

REFERENCE TITLE: terminally ill patients; suffering; control

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## **HB 2314**

Introduced by  
Representatives Lopez L: Cajero Bedford, Gallardo, Garcia M, Meza, Tom,  
Senator Rios

AN ACT

AMENDING TITLE 36, CHAPTER 32, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8;  
RELATING TO TERMINALLY ILL PATIENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 32, Arizona Revised Statutes, is amended  
3 by adding article 8, to read:

4 ARTICLE 8. TERMINALLY ILL PATIENTS

5 36-3301. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ADVANCE DIRECTIVE FOR CONTROL OF SUFFERING" MEANS A DIRECTIVE  
8 PURSUANT TO THIS CHAPTER THAT HAS LANGUAGE THAT MEETS THE REQUIREMENTS OF  
9 SECTION 36-3302, SUBSECTION A, PARAGRAPH 1.

10 2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY  
11 RESPONSIBILITY FOR THE CARE OF THE PATIENT AND TREATMENT OF THE PATIENT'S  
12 DISEASE.

13 3. "CONSULTING PHYSICIAN" MEANS THE PHYSICIAN WHO IS QUALIFIED BY  
14 SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS  
15 REGARDING THE PATIENT'S DISEASE.

16 4. "HEALTH CARE PROVIDER" MEANS A HEALTH PROFESSIONAL LICENSED  
17 PURSUANT TO TITLE 32 OR A HEALTH CARE FACILITY.

18 5. "INCAPABLE" MEANS THAT IN THE OPINION OF A COURT OR THE PATIENT'S  
19 ATTENDING OR CONSULTING PHYSICIAN, THE PATIENT LACKS THE ABILITY TO MAKE AND  
20 COMMUNICATE HEALTH CARE DECISIONS TO A HEALTH CARE PROVIDER, INCLUDING  
21 COMMUNICATION THROUGH PERSONS FAMILIAR WITH THE PATIENT'S MANNER OF  
22 COMMUNICATING.

23 6. "INFORMED DECISION" MEANS A DECISION BY A QUALIFIED PATIENT TO  
24 REQUEST AND ASSUME CONTROL OF THE PATIENT'S SUFFERING BY OBTAINING A  
25 PRESCRIPTION TO PREVENT UNBEARABLE SUFFERING AFTER THAT PATIENT'S ATTENDING  
26 PHYSICIAN HAS FULLY INFORMED THE PATIENT OF THE FOLLOWING:

27 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

28 (b) THE PATIENT'S PROGNOSIS.

29 (c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE  
30 PRESCRIBED.

31 (d) THE PROBABLE RESULT OF TAKING THE MEDICATION TO BE PRESCRIBED.

32 (e) THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE  
33 AND PHYSICIAN DIRECTED PAIN MANAGEMENT.

34 7. "MEDICALLY CONFIRMED" MEANS THE MEDICAL OPINION OF THE ATTENDING  
35 PHYSICIAN HAS BEEN CONFIRMED BY A CONSULTING PHYSICIAN WHO HAS EXAMINED THE  
36 PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS.

37 8. "PHYSICIAN" MEANS A PHYSICIAN LICENSED PURSUANT TO TITLE 32,  
38 CHAPTER 13 OR 17.

39 9. "QUALIFIED PATIENT" MEANS AN ADULT WHO IS NOT INCAPABLE.

40 10. "TERMINAL DISEASE" MEANS AN INCURABLE AND IRREVERSIBLE DISEASE THAT  
41 HAS BEEN MEDICALLY CONFIRMED AND THAT WILL RESULT, WITHIN REASONABLE MEDICAL  
42 JUDGMENT, IN A PERSON'S DEATH WITHIN SIX MONTHS.

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36-3302. Request for medication: requirements

A. A COMPETENT ADULT WHO IS A RESIDENT OF THIS STATE MAY MAKE A WRITTEN REQUEST FOR MEDICATION FOR PATIENT CONTROL OF SUFFERING PURSUANT TO SUBSECTION C IF THAT PERSON:

1. AT LEAST THREE MONTHS BEFORE, HAS EXECUTED AN ADVANCE DIRECTIVE FOR CONTROL OF SUFFERING THAT CONTAINS LANGUAGE THAT IS THE SAME OR SUBSTANTIALLY SIMILAR TO THE FOLLOWING:

IF I AM DIAGNOSED WITH A TERMINAL ILLNESS, I WANT TO BE ABLE TO CONTROL MY OWN MEDICATION TO LESSEN SUFFERING AND PRESERVE MY DIGNITY AND BE IN CONTROL OF MY OWN PAIN AND SUFFERING.

2. HAS BEEN DETERMINED BY THAT PERSON'S ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO BE SUFFERING FROM A TERMINAL DISEASE.

3. HAS VOLUNTARILY EXPRESSED A WISH TO CONTROL THE SUFFERING FROM THAT DISEASE.

B. THE MEDICATION SHALL BE AS AGREED ON BY THE PATIENT AND THE PRESCRIBING PHYSICIAN. THE PHYSICIAN MAY ALLOW THE PRESCRIPTION TO BE REFILLED AS IS NECESSARY FOR THE PATIENT TO CONTROL THE SUFFERING PURSUANT TO THIS ARTICLE.

C. THE WRITTEN REQUEST MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:  
REQUEST FOR MEDICATION TO TAKE CONTROL OF  
MY OWN MANAGEMENT OF MY OWN SUFFERING

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 AND PROGNOSIS, THE NATURE OF MEDICATION TO BE PRESCRIBED AND THE POTENTIAL ASSOCIATED RISKS, THE EXPECTED RESULT AND THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE AND PHYSICIAN DIRECTED PAIN CONTROL.

I REQUEST THAT MY ATTENDING PHYSICIAN PRESCRIBE MEDICATION THAT WILL ALLOW ME FULL CONTROL OVER MANAGEMENT OF MY SUFFERING.

INITIAL ONE:

\_\_\_\_\_ I HAVE INFORMED FAMILY MEMBERS OF MY DECISION AND HAVE 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 UNDERSTAND THAT A SECONDARY EFFECT OF TAKING THE PRESCRIBED MEDICATION IS THAT IT MAY HASTEN DEATH.

1 I MAKE THIS REQUEST VOLUNTARILY AND WITHOUT RESERVATION,  
2 AND I ACCEPT FULL RESPONSIBILITY FOR MY ACTIONS.

3 SIGNED: \_\_\_\_\_

4 DATED: \_\_\_\_\_

5 DECLARATION OF WITNESSES

6 WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

7 1. IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF  
8 IDENTITY.

9 2. SIGNED THIS REQUEST IN OUR PRESENCE.

10 3. APPEARS TO BE OF SOUND MIND AND NOT UNDER DURESS,  
11 FRAUD OR UNDUE INFLUENCE.

12 4. IS NOT A PATIENT FOR WHOM EITHER OF US IS ATTENDING  
13 PHYSICIAN.

14 WITNESS 1 \_\_\_\_\_

15 DATE \_\_\_\_\_

16 WITNESS 2 \_\_\_\_\_

17 DATE \_\_\_\_\_

18 NOTE: ONE WITNESS SHALL NOT BE A RELATIVE (BY BLOOD,  
19 MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, SHALL  
20 NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH  
21 AND SHALL NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE  
22 FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT.

23 D. AT LEAST ONE OF THE WITNESSES MUST BE A PERSON WHO IS NOT:

24 1. A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION.

25 2. AT THE TIME THE REQUEST IS SIGNED, ENTITLED TO ANY PORTION OF THE  
26 PATIENT'S ESTATE.

27 3. AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE  
28 PATIENT IS RECEIVING MEDICAL TREATMENT OR IS A RESIDENT.

29 E. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED  
30 SHALL NOT BE A WITNESS.

31 36-3303. Responsibilities of attending physician

32 ON RECEIVING A REQUEST FROM A PATIENT TO PRESCRIBE MEDICATION TO  
33 CONTROL SUFFERING PURSUANT TO THIS ARTICLE, THE ATTENDING PHYSICIAN MUST DO  
34 ALL OF THE FOLLOWING BEFORE ISSUING THE PRESCRIPTION:

35 1. CONFIRM THAT THE PATIENT HAS EXECUTED AN ADVANCE DIRECTIVE FOR  
36 CONTROL OF SUFFERING.

37 2. DIAGNOSE WHETHER A PATIENT HAS A TERMINAL DISEASE, IS COMPETENT AND  
38 HAS MADE THE REQUEST VOLUNTARILY.

39 3. INFORM THE PATIENT OF:

40 (a) THE PATIENT'S MEDICAL DIAGNOSIS.

41 (b) THE PATIENT'S PROGNOSIS.

42 (c) THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE  
43 AND TRADITIONAL PHYSICIAN DIRECTED PAIN CONTROL.

44 4. REFER THE PATIENT TO A CONSULTING PHYSICIAN PURSUANT TO SECTION  
45 36-3304.

1           5. BEFORE WRITING THE PRESCRIPTION FOR MEDICATION, VERIFY THAT THE  
2 PATIENT IS MAKING AN INFORMED DECISION.

3           6. FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENTS OF SECTION  
4 36-3307.

5           7. PURSUANT TO SECTION 36-3307, ENSURE THAT ALL APPROPRIATE STEPS ARE  
6 CARRIED OUT IN ACCORDANCE WITH THIS ARTICLE BEFORE WRITING THE PRESCRIPTION  
7 FOR MEDICATION.

8           36-3304. Consulting physician confirmation

9           BEFORE A PATIENT CAN BE PRESCRIBED MEDICATION PURSUANT TO SECTION  
10 36-3303, A CONSULTING PHYSICIAN MUST EXAMINE THE PATIENT AND THE PATIENT'S  
11 RELEVANT MEDICAL RECORDS, CONFIRM IN WRITING THE ATTENDING PHYSICIAN'S  
12 DIAGNOSIS THAT THE PATIENT IS SUFFERING FROM A TERMINAL DISEASE AND VERIFY  
13 THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED  
14 DECISION.

15           36-3305. Informed decision

16           A PERSON SHALL NOT RECEIVE A PRESCRIPTION PURSUANT TO THIS ARTICLE  
17 UNLESS THAT PERSON HAS MADE AN INFORMED DECISION AS PRESCRIBED BY THIS  
18 ARTICLE.

19           36-3306. Family notification

20           A. THE PATIENT'S ATTENDING PHYSICIAN SHALL ASK THE PATIENT TO INFORM  
21 THE PATIENT'S NEXT OF KIN OF THE PATIENT'S REQUEST FOR MEDICATION PURSUANT TO  
22 THIS ARTICLE.

23           B. A PATIENT WHO DECLINES OR IS UNABLE TO NOTIFY NEXT OF KIN SHALL NOT  
24 HAVE THE PATIENT'S REQUEST DENIED FOR THAT REASON.

25           36-3307. Medical record documentation requirements

26           A PHYSICIAN MUST DOCUMENT THE FOLLOWING IN THE PATIENT'S MEDICAL  
27 RECORDS:

28           1. A COPY OF THE ADVANCE DIRECTIVE FOR CONTROL OF SUFFERING EXECUTED  
29 BY THE PATIENT.

30           2. ALL WRITTEN REQUESTS BY THE PATIENT FOR MEDICATION TO CONTROL THE  
31 PATIENT'S OWN SUFFERING.

32           3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND THE  
33 DETERMINATION THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS  
34 MADE AN INFORMED DECISION.

35           4. THE CONSULTING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND  
36 VERIFICATION THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS  
37 MADE AN INFORMED DECISION.

38           5. A NOTE BY THE ATTENDING PHYSICIAN INDICATING THAT ALL REQUIREMENTS  
39 UNDER THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS TAKEN TO CARRY OUT  
40 THE REQUEST, INCLUDING A NOTATION OF THE MEDICATION PRESCRIBED.

41           36-3308. Insurance or annuity policies

42           A. THE SALE, PROCUREMENT OR ISSUANCE OF ANY LIFE, HEALTH OR ACCIDENT  
43 INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY SHALL NOT BE  
44 CONDITIONED ON OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST BY A  
45 PERSON FOR MEDICATION TO CONTROL THAT PERSON'S SUFFERING.

1           B. A QUALIFIED PATIENT'S ACT OF TAKING MEDICATION TO CONTROL THAT  
2 PERSON'S OWN SUFFERING SHALL NOT HAVE AN EFFECT ON A LIFE, HEALTH OR ACCIDENT  
3 INSURANCE OR ANNUITY POLICY.

4           36-3309. Construction of article

5           A. THIS ARTICLE DOES NOT AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO  
6 END ANOTHER PERSON'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE  
7 EUTHANASIA. THIS ARTICLE AUTHORIZES A PHYSICIAN TO PRESCRIBE OR ORDER THE  
8 MEDICATION AND PERMITS TRAINED MEDICAL PROFESSIONALS TO OFFER ASSISTANCE, BUT  
9 THE ACTUAL ACT OF CONTROLLING THE INTAKE OF MEDICATION MUST BE IN THE  
10 IMMEDIATE CONTROL OF THE PATIENT.

11           B. IF THE PATIENT'S DECISION TO CONTROL SUFFERING HAS THE SECONDARY  
12 EFFECT OF HASTENING DEATH, THIS SHALL NOT FOR ANY PURPOSE BE CONSTITUTED AS  
13 SUICIDE, ASSISTED SUICIDE, MERCY KILLING OR HOMICIDE OR BE CAUSE FOR ANY  
14 PROFESSIONAL DISCIPLINARY ACTION OR CIVIL OR CRIMINAL PENALTY UNDER THE LAW.

15           C. THIS ARTICLE EXPANDS THE RIGHT OF A PHYSICIAN UNDER CERTAIN  
16 CIRCUMSTANCES TO PRESCRIBE OR ORDER MEDICATION TO CONTROL SUFFERING.

17           D. THIS ARTICLE DOES NOT INTERFERE WITH OR LIMIT ANY EXISTING RIGHT OF  
18 A PHYSICIAN TO PRESCRIBE MEDICATION.