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HOUSE BILL 814

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Karen E. Giannini

AN ACT

RELATING TO HEALTH CARE; PROVIDING FOR DIGNIFIED ACCESS TO DEATH FOR TERMINALLY ILL INDIVIDUALS; ENACTING THE DEATH WITH DIGNITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Death with Dignity Act".

Section 2. DEFINITIONS.--As used in the Death with Dignity Act:

A. "adult" means an individual who is eighteen years of age or older;

B. "attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease;

C. "capable" means that, in the opinion of a court

1 or in the opinion of the patient's attending physician or
2 consulting physician, psychiatrist or psychologist, a patient
3 has the ability to make and communicate health care decisions
4 to health care providers, including communication through
5 persons familiar with the patient's manner of communicating if
6 those persons are available;

7 D. "consulting physician" means a physician who is
8 qualified by specialty or experience to make a professional
9 diagnosis and prognosis regarding the patient's disease;

10 E. "counseling" means one or more consultations as
11 necessary between a state licensed psychiatrist or psychologist
12 and a patient for the purpose of determining that the patient
13 is capable and not suffering from a psychiatric or
14 psychological disorder or depression causing impaired judgment;

15 F. "department" means the department of health;

16 G. "health care provider" means a person licensed,
17 certified or otherwise authorized or permitted by the law of
18 this state to administer health care or dispense medication in
19 the ordinary course of business or practice of a profession and
20 includes a health care facility;

21 H. "informed decision" means a decision by a
22 qualified patient to request and obtain a prescription to end
23 the qualified patient's life in a humane and dignified manner
24 that is based on an appreciation of the relevant facts and
25 after being fully informed by the attending physician of:

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1 (1) a qualified patient's medical diagnosis;
2 (2) a qualified patient's prognosis;
3 (3) the potential risks associated with taking
4 the medication to be prescribed;

5 (4) the probable result of taking the
6 medication to be prescribed; and

7 (5) the feasible alternatives, including
8 comfort care, hospice care and pain control;

9 I. "medically confirmed" means the medical opinion
10 of the attending physician has been confirmed by a consulting
11 physician who has examined the patient and the patient's
12 relevant medical records;

13 J. "patient" means a person who is under the care
14 of a physician;

15 K. "physician" means a doctor of medicine licensed
16 to practice medicine pursuant to Chapter 61, Article 6 NMSA
17 1978 or a doctor of osteopathy licensed to practice medicine
18 pursuant to Chapter 61, Article 10 NMSA 1978;

19 L. "qualified patient" means a capable adult who is
20 a resident of New Mexico and has satisfied the requirements of
21 the Death with Dignity Act in order to obtain a prescription
22 for medication to end the adult's life in a humane and
23 dignified manner; and

24 M. "terminal disease" means an incurable and
25 irreversible disease that has been medically confirmed and

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1 will, within reasonable medical judgment, produce death within
2 six months.

3 Section 3. MEDICATION--INITIATION OF REQUEST.--

4 A. An adult who is capable, is a resident of New
5 Mexico, is determined by the adult's attending physician and
6 consulting physician to be suffering from a terminal disease
7 and who has voluntarily expressed the adult's wish to die may
8 make a written request for medication for the purpose of ending
9 the adult's life in a humane and dignified manner in accordance
10 with the Death with Dignity Act.

11 B. No person shall be classified as a qualified
12 patient pursuant to the Death with Dignity Act solely because
13 of age or disability.

14 Section 4. REQUEST FOR MEDICATION.--

15 A. A valid request for medication pursuant to the
16 Death with Dignity Act shall be in substantially the form set
17 forth in that act. The form shall be signed and dated by the
18 qualified patient and witnessed by at least two individuals
19 who, in the presence of the patient, attest that to the best of
20 their knowledge and belief, the patient is capable, is acting
21 voluntarily and is not being coerced to sign the request.

22 B. At least one of the witnesses shall be a person
23 who is not:

24 (1) a relative of the patient by blood,
25 marriage or adoption;

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1 (2) a person who at the time the request is
2 signed would be entitled to any portion of the estate of the
3 qualified patient upon death under any will or by operation of
4 law; or

5 (3) an owner, operator or employee of a health
6 care facility where the qualified patient is receiving medical
7 treatment or is a resident.

8 C. The patient's attending physician at the time
9 the request is signed shall not be a witness.

10 D. If the patient is a patient in a long-term care
11 facility at the time the written request is made, one of the
12 witnesses shall be an individual designated by the facility and
13 having the qualifications specified by rule of the department.

14 Section 5. ATTENDING PHYSICIAN RESPONSIBILITIES.--

15 A. The attending physician shall:

16 (1) make the initial determination of whether
17 a patient has a terminal disease, is capable and has made the
18 request voluntarily;

19 (2) request that the patient demonstrate
20 residency;

21 (3) ensure that the patient is making an
22 informed decision by informing the patient of:

23 (a) the patient's medical diagnosis;

24 (b) the patient's prognosis;

25 (c) the potential risks associated with

1 taking the medication to be prescribed;

2 (d) the probable result of taking the
3 medication to be prescribed; and

4 (e) the feasible alternatives, including
5 comfort care, hospice care and pain control;

6 (4) refer the patient to a consulting
7 physician for medical confirmation of the diagnosis and for a
8 determination that the patient is capable and acting
9 voluntarily;

10 (5) refer the patient for counseling, if
11 appropriate;

12 (6) recommend that the patient notify next of
13 kin;

14 (7) counsel the patient about the importance
15 of having another person present when the patient takes the
16 medication prescribed pursuant to the Death with Dignity Act
17 and of not taking the medication in a public place;

18 (8) inform the patient that the patient has an
19 opportunity to rescind the request at any time and in any
20 manner, and offer the patient an opportunity to rescind at the
21 end of the fifteen-day waiting period;

22 (9) verify, immediately prior to writing the
23 prescription for medication pursuant to the Death with Dignity
24 Act, that the patient is making an informed decision;

25 (10) fulfill the medical record documentation

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1 requirements of the Death with Dignity Act;

2 (11) ensure that all appropriate steps are
3 carried out in accordance with the Death with Dignity Act prior
4 to writing a prescription for medication to enable a qualified
5 patient to end the qualified patient's life in a humane and
6 dignified manner; and

7 (12) dispense medications directly, including
8 ancillary medications intended to facilitate the desired effect
9 to minimize the patient's discomfort; provided the attending
10 physician is registered as a dispensing physician pursuant to
11 the Death with Dignity Act and complies with any applicable
12 rules of the department, or with the patient's written consent:

13 (a) contact a pharmacist and inform the
14 pharmacist of the prescription; and

15 (b) deliver the written prescription
16 personally, electronically or by mail to the pharmacist, who
17 will dispense the medications to either the patient, the
18 attending physician or an expressly identified agent of the
19 patient.

20 B. Notwithstanding any other provision of law, the
21 attending physician may sign the patient's death certificate.

22 Section 6. CONSULTING PHYSICIAN'S CONFIRMATION.--Before a
23 patient is qualified pursuant to the Death with Dignity Act, a
24 consulting physician shall examine the patient and the
25 patient's relevant medical records and confirm, in writing, the

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1 attending physician's diagnosis that the patient is suffering
2 from a terminal disease, and verify that the patient is
3 capable, is acting voluntarily and has made an informed
4 decision.

5 Section 7. COUNSELING REFERRAL.--If, in the opinion of
6 the attending physician or the consulting physician, a patient
7 may be suffering from a psychiatric or psychological disorder
8 or depression causing impaired judgment, either an attending
9 physician or a consulting physician shall refer the patient for
10 counseling. No medication to end a patient's life in a humane
11 and dignified manner shall be prescribed until the person
12 performing the counseling determines that the patient is not
13 suffering from a psychiatric or psychological disorder or
14 depression causing impaired judgment.

15 Section 8. INFORMED DECISION.--A patient shall not
16 receive a prescription for medication to end the patient's life
17 in a humane and dignified manner unless the patient has made an
18 informed decision as defined in the Death with Dignity Act.
19 Immediately prior to writing a prescription for medication
20 pursuant to the Death with Dignity Act, the attending physician
21 shall verify that the patient is making an informed decision.

22 Section 9. FAMILY NOTIFICATION.--The attending physician
23 shall recommend that the patient notify the next of kin of the
24 patient's request for medication pursuant to the Death with
25 Dignity Act. A patient who declines or is unable to notify

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1 next of kin shall not have the patient's request denied for
2 that reason.

3 Section 10. WRITTEN AND ORAL REQUESTS.--In order to
4 receive a prescription for medication to end a patient's life
5 in a humane and dignified manner, a qualified patient shall
6 have made an oral request and a written request and reiterate
7 the oral request to the patient's attending physician no fewer
8 than fifteen days after making the initial oral request. At
9 the time the qualified patient makes the patient's second oral
10 request, the attending physician shall offer the patient an
11 opportunity to rescind the request.

12 Section 11. RIGHT TO RESCIND REQUEST.--A qualified
13 patient may rescind the patient's request at any time and in
14 any manner without regard to the patient's mental state. No
15 prescription for medication pursuant to the Death with Dignity
16 Act may be written without the attending physician offering the
17 qualified patient an opportunity to rescind the request.

18 Section 12. WAITING PERIODS.--No fewer than fifteen days
19 shall elapse between the patient's initial oral request and the
20 writing of a prescription pursuant to the Death with Dignity
21 Act. No fewer than forty-eight hours shall elapse between the
22 patient's written request and the writing of a prescription
23 pursuant to that act.

24 Section 13. MEDICAL RECORD DOCUMENTATION REQUIREMENTS.--
25 The following shall be documented or filed in the patient's

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1 medical record:

2 A. all oral requests by a patient for medication to
3 end the patient's life in a humane and dignified manner;

4 B. all written requests by a patient for medication
5 to end the patient's life in a humane and dignified manner;

6 C. the attending physician's diagnosis, prognosis
7 and determination that the patient is capable, acting
8 voluntarily and has made an informed decision;

9 D. the consulting physician's diagnosis, prognosis
10 and verification that the patient is capable, acting
11 voluntarily and has made an informed decision;

12 E. a report of the outcome and determinations made
13 during counseling, if performed;

14 F. the attending physician's offer to the patient
15 to rescind the patient's request at the time of the patient's
16 second oral request as required by the Death with Dignity Act;
17 and

18 G. a note by the attending physician indicating
19 that all requirements of the Death with Dignity Act have been
20 met and indicating the steps taken to carry out the request,
21 including a notation of the medication prescribed.

22 Section 14. RESIDENCY REQUIREMENT.--Only requests made by
23 New Mexico residents pursuant to the Death with Dignity Act
24 shall be granted. Factors demonstrating New Mexico residency
25 include:

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- 1 A. possession of a New Mexico driver's license;
- 2 B. registration to vote in the state;
- 3 C. evidence that the person owns or leases property
- 4 in the state; or
- 5 D. filing of a New Mexico tax return for the most
- 6 recent taxable year.

7 Section 15. REPORTING REQUIREMENTS.--

- 8 A. The department shall annually review a sample of
- 9 records maintained pursuant to the Death with Dignity Act.
- 10 B. The department shall require a health care
- 11 provider upon dispensing medication pursuant to the Death with
- 12 Dignity Act to file a copy of the dispensing record with the
- 13 department.
- 14 C. The department shall adopt rules to facilitate
- 15 the collection of information regarding compliance with the
- 16 Death with Dignity Act. Except as otherwise required by law,
- 17 the information collected shall not be a public record and may
- 18 not be made available for inspection by the public.
- 19 D. The department shall generate and make available
- 20 to the public an annual statistical report of information
- 21 collected pursuant to this section.

22 Section 16. EFFECT ON CONSTRUCTION OF WILLS--CONTRACTS--

23 STATUTES.--

- 24 A. No provision in a contract, will or other
- 25 agreement, whether written or oral, to the extent the provision

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1 would affect whether a person may make or rescind a request for
2 medication to end the person's life in a humane and dignified
3 manner shall be valid.

4 B. No obligation owing under an existing contract
5 shall be conditioned or affected by the making or rescinding of
6 a request by a person for medication to end the person's life
7 in a humane and dignified manner.

8 Section 17. INSURANCE OR ANNUITY POLICIES.--The sale,
9 procurement or issuance of a life, health or accident insurance
10 or annuity policy or the rate charged for a policy shall not be
11 conditioned upon or affected by the making or rescinding of a
12 request by a person for medication to end the person's life in
13 a humane and dignified manner. A qualified patient's act of
14 ingesting medication to end the qualified patient's life in a
15 humane and dignified manner shall not have an effect upon a
16 life, health or accident insurance or annuity policy purchased,
17 renewed or entered into after the effective date of the Death
18 with Dignity Act.

19 Section 18. CONSTRUCTION OF ACT.--Nothing in the Death
20 with Dignity Act shall be construed to authorize a physician or
21 any other person to end a patient's life by lethal injection,
22 mercy killing or active euthanasia. Actions taken in
23 accordance with the Death with Dignity Act shall not, for any
24 purpose, constitute suicide, assisted suicide, mercy killing or
25 homicide under the law.

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1 Section 19. IMMUNITIES AND LIABILITIES--BASIS FOR
2 PROHIBITING HEALTH CARE PROVIDER FROM PARTICIPATION--
3 NOTIFICATION--PERMISSIBLE SANCTIONS.--

4 A. Except as otherwise provided in the Death with
5 Dignity Act:

6 (1) a person shall not be subject to civil or
7 criminal liability or professional disciplinary action for
8 participating in good-faith compliance with the Death with
9 Dignity Act, including being present when a qualified patient
10 takes the prescribed medication to end the patient's life in a
11 humane and dignified manner;

12 (2) a professional organization or association
13 or health care provider may not subject a person to censure,
14 discipline, suspension, loss of license, loss of privileges,
15 loss of membership or other penalty for participating or
16 refusing to participate in good-faith compliance with the Death
17 with Dignity Act;

18 (3) a request by a patient for or provision by
19 an attending physician of medication in good-faith compliance
20 with the provisions of the Death with Dignity Act shall not
21 constitute neglect for any purpose of law or provide the sole
22 basis for the appointment of a guardian or conservator; and

23 (4) a health care provider shall not be under
24 any duty, whether by contract, by statute or by any other legal
25 requirement to participate in the provision to a qualified

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1 patient of medication to end the patient's life in a humane and
2 dignified manner; provided that if a health care provider is
3 unable or unwilling to carry out a patient's request pursuant
4 to the Death with Dignity Act, and the patient transfers the
5 patient's care to a new health care provider, the prior health
6 care provider shall transfer, upon request, a copy of the
7 patient's relevant medical records to the new health care
8 provider.

9 B. A health care provider may:

10 (1) prohibit another health care provider from
11 participating in the Death with Dignity Act on the premises of
12 the prohibiting provider if the prohibiting provider has
13 notified the other health care provider of the prohibiting
14 provider's policy against participating in activities
15 authorized by the Death with Dignity Act; however, nothing in
16 this paragraph prevents a health care provider that is not the
17 prohibiting health care provider from providing health care
18 services to a patient that do not constitute participation in
19 the Death with Dignity Act; and

20 (2) subject another health care provider to
21 the sanctions stated in this paragraph if the sanctioning
22 health care provider has notified the sanctioned health care
23 provider prior to the sanctioned health care provider's
24 participation in activities authorized pursuant to the Death
25 with Dignity Act that the sanctioning health care provider may

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1 prohibit participation in activities authorized in that act and
2 may provide the following sanctions:

3 (a) loss of privileges, loss of
4 membership or other sanction provided pursuant to the medical
5 staff bylaws, policies and procedures of the sanctioning health
6 care provider if the sanctioned provider is a member of the
7 sanctioning provider's medical staff and participates in
8 activities authorized by the Death with Dignity Act while on
9 the health care facility premises of the sanctioning health
10 care provider, but not including the private medical office of
11 a physician or other provider;

12 (b) termination of a lease or other
13 property contract or other nonmonetary remedies provided by a
14 lease contract, not including loss or restriction of medical
15 staff privileges or exclusion from a provider panel, if the
16 sanctioned provider participates in activities authorized by
17 the Death with Dignity Act while on the premises of the
18 sanctioning health care provider or on property that is owned
19 by or under the direct control of the sanctioning health care
20 provider; or

21 (c) termination of a contract or other
22 nonmonetary remedies provided by contract if the sanctioned
23 provider participates in activities authorized by the Death
24 with Dignity Act while acting in the course and scope of the
25 sanctioned provider's capacity as an employee or independent

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1 contractor of the sanctioning health care provider; provided
2 that nothing in this subparagraph shall be construed to
3 prevent: 1) a health care provider from participating in the
4 activities authorized by the Death with Dignity Act while
5 acting outside the course and scope of the provider's capacity
6 as an employee or independent contractor; or 2) a patient from
7 contracting with the patient's attending physician and
8 consulting physician to act outside the course and scope of the
9 provider's capacity as an employee or independent contractor of
10 the sanctioning health care provider.

11 C. A health care provider that imposes sanctions
12 pursuant to this section shall follow all due process and other
13 procedures that the sanctioning health care provider may have
14 that are related to the imposition of sanctions on another
15 health care provider.

16 D. As used in this section:

17 (1) "notify" means a separate statement in
18 writing to the health care provider specifically informing the
19 health care provider prior to the provider's participation in
20 activities authorized by the Death with Dignity Act of the
21 sanctioning health care provider's policy about participation
22 in activities covered by that act; and

23 (2) "participate in activities authorized by
24 the Death with Dignity Act" means to perform the duties of an
25 attending physician, the functions of a consulting physician or

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1 the counseling function described in that act; "participate in
2 activities authorized by the Death with Dignity Act" does not
3 include:

4 (a) making an initial determination that
5 a patient has a terminal disease and informing the patient of
6 the medical prognosis;

7 (b) providing information about the
8 Death with Dignity Act to a patient upon the request of the
9 patient;

10 (c) providing a patient, upon the
11 request of the patient, with a referral to another physician;
12 or

13 (d) a patient contracting with the
14 patient's attending physician and consulting physician to act
15 outside of the course and scope of the provider's capacity as
16 an employee or independent contractor of the sanctioning health
17 care provider.

18 E. Suspension or termination of staff membership or
19 privileges under this section shall not be the sole basis for a
20 report of unprofessional or dishonorable conduct pursuant to
21 the provisions of Chapter 61, Article 6 NMSA 1978 or Chapter
22 61, Article 10 NMSA 1978.

23 F. The Death with Dignity Act shall not be
24 construed to allow a lower standard of care for patients in the
25 community where the patient is treated or a similar community.

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1 Section 20. LIABILITIES.--

2 A. A person who without authorization of the
3 patient willfully alters or forges a request for medication or
4 conceals or destroys a rescission of that request with the
5 intent or effect of causing the patient's death is guilty of a
6 third degree felony and upon conviction shall be sentenced
7 pursuant to Section 31-18-15 NMSA 1978.

8 B. A person who coerces or exerts undue influence
9 on a patient to request medication for the purpose of ending
10 the patient's life, or to destroy a rescission of such a
11 request, is guilty of a third degree felony and upon conviction
12 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

13 C. The Death with Dignity Act shall not be
14 construed to limit further liability for civil damages
15 resulting from other negligent conduct or intentional
16 misconduct by a person.

17 D. The penalties in the Death with Dignity Act do
18 not preclude criminal penalties applicable under other law for
19 conduct that is inconsistent with the provisions of that act.

20 Section 21. CLAIMS BY GOVERNMENTAL ENTITIES FOR COSTS
21 INCURRED.--A governmental entity that incurs costs resulting
22 from a person terminating the person's life pursuant to the
23 provisions of the Death with Dignity Act in a public place
24 shall have a claim against the estate of the person to recover
25 those costs and reasonable attorney fees related to enforcing

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1 the claim.

2 Section 22. FORM OF THE REQUEST.--

3 A. The department shall create forms necessary to
4 carry out the purposes of the Death with Dignity Act.

5 B. A request for a medication shall include:

6 (1) a heading noting that the form is for
7 medication to end the life of the patient in a dignified and
8 humane manner;

9 (2) a statement that the person making the
10 request is an adult of sound mind;

11 (3) a statement of the medical conditions and
12 prognosis of the patient;

13 (4) a statement that the patient has been
14 fully informed of the patient's diagnosis, prognosis, the
15 nature of medication to be prescribed and potential associated
16 risks, the expected result and the feasible alternatives,
17 including comfort care, hospice care and pain control;

18 (5) a request that the patient's attending
19 physician prescribe medication that is intended to end the
20 patient's life in a humane and dignified manner;

21 (6) a place for the patient to indicate
22 whether:

23 (a) the patient's family or next of kin
24 has been informed of the patient's decision and has taken the
25 opinions of the family or next of kin into consideration;

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1 (b) the patient has decided not to
2 inform the patient's family or next of kin; or

3 (c) the patient has no family or next of
4 kin;

5 (7) a statement that the patient is aware that
6 the patient has the right to rescind a request for medication
7 at any time;

8 (8) statements that the patient understands:

9 (a) the full import of this request and
10 the patient expects to die when the patient takes the
11 medication to be prescribed; and

12 (b) that although most deaths occur
13 within three hours, the patient's death may take longer and the
14 patient's physician has counseled the patient about this
15 possibility;

16 (9) the patient makes the request for
17 medication voluntarily and without reservation, and the patient
18 accepts full moral responsibility for the patient's actions;

19 (10) a signature and date line for the patient
20 to complete; and

21 (11) signature lines for two witnesses and a
22 method for the witnesses to affirm that:

23 (a) the patient signing the request: 1)
24 is personally known to the witnesses or has provided proof of
25 identity; 2) signed this request in the presence of the

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1 witnesses; 3) appears to be of sound mind and not under duress,
2 fraud or undue influence; and (4) is not a patient for whom
3 either of the witnesses is an attending physician;

4 (b) neither witness: 1) is a relative
5 by blood, marriage or adoption of the person signing the
6 request; 2) is entitled to any portion of the person's estate
7 upon death; and 3) is not an owner, operator or employee of a
8 health care facility where the person is a patient or resident;
9 and

10 (c) if the patient is an inpatient at a
11 health care facility, one of the witnesses shall be an
12 individual designated by the facility.

13 Section 23. PENALTIES.--

14 A. A person without authorization from a patient
15 requesting medication pursuant to the Death with Dignity Act,
16 who willfully alters, forges, conceals or destroys an
17 instrument, the reinstatement or revocation of an instrument or
18 any other evidence or document reflecting a patient's desires
19 and interests, with the intent and effect of causing a
20 withholding or withdrawal of life-sustaining procedures or of
21 artificially administered nutrition and hydration that hastens
22 the death of the patient is guilty of a third degree felony and
23 upon conviction shall be sentenced pursuant to Section
24 31-18-15 NMSA 1978.

25 B. A person without authorization from a patient
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1 who willfully alters, forges, conceals or destroys an
2 instrument, the reinstatement or revocation of an instrument or
3 any other evidence or document reflecting the patient's desires
4 and interests with the intent or effect of affecting a health
5 care decision is guilty of a misdemeanor and upon conviction
6 shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

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