WEST VIRGINIA CODE: §16-30-3

§16-30-3. Definitions.

For the purposes of this article:

“Actual knowledge” means the possession of information of the person’s wishes communicated to the health care provider orally or in writing by the person, the person’s medical power of attorney representative, the person’s health care surrogate, or other individuals resulting in the health care provider’s personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

“Adult” means a person who is 18 years of age or older, an emancipated minor who has been established as such pursuant to the provisions of §49-4-115 of this code, or a mature minor.

“Advanced nurse practitioner” means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of the West Virginia Board of Examiners for Registered Professional Nurses rule, advanced practice registered nurse, 19 CSR 7, who has a mutually agreed upon association in writing with a physician, and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

“Attending physician” means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

“Capable adult” means an adult who is physically and mentally capable of making health care decisions and who is not considered a protected person pursuant to Chapter 44A of this code.

“Close friend” means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person’s health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health, and religious and moral beliefs.

“Death” means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

“Guardian” means a person appointed by a court pursuant to chapter 44A of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

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"Health care decision" means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care, and organ or tissue donation.

"Health care facility" means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians' office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, or other facility established to administer health care in its ordinary course of business or practice.

"Health care provider" means any licensed physician, dentist, nurse, physician assistant, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

"Incapacity" means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

"Life-prolonging intervention" means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

"Living will" means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of §16-30-4 of this code.

"Mature minor" means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

"Medical information" or "medical records" means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present, or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

"Medical power of attorney representative" or "representative" means a person, 18 years of age or older, appointed by another person to make health care decisions pursuant to

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§16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

“Parent” means a person who is another person’s natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

“Person” means an individual, corporation, business trust, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.

“Portable orders for scope of treatment (POST) form” means a standardized form containing orders by a qualified physician, an advanced practice registered nurse, or a physician assistant that details a person’s life-sustaining wishes as provided by §16-30-25 of this code.

“Principal” means a person who has executed a living will, medical power of attorney, or combined medical power of attorney and living will.

“Protected person” means an adult who, pursuant to chapter 44A of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

“Qualified physician” means a physician licensed to practice medicine who has personally examined the person.

“Qualified psychologist” means a psychologist licensed to practice psychology who has personally examined the person.

“Surrogate decision-maker” or “surrogate” means an individual 18 years of age or older who is reasonably available, to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

“Terminal condition” means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

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