

Approved 1-28-92  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by John Solbach at  
Chairperson

3:30 ~~am~~/p.m. on January 23, 1992 in room 313S of the Capitol.

All members were present except:

Representatives Allen, Gomez and Sebelius who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Shaun McGrath, Kansas Natural Resource Council  
R. E. "Tuck" Duncan, Medevac Medical Services, Inc,  
Bob McDanel, Kansas Board of Emergency Medical Services  
Robert Frey, Kansas Trial Lawyers Association  
Chip Wheelen, Kansas Medical Society.

Chairman Solbach called the meeting to order.

Shaun McGrath, Kansas Natural Resource Council, conceptually requested that HB 2535 from the 1991 Legislative session have changes made. Rep. Everhart moved to introduce such legislation. Rep. Hochhauser seconded the motion. Motion carried.

Rep. Lawrence moved to introduce a bill concerning used vehicle warranties and one concerning advertising sales. Rep. Heinemann seconded the motion. Motion carried.

Jill Wolters reviewed HB 2672, emergency medical services personnel following do not resuscitate orders, in preparation for bill being heard.

R. E. "Tuck" Duncan, Medevac Medical Services, testified in favor of HB 2672. Attachment #1. He answered committee members questions. He requested the bill be amended that employers should be afforded the same immunity as employees.

Bob McDanel, Kansas Board of Emergency Medical Services, testified in favor of HB 2672. Attachment #2.

Robert Frey, Kansas Trial Lawyers Association, testified in opposition to HB 2672. Attachment #3. He also testified that if the bill were passed there should be a provision for a standard of misconduct.

Chip Wheelen, Kansas Medical Society, submitted an amendment he would like to have on HB 2672. Attachment #4.

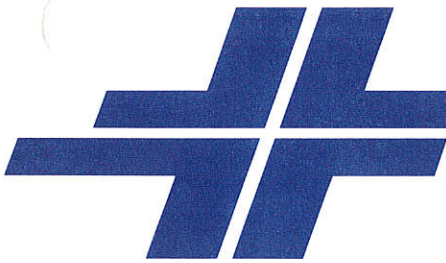
Rep. Smith moved to approve the committee meeting minutes from 1/14, 1/15, 1/16, 1/21 and 1/22. Rep. Lawrence seconded the motion.

Rep. Everhart made a substitute motion to correct the meeting minutes of 1/22/92 noting that SB 233 should be passed as amended, not passed as a substitute bill. Rep. Snowbarger seconded the motion. Motion carried.

Rep. Smith moved to approve the committee meeting minutes from 1/14, 1/15, 1/16, 1/22 as amended, and 1/21. Rep. Lawrence seconded the motion. Motion carried.

Meeting adjourned at 4:50.





**MEDEVAC MEDICAL SERVICES, INC.®**  
411 S.W. Jackson • Topeka, Kansas 66603 • (913) 233-2400 Administration

January 23, 1992

TO: House Judiciary Committee  
FROM: R.E. "Tuck" Duncan  
General Counsel for  
Medevac Medical Services  
RE: HB 2672

Medevac Medical Services supports House Bill 2672, an act relating to do not resuscitate (DNR) orders which provides that health care providers or emergency medical services (EMS) personnel will not be subject to certain liabilities or discipline for unprofessional conduct when a good faith decision is made regarding implementation of a DNR order.

Medevac concurs with the recommendation of the Special Committee on Judiciary and the conclusions reached by the Committee and reflected in the Report on Kansas Legislative Interim Studies to the 1992 Legislature at page 170. EMS personnel often must make care decisions in a matter of seconds, and HB 2672 reflects a prudent approach to meeting the needs of these personnel "in the field."

Thank you for your kind attention to and consideration of this matter.

HJC  
Attach #1  
1-23-92



# State of Kansas


## BOARD OF EMERGENCY MEDICAL SERVICES

109 S.W. 6TH STREET, TOPEKA, KS 66603-3805

(913) 296-7296 Administration  
(913) 296-7403 Education & Training  
(913) 296-7299 Examination & Certification  
(913) 296-7408 Planning & Regulation

Bob McDanel  
Administrator

Joan Finney  
Governor

DATE: January 23, 1992  
TO: House Judiciary Committee  
FROM: Bob McDanel   
SUBJECT: Testimony on HB 2672

The Board of Emergency Medical Services is the state agency which regulates pre-hospital emergency medical services. Agency responsibilities include the licensing of ambulance services and vehicles, and the training, examination and certification of ambulance attendants.

During the 1991 legislative session, the board testified in favor of SB 272. The board also testified in support of amending current statutes when the Special Committee on the Judiciary studied Proposal 14 during the interim session. Whatever legislation is ultimately adopted, the board wants to resolve a serious liability and ethical problem for ambulance services and personnel. That problem is determining when emergency medical care should be not be provided to terminal patients.

The problem for emergency medical services, although it presents a number of complex issues, can be simply stated: How can ambulance services and personnel have legal protection when they follow the wishes of the patient and family members to not provide emergency medical care when these health care providers are called to a home where a person is dying?

HB 2672 provides a satisfactory solution to this problem. The Board of Emergency Medical Services supports this bill and urges that you pass it out of committee. If the bill becomes law, the legal risks for failing to provide care will be minimized and the needs of terminal patients and their families will be met.

RM/st

HJC  
Attach #2  
1-23-92



# KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603  
(913) 232-7756 FAX (913) 232-7730

TESTIMONY  
OF THE  
KANSAS TRIAL LAWYERS ASSOCIATION  
HOUSE JUDICIARY COMMITTEE  
January 23, 1992

HB 2672

The Kansas Trial Lawyers Association is in opposition to HB 2672 for several reasons.

IMMUNITY FOR HEALTH CARE PROVIDERS

We have taken a position in opposition to the granting of immunity to health care providers whenever and wherever that is proposed. There are certain areas of the law which do provide for immunity for health care providers, but in those instances there has been ample justification for the granting of the immunity and there have been provisions made for protection of the health care consumer in other forms. In HB 2672, there does not appear to be a genuine need established for the blanket immunity which is granted and there is no alternative entity which takes responsibility for the possible negligent acts which could cause substantial damage or death to the consumer.

DUPLICATION OF EXISTING LAW

The Kansas Natural Death Act (KSA 65-28,101) currently provides for the preparation of a document which would give direction to any health care provider or emergency medical technician as to what the wishes of the patient are if the question of use of life saving techniques is raised. The "Living Will" is a document which is strongly supported by many Kansans as a means of preventing the use of heroic measures to sustain life when there is no possibility of saving the patient and merely prolongs the dying process.

HB 2672 would create a totally new document which would apply only for instances involving acute cardiac arrest or respiratory arrest. That document would be known as a "Do Not Resuscitate Order". The confusion that will be created between this new document and the current Living Will document will be difficult to deal with and is totally unnecessary and uncalled for.

HJC  
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IS THERE A DEMONSTRATED NEED FOR THE BILL?

Have the proponents come forward with examples of lawsuits or other instances where a health care provider or emergency medical technician has been found liable for damages caused to a patient as a result of failure to follow a patient's wishes as set out in a Living Will? Is this really a threat to the profession or is it merely an imagined threat that could possibly, under some remote set of circumstances, occur?

We are of the opinion that the present Kansas law addresses the problem of knowing when to withhold resuscitation and when not to withhold resuscitation. The creation of a new concept known as the Do Not Resuscitate Order will only cause confusion for the general public and will possibly result in the loss of protection from negligent injuries that currently exists for Kansans who find themselves in this unfortunate situation.

We recommend that HB 2672 not be recommended for passage.

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1 no health care provider or emergency medical service personnel, as  
 2 specified in K.S.A. 1991 Supp. 65-6112, and amendments thereto,  
 3 who in good faith causes or participates in the withholding or with-  
 4 drawing of cardiopulmonary resuscitation pursuant to a do not re-  
 5 suscitate order shall be subject to criminal or civil liability or be  
 6 found to have committed an act of unprofessional conduct. As used  
 7 in this section, a do not resuscitate order shall be signed by the  
 8 person making the order, or by another person in the presence of  
 9 the person making the order and by the expressed direction of the  
 10 person making the order, and: (1) Signed in the presence of two or  
 11 more witnesses at least 18 years of age neither of whom shall be  
 12 the person who signed the order on behalf of and at the direction  
 13 of the person making the order, related to the person making the  
 14 order by blood or marriage, entitled to any portion of the estate of  
 15 the person making the order according to the laws of intestate suc-  
 16 cession of this state or under any will of the person making the  
 17 order or codicil thereto, or directly financially responsible for the  
 18 medical care of the person making the order; or (2) signed by the  
 19 person's attending physician. A health care provider or emergency  
 20 medical services personnel whose decision about the validity of the  
 21 signed do not resuscitate order is made in good faith is not subject  
 22 to criminal or civil liability, or discipline for unprofessional conduct  
 23 with respect to that decision.

: (1) a lawfully executed advance directive, or  
 (2) a written order in the person's medical record  
 or chart signed by the person's attending physician.

24 Sec. 2. K.S.A. 1991 Supp. 65-6124 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after  
26 its publication in the statute book.



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612  
(913) 235-2383 FAX # (913) 235-5114

Chip Wheelen  
Director of Public Affairs

Handwritten notes: HSC #4, Attach #4, 1-23-92

# **MEDICAL DIRECTIVES**

## **Living Will**

## **Durable Power of Attorney for Health Care Decisions**

**Prepared and Distributed by**

**Kansas Medical Society**  
623 W 10th Ave.  
Topeka, Kansas 66612  
913-235-2383

**and**

**KaMMCO**  
**Kansas Medical Mutual Insurance Company**  
623 W 10th Ave.  
Topeka, Kansas 66612  
913-232-2224

*HJC  
Attach #4  
2/7/6  
1-23-92*



## GENERAL INFORMATION FOR MEDICAL DIRECTIVES

Medical directives are legally recognized documents which allow you to have control over health care decisions even though you may no longer be capable of communicating your wishes. Kansas recognizes two types of medical directives, the Living Will and the Durable Power of Attorney for Health Care Decisions. Living Wills are designed to allow you to express your wishes regarding life sustaining treatment when there is a terminal condition and when the treatment merely prolongs death. The Durable Power of Attorney for Health Care Decisions is designed to allow you to appoint an agent, a person of your choice, to make health care decisions for you in the event you are unable to make or communicate your wishes regarding treatment. Your agent can consent to treatment or can refuse treatment on your behalf. You may have either type of directive, or both.

In considering medical directives, consultation with your personal physician is a suitable beginning. Together, you and your physician can discuss your general health, the general prospects for future illnesses, and range of treatments. Your physician can also educate you regarding the specific nature of various treatments. This education will enable you to decide whether you would want a particular type of treatment.

If you chose to have a Durable Power of Attorney for Health Care Decisions, you should name an agent who knows your values and goals relating to treatment and whom you trust to carry out your wishes. This agent does not have to be a family member, but you may chose a family member to be your agent if you like. Talk with your agent about your wishes and confirm that he or she is willing to act on your behalf.

It is also important to discuss your medical directives with a close relative or trusted friend so that someone is aware of your wishes should an unforeseen situation arise. Consultation with an attorney may also be desirable to assure legal complications are avoided, however, it is not mandatory.

If you decide to have a medical directive, provide copies to your personal physician, a family member or friend, your agent, your legal advisor and to the hospital or nursing home. Because hospitals make a new chart for each admission and your previous charts may not be available, you must give a copy of your medical directive to the hospital each time you are admitted.

You may change or revoke your medical directive at any time. Durable Powers of Attorney for Health Care Decisions are revoked by writing a statement that the document is revoked. The statement must be witnessed or notarized. Living Wills may be revoked by destroying the document, signing a written revocation, or verbally. If you tell someone that you want your Living Will revoked, that person must confirm the revocation in writing and give it to your physician. Each person or institution that has a copy of your medical directive should be notified whenever there is a change or revocation.

Forms for a Living Will and a Durable Power of Attorney for Health Care Decisions are included with this brochure.

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**LIVING WILL DECLARATION**

Declaration made this \_\_\_\_\_ day of \_\_\_\_\_  
(month, year)

I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining 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.

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 honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally capable to make this declaration.

Declarant's Signature \_\_\_\_\_  
Address \_\_\_\_\_

The declarant has been personally known to me and I believe him or her to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness \_\_\_\_\_  
Address \_\_\_\_\_

Witness \_\_\_\_\_  
Address \_\_\_\_\_

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**DURABLE POWER OF ATTORNEY FOR  
HEALTH CARE DECISIONS**

**CREATION OF DURABLE POWER OF ATTORNEY**

I, \_\_\_\_\_, designate and appoint:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

as my agent for health care decisions for me as authorized in this document. (This person cannot be a health care provider or an employee, owner, director or officer of a health care provider unless related to you or a member of the same religious community bound by vows).

**GENERAL STATEMENT OF AUTHORITY GRANTED**

Pursuant to the language stated below, on my behalf my agent may:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

(2) Make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution, employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and

(3) Request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above, my agent for health care decisions shall: (here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted):

\_\_\_\_\_  
\_\_\_\_\_

**LIMITATIONS OF AUTHORITY**

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

\_\_\_\_\_  
\_\_\_\_\_

(3) This durable power of attorney for health care decisions shall be subject of the additional following limitations:

\_\_\_\_\_  
\_\_\_\_\_

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**EFFECTIVE TIME**

This power of attorney for health care decisions shall become effective (initial one):  
\_\_\_\_\_ immediately, and shall not be affected by my subsequent disability, incapacity or death; or  
\_\_\_\_\_ upon the occurrence of my disability or incapacity as defined in K.S.A. 59-3002 and determined by my attending physician.

**REVOCAATION**

Any durable power of attorney for health care decisions I have previously made is hereby revoked. (This durable power of attorney for health care decisions may be revoked by any instrument in writing executed, witnessed or acknowledged in the same manner as this document).

**EXECUTION**

Executed this \_\_\_\_\_ day of \_\_\_\_\_ at  
\_\_\_\_\_ (month, year)

\_\_\_\_\_

Principal's Signature \_\_\_\_\_

**This document must be: witnessed by two individuals, OR acknowledged by a notary public.**

(1) **Witnesses** - two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care:

Witness \_\_\_\_\_  
Address \_\_\_\_\_

Witness \_\_\_\_\_  
Address \_\_\_\_\_

**OR (2) Notary Public**

STATE OF \_\_\_\_\_ ss:  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ (month, year)

by \_\_\_\_\_  
\_\_\_\_\_ (name of person)

(SEAL)

\_\_\_\_\_  
Signature of Notary

My appointment expires: \_\_\_\_\_

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