

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 609

An Act to amend and reenact §§ 32.1-290.1, 54.1-2982, and 54.1-2984 of the Code of Virginia, relating to organ, tissue, and eye donations.

[H 2173]

Approved March 20, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-290.1, 54.1-2982, and 54.1-2984 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-290.1. Consent to anatomical gifts by agents and others.

A. Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

1. The spouse of the decedent;
2. An adult son or daughter of the decedent;
3. Either parent of the decedent;
4. An adult brother or sister of the decedent;
5. A grandparent of the decedent; and
6. A guardian of the person of the decedent at the time of death.

B. *Notwithstanding the provisions of subsection A, an adult may be appointed by a person to make an anatomical gift of all or any part of the declarant's body pursuant to the provisions of this article. Such agent may be appointed in a will or in an advance directive executed in compliance with the Health Care Decisions Act (§ 54.1-2981 et seq.).*

An anatomical gift by a person authorized under subsection A or by an appointed agent must be made by (i) a document of gift signed by the person or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

C. An anatomical gift by a person authorized under subsection A may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician or enucleator removing the part knows of the revocation. *An anatomical gift by an appointed agent shall be in accordance with any directions of the person wishing to make the gift in the document appointing the agent and shall not be revoked by any member of the same or a prior class as listed in subsection A.*

D. A failure to make an anatomical gift under subsection A or to appoint an agent is not an objection to the making of an anatomical gift.

E. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. *The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.*

"Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Emergency Medical Services Do Not Resuscitate Order" means a written physician's order in a form approved by the Board of Health which authorizes qualified emergency medical service personnel or hospital emergency department health care providers to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort

care or to alleviate pain.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of excess dosages of pain relieving medications in accordance with § 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation by emergency medical services personnel.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

"Qualified patient" means a patient who has made an advance directive in accordance with this article and either (i) has been diagnosed and certified in writing by the attending physician and a second physician or licensed clinical psychologist after personal examination to be incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment, in accordance with § 54.1-2986, or (ii) has been diagnosed and certified in writing by the attending physician to be afflicted with a terminal condition.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means a person who is not a spouse or blood relative of the patient. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2984. Suggested form of written advance directives.

An advance directive executed pursuant to this article may, but need not, be in the following form, and may (i) direct a specific procedure or treatment to be provided, such as artificially administered hydration and nutrition; (ii) direct a specific procedure or treatment to be withheld; or (iii) appoint an agent to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision, *including the decision to make, after the declarant's death, an anatomical gift of all or any part of the declarant's body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and in compliance with any directions of the declarant.* Should any other specific directions be held to be invalid, such invalidity shall not affect the advance directive. If the declarant appoints an agent in an advance directive, that agent shall have the authority to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and shall have decision-making priority over any individuals authorized under § 54.1-2986 to make health care decisions for the declarant.

ADVANCE MEDICAL DIRECTIVE

I,, willfully and voluntarily make known my desire and do hereby declare:

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain (OPTION: I specifically direct that the following procedures or treatments be provided to me:)

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final

expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

OPTION: APPOINTMENT OF AGENT (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

I hereby appoint (primary agent), of (address and telephone number), as my agent to make health care decisions on my behalf as authorized in this document. If (primary agent) is not reasonably available or is unable or unwilling to act as my agent, then I appoint (successor agent), of (address and telephone number), to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision about providing, withholding or withdrawing medical treatment. The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed medical decision or unable to make a rational evaluation of the risks and benefits of a proposed medical decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a second physician or licensed clinical psychologist after a personal examination of me and shall be certified in writing. Such certification shall be required before treatment is withheld or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every 180 days thereafter while the treatment continues.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not authorize a course of treatment which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what treatment choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of medical care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of standard dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or inadvertently hastens my death;

B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, adult home or other medical care facility; and

E. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

Further, my agent shall not be liable for the costs of treatment pursuant to his authorization, based solely on that authorization.

OPTION: APPOINTMENT OF ANOTHER AGENT TO MAKE AN ANATOMICAL GIFT (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT ANOTHER AGENT TO MAKE AN ANATOMICAL GIFT FOR YOU.)

Upon my death, I direct that an anatomical gift of all or any part of my body may be made pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint as my agent, of(address and telephone number), to make any such anatomical gift following my death. I further direct that:.....(declarant's directions concerning anatomical gift).

This advance directive shall not terminate in the event of my disability.

By signing below, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand the purpose and effect of this document.

(Date)

(Signature of Declarant)

The declarant signed the foregoing advance directive in my presence. I am not the spouse or a blood relative of the declarant.

(Witness) _____

(Witness) _____