined by rules adopted by the Department of Human Services, after giving notice to the principal's case manager. [Formerly 97.083; 1993 c.767 §21]

127.640 Physician to determine that conditions met before withdrawing or withholding certain health care. Before withholding or withdrawing life-sustaining procedures or artificially administered nutrition and hydration under the provisions of ORS 127.540, 127.580 or 127.635, the attending physician shall determine that the conditions of ORS 127.540, 127.580 and 127.635 have been met. [Formerly 97.084; 1993 c.767 §22]

127.642 Principal to be provided with certain care to insure comfort and cleanliness. Individuals caring for a principal from whom life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide care to insure comfort and cleanliness, including but not limited to the following:

(1) Oral and body hygiene.

(2) Reasonable efforts to offer food and fluids orally.

(3) Medication, positioning, warmth, appropriate lighting and other measures to relieve pain and suffering.

(4) Privacy and respect for the dignity and humanity of the principal. [1993 c.767 §11]

127.645 [Formerly 97.085; repealed by 1993 c.767 §29]

(Requirements Imposed on Health Care Organizations Relating to Rights of Individuals to Make Health Care Decisions)

127.646 Definitions for ORS 127.646 to 127.654. As used in ORS 127.646 to 127.654:

(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 the meaning given that term 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 the meaning given that term in ORS 443.005.

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

(5) "Hospital" has the meaning given that term in ORS 442.015 (19), except that "hospital" does not include a special inpatient care facility.

(6) "Long term care facility" has the meaning given that term in ORS 442.015, except that "long term care facility" does not include an intermediate care facility for individuals with mental retardation. [1991 c.761 §1; 2001 c.104 §38]

127.649 Health care organizations required to have written policies and procedures on providing information on patient's right to make health care decisions. (1) Subject to the provisions of ORS 127.652 and 127.654, all health care organizations shall maintain written policies and procedures, applicable to all capable adults who are receiving health care by or through the health care organization, that provide for:

(a) 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 advance directives;

(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 advance directive set forth in ORS 127.531, along with a disclaimer on the first line of the first page of each form in at least 16-point boldfaced 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 advance directives.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed an advance directive.

(c) Ensuring compliance by the health care organization with Oregon law relating to advance directives.

(d) Educating the staff and the community on issues relating to advance directives.

(2) A health care organization need not furnish a copy of an advance directive to an individual if the health care organization has reason to believe that the individual has received a copy of an advance directive in the

form set forth in ORS 127.531 within the preceding 12-month period or has previously executed an advance directive. [1991 c.761 §2; 1993 c.767 §26]

127.650 [Formerly 97.090; repealed by 1993 c.767 §29]

127.652 Time of providing information. The written information described in ORS 127.649 (1) 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]

127.654 Scope of requirement; limitation on liability for failure to comply. (1) The requirements of ORS 127.646 to 127.654 are in addition to any requirements that may be imposed under federal law, but ORS 127.646 to 127.654 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 ORS 127.646 to 127.654 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 ORS 127.646 to 127.654. [1991 c.761 §4]

(Previously Executed Advance Directives)

127.658 Effect of ORS 127.505 to 127.660 on previously executed advance directives. (1) ORS 127.505 to 127.660 and 127.995 do not impair or supersede any power of attorney for health care, directive to physicians or health care instruction in effect before November 4, 1993.

(2) Any power of attorney for health care or directive to physicians executed before November 4, 1993, shall be governed by the provisions of ORS 127.505 to 127.660 and 127.995, except that:

(a) The directive to physicians or power of attorney for health care shall be valid if it complies with the provisions of either ORS 127.505 to 127.660 and 127.995 or the statutes in effect as of the date of execution;

(b) The terms in a directive to physicians in the form prescribed by ORS 127.610 (1991 Edition) or predecessor statute have those meanings given in ORS 127.605 (1991 Edition) or predecessor statute in effect at the time of execution; and

(c) The terms in a power of attorney for health care in the form prescribed by ORS 127.530 (1991 Edition) have those meanings given in ORS 127.505 in effect at the time of execution.

(3) A health care organization, as defined in ORS 127.646, that on November 4, 1993, has printed materials with the information and forms which were required by ORS 127.649, prior to November 4, 1993, may use such printed materials until December 1, 1993. [1993 c.767 §23]

(Short Title)

127.660 Short title. ORS 127.505 to 127.660 and 127.995 may be cited as the Oregon Health Care Decisions Act. [1993 c.767 §24]

DECLARATIONS FOR MENTAL HEALTH TREATMENT

127.700 Definitions for ORS 127.700 to 127.737. As used in ORS 127.700 to 127.737:

(1) "Attending physician" shall have the same meaning as provided in ORS 127.505.

(2) "Attorney-in-fact" means an adult validly appointed under ORS 127.540, 127.700 to 127.737 and 426.385 to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative attorney-in-fact.

(3) "Declaration" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Health care facility" shall have the same meaning as provided in ORS 127.505.

(5) "Incapable" means that, in the opinion of the court in a protective proceeding under ORS chapter 125, or the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(6) "Mental health treatment" means convulsive treatment, treatment of mental illness with psychoactive medication, admission to and retention in a health care facility for a period not to exceed 17 days for care or treatment of mental illness, and outpatient services.

(7) "Outpatient services" means treatment for a mental or emotional disorder that is obtained by appointment and is provided

by an outpatient service as defined in ORS 430.010.

(8) "Provider" means a mental health treatment provider.

(9) "Representative" means "attorney-in-fact" as defined in this section. [1993 c.442 §1; 1995 c.664 §88; 1997 c.563 §1; 1999 c.83 §1; 2001 c.104 §39]

127.702 Persons who may make declaration for mental health treatment; period of validity. (1) An adult of sound mind may make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

(2) A declaration for mental health treatment continues in effect for a period of three years or until revoked. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the declaration continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn. If a declaration for mental health treatment has been invoked and is in effect at the expiration of three years after its execution, the declaration remains effective until the principal is no longer incapable. [1993 c.442 §2]

127.703 Required policies regarding mental health treatment rights information; declarations for mental health treatment. (1) All health care and mental health care organizations shall maintain written policies and procedures, applicable to all capable adults who are receiving mental health treatment by or through the organization, that provide for:

(a) 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 mental health treatment decisions, including the right to accept or refuse mental health treatment and the right to execute declarations for mental health treatment;

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

(C) A copy of the declaration for mental health treatment set forth in ORS 127.736; and

(D) The name of a person who can provide additional information concerning the forms for declarations for mental health treatment.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed a declaration for mental health treatment.

(c) Ensuring compliance by the organization with Oregon law relating to declarations for mental health treatment.

(d) Educating the staff and the community on issues relating to declarations for mental health treatment.

(2) An organization need not furnish a copy of a declaration for mental health treatment to an individual if the organization has reason to believe that the individual has received a copy of a declaration in the form set forth in ORS 127.736 within the preceding 12-month period or has a validly executed declaration.

(3) The requirements of this section are in addition to any requirements that may be imposed under federal law and shall be interpreted in a manner consistent with federal law. Nothing in this section requires any health care or mental health care organization, or any employee or agent of an organization, to act in a manner inconsistent with federal law or contrary to individual religious or philosophical beliefs.

(4) No health care or mental health care organization shall be subject to criminal prosecution or civil liability for failure to comply with this section.

(5) For purposes of this section, "health care or mental health care organization" means a health care organization as defined in ORS 127.646 or a community mental health program or facility that provides mental health services. [1997 c.563 §5]

127.705 Designation of attorney-in-fact for decisions about mental health treatment. A declaration may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions must be consistent with any desires the principal has expressed in the declaration. [1993 c.442 §3]

127.707 Execution of declaration; witnesses. A declaration is effective only if it is signed by the principal and two competent adult witnesses. The witnesses must attest that the principal is known to them, signed the declaration in their presence and appears to be of sound mind and not under duress, fraud or undue influence. Persons specified in ORS 127.730 may not act as witnesses. [1993 c.442 §4]

127.710 Operation of declaration; physician or provider to act in accordance with declaration. A declaration becomes operative when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an operative declaration when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal. [1993 c.442 §5]

127.712 Scope of authority of attorney-in-fact; powers and duties; limitation on liability. (1) The attorney-in-fact does not have authority to make mental health treatment decisions unless the principal is incapable.

(2) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(3) Except to the extent the right is limited by the declaration or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(4) In exercising authority under the declaration, the attorney-in-fact has a duty to act consistently with the desires of the principal as expressed in the declaration. If the principal's desires are not expressed in the declaration and not otherwise known by the attorney-in-fact, 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) An attorney-in-fact is not subject to criminal prosecution, civil liability or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment. [1993 c.442 §6]

127.715 Prohibitions against requiring person to execute or refrain from executing declaration. A person shall not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services or as a condition of discharge from a health care facility. [1993 c.442 §7]

127.717 Declaration to be made part of medical record; physician or provider to comply with declaration; withdrawal of physician or provider. Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the principal's medical record. When acting under authority of a declaration, a physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested and applicable law. If the physician or other provider is unable or unwilling at any time to carry out preferences or instructions contained in a declaration or the decisions of the attorney-in-fact, the physician or provider may withdraw from providing treatment if withdrawal is consistent with the exercise of independent medical judgment that is in the best interest of the principal. Upon withdrawing, a physician or provider shall promptly notify the principal and the attorney-in-fact and document the notification in the principal's medical record. [1993 c.442 §8; 1999 c.83 §2]

127.720 Circumstances in which physician or provider may disregard declaration. (1) The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(a) If the principal is committed to the Department of Human Services pursuant to ORS 426.005 to 426.390 and treatment is authorized in compliance with ORS 426.385 (3) and administrative rule; or

(b) In cases of emergency endangering life or health.

(2) A declaration does not limit any authority provided in ORS 426.005 to 426.390 either to take a person into custody, or to admit, retain or treat a person in a health care facility. [1993 c.442 §9; 1995 c.141 §2]

127.722 Revocation of declaration. A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. [1993 c.442 §10]

127.725 Limitations on liability of physician or provider. A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of a declaration's invalidity. [1993 c.442 §11]

127.727 Persons prohibited from serving as attorney-in-fact. None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider or employee is unrelated to the principal by blood, marriage or adoption.

(2) An owner, operator or employee of a health care facility in which the principal is a patient or resident, if the owner, operator or employee is unrelated to the principal by blood, marriage or adoption. [1993 c.442 §12]

127.730 Persons prohibited from serving as witnesses to declaration. None of the following may serve as a witness to the signing of a declaration:

(1) The attending physician or mental health service provider or a relative of the physician or provider;

(2) An owner, operator or relative of an owner or operator of a health care facility in which the principal is a patient or resident; or

(3) A person related to the principal by blood, marriage or adoption. [1993 c.442 §13]

127.732 Withdrawal of attorney-in-fact; rescission of withdrawal. (1) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.

(2) A person who has withdrawn under the provisions of subsection (1) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance must be in the same form as provided by ORS 127.736 for accepting an appointment. A person who rescinds a withdrawal must give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable. [1993 c.442 §14]

127.735 [1993 c.442 §15; repealed by 1997 c.563 §2 (127.736 enacted in lieu of 127.735)]

127.736 Form of declaration. A declaration for mental health treatment shall be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment. I want this declaration to be followed if a court or two physicians determine that I am unable to make decisions for myself because my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means treatment of mental illness with psychoactive medication, admission to and retention in a health care facility for a period up to 17 days, convulsive treatment and outpatient services that are specified in this declaration.

CHOICE OF DECISION MAKER

If I become incapable of giving or withholding informed consent for mental health treatment, I want these decisions to be made by: (INITIAL ONLY ONE)

___ My appointed representative consistent with my desires, or, if my desires are unknown by my representative, in what my representative believes to be my best interests.

___ By the mental health treatment provider who requires my consent in order to treat me, but only as specifically authorized in this declaration.

APPOINTED REPRESENTATIVE

If I have chosen to appoint a representative to make mental health treatment decisions for me when I am incapable, I am naming that person here. I may also name an alternate representative to serve. Each person I appoint must accept my appointment in order to serve. I understand that I am not required to appoint a representative in order to complete this declaration.

I hereby appoint:

NAME _____

ADDRESS _____

TELEPHONE # _____ to act as my representative to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

(OPTIONAL)

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

NAME _____

ADDRESS _____

TELEPHONE # _____

My representative is authorized to make decisions that are consistent with the wishes I have expressed in this declaration or, if not expressed, as are otherwise known to my representative. If my desires are not ex-

pressed and are not otherwise known by my representative, my representative is to act in what he or she believes to be my best interests. My representative is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment.

_____

DIRECTIONS FOR
MENTAL HEALTH TREATMENT

This declaration permits me to state my wishes regarding mental health treatments including psychoactive medications, admission to and retention in a health care facility for mental health treatment for a period not to exceed 17 days, convulsive treatment and outpatient services.

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes are: I CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENTS: (May include types and dosage of medications, short-term inpatient treatment, a preferred provider or facility, transport to a provider or facility, convulsive treatment or alternative outpatient treatments.)

_____

_____

_____

_____

_____

_____

_____

I DO NOT CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENT: (Consider including your reasons, such as past adverse reaction, allergies or misdiagnosis. Be aware that a person may be treated without consent if the person is held pursuant to civil commitment law.)

_____

_____

_____

_____

_____

_____

ADDITIONAL INFORMATION ABOUT MY MENTAL HEALTH TREATMENT NEEDS: (Consider including mental or physical health history, dietary requirements, religious concerns, people to notify and other matters of importance.)

_____

_____

_____

_____

_____

_____

_____

YOU MUST SIGN HERE FOR THIS DECLARATION TO BE EFFECTIVE:

_____

(Signature/Date)

AFFIRMATION OF WITNESSES

I affirm that the person signing this declaration:

(a) Is personally known to me;

(b) Signed or acknowledged his or her signature on this declaration in my presence;

(c) Appears to be of sound mind and not under duress, fraud or undue influence;

(d) Is not related to me by blood, marriage or adoption;

(e) Is not a patient or resident in a facility that I or my relative owns or operates;

(f) Is not my patient and does not receive mental health services from me or my relative; and

(g) Has not appointed me as a representative in this document.

Witnessed by:

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

ACCEPTANCE OF APPOINTMENT
AS REPRESENTATIVE

I accept this appointment and agree to serve as representative to make mental health treatment decisions. I understand that I must act consistently with the desires of the person I represent, as expressed in this

declaration or, if not expressed, as otherwise known by me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document gives me authority to make decisions about mental health treatment only while that person has been determined to be incapable of making those decisions by a court or two physicians. I understand that the person who appointed me may revoke this declaration in whole or in part by communicating the revocation to the attending physician or other provider when the person is not incapable.

(Signature of Representative/Date)	(Printed name)
(Signature of Alternate Representative/Date)	(Printed name)

NOTICE TO PERSON
MAKING A DECLARATION FOR
MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (not to exceed 17 days) admission to a treatment facility, convulsive treatment and outpatient services. Outpatient services are mental health services provided by appointment by licensed professionals and programs. The instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held pursuant to civil commitment law.

You may also appoint a person as your representative to make treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, as otherwise known by the representative. If your representative does not know your desires, he or she must make decisions in your best interests. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your representative at any time. A "representative" is also referred to as an "attorney-in-fact" in state law but this person does not need to be an attorney at law.

This document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is communicated to your attending physician or other provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid 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.

NOTICE TO PHYSICIAN OR PROVIDER

Under Oregon law, a person may use this declaration to provide consent for mental health treatment or to appoint a representative to make mental health treatment decisions when the person is incapable of making those decisions. A person is "incapable" when, in the opinion of a court or two physicians, the person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions. This document becomes operative when it is delivered to the person's physician or other provider and remains valid until revoked or expired. Upon being presented with this declaration, a physician or provider must make it a part of the person's medical record. When acting under authority of the declaration, a physician or provider must comply with it to the fullest extent possible. If the physician or provider is unwilling to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with professional judgment and must promptly notify the person and the person's representative and document the notification in the person's medical record. A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of this declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of the declaration's invalidity.

[1997 c.563 §3 (enacted in lieu of 127.735)]

127.737 Certain other laws applicable to declaration. (1) ORS 127.525, 127.550, 127.565, 127.570, 127.575 and 127.995 apply to a declaration for mental health treatment.

(2) For purposes of this section only, a declaration shall be considered a power of attorney for health care, without regard to whether the declaration appoints an attorney-in-fact. [1993 c.442 §17]

THE OREGON DEATH WITH DIGNITY ACT

(General Provisions)

(Section 1)

Note: The division headings, subdivision headings and leadlines for 127.800 to 127.890, 127.895 and 127.897 were enacted as part of Ballot Measure 16 (1994) and were not provided by Legislative Counsel.

127.800 §1.01. Definitions. The following words and phrases, whenever used in ORS 127.800 to 127.897, have the following meanings:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(11) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the requirements of ORS 127.800 to 127.897 in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

(12) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [1995 c.3 §1.01; 1999 c.423 §1]

(Written Request for Medication to End One's Life in a Humane and Dignified Manner)

(Section 2)

127.805 §2.01. Who may initiate a written request for medication. (1) An adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.

(2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age or disability. [1995 c.3 §2.01; 1999 c.423 §2]

127.810 §2.02. Form of the written request. (1) A valid request for medication under ORS 127.800 to 127.897 shall be in substantially the form described in ORS 127.897, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the

best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

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

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Services by rule. [1995 c.3 §2.02]

(Safeguards)

(Section 3)

127.815 §3.01. Attending physician responsibilities. (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;

(b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking the medication to be prescribed;

(D) The probable result of taking the medication to be prescribed; and

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;

(e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to ORS 127.800 to 127.897 and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to ORS 127.840;

(i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to 127.897, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of ORS 127.855;

(k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(L)(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is registered as a dispensing physician with the Board of Medical Examiners, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or

(B) With the patient's written consent:

(i) Contact a pharmacist and inform the pharmacist of the prescription; and

(ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient.

(2) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate. [1995 c.3 §3.01; 1999 c.423 §3]

127.820 §3.02. Consulting physician confirmation. Before a patient is qualified under ORS 127.800 to 127.897, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision. [1995 c.3 §3.02]

127.825 §3.03. Counseling referral. If in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person

performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. [1995 c.3 §3.03; 1999 c.423 §4]

127.830 §3.04. Informed decision. No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision as defined in ORS 127.800 (7). Immediately prior to writing a prescription for medication under ORS 127.800 to 127.897, the attending physician shall verify that the patient is making an informed decision. [1995 c.3 §3.04]

127.835 §3.05. Family notification. The attending physician shall recommend that the patient notify the next of kin of his or her request for medication pursuant to ORS 127.800 to 127.897. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [1995 c.3 §3.05; 1999 c.423 §6]

127.840 §3.06. Written and oral requests. In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician no less than fifteen (15) days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an opportunity to rescind the request. [1995 c.3 §3.06]

127.845 §3.07. Right to rescind request. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under ORS 127.800 to 127.897 may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [1995 c.3 §3.07]

127.850 §3.08. Waiting periods. No less than fifteen (15) days shall elapse between the patient's initial oral request and the writing of a prescription under ORS 127.800 to 127.897. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under ORS 127.800 to 127.897. [1995 c.3 §3.08]

127.855 §3.09. Medical record documentation requirements. The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, determination that the patient is capable, acting voluntarily and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is capable, acting voluntarily and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request pursuant to ORS 127.840; and

(7) A note by the attending physician indicating that all requirements under ORS 127.800 to 127.897 have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [1995 c.3 §3.09]

127.860 §3.10. Residency requirement. Only requests made by Oregon residents under ORS 127.800 to 127.897 shall be granted. Factors demonstrating Oregon residency include but are not limited to:

(1) Possession of an Oregon driver license;

(2) Registration to vote in Oregon;

(3) Evidence that the person owns or leases property in Oregon; or

(4) Filing of an Oregon tax return for the most recent tax year. [1995 c.3 §3.10; 1999 c.423 §8]

127.865 §3.11. Reporting requirements. (1)(a) The Department of Human Services shall annually review a sample of records maintained pursuant to ORS 127.800 to 127.897.

(b) The department shall require any health care provider upon dispensing medication pursuant to ORS 127.800 to 127.897 to file a copy of the dispensing record with the department.

(2) The department shall make rules to facilitate the collection of information regarding compliance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(3) The department shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [1995 c.3 §3.11; 1999 c.423 §9; 2001 c.104 §40]

127.870 §3.12. Effect on construction of wills, contracts and statutes. (1) No provision in a contract, will or other agreement, whether written or oral, to the extent

the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid.

(2) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [1995 c.3 §3.12]

127.875 §3.13. Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy. [1995 c.3 §3.13]

127.880 §3.14. Construction of Act. Nothing in ORS 127.800 to 127.897 shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with ORS 127.800 to 127.897 shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. [1995 c.3 §3.14]

(Immunities and Liabilities)

(Section 4)

127.885 §4.01. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. Except as provided in ORS 127.890:

(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with ORS 127.800 to 127.897. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

(2) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with ORS 127.800 to 127.897.

(3) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of ORS 127.800 to 127.897 shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under ORS 127.800 to 127.897, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in ORS 127.800 to 127.897 on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in ORS 127.800 to 127.897. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in ORS 127.800 to 127.897.

(b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care provider may subject another health care provider to the sanctions stated in this paragraph if the sanctioning health care provider has notified the sanctioned provider prior to participation in ORS 127.800 to 127.897 that it prohibits participation in ORS 127.800 to 127.897:

(A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in ORS 127.800 to 127.897 while on the health care facility premises, as defined in ORS 442.015, of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(B) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in ORS 127.800 to 127.897 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(C) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in ORS 127.800 to 127.897 while acting in the

course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent:

(i) A health care provider from participating in ORS 127.800 to 127.897 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(ii) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions pursuant to paragraph (b) of this subsection must follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For purposes of this subsection:

(A) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider's participation in ORS 127.800 to 127.897 of the sanctioning health care provider's policy about participation in activities covered by ORS 127.800 to 127.897.

(B) "Participate in ORS 127.800 to 127.897" means to perform the duties of an attending physician pursuant to ORS 127.815, the consulting physician function pursuant to ORS 127.820 or the counseling function pursuant to ORS 127.825. "Participate in ORS 127.800 to 127.897" does not include:

(i) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(ii) Providing information about the Oregon Death with Dignity Act to a patient upon the request of the patient;

(iii) Providing a patient, upon the request of the patient, with a referral to another physician; or

(iv) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(6) Suspension or termination of staff membership or privileges under subsection (5) of this section is not reportable under ORS 441.820. Action taken pursuant to ORS 127.810, 127.815, 127.820 or 127.825 shall not be the sole basis for a report of unprofessional or dishonorable conduct under ORS 677.415 (3), (4), (5) or (6).

(7) No provision of ORS 127.800 to 127.897 shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community. [1995 c.3 §4.01; 1999 c.423 §10; 2003 c.554 §3]

Note: As originally enacted by the people, the leadline to section 4.01 read "Immunities." The remainder of the leadline was added by editorial action.

127.890 §4.02. Liabilities. (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death shall be guilty of a Class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be guilty of a Class A felony.

(3) Nothing in ORS 127.800 to 127.897 limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in ORS 127.800 to 127.897 do not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of ORS 127.800 to 127.897. [1995 c.3 §4.02]

127.892 Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of ORS 127.800 to 127.897 in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim. [1999 c.423 §5a]

(Severability)

(Section 5)

127.895 §5.01. Severability. Any section of ORS 127.800 to 127.897 being held invalid as to any person or circumstance shall not affect the application of any other section of ORS 127.800 to 127.897 which can be given full effect without the invalid section or application. [1995 c.3 §5.01]

(Form of the Request)

(Section 6)

127.897 §6.01. Form of the request. A request for a medication as authorized by ORS 127.800 to 127.897 shall be in substantially the following form:

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE
AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) Is personally known to us or has provided proof of identity;

(b) Signed this request in our presence;

(c) Appears to be of sound mind and not under duress, fraud or undue influence;

(d) Is not a patient for whom either of us is attending physician.

_____ Witness 1/Date

_____ Witness 2/Date

NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

[1995 c.3 §6.01; 1999 c.423 §11]

PENALTIES

127.990 [Formerly part of 97.990; repealed by 1993 c.767 §29]

127.995 Penalties. (1) It shall be a Class A felony for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the principal's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal.

(2) Except as provided in subsection (1) of this section, it shall be a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision. [Formerly 127.585]