

HOUSE BILL No. 5718

March 30, 2004, Introduced by Reps. Gaffney, Lipsey, Accavitti, Ward, Wojno, Adamini, LaJoy, Vander Veen, Law, Pappageorge, Voorhees, Shaffer, Sheen, Hune and Amos and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5509 and 5511 (MCL 700.5509 and 700.5511), section 5509 as amended by 1999 PA 52, and by adding section 5525.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5509. (1) An individual designated as a patient
2 advocate has the following authority, rights, responsibilities,
3 and limitations:

4 (a) A patient advocate shall act in accordance with the
5 standards of care applicable to fiduciaries in exercising his or
6 her powers.

7 (b) A patient advocate shall take reasonable steps to follow
8 an advance directive under section 5525 and, to the extent that
9 they do not conflict with an advance directive or if there is no

1 **advance directive or an advance directive has been revoked,** the
2 desires, instructions, or guidelines given by the patient while
3 the patient was able to participate in care, custody, or medical
4 treatment decisions, whether given orally or as written in the
5 designation.

6 (c) A patient advocate shall not exercise powers concerning
7 the patient's care, custody, and medical treatment that the
8 patient, if the patient were able to participate in the decision,
9 could not have exercised on his or her own behalf.

10 (d) ~~This designation cannot be used to~~ **A patient advocate**
11 **shall not** make a medical treatment decision to withhold or
12 withdraw treatment from a patient who is pregnant that would
13 result in the pregnant patient's death.

14 (e) A patient advocate may make a decision to withhold or
15 withdraw treatment that would allow a patient to die only if the
16 patient has expressed in a clear and convincing manner that the
17 patient advocate is authorized to make such a decision, and that
18 the patient acknowledges that such a decision could or would
19 allow the patient's death.

20 (f) A patient advocate may choose to have the patient placed
21 under hospice care.

22 (g) A patient advocate ~~under this section~~ shall not
23 delegate his or her powers to another individual without prior
24 authorization by the patient.

25 (2) A patient advocate designation is suspended when the
26 patient regains the ability to participate in medical treatment
27 decisions. The suspension is effective as long as the patient is

1 able to participate in medical treatment decisions. If the
2 patient subsequently is determined under section 5508 to be
3 unable to participate in medical treatment decisions, the patient
4 advocate's authority, rights, responsibilities, and limitations
5 are again effective.

6 Sec. 5511. (1) Irrespective of a previously expressed or
7 evidenced desire, **unless the previously expressed desire is**
8 **contained in an advance directive under section 5525 that has not**
9 **been revoked**, a current desire by a patient to have provided, and
10 not withheld or withdrawn, a specific life-extending care,
11 custody, or medical treatment is binding on the patient advocate,
12 if known by the patient advocate, regardless of the then ability
13 or inability of the patient to participate in care, custody, or
14 medical treatment decisions or the patient's competency.

15 (2) A person providing, performing, withholding, or
16 withdrawing care, custody, or medical treatment as a result of
17 the decision of an individual who is reasonably believed to be a
18 patient advocate and who is reasonably believed to be acting
19 within the authority granted by the designation is liable in the
20 same manner and to the same extent as if the patient had made the
21 decision on his or her own behalf.

22 (3) A person providing care, custody, or medical treatment to
23 a patient is bound by sound medical practice and by a patient
24 advocate's instructions if the patient advocate complies with
25 sections 5506 to 5512 **and any advance directive made by the**
26 **patient under section 5525**, but is not bound by the patient
27 advocate's instructions if the patient advocate does not comply

1 with these sections **or the advance directive**.

2 (4) If a dispute arises as to whether a patient advocate is
3 acting consistent with the patient's best interests or is not
4 complying with sections 5506 to 5512 **or an advance directive**
5 **under section 5525**, a petition may be filed with the court in the
6 county in which the patient resides or is found requesting the
7 court's determination as to the continuation of the designation
8 or the removal of the patient advocate.

9 **Sec. 5525. (1) An individual 18 years of age or older who**
10 **is of sound mind may make a written advance directive regarding**
11 **the provision of health care to that individual or the**
12 **withholding or withdrawal of health care from that individual. A**
13 **written advance directive may be part of or combined with a**
14 **designation of patient advocate under section 5506 or another**
15 **document. A written advance directive must comply with the**
16 **formalities required of a designation of patient advocate under**
17 **this part.**

18 (2) An individual 18 years of age or older who is of sound
19 mind may make an oral advance directive to authorize the
20 provision, withholding, or withdrawal of any life-sustaining
21 procedure. An oral advance directive has the same effect as a
22 written advance directive if made in the presence of the
23 individual's attending physician and 1 witness and if the
24 substance of the oral advance directive is documented as part of
25 the individual's medical record, dated, and signed by the
26 attending physician and the witness.

27 (3) An advance directive that directs the withholding or

1 withdrawal of health care if general circumstances described in
2 the advance directive exist shall be followed if those general
3 circumstances exist, regardless of whether specific circumstances
4 exist that are not addressed in the advance directive. General
5 circumstances described in an advance directive may include, but
6 are not limited to, a persistent vegetative state, an incurable
7 and irreversible condition that will result in death in a
8 relatively short time, or a condition for which the risks and
9 burdens of treatment outweigh the expected benefits.

10 (4) An advance directive that complies with this section
11 becomes effective when the individual is unable to participate in
12 medical treatment decisions as determined under section 5508.

13 (5) An advance directive that does not comply with this
14 section may still be considered to the extent allowed by law in
15 making decisions about health care for an individual who is
16 unable to participate in medical treatment decisions.

17 (6) A written advance directive may be revoked in the same
18 manner as a designation of patient advocate under this part. An
19 oral advance directive is revoked if the requirements of
20 subsection (2) for the making of an oral advance directive are
21 satisfied for the revocation.