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महाराष्ट्र शासन राजपत्र

MAHARASHTRA LEGISLATURE SECRETARIAT

Thursday, July 11, 1985

CIRCULATED FOR ELICITING PUBLIC OPINION

The Bill alongwith the motion which was passed by the Maharashtra Legislative Council on the 5th July, 1985, is published.

MOTION

That L.C. Bill No. XIV of 1984. — A bill to provide for civil and criminal immunity to physicians and surgeons withdrawing life sustaining treatment from patients suffering from terminal illness, be circulated for the purposes of eliciting opinion thereon, within a period of one year.

L. C. BILL No. XIV OF 1984.

A BILL

to provide for civil and criminal immunity to physicians and surgeons withdrawing life sustaining treatment from patients suffering from terminal illness.

WHEREAS it is expedient to provide for civil and criminal immunity to physicians and surgeons withdrawing life sustaining treatment from patients suffering from terminal illness;

It is hereby enacted in the Thirty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Maharashtra Physicians and Surgeons (Civil and Criminal Immunity) Act, 1984.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.

2. In this Act unless the context otherwise requires:—

(a) "maintenance medical treatment" means all artificial means or measures of whatever kind administered as medical or surgical treatment designed solely to sustain the life processes;

(b) "Patient" means a person treated by a physician or surgeon for any illness, ailment, sickness or injury;

(c) "Petitioner" means any person authorised by this Act who may petition the courts for relief;

(d) "Physician" and "Surgeon" mean a person authorised to practise medicine or surgery by or under the provisions of the Indian Medical Council Act, 1970 or any other law force for the time being;

(e) "Terminal illness" or "terminal injury" means any illness or injury which will in all probability result in the expiration of life, regardless of the use or discontinuance of medical or surgical treatment.

3. (1) Where a patient of a sound mind and who is suffering from a terminal illness or terminal injury calls upon his physician or surgeon in writing to withdraw maintenance medical treatment, the physician or surgeon may comply with such request of the patient provided the physician or surgeon and a consultant unconnected with the case are satisfied that the patient is suffering from a terminal illness or terminal injury.

(2) Notwithstanding anything contained in any other law for the time being in force, where such physician or surgeon withdraws maintenance medical treatment as provided in sub-section (1) he or she, the patient and members of his/her family, shall be free from any civil or criminal liability whatsoever.

4. Any person of sound mind shall be entitled to make Declaration and give a Power of Attorney in the forms appended to this Act duly executed by such person expressing the desire that, if at any time in the future he or she were to suffer from a terminal illness or terminal injury and be unable to express himself or herself, the wish embodied in the Declaration and Power of Attorney shall, if it has been in operation for 30 days and has not been duly revoked in writing be given effect to by his physician or surgeon and the members of his/her family; and in such circumstances the physician or surgeon and the members of his/her family complying with the request made in the aforesaid Declaration and Power of Attorney shall be free from any civil or criminal liability whatsoever.

5. Where a physician or surgeon in a hospital or institution fails to give effect to the request of the patient in the circumstances mentioned in section 3(1) above, that physician or surgeon who is willing to respond to the patient's request, the patient may file a Petition in a District Court or in a Court exercising similar jurisdiction in the form appended to this Act against such physician or surgeon praying for his/her wish to be respected or for discharge from that hospital or institution and the Court shall give such relief to the Petitioner as the Court may think fit.

6. Where a physician or surgeon fails to respond to the wishes of his patient as expressed in the Declaration and Power of Attorney made earlier by the patient under section 4, the Executors of the patient may file a petition in the form attached to this Act in a District Court or in a Court exercising similar jurisdiction against the physician or surgeon praying that the wishes of the patient as expressed in the Declaration and the Power of Attorney be given effect to and the Court shall give such relief to the Petitioners as the Court may think fit.

Short title and commencement.

Definitions.

Withdrawal of maintenance medical treatment and exemption from civil and criminal liability.

Declaration for withdrawal of maintenance medical treatment.

Petition for withdrawal of maintenance medical treatment.

Petition by executors of patient.

DECLARATION
(See section 4)

This Declaration is made by me
of

at a time when I am of sound mind and after careful consideration :

(1) If the time comes when I can no longer take part in decision for my own future, let this Declaration stand as the testament to my wishes.

(2) If there is no reasonable prospect of my recovery from physical illness or impairment expected to cause me severe distress or to render me incapable of rational existence or, my vital bodily functions are incapable of independent operation, I should be deemed to decline to receive artificial medical treatment and to ask to be kept free from pain and distress.

(3) If I suffer from heart arrest, it is my request that efforts at resuscitation be abandoned at the end of three minutes.

In the absence of my ability to give directions regarding the use of such life sustaining procedures, it is my intention that this Declaration shall be honoured by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequence from such refusal.

This Declaration is signed and dated by me in the presence of the two undermentioned witnesses present at the same time who at my request in my presence and in the presence of each other have here unto subscribed their names as witnesses.

Dated..... Signed.....

This declarant has been personally known to me and I believe him/her to be of sound mind.

Witness : 1

Name :

Address :

Witness : 2

Name :

Address :

..... Signed.....

.....

.....

Note :— Witness should not be members of the family.

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DRAFT
SPECIAL POWER OF ATTORNEY

A "POWER" OF ATTORNEY given this 19 by me,

..... of
(full name)

WHEREAS (1) I have executed a declaration dated 19 stating that in circumstances there set out I should be deemed to decline to receive artificial medical treatment and to ask to be kept free from pain and distress.

(2) I seek to ensure that the wishes expressed in my declaration will be fully respected.

NOW THIS DEED WITNESSES that I appoint of and

..... of who have expressed their acceptance to act as such, jointly or severally to be my attorneys for the purpose of securing compliance with the terms of my said declaration and I vest in my attorneys jointly or severally power to interpret, make decisions and take action on my behalf with regard to my declaration notwithstanding any contrary views held by any other person.

I do that this Power of Attorney shall remain in force during my lifetime until notice of its revocation is received by my attorneys AS WITNESS my hand this day.

SIGNED, SEALED AND DELIVERED

by me

in the presence of (full name)

of (full address)

Red Wafer
Seal

Before the Notary.

V. M. SUBRAHMANYAM,
Secretary (II),
Maharashtra Legislative Council.

Bombay, dated the 19th July 1984.