



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

DATE	March 5, 1996
TIME	3:25 PM
RECEIVED BY	<i>[Signature]</i>
FOR	P. Roberto

RETURN TO
LEGISLATIVE SECRETARY

MAR 05 1996

The Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Center - Suite 222
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>[Signature]</i>
Time	4:12 P.M.
Date	3-5-96

Dear Speaker Parkinson:

Enclosed please find a copy of Bill No.443 (LS), "AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT", which I have numbered as **Public Law No. 23-73**.

Very truly yours,

[Signature]
Madeleine Z. Bordallo
Acting Governor of Guam

Attachment

232019

TWENTY-THIRD GUAM LEGISLATURE
1996 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 443 (LS), "AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT," returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 28th day of February, 1996, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit; by a vote of fifteen (15) members.



DON PARKINSON
Speaker

Attested:



JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 1st day of MARCH,
1996, at 5:40 o'clock P.M.



Assistant Staff Officer
Governor's Office

Public Law No. 23-73

1 medical care, including the decision to have life-sustaining treatment
2 withheld or withdrawn in instances of a terminal condition or
3 permanent unconscious condition.

4 (b) The Legislature further finds that modern medical technology
5 has made possible the artificial prolongation of human life beyond
6 natural limits.

7 (c) The Legislature further finds that, in the interest of protecting
8 individual autonomy, such prolongation of the process of dying for a
9 person with a terminal condition or permanent unconscious condition
10 for whom continued medical treatment does not improve the prognosis
11 for recovery may violate patient dignity and cause unnecessary pain
12 and suffering, while providing nothing medically necessary or beneficial
13 to the person.

14 (d) In recognition of the dignity and privacy that a person has a
15 right to expect, the Legislature hereby declares that the laws of the
16 Territory of Guam shall recognize the right of any adult person to make
17 a written declaration instructing his or her physician to withhold or
18 withdraw life-sustaining treatment in the event of a terminal condition
19 or permanent unconscious condition, in the event that the person is
20 unable to make those decisions for himself or herself.

21 (e) The Legislature further declares that, in the absence of
22 controversy, a court normally is not the proper forum in which to make
23 decisions regarding life-sustaining treatment.

24 (f) To avoid treatment that is not desired by a person in a terminal
25 condition or permanent unconscious condition, the Legislature declares
26 that this chapter is in the interest of the public health and welfare.

1 (g) The Legislature further finds that the family should be
2 encouraged to openly express their opinion and concerns with the
3 individual. It recognizes the importance family plays in supporting the
4 decision of the individual.

5 **§91102. Definitions.** As used in this chapter, unless the context
6 otherwise requires:

7 (a) "Attending physician" means the physician who has primary
8 responsibility for the treatment and care of the patient.

9 (b) "Declaration" means a writing executed in accordance with
10 the requirements of subdivision (a) of Section 91103.

11 (c) "Health care provider" means a person who is licensed,
12 certified, or otherwise authorized by the laws of this Territory to
13 administer health care in the ordinary course of business or practice of a
14 profession.

15 (d) "Life-sustaining treatment" means any medical
16 procedure or intervention that, when administered to a qualified
17 patient, will serve only to prolong the process of dying or an irreversible
18 coma or persistent vegetative state. "Life-sustaining treatment" shall
19 not include the administration of medication or the performance of any
20 medical procedure deemed necessary to alleviate pain or for nutrition
21 or hydration.

22 (e) "Permanent unconscious condition" means an incurable and
23 irreversible condition that, within reasonable medical judgment,
24 renders the patient in an irreversible coma or persistent vegetative
25 state.

26 (f) "Person" means an individual, corporation, business trust,
27 estate, trust, partnership, association, joint venture, government,

1 governmental subdivision or agency, or any other legal or commercial
2 entity.

3 (g) "Physician" means an individual licensed to practice medicine
4 in the Territory of Guam.

5 (h) "Qualified patient" means a patient 18 or more years of age
6 who has executed a declaration and who has been diagnosed and
7 certified in writing by the attending physician and a second physician
8 who has personally examined the patient to be in a terminal condition
9 or permanent unconscious condition.

10 (i) "State" means a state of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, or a territory or insular
12 possession subject to the jurisdiction of the United States.

13 (j) "Terminal condition" means an incurable and irreversible
14 condition that, without the administration of life-sustaining treatment,
15 will, within reasonable medical judgment, result in death within a
16 relatively short time.

17 **§91103. Declaration Concerning Life-Sustaining Treatment;**
18 **Execution Requirements.**

19 (a) An individual of sound mind and 18 or more years of age may
20 execute at any time a declaration governing the withholding or
21 withdrawal of life-sustaining treatment. The declaration shall be a
22 separate document and not a part of another document nor contained
23 on a piece of paper containing some other document, shall be signed by
24 the declarant, or another at the declarant's direction and in the
25 declarant's presence, and witnessed by two individuals neither of
26 whom may be a person who is entitled to any portion of the estate of
27 the qualified patient upon his or her death under any will or codicil

1 thereto of the qualified patient existing at the time of execution of the
2 declaration or by operation of law. In addition, a health care provider,
3 an employee of a health care provider, the operator of a community
4 care facility, an employee of an operator of a community care facility,
5 the operator of a residential care facility for the elderly, or an employee
6 of an operator of a residential care facility for the elderly may not be a
7 witness.

8 (b) A declaration shall substantially contain the following
9 provisions:

10 **DECLARATION**

11 If I should have an incurable and irreversible condition that has
12 been diagnosed by two physicians and that will result in my death
13 within a relatively short time without the administration of
14 life-sustaining treatment or has produced an irreversible coma or
15 persistent vegetative state, and I am no longer able to make decisions
16 regarding my medical treatment, I direct my attending physician,
17 pursuant to the Natural Death Act of Guam, to withhold or withdraw
18 life-sustaining treatment that only prolongs the process of dying or the
19 irreversible coma or persistent vegetative state and is not necessary for
20 my comfort, nutrition, hydration or to alleviate pain.

21 If I have been diagnosed as pregnant, and that diagnosis is known
22 to my physician, this declaration shall have no force or effect during my
23 pregnancy.

24 Signed _____ this day of _____, _____

25 Signature _____

26 Address _____

1 The declarant voluntarily signed this writing in my presence. I am
2 not entitled to any portion of the estate of the declarant upon his or her
3 death under any will or codicil thereto of the declarant now existing or
4 by operation of law. I am not a health care provider, an employee of a
5 health care provider, the operator of a community care facility, an
6 employee of an operator of a community care facility, the operator of a
7 residential care facility for the elderly, or an employee of an operator of
8 a residential care facility for the elderly.

9 Witness _____ Witness _____

10 Address _____ Address _____

11 (c) A physician or other health care provider who is furnished a
12 copy of the declaration shall make it a part of the declarant's medical
13 record and, if unwilling to comply with the declaration, promptly so
14 advise the declarant.

15 **§91104. Patients In Nursing Homes; Effect Of Declaration.**

16 A declaration shall have no force or effect if the declarant is a
17 person in a skilled nursing facility as defined in 10 Guam Code
18 Annotated Section 7102(a), at the time the declaration is executed unless
19 one of the two witnesses to the declaration is a patient advocate or
20 ombudsman as may be designated by the Administrator of the Division
21 of Senior Citizens, Department of Public Health & Social Services, for
22 this purpose.

23 **§91105. Operative Effect Of Declaration.**

24 A declaration becomes operative when (a) it is communicated to
25 the attending physician and (b) the declarant is diagnosed and certified
26 in writing by the attending physician and a second physician who has
27 personally examined the declarant to be in a terminal condition or

1 permanent unconscious condition and no longer able to make decisions
2 regarding administration of life-sustaining treatment. When the
3 declaration becomes operative, the attending physician and other
4 health care providers shall act in accordance with its provisions or
5 comply with the transfer requirements of Section 91109.

6 **§91106. Revocation Of Declaration.**

7 (a) A declarant may revoke a declaration at any time and in any
8 manner, without regard to the declarant's mental or physical condition.
9 A revocation is effective upon its communication to the attending
10 physician or other health care provider by the declarant or a witness to
11 the revocation.

12 (b) The attending physician or other health care provider shall
13 make the revocation a part of the declarant's medical record.

14 **§91107. Terminal Or Permanent Unconscious Condition; Records.**

15 Upon determining that the declarant is in a terminal condition or
16 permanent unconscious condition, the attending physician who knows
17 of a declaration shall record the determination and the terms of the
18 declaration in the declarant's medical record and file a copy of the
19 declaration in the record.

20 **§91108. Self-Determination By Patient; Pregnant Patients.**

21 (a) A qualified patient may make decisions regarding life
22 sustaining treatment as long as the patient is able to do so.

23 (b) This chapter does not affect the responsibility of the attending
24 physician or other health care provider to provide treatment for a
25 patient's comfort, care or alleviation of pain.

26 (c) The declaration of a qualified patient known to the attending
27 physician to be pregnant shall not be given effect as long as the patient

1 is pregnant. The attending physician shall cause a test to be made to
2 determine if a female qualified patient in a terminal condition is
3 pregnant.

4 **§91109. Physician Or Health Care Provider Unwilling To Comply**
5 **With Chapter; Transfer Of Patient.**

6 An attending physician or other health care provider who is
7 unwilling to comply with this chapter shall take all reasonable steps as
8 promptly as practicable to transfer care of the declarant to another
9 physician or health care provider who is willing to do so .

10 **§91110. Civil Or Criminal Liability; Unprofessional Conduct.**

11 (a) A physician or other health care provider is not subject to civil
12 or criminal liability, or discipline for unprofessional conduct, for giving
13 effect to a declaration in the absence of knowledge of the revocation of
14 a declaration.

15 (b) A physician or other health care provider, whose action under
16 this chapter is in accord with reasonable medical standards, is not
17 subject to criminal prosecution, civil liability, discipline for
18 unprofessional conduct, administrative sanction, or any other sanction
19 if the physician or health care provider believes in good faith that the
20 action is consistent with this chapter and the desires of the declarant
21 expressed in the declaration.

22 **§91111. Willful Failure To Act; Fraudulent Conduct; Penalties.**

23 (a) A physician or other health care provider who willfully fails to
24 transfer the care of a patient in accordance with Section 91109 is guilty
25 of a felony of the third degree.

26 (b) A physician who willfully fails to record a determination of
27 terminal condition or permanent unconscious condition or the terms of

1 a declaration in accordance with Section 91107 is guilty of a felony of
2 the third degree.

3 (c) An individual who willfully conceals, cancels, defaces, or
4 obliterates the declaration of another individual without the declarant's
5 consent or who falsifies or forges a revocation of the declaration of
6 another individual is guilty of a felony of the third degree.

7 (d) An individual who falsifies or forges the declaration of another
8 individual, or willfully conceals or withholds personal knowledge of a
9 revocation is guilty of a felony of the third degree.

10 (e) A personal who requires or prohibits the execution of a
11 declaration as a condition for being insured for, or receiving, health
12 care services is guilty of a felony of the third degree.

13 (f) A person who coerces or fraudulently induces an individual to
14 execute a declaration is guilty of a felony of the third degree.

15 (g) The sanctions provided in this section do not displace any
16 sanction applicable under other law.

17 **§91112. Construction Of Chapter, Characterization Of Death**
18 **Resulting From Decisions Made In Accordance With Chapter; Effect Of**
19 **Declaration On Life Insurance Or Annuities; Deliberate Acts Or**
20 **Omissions To End Life.**

21 (a) Death resulting from the withholding or withdrawal of a
22 life-sustaining treatment in accordance with this Act does not
23 constitute, for any purpose, a suicide or homicide.

24 (b) The making of a declaration pursuant to Section 91103 does
25 not affect in any manner the sale, procurement, or issuance of any
26 policy of life insurance or annuity, nor does it affect, impair, or modify
27 the terms of an existing policy of life insurance or annuity. A policy of

1 life insurance or annuity is not legally impaired or invalidated by the
2 withholding or withdrawal of life sustaining treatment from an
3 insured, notwithstanding any term to the contrary.

4 (c) A person may not prohibit or require the execution of a
5 declaration as a condition for being insured for, or receiving, health
6 care services.

7 (d) This Act creates no presumption concerning the intention of an
8 individual who has revoked or has not executed a declaration with
9 respect to the use, withholding, or withdrawal of life-sustaining
10 treatment in the event of a terminal condition or permanent conscious
11 condition.

12 (e) This Act does not affect the right of a patient to make decisions
13 regarding use of life-sustaining treatment, so long as the patient is able
14 to do so, or impair or supersede a right or responsibility that a person
15 has to effect the withholding or withdrawal of medical treatment.

16 (f) This Act does not require any physician or other health care
17 provider to take any action contrary to reasonable medical standards.

18 (g) This Act does not condone, authorize, or approve mercy killing
19 or assisted suicide or permit any affirmative or deliberate act or
20 omission to end life other than to permit the natural process of dying.

21 (h) The rights granted by this Act are in addition to, and not in
22 derogation of, rights under any other statutory or case law.

23 (i) A person shall be considered dead if in the opinion of a
24 physician, based on ordinary standards of current medical practice, the
25 person has experienced irreversible cessation of spontaneous
26 respiratory and circulatory function. Death will have occurred at the
27 time when the irreversible cessation of the function first occurred.

1 (j) In the event that artificial means of support preclude a
2 determination that respiratory and circulatory functions have ceased, a
3 person shall be considered dead if, in the opinion of the attending
4 physician and one other physician, based on ordinary standards of
5 medical practice, the person has experienced irreversible cessation of all
6 function of the brain, including brain stem. The opinions of the
7 physicians shall be evidenced by signed statements. Death will have
8 occurred at the time when the irreversible cessation of all functions of
9 the entire brain, including the brain stem, first occurred. Death shall be
10 pronounced before artificial means of support are withdrawn and
11 before any vital organ is removed for purposes of transplantation.

12 **§91113. Declaration Presumed In Compliance And Valid.**

13 In the absence of knowledge to the contrary, a physician or other
14 health care provider may presume that a declaration complies with this
15 Act and is valid.

16 **§91114. Instruments Executed In Other States.**

17 An instrument governing the withholding or withdrawal of life-
18 sustaining treatment executed in another state in compliance with the
19 laws of that state or of the Territory of Guam, is valid for purposes of
20 this Act.

21 **§91115. Instruments To Be Given Effect Pursuant To Act.** The
22 following instruments shall be given effect pursuant to the provisions of
23 this Act.

24 (a) An instrument executed before the effective date of this Act
25 that substantially complies with subdivision (a) of Section 91103.

26 (b) An instrument governing the withholding or withdrawal of
27 life-sustaining treatment executed in another state that does not

1 comply with the laws of that state, but substantially complies with the
2 laws of the Territory of Guam.

3 **§91116. Severability Of Provisions.**

4 If any provision of this Act or its application to any person or
5 circumstance is held invalid, the invalidity shall not affect other
6 provisions or applications of this Act which can be given effect without
7 the invalid provision or application, and to this end the provisions of
8 this Act are severable.

9 **§91117. Uniform Law; Construction Of Act.**

10 To the extent that a provision of this Act conforms to the Uniform
11 Rights of the Terminally Ill Act, that provision shall be applied and
12 construed to effectuate its general purpose to make uniform the law
13 with respect to the subject of this Act among states enacting it."

0.000773 of 06.000 2/28/96
23-73



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By Jellefer
Time 10:49 AM
Date 2/27/96

FEB 27 1996

The Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Center - Suite 222
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY

Date: 2/27/96
Time: 9:15 A
Received By: W
Print Name: HANS LAMONIE

REFER TO
LEGISLATIVE SECRETARY

Dear Speaker Parkinson:

Enclosed please find Bill No. 443 (LS), "AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT", which I have vetoed.

I am in favor of the essential concept behind this legislation, which is to allow a patient to choose his or her course of treatment in the case of impending death by choosing to die naturally, rather than be subjected to extraordinary means of prolonging the death process. The natural death process affirms the dignity of life. This particular bill, however, contains a few fatal flaws.

The fatal flaws in the bill result from unclear or incomplete language. Statutes stating the method of dealing with the withdrawal of medical treatment in the case of impending death should be very, very clear and complete. The following language, or incompletely addressed items, are the reasons for the veto of this bill:

1. "Substantially complies with". Bill No. 443 provides for a person to execute a certain document, or "declaration", stating his or her wishes in the case of experiencing an "irreversible coma or persistent vegetative state". The bill states that a document executed in another state and governing the withholding or withdrawal of life-sustaining treatment which "substantially complies with" the laws of Guam will be given effect on Guam. See page 12, line 1. I believe that an authorization for removing life-sustaining treatment on Guam must comply **completely** with the laws

of Guam, not merely "substantially comply with", or be similar to, the laws of Guam. "Substantially complies with" is a term that muddies the waters.

2. **"Relatively short time"**. Bill No. 443 states that life-sustaining treatment may be withheld in the case of a condition that will result in death "within a relatively short time". See page 4, line 16 and page 5, line 13. I believe that phrase "relatively short time" is not precise enough for guidance for those who need to make a decision to continue or withhold life-sustaining treatment. The phrase "imminent death" has been used with more clarity in other jurisdictions.

3. **"Without regard to the declarant's mental or physical condition"**. This language is used in §91106, page 7, line 8 of the bill. It states that a declarant may revoke a declaration at any time and in any manner, without regard to the declarant's **mental** or physical condition. It is puzzling to consider that under the provisions of this bill that a person must be of sound mind to execute a declaration authorizing the removal of life-sustaining medical treatment, but a person does not have to be of sound mind to revoke such a declaration or authorization. This points out the difficulty of giving effect to legislation with unclear language.

4. **Liability for physicians and health care providers**. In conjunction with item 3 above, page 8, lines 11-14 of the bill states that civil or criminal liability or discipline for unprofessional conduct is not applicable in the case where a physician or health care provider removes life-sustaining treatment and **did not know** that the patient had revoked his or her authorization to do so. In item 3 above, a patient may revoke his or her authorization even when not in sound mind, and in any manner. There is no requirement for recording a revocation of authorization to withdraw life-sustaining treatment in the patient's file, as there is for recording an authorizing declaration, and no punishment for failure to do so. See page 8, lines 26-27 and page 9, lines 1-9. A revocation of authorization made under these circumstances may be lost in the shuffle and fail to be communicated to a physician or other health care provider. A presumption in favor of "pulling the plug" is thereby established. This is, I believe, the wrong emphasis in affirming the sanctity of life.

5. **Medication for pain, and nutrition and hydration are not "life-sustaining treatment"**. The definitions section of the bill, page 3, lines 19-21, omits the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain or for nutrition or hydration from inclusion in the definition of "life-sustaining

treatment", however, the bill does not positively state that nutrition and hydration shall not be withheld. This would clarify the bill for the purposes of those who must follow its provisions.

6. Presumption in favor of life. There is no positive statement in favor of life in the bill. The emphasis is placed in favor of executing authorizing declarations for, and the removal of, life-sustaining treatment. Although the bill states that it does not condone "mercy killing or assisted suicide", see page 10, lines 18-19, no mention is made of "euthanasia". A recent case reported in the news, where a former police officer, shot in the head 7 years ago and remaining in a "persistent vegetative state" ever since, just a week ago suddenly spoke to family members who were visiting his bedside. Life is not always predictable, and recoveries, or partial recoveries, are possible in some of the most hopeless-looking of situations. This aspect should be emphasized in a bill authorizing removal of life-sustaining treatment.

7. Omission of family members from declarations by patients. The bill specifically states that declarations cannot be witnessed by persons entitled to inherit, health care providers, employees of health care providers, and so forth. See page 4, lines 25-27 and page 5, lines 1-7. Although the bill may provide for witnessing of declarations by uninterested individuals, it should also provide for the family members to be additional witnesses or closely informed. Preventing undue influence on a person making a declaration should be balanced with the involvement of the family in these sorts of decisions.

I commend the Legislature for tackling this very difficult issue, and attempting to make some clarification for decision-making on Guam for all those concerned with terminally ill patients and persons in irreversible comas and persistent vegetative states. Another visit to this subject matter may result in legislation which will clear up some of the points listed above.

Very truly yours,



Carl T. C. Gutierrez

Attachment

230993

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) Regular Session

Date: 2/22/96

VOTING SHEET

Bill No. 443

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P. /		✓		
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V		✓		
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S. ///		#✓		
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don		✓		
SAN AGUSTIN, Joe T.		✓		
SANTOS, Angel L. G. /	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL 16 5 _____

CERTIFIED TRUE AND CORRECT:

Recording Secretary ** three passes is a no vote.*



TWENTY-THIRD
GUAM LEGISLATURE

324 W. SOLEDAD AVENUE
AGAÑA, GUAM 96910
TEL: (671) 472-3543/44/45
FAX: (671) 472-3832

SENATOR LOU LEON GUERRERO, *RN, MPH*

CHAIRPERSON
COMMITTEE ON HEALTH, WELFARE, AND SENIOR CITIZENS

January 3, 1996

The Honorable
Don Parkinson
Speaker, 23rd Guam Legislature
Agana, Guam

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Health, Welfare & Senior Citizens to which was referred Bill 443, AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT, herein reports **TO DO PASS**.

Votes of committee members are as follows:

11 To Pass
0 Not To Pass
0 To The Inactive File
0 Abstained
0 Off-Island
1 Not Available

Sincerely,

Lou Leon Guerrero, RN, MPH
Lou Leon Guerrero, *RN, MPH*
attachments

**Committee On Health, Welfare, And Senior Citizens
VOTE SHEET**

on
Bill 443, AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE
ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
<i>Sen. Lou Leon Guerrero RN, MPH</i> Sen. Lou Leon Guerrero, RN, MPH, Chair	✓			
<i>Sen. Ben C. Pangelinan</i> Sen. Ben C. Pangelinan, Vice Chair	✓			
<i>Sen. Tom C. Ada</i> Sen. Tom C. Ada, member	✓			
<i>Sen. Mark C. Charfauros</i> Sen. Mark C. Charfauros, member	✓			
<i>Sen. Hope A. Cristobal</i> Sen. Hope A. Cristobal, member	✓			
<i>Vice Speaker Ted S. Nelson</i> Vice Speaker Ted S. Nelson, member				
<i>Sen. Angel L.G. Santos</i> Sen. Angel L.G. Santos, member	✓			
<i>Sen. Judith Won Pat-Borja</i> Sen. Judith Won Pat-Borja, member	✓			
<i>Sen. Anthony C. Blaz</i> Sen. Anthony C. Blaz, member	✓			
<i>Sen. Felix P. Camacho</i> Sen. Felix P. Camacho, member	✓			
<i>Sen. Alberto Lamorena</i> Sen. Alberto Lamorena, member	✓			
<i>Sen. Carlotta Leon Guerrero</i> Sen. Carlotta Leon Guerrero, member	✓			

O.I.

COMMITTEE REPORT
HEALTH, WELFARE and SENIOR CITIZENS
on

Bill 443, AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

FINDINGS

Bill 443 is the reintroduced Substitute Bill 194. Substitute Bill 194 was reported out to do pass by the committee on November 15, 1995. Bill 194 failed to pass on the floor by one vote in the last session, November 23, 1995.

In as much as the bill has been properly heard and reported out, public hearing for Bill 443 is therefore waived. The attached committee report of Bill 194 fulfills the requirement for Bill 443.

RECOMMENDATION

The Committee on Health, Welfare & Senior Citizens to which was referred **Bill 443, AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT,** has such under consideration and hereby recommends **TO DO PASS.**



COMMITTEE ON RULES

Twenty-Third Guam Legislature
155 Hesler St., Agana, Guam 96910



December 5, 1995

MEMORANDUM

TO: Chairman, Committee on Health, Welfare and Senior Citizens

FROM: Chairman, Committee on Rules

SUBJECT: Referral - Bill No. 443

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.


SONNY LUJAN ORSINI

Attachment:

TWENTY-THIRD GUAM LEGISLATURE
1995 (First) Regular Session

Bill No. 443
Introduced by:

Lou Leon Guerrero
Tom C. Ada
Hope A. Cristobal
ben c. pangelinan
Judith Won Pat-Borja
Anthony Blaz

AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

- 1 §91100. **Title.** This act shall be known and cited as The Natural Death Act.
2 §91101. **Legislative Findings And Intent.**
3 (a) The Legislature finds that an adult person has the fundamental right to
4 control the decisions relating to the rendering of his or her own medical care,
5 including the decision to have life-sustaining treatment withheld or withdrawn
6 in instances of a terminal condition or permanent unconscious condition.
7 (b) The Legislature further finds that modern medical technology has made
8 possible the artificial prolongation of human life beyond natural limits.
9 (c) The Legislature further finds that, in the interest of protecting individual
10 autonomy, such prolongation of the process of dying for a person with a
11 terminal condition or permanent unconscious condition for whom continued
12 medical treatment does not improve the prognosis for recovery may violate
13 patient dignity and cause unnecessary pain and suffering, while providing
14 nothing medically necessary or beneficial to the person.
15 (d) In recognition of the dignity and privacy that a person has a right to expect,
16 the Legislature hereby declares that the laws of the Territory of Guam shall
17 recognize the right of any adult person to make a written declaration instructing
18 his or her physician to withhold or withdraw life-sustaining treatment in the
19 event of a terminal condition or permanent unconscious condition, in the event
20 that the person is unable to make those decisions for himself or herself.

1 (e) The Legislature further declares that, in the absence of controversy, a court
2 normally is not the proper forum in which to make decisions regarding
3 life-sustaining treatment.

4 (f) To avoid treatment that is not desired by a person in a terminal condition or
5 permanent unconscious condition, the Legislature declares that this chapter is in
6 the interest of the public health and welfare.

7 (g) The Legislature further finds that the family should be encouraged to openly
8 express their opinion and concerns with the individual. It recognizes the
9 importance family plays in supporting the decision of the individual.

10 **§91102. Definitions. As Used In This Chapter, Unless The Context Otherwise**
11 **Requires:**

12 (a) "Attending physician" means the physician who has primary responsibility
13 for the treatment and care of the patient.

14 (b) "Declaration" means a writing executed in accordance with the requirements
15 of subdivision (a) of Section 91103.

16 (c) "Health care provider" means a person who is licensed, certified, or otherwise
17 authorized by the laws of this Territory to administer health care in the ordinary
18 course of business or practice of a profession.

19 (d) "Life-sustaining treatment" means any medical procedure or intervention
20 that, when administered to a qualified patient, will serve only to prolong the
21 process of dying or an irreversible coma or persistent vegetative state.
22 "Life-sustaining treatment" shall not include the administration of medication
23 or the performance of any medical procedure deemed necessary to alleviate pain
24 or for nutrition or hydration.

25 (e) "Permanent unconscious condition" means an incurable and irreversible
26 condition that, within reasonable medical judgment, renders the patient in an
27 irreversible coma or persistent vegetative state.

28 (f) "Person" means an individual, corporation, business trust, estate, trust,
29 partnership, association, joint venture, government, governmental subdivision
30 or agency, or any other legal or commercial entity.

31 (g) "Physician" means an individual licensed to practice medicine in the
32 Territory of Guam.

33 (h) "Qualified patient" means a patient 18 or more years of age who has executed
34 a declaration and who has been diagnosed and certified in writing by the
35 attending physician and a second physician who has personally examined the
36 patient to be in a terminal condition or permanent unconscious condition.

1 (i) "State" means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, or a territory or insular possession subject to the
3 jurisdiction of the United States.

4 (j) "Terminal condition" means an incurable and irreversible condition that,
5 without the administration of life-sustaining treatment, will, within reasonable
6 medical judgment, result in death within a relatively short time.

7 **§91103. Declaration Concerning Life-Sustaining Treatment; Execution**
8 **Requirements.**

9 (a) An individual of sound mind and 18 or more years of age may execute at any
10 time a declaration governing the withholding or withdrawal of life-sustaining
11 treatment. The declaration shall be signed by the declarant, or another at the
12 declarant's direction and in the declarant's presence, and witnessed by two
13 individuals neither of whom may be a person who is entitled to any portion of
14 the estate of the qualified patient upon his or her death under any will or codicil
15 thereto of the qualified patient existing at the time of execution of the declaration
16 or by operation of law. In addition, a health care provider, an employee of a
17 health care provider, the operator of a community care facility, an employee of
18 an operator of a community care facility, the operator of a residential care facility
19 for the elderly , or an employee of an operator of a residential care facility for the
20 elderly may not be a witness.

21 (b) A declaration shall substantially contain the following provisions:

22 **DECLARATION**

23 If I should have an incurable and irreversible condition that has been diagnosed
24 by two physicians and that will result in my death within a relatively short time
25 without the administration of life-sustaining treatment or has produced an
26 irreversible coma or persistent vegetative state, and I am no longer able to make
27 decisions regarding my medical treatment, I direct my attending physician,
28 pursuant to the Natural Death Act of Guam, to withhold or withdraw
29 life-sustaining treatment that only prolongs the process of dying or the
30 irreversible coma or persistent vegetative state and is not necessary for my
31 comfort, nutrition, hydration or to alleviate pain.

32 If I have been diagnosed as pregnant, and that diagnosis is known to my
33 physician, this declaration shall have no force or effect during my pregnancy.

34 Signed _____ this day of _____, _____

35 Signature _____

36 Address _____

1 The declarant voluntarily signed this writing in my presence. I am not entitled to
2 any portion of the estate of the declarant upon his or her death under any will or
3 codicil thereto of the declarant now existing or by operation of law. I am not a
4 health care provider, an employee of a health care provider, the operator of a
5 community care facility, an employee of an operator of a community care facility,
6 the operator of a residential care facility for the elderly, or an employee of an
7 operator of a residential care facility for the elderly.

8 Witness _____ Witness _____

9 Address _____ Address _____

10 (c) A physician or other health care provider who is furnished a copy of the
11 declaration shall make it a part of the declarant's medical record and, if
12 unwilling to comply with the declaration, promptly so advise the declarant.

13 **§91104. Patients In Nursing Homes; Effect Of Declaration.**

14 A declaration shall have no force or effect if the declarant is a person in a skilled
15 nursing facility as defined in 10 Guam Code Annotated Section 7102(a), at the
16 time the declaration is executed unless one of the two witnesses to the
17 declaration is a patient advocate or ombudsman as may be designated by the
18 Administrator of the Division of Senior Citizens, Department of Public Health &
19 Social Services, for this purpose.

20 **§91105. Operative Effect Of Declaration.**

21 A declaration becomes operative when (a) it is communicated to the attending
22 physician and (b) the declarant is diagnosed and certified in writing by the
23 attending physician and a second physician who has personally examined the
24 declarant to be in a terminal condition or permanent unconscious condition and
25 no longer able to make decisions regarding administration of life-sustaining
26 treatment. When the declaration becomes operative, the attending physician and
27 other health care providers shall act in accordance with its provisions or comply
28 with the transfer requirements of Section 91109.

29 **§91106. Revocation Of Declaration.**

30 (a) A declarant may revoke a declaration at any time and in any manner, without
31 regard to the declarant's mental or physical condition. A revocation is effective
32 upon its communication to the attending physician or other health care provider
33 by the declarant or a witness to the revocation.

34 (b) The attending physician or other health care provider shall make the
35 revocation a part of the declarant's medical record.

36

1 **§91107. Terminal Or Permanent Unconscious Condition; Records.**

2 Upon determining that the declarant is in a terminal condition or permanent
3 unconscious condition, the attending physician who knows of a declaration shall
4 record the determination and the terms of the declaration in the declarant's
5 medical record and file a copy of the declaration in the record.

6 **§91108. Self-Determination By Patient; Pregnant Patients.**

7 (a) A qualified patient may make decisions regarding life sustaining treatment as
8 long as the patient is able to do so.

9 (b) This chapter does not affect the responsibility of the attending physician or
10 other health care provider to provide treatment for a patient's comfort, care or
11 alleviation of pain.

12 (c) The declaration of a qualified patient known to the attending physician to be
13 pregnant shall not be given effect as long as the patient is pregnant. The
14 attending physician shall cause a test to be made to determine if a female
15 qualified patient in a terminal condition is pregnant.

16 **§91109. Physician Or Health Care Provider Unwilling To Comply With Chapter;
17 Transfer Of Patient.**

18 An attending physician or other health care provider who is unwilling to
19 comply with this chapter shall take all reasonable steps as promptly as practicable
20 to transfer care of the declarant to another physician or health care provider who
21 is willing to do so .

22 **§91110. Civil Or Criminal Liability; Unprofessional Conduct.**

23 (a) A physician or other health care provider is not subject to civil or criminal
24 liability, or discipline for unprofessional conduct, for giving effect to a
25 declaration in the absence of knowledge of the revocation of a declaration.

26 (b) A physician or other health care provider, whose action under this chapter is
27 in accord with reasonable medical standards, is not subject to criminal
28 prosecution, civil liability, discipline for unprofessional conduct, administrative
29 sanction, or any other sanction if the physician or health care provider believes
30 in good faith that the action is consistent with this chapter and the desires of the
31 declarant expressed in the declaration.

32 **§91111. Willful Failure To Act; Fraudulent Conduct; Penalties.**

33 (a) A physician or other health care provide who willfully fails to transfer the
34 care of a patient in accordance with Section 91109 is guilty of a felony of the third
35 degree.

1 (b) A physician who willfully fails to record a determination of terminal
2 condition or permanent unconscious condition or the terms of a declaration in
3 accordance with Section 91107 is guilty of a felony of the third degree.

4 (c) An individual who willfully conceals, cancels, defaces, or obliterates the
5 declaration of another individual without the declarant's consent or who
6 falsifies or forges a revocation of the declaration of another individual is guilty of
7 a felony of the third degree.

8 (d) An individual who falsifies or forges the declaration of another individual,
9 or willfully conceals or withholds personal knowledge of a revocation is guilty of
10 a felony of the third degree.

11 (e) A personal who requires or prohibits the execution of a declaration as a
12 condition for being insured for, or receiving, health care services is guilty of a
13 felony of the third degree.

14 (f) A person who coerces or fraudulently induces an individual to execute a
15 declaration is guilty of a felony of the third degree.

16 (g) The sanctions provided in this section do not displace any sanction applicable
17 under other law.

18 **§91112. Construction Of Chapter, Characterization Of Death Resulting From**
19 **Decisions Made In Accordance With Chapter; Effect Of Declaration On Life**
20 **Insurance Or Annuities; Deliberate Acts Or Omissions To End Life.**

21 (a) Death resulting from the withholding or withdrawal of a life-sustaining
22 treatment in accordance with this Act does not constitute, for any purpose, a
23 suicide or homicide.

24 (b) The making of a declaration pursuant to Section 91103 does not affect in any
25 manner the sale, procurement, or issuance of any policy of life insurance or
26 annuity, nor does it affect, impair, or modify the terms of an existing policy of life
27 insurance or annuity. A policy of life insurance or annuity is not legally
28 impaired or invalidated by the withholding or withdrawal of life sustaining
29 treatment from an insured, notwithstanding any term to the contrary.

30 (c) A person may not prohibit or require the execution of a declaration as a
31 condition for being insured for, or receiving, health care services.

32 (d) This Act creates no presumption concerning the intention of an individual
33 who has revoked or has not executed a declaration with respect to the use,
34 withholding, or withdrawal of life-sustaining treatment in the event of a
35 terminal condition or permanent conscious condition.

1 (e) This Act does not affect the right of a patient to make decisions regarding use
2 of life-sustaining treatment, so long as the patient is able to do so, or impair or
3 supersede a right or responsibility that a person has to effect the withholding or
4 withdrawal of medical treatment.

5 (f) This Act does not require any physician or other health care provider to take
6 any action contrary to reasonable medical standards.

7 (g) This Act does not condone, authorize, or approve mercy killing or assisted
8 suicide or permit any affirmative or deliberate act or omission to end life other
9 than to permit the natural process of dying.

10 (h) The rights granted by this Act are in addition to, and not in derogation of,
11 rights under any other statutory or case law.

12 (i) A person shall be considered dead if in the opinion of a physician, based on
13 ordinary standards of current medical practice, the person has experienced
14 irreversible cessation of spontaneous respiratory and circulatory function. Death
15 will have occurred at the time when the irreversible cessation of the function
16 first occurred.

17 (j) In the event that artificial means of support preclude a determination that
18 respiratory and circulatory functions have ceased, a person shall be considered
19 dead if, in the opinion of the attending physician and one other physician, based
20 on ordinary standards of medical practice, the person has experienced
21 irreversible cessation of all function of the brain, including brain stem. The
22 opinions of the physicians shall be evidenced by signed statements. Death will
23 have occurred at the time when the irreversible cessation of all functions of the
24 entire brain, including the brain stem, first occurred. Death shall be pronounced
25 before artificial means of support are withdrawn and before any vital organ is
26 removed for purposes of transplantation.

27 **§91113. Declaration Presumed In Compliance And Valid.**

28 In the absence of knowledge to the contrary, a physician or other health care
29 provider may presume that a declaration complies with this Act and is valid.

30 **§91114. Instruments Executed In Other States.**

31 An instrument governing the withholding or withdrawal of life-sustaining
32 treatment executed in another state in compliance with the laws of that state or
33 of the Territory of Guam, is valid for purposes of this Act.

34 **§91115. Instruments To Be Given Effect Pursuant To Act.** The following
35 instruments shall be given effect pursuant to the provisions of this Act.

1 (a) An instrument executed before the effective date of this Act that substantially
2 complies with subdivision (a) of Section 91103.

3 (b) An instrument governing the withholding or withdrawal of life-sustaining
4 treatment executed in another state that does not comply with the laws of that
5 state, but substantially complies with the laws of the Territory of Guam.

6 **§91116. Severability Of Provisions.**

7 If any provision of this Act or its application to any person or circumstance is
8 held invalid, the invalidity shall not affect other provisions or applications of
9 this Act which can be given effect without the invalid provision or application,
10 and to this end the provisions of this Act are severable.

11 **§91117. Uniform Law; Construction Of Act.**

12 To the extent that a provision of this Act conforms to the Uniform Rights of the
13 Terminally Ill Act, that provision shall be applied and construed to effectuate its
14 general purpose to make uniform the law with respect to the subject of this Act
15 among states enacting it.



TWENTY-THIRD
GUAM LEGISLATURE

324 W. SOLEDAD AVENUE
AGANA, GUAM 96910
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SENATOR LOU LEON GUERRERO, RN, MPH

CHAIRPERSON
COMMITTEE ON HEALTH, WELFARE, AND SENIOR CITIZENS

15 November, 1995

The Honorable
Don Parkinson
Speaker, 23rd Guam Legislature
Agana, Guam

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Health, Welfare & Senior Citizens to which was referred Bill No. 194: **AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.** herein reports back with the recommendation **TO DO PASS AS SUBSTITUTED.**

Votes of committee members are as follows:

- 11 To Pass
- ~~0~~ Not To Pass
- ~~0~~ To The Inactive File
- 1 Abstained
- ~~0~~ Off-Island
- ~~0~~ Not Available

Sincerely,

Lou Leon Guerrero, RN, MPH
attachments

**Committee On Health, Welfare, And Senior Citizens
VOTE SHEET**

on

Bill No. 194: AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
<i>Lou Leon Guerrero</i> Sen. Lou Leon Guerrero, RN, MPH, Chair	✓			
<i>Ben C. Pangelinan</i> Sen. Ben C. Pangelinan, Vice Chair	✓			
<i>Tom C. Ada</i> Sen. Tom C. Ada, member	✓			
<i>Mark C. Charfauros</i> Sen. Mark C. Charfauros, member	✓			
<i>Hope A. Cristobal</i> Sen. Hope A. Cristobal, member	✓			
<i>Ted S. Nelson</i> Vice Speaker Ted S. Nelson, member	✓	<i>Not in session</i>		
<i>Angel L.G. Santos</i> Sen. Angel L.G. Santos, member	✓			
<i>Judith Won Pat-Borja</i> Sen. Judith Won Pat-Borja, member	✓			
<i>Anthony C. Blaz</i> Sen. Anthony C. Blaz, member	✓			
<i>Felix P. Camacho</i> Sen. Felix P. Camacho, member	✓			
<i>Alberto Lamorena</i> Sen. Alberto Lamorena, member			✓	
<i>Carlotta Leon Guerrero</i> Sen. Carlotta Leon Guerrero, member	✓			

TWENTY-THIRD GUAM LEGISLATURE
1995 (First) Regular Session

Bill No. 194
As substituted by the Committee
on Health, Welfare and
Senior Citizens

Introduced by:

Lou Leon Guerrero
Tom C. Ada
Hope A. Cristobal
ben c. pangelinan

**AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE
ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.**

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1 §91100. **Title.** This act shall be known and cited as the Natural Death Act.

2 §91101. **Legislative findings and intent.**

3 (a) The Legislature finds that an adult person has the fundamental
4 right to control the decisions relating to the rendering of his or her own
5 medical care, including the decision to have life-sustaining treatment
6 withheld or withdrawn in instances of a terminal condition or permanent
7 unconscious condition.

8 (b) The Legislature further finds that modern medical technology has
9 made possible the artificial prolongation of human life beyond natural limits.

10 (c) The Legislature further finds that, in the interest of protecting
11 individual autonomy, such prolongation of the process of dying for a person
12 with a terminal condition or permanent unconscious condition for whom
13 continued medical treatment does not improve the prognosis for recovery
14 may violate patient dignity and cause unnecessary pain and suffering, while
15 providing nothing medically necessary or beneficial to the person.

16 (d) In recognition of the dignity and privacy that a person has a right to
17 expect, the Legislature hereby declares that the laws of the Territory of Guam
18 shall recognize the right of any adult person to make a written declaration
19 instructing his or her physician to withhold or withdraw life-sustaining
20 treatment in the event of a terminal condition or permanent unconscious

1 condition, in the event that the person is unable to make those decisions for
2 himself or herself.

3 (e) The Legislature further declares that, in the absence of controversy, a
4 court normally is not the proper forum in which to make decisions regarding
5 life-sustaining treatment.

6 (f) To avoid treatment that is not desired by a person in a terminal
7 condition or permanent unconscious condition, the Legislature declares that
8 this chapter is in the interest of the public health and welfare.

9 (g) The Legislature further finds that the family should be encouraged
10 to openly express their opinion and concerns with the individual. It
11 recognizes the importance family plays in supporting the decision of the
12 individual.

13 **§91102. Definitions.** As used in this chapter, unless the context otherwise
14 requires:

15 (a) "Attending physician" means the physician who has primary
16 responsibility for the treatment and care of the patient.

17 (b) "Declaration" means a writing executed in accordance with the
18 requirements of subdivision (a) of Section 91103.

19 (c) "Health care provider" means a person who is licensed, certified, or
20 otherwise authorized by the laws of this Territory to administer health care in
21 the ordinary course of business or practice of a profession.

22 (d) "Life-sustaining treatment" means any medical procedure or
23 intervention that, when administered to a qualified patient, will serve only to
24 prolong the process of dying or an irreversible coma or persistent vegetative
25 state. "Life-sustaining treatment" shall not include the administration of
26 medication or the performance of any medical procedure deemed necessary to
27 alleviate pain or for nutrition or hydration.

28 (e) "Permanent unconscious condition" means an incurable and
29 irreversible condition that, within reasonable medical judgment, renders the
30 patient in an irreversible coma or persistent vegetative state.

31 (f) "Person" means an individual, corporation, business trust, estate,
32 trust, partnership, association, joint venture, government, governmental
33 subdivision or agency, or any other legal or commercial entity.

34 (g) "Physician" means an individual licensed to practice medicine in
35 the Territory of Guam.

1 (h) "Qualified patient" means a patient 18 or more years of age who has
2 executed a declaration and who has been diagnosed and certified in writing by
3 the attending physician and a second physician who has personally examined
4 the patient to be in a terminal condition or permanent unconscious condition.

5 (i) "State" means a state of the United States, the District of Columbia,
6 the Commonwealth of Puerto Rico, or a territory or insular possession subject
7 to the jurisdiction of the United States.

8 (j) "Terminal condition" means an incurable and irreversible condition
9 that, without the administration of life-sustaining treatment, will, within
10 reasonable medical judgment, result in death within a relatively short time.

11 **§91103. Declaration concerning life-sustaining treatment; execution**
12 **requirements.**

13 (a) An individual of sound mind and 18 or more years of age may
14 execute at any time a declaration governing the withholding or withdrawal of
15 life-sustaining treatment. The declaration shall be signed by the declarant, or
16 another at the declarant's direction and in the declarant's presence, and
17 witnessed by two individuals neither of whom may be a person who is
18 entitled to any portion of the estate of the qualified patient upon his or her
19 death under any will or codicil thereto of the qualified patient existing at the
20 time of execution of the declaration or by operation of law. In addition, a
21 health care provider, an employee of a health care provider, the operator of a
22 community care facility, an employee of an operator of a community care
23 facility, the operator of a residential care facility for the elderly , or an
24 employee of an operator of a residential care facility for the elderly may not be
25 a witness.

26 (b) A declaration shall substantially contain the following provisions:

27 **DECLARATION**

28 If I should have an incurable and irreversible condition that has been
29 diagnosed by two physicians and that will result in my death within a
30 relatively short time without the administration of life-sustaining treatment
31 or has produced an irreversible coma or persistent vegetative state, and I am
32 no longer able to make decisions regarding my medical treatment, I direct my
33 attending physician, pursuant to the Natural Death Act of Guam, to withhold
34 or withdraw life-sustaining treatment that only prolongs the process of dying
35 or the irreversible coma or persistent vegetative state and is not necessary for
36 my comfort, nutrition, hydration or to alleviate pain.

1 If I have been diagnosed as pregnant, and that diagnosis is known to my
2 physician, this declaration shall have no force or effect during my pregnancy.

3 Signed _____ this day of _____, _____

4 Signature _____

5 Address _____

6 The declarant voluntarily signed this writing in my presence. I am not
7 entitled to any portion of the estate of the declarant upon his or her death
8 under any will or codicil thereto of the declarant now existing or by operation
9 of law. I am not a health care provider, an employee of a health care provider,
10 the operator of a community care facility, an employee of an operator of a
11 community care facility, the operator of a residential care facility for the
12 elderly, or an employee of an operator of a residential care facility for the
13 elderly.

14 Witness _____ Witness _____

15 Address _____ Address _____

16 (c) A physician or other health care provider who is furnished a copy of
17 the declaration shall make it a part of the declarant's medical record and, if
18 unwilling to comply with the declaration, promptly so advise the declarant.

19 **§91104. Patients in nursing homes; affect of declaration.**

20 A declaration shall have no force or effect if the declarant is a person in
21 a skilled nursing facility as defined in 10 Guam Code Annotated Section
22 7102(a), at the time the declaration is executed unless one of the two witnesses
23 to the declaration is a patient advocate or ombudsman as may be designated by
24 the Administrator of the Division of Senior Citizens, Department of Public
25 Health & Social Services, for this purpose.

26 **§91105. Operative effect of declaration.**

27 A declaration becomes operative when (a) it is communicated to the
28 attending physician and (b) the declarant is diagnosed and certified in writing
29 by the attending physician and a second physician who has personally
30 examined the declarant to be in a terminal condition or permanent
31 unconscious condition and no longer able to make decisions regarding
32 administration of life-sustaining treatment. When the declaration becomes
33 operative, the attending physician and other health care providers shall act in
34 accordance with its provisions or comply with the transfer requirements of
35 Section 91109.

1 **§91106. Revocation of declaration.**

2 (a) A declarant may revoke a declaration at any time and in any
3 manner, without regard to the declarant's mental or physical condition. A
4 revocation is effective upon its communication to the attending physician or
5 other health care provider by the declarant or a witness to the revocation.

6 (b) The attending physician or other health care provider shall make
7 the revocation a part of the declarant's medical record.

8 **§91107. Terminal or permanent unconscious condition; records.**

9 Upon determining that the declarant is in a terminal condition or
10 permanent unconscious condition, the attending physician who knows of a
11 declaration shall record the determination and the terms of the declaration in
12 the declarant's medical record and file a copy of the declaration in the record.

13 **§91108. Self-determination by patient; pregnant patients.**

14 (a) A qualified patient may make decisions regarding life sustaining
15 treatment as long as the patient is able to do so.

16 (b) This chapter does not affect the responsibility of the attending
17 physician or other health care provider to provide treatment for a patient's
18 comfort, care or alleviation of pain.

19 (c) The declaration of a qualified patient known to the attending
20 physician to be pregnant shall not be given effect as long as the patient is
21 pregnant. The attending physician shall cause a test to be made to determine if
22 a female qualified patient in a terminal condition is pregnant.

23 **§91109. Physician or health care provider unwilling to comply with chapter;**
24 **transfer of patient.**

25 An attending physician or other health care provider who is unwilling
26 to comply with this chapter shall take all reasonable steps as promptly as
27 practicable to transfer care of the declarant to another physician or health care
28 provider who is willing to do so .

29 **§91110. Civil or criminal liability; unprofessional conduct.**

30 (a) A physician or other health care provider is not subject to civil or
31 criminal liability, or discipline for unprofessional conduct, for giving effect to a
32 declaration in the absence of knowledge of the revocation of a declaration.

33 (b) A physician or other health care provider, whose action under this
34 chapter is in accord with reasonable medical standards, is not subject to
35 criminal prosecution, civil liability, discipline for unprofessional conduct,
36 administrative sanction, or any other sanction if the physician or health care

1 provider believes in good faith that the action is consistent with this chapter
2 and the desires of the declarant expressed in the declaration.

3 **§91111. Willful failure to act; fraudulent conduct; penalties.**

4 (a) A physician or other health care provide who willfully fails to
5 transfer the care of a patient in accordance with Section 91109 is guilty of a
6 felony of the third degree.

7 (b) A physician who willfully fails to record a determination of terminal
8 condition or permanent unconscious condition or the terms of a declaration in
9 accordance with Section 91107 is guilty of a felony of the third degree.

10 (c) An individual who willfully conceals, cancels, defaces, or obliterates
11 the declaration of another individual without the declarant's consent or who
12 falsifies or forges a revocation of the declaration of another individual is
13 guilty of a felony of the third degree.

14 (d) An individual who falsifies or forges the declaration of another
15 individual, or willfully conceals or withholds personal knowledge of a
16 revocation is guilty of a felony of the third degree.

17 (e) A personal who requires or prohibits the execution of a declaration
18 as a condition for being insured for, or receiving, health care services is guilty
19 of a felony of the third degree.

20 (f) A person who coerces or fraudulently induces an individual to
21 execute a declaration is guilty of a felony of the third degree.

22 (g) The sanctions provided in this section do not displace any sanction
23 applicable under other law.

24 **§91112. Construction of chapter, characterization of death resulting from**
25 **decisions made in accordance with chapter; effect of declaration**
26 **on life insurance or annuities; deliberate acts or omissions to end**
27 **life.**

28 (a) Death resulting from the withholding or withdrawal of a
29 life-sustaining treatment in accordance with this Act does not constitute, for
30 any purpose, a suicide or homicide.

31 (b) The making of a declaration pursuant to Section 91103 does not
32 affect in any manner the sale, procurement, or issuance of any policy of life
33 insurance or annuity, nor does it affect, impair, or modify the terms of an
34 existing policy of life insurance or annuity. A policy of life insurance or
35 annuity is not legally impaired or invalidated by the withholding or

1 withdrawal of life sustaining treatment from an insured, notwithstanding any
2 term to the contrary.

3 (c) A person may not prohibit or require the execution of a declaration
4 as a condition for being insured for, or receiving, health care services.

5 (d) This Act creates no presumption concerning the intention of an
6 individual who has revoked or has not executed a declaration with respect to
7 the use, withholding, or withdrawal of life-sustaining treatment in the event
8 of a terminal condition or permanent conscious condition.

9 (e) This Act does not affect the right of a patient to make decisions
10 regarding use of life-sustaining treatment, so long as the patient is able to do
11 so, or impair or supersede a right or responsibility that a person has to effect
12 the withholding or withdrawal of medical treatment.

13 (f) This Act does not require any physician or other health care provider
14 to take any action contrary to reasonable medical standards.

15 (g) This Act does not condone, authorize, or approve mercy killing or
16 assisted suicide or permit any affirmative or deliberate act or omission to end
17 life other than to permit the natural process of dying.

18 (h) The rights granted by this Act are in addition to, and not in
19 derogation of, rights under any other statutory or case law.

20 (i) A person shall be considered dead if in the opinion of a physician,
21 based on ordinary standards of current medical practice, the person has
22 experienced irreversible cessation of spontaneous respiratory and circulatory
23 function. Death will have occurred at the time when the irreversible cessation
24 of the function first occurred.

25 (j) In the event that artificial means of support preclude a
26 determination that respiratory and circulatory functions have ceased, a person
27 shall be considered dead if, in the opinion of the attending physician and one
28 other physician, based on ordinary standards of medical practice, the person
29 has experienced irreversible cessation of all function of the brain, including
30 brain stem. The opinions of the physicians shall be evidenced by signed
31 statements. Death will have occurred at the time when the irreversible
32 cessation of all functions of the entire brain, including the brain stem, first
33 occurred. Death shall be pronounced before artificial means of support are
34 withdrawn and before any vital organ is removed for purposes of
35 transplantation.

1 **§91113. Declaration presumed in compliance and valid.**

2 In the absence of knowledge to the contrary, a physician or other health
3 care provider may presume that a declaration complies with this Act and is
4 valid.

5 **§91114. Instruments executed in other states.**

6 An instrument governing the withholding or withdrawal of life-
7 sustaining treatment executed in another state in compliance with the laws of
8 that state or of the Territory of Guam, is valid for purposes of this Act.

9 **§91115. Instruments to be given effect pursuant to Act.** The following
10 instruments shall be given effect pursuant to the provisions of this Act.

11 (a) An instrument executed before the effective date of this Act that
12 substantially complies with subdivision (a) of Section 91103.

13 (b) An instrument governing the withholding or withdrawal of
14 life-sustaining treatment executed in another state that does not comply with
15 the laws of that state, but substantially complies with the laws of the Territory
16 of Guam.

17 **§91116. Severability of provisions.**

18 If any provision of this Act or its application to any person or
19 circumstance is held invalid, the invalidity shall not affect other provisions or
20 applications of this Act which can be given effect without the invalid
21 provision or application, and to this end the provisions of this Act are
22 severable.

23 **§91117. Uniform law; construction of Act.**

24 To the extent that a provision of this Act conforms to the Uniform
25 Rights of the Terminally Ill Act, that provision shall be applied and construed
26 to effectuate its general purpose to make uniform the law with respect to the
27 subject of this Act among states enacting it.

COMMITTEE REPORT HEALTH, WELFARE, AND SENIOR CITIZENS

Bill 194, AN ACT TO ADD A NEW CHAPTER TO TITLE 10, GUAM CODE
ANNOTATED TO ESTABLISH THE NATURAL DEATH ACT

PUBLIC HEARING

The Health, Welfare, and Senior Citizens Committee held a public hearing on Friday, May 19, 1995 at 2:00pm to hear testimonies on Bill #194, an act to add a new chapter to Title 10, Guam Code Annotated to establish the Natural Death Act.

The hearing on Bill #194 was called to order at 2:45pm by the HWSC Chairwoman, Sen. Lou Leon Guerrero. Senator Ben Pangelinan, Vice Chair and Senators Tom Ada, Carlotta Leon Guerrero, Tony Lamorena, Ted Nelson, Hope Cristobal, Judy Won Pat Borja and Angel Santos also attended the public hearing.

BACKGROUND

On December 1991, the U.S. Congress passed the Patient Self Determination Act (PSDA) that mandated all health care providers receiving Medicare or Medicaid reimbursements to inform patients upon admission of their right to accept or refuse treatment and to fill out advance directives such as a living will or a durable power of attorney. This PSDA is only for informing individuals of their right and individuals sign a document acknowledging receipt of the information and explanation. This PSDA does not provide the process nor the mechanism for the enactment of a living will or a durable power of attorney.

At present, Guam lacks a statute regarding a living will or a durable power of attorney for an individual to control or decide his or her medical care involving life-sustaining treatment of a terminal illness condition. And despite the lack of such a statute, it has been a practice of health care providers to withhold and withdraw extraordinary life-sustaining measures on individuals with terminal conditions such as metastatic cancer and or terminal vegetative "brain death" status.

Upon conferring with affected individuals and their families and upon receipt of signed documents that declare resuscitative measures will be withheld or withdrawn, physicians have written directives such as "Do Not Resuscitate" in clients' records. Additionally, physicians have withdrawn extraordinary life-sustaining measures such as respiratory machines. This is currently practiced at the Guam Memorial Hospital.

The purpose of this proposed bill is to codify such a practice. It is not a right to die legislation. It does not include, condone nor support euthanasia, mercy killing, or assisted suicide.

TESTIMONY

Prior to allowing the public to present testimonies, Senator Lou Leon Guerrero, Chair of HWSC delivered opening statements clarifying the intent of the Natural Death Act that it is not a "Right to Die" legislation, nor does it support euthanasia nor assisted suicide.

A total of 16 individuals testified. Thirteen of these people signed up to orally present their testimonies. The remaining three other individuals were unable to present themselves at this hearing but were able to submit written testimonies.

Because of the large number of individuals testifying, Senator Lou Leon Guerrero called the first six (6) individuals forward to hear their testimonies. These individuals were Ms. Ruth Gurusamy, RN; Dr. Ulla-Katrina Craig, Roy Adonay, SW; Tahereh G. Gerling; Father Adrian Cristobal for Archbishop Anthony Apuron; and, Father Eric Forbes.

Ruth Gurusamy, a registered nurse who currently works on a part-time basis as a critical care nurse at GMHA ICU/CCU area testified on behalf of herself. Ms. Gurusamy testified in support of Bill #194 on the basis that she believes in supporting a patient's right to make decisions that involve his or her healthcare. Ms. Gurusamy is also a full-time nursing instructor at the University of Guam College of Nursing & Health Sciences. As a nurse educator, Ms. Gurusamy teaches nursing students that dying is an integral part of life.

Dr. Ulla-Katrina Craig, also a faculty of the University of Guam College of Nursing & Health Sciences and President of Hospice Guam, testified in support of Bill #194. Dr. Craig pointed out that the philosophy of Hospice encourages patients to make a "living will." Dr. Craig emphasized that the best protection is to plan ahead and fill out an advanced directive such as a living will or a durable power of attorney.

Mr. Roy Adonay, a social worker with the Mayo Research Center at the University of Guam, offered only a verbal testimony in support of the bill.

Tahereh G. Gerling from the National Spiritual assembly of the Baha'is of the Marianas Islands, read the brief written testimony prepared and submitted by Michael Cornwell, Chief Executive Office of the Baha'is Assembly. Mr. Cornwell's testimony did not clearly nor directly state that he does not support the bill. Mr. Cornwell however emphasized the teachings of their assembly that "God, the Giver of Life, can alone dispose of it as He deems best" and in regards to individuals wishing to maintain control of their medical treatment by either withholding or withdrawing life-sustaining interventions, "it is left to the conscience of the individual concerned whether to subscribe to this or not." In other words, Mr. Cornwell supports the issue of allowing individuals to make their own decision.

Father Adrian Cristobal, spoke on behalf of Archbishop Anthony Apuron and on behalf of himself. Father Cristobal recounted Archbishop Apuron's written testimony. Archbishop Apuron's testimony stated that it is his "view that a properly drafted Natural Death Act would benefit Guam" however he is in "opposition to certain aspects" of the bill which must be changed before enactment. The areas of particular concern include family participation, the definition of "terminal condition," nutrition and hydration, presumption in favor of life, assurance of patient's understanding, and the section on "substantial compliance." The Archbishop strongly emphasized the need to include family participation.

Father Adrian Cristobal then presented his testimony echoing essentially what the Archbishop expressed and recommended.

Father Eric Forbes, a Roman Catholic priest presented himself to testify as a private citizen. Father Forbes stated that based on his initial interpretation and understanding of the bill, his assertion of the bill sounded "to be in keeping with his own personal moral philosophy, which is consonant with the moral teachings of the Catholic Church." However, Father Forbes attested that he had been alerted to possible vagueness in the language of the bill as they have been pointed out by the Archbishop. In closing, Father Forbes requested that the Committee on HW&SC allow for a more thorough review and input from the public before the legislature really takes action on this bill.

The second group of individuals that were called forward to present their testimonies included former Senator Elizabeth P. Arriola, Dr.

Vincent Duenas, Roger Cauley, John Dierking, Cerila Rapadas, Sister Callista Camacho, Maria Tenorio, and Peter Mayer.

The former Senator Elizabeth Arriola, representing the Lay Committee, was the first one to testify. Ms. Arriola claimed in her testimony that the "natural death act" or the "living will" are mistitles to the bill's basic concept. According to Ms. Arriola's testimony, "to die naturally need not be statutorized -- it is the surest thing." Ms. Arriola added in her testimony the same recommendations made by the Archbishop in his testimony.

Dr. Vincent Duenas, a local physician, testified that albeit the "flaws" of the bill, it encourages individuals to seriously think about "health-care proxies and living wills" before they become ill and are no longer capable of thinking rationally. Dr. Duenas pointed out that a major problem with the bill is "its view of the person with disability." According to Dr. Duenas, "the persistent vegetative state (PVS) is a person in a coma and in a suspended sleep state from which he may or may not awaken." In summary, Dr. Duenas is more supportive of the durable power of attorney rather than a living will. The basis of his argument is that the power of attorney is a "person" representing the ill individual, a person who is flexible and can be responsive to circumstances and speak on behalf of the ill individual. A living will is a "piece of paper" that is not flexible.

Roger Cauley, a registered nurse and Chair of the Guam Nurses Association Legislative Committee testified on behalf of the professional organization. Mr. Cauley testified in support of the bill on the basis of supporting the "adult patient's fundamental right to control the decision relating to his or medical care" and that this bill "does not condone, authorize, or approve mercy killing or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying" as stated on page 7 of the present bill #194.

Mr. Peter Mayer, a professor of economics at the University of Guam, verbally testified on his own behalf in support of the bill. Mr. Mayer claimed that he himself has a living will. Mr. Mayer also testified that from an economics perspective, a "teenager's life can be saved if resources are not used to prolong the life of a terminally ill individual or a comatose person."

Mr. John Dierking, an attorney representing the Catholic Church, and an instructor at the University of Guam, requested to be allowed to testify at this time since he must leave. Mr. Dierking did not prepare a

written testimony but was tasked with the responsibility to articulate the recommendations delineated in the Archbishop's testimony.

Ms. Cerila Rapadas, President of the Island Board of Christian Mothers which is an organization of the Archdiocese of Agana, testified that while the intent of the bill is "good" in terms of allowing a person over the age of 18 to complete and sign a declaration form stating that no life-sustaining treatment will be administered to prolong the process of dying, she argued that the language "death will result in a relatively short time" is vague.

Sister Callista Camacho, Deputy Director of Catholic Social Services, testified that the intent of the bill in reference to the fundamental rights of the adult individual to control and decide his or her medical care is commendable; but, the bill needs to be further defined and discussed in the light of Christian values. Sister Camacho emphasized the need for family members to be involved in the decision making.

Ms. Maria Tenorio, a Catholic citizen, claimed she was only presenting an oral testimony. However, she testified by reading a written document to which she refused to submit to the committee. Ms. Tenorio's opening statements adamantly opposed the bill proclaiming that "God is the only author of life!" However, her closing statements recapitulated the Archbishop's proposed changes.

Three other written testimonies were submitted by Mr. John Palomo, Mr. Jack Stanton Cross, and Mr. Frank Portusach. Mr. Palomo, Project Director of In-Home Services of Catholic Social Services, wrote in his testimony that while the adult person has every fundamental right in deciding whether or not to withhold or withdraw life-sustaining treatments, family members must be involved. Mr. Palomo further testified that "an islandwide awareness education program be initiated" so that "while people are still alert and capable of deciding, they can be encouraged to draw written wills."

Mr. Jack Stanton Cross' written testimony disclosed his support of the bill and salutes Senator Lou Leon Guerrero's courage in introducing this legislation. Mr. Cross further stated in his testimony that he thanks the Senator for "trying to allow people to choose to die in a humane and dignified manner. We deserve this right and our families deserve the peace and relief it can bring. Neither the church nor the medical should be permitted to dictate in this very personal and private decision."

Mr. Frank Portusach, a private citizen, also testified in support of the bill. Mr. Portusach's written testimony claimed that "it is a good

practice to execute a "living will" and that this bill made it clear how a living is made and how it will take effect. Mr. Portusach commended that authors of the bill for their wisdom.

Professor Kim Scoogs, a professor of philosophy, including courses on death and dying, was not able to prepare or present himself to testify. Professor Scoogs, however, verbally reported to Senator Lou Leon Guerrero's office that he supports the bill.

COMMITTEE FINDINGS

Based on the written and verbal testimonies, the eight individuals who opposed the bill, opposed only portions of the bill. Otherwise, they seemed supportive of the overall intent.

A total of eight individuals testified openly in support of the bill. Seven of these individuals submitted their testimonies whereas one individual verbally expressed his support of the bill.

One testimony did not clearly oppose nor support the bill but did reiterate that it is an individual's choice and decision whether or not to withhold or withdraw life-sustaining measures.

In order to gather additional input from the senior citizens in the community, the Committee will hold public hearings in the village senior centers.

COMMITTEE RECOMMENDATION

Village public hearings were held at the Dededo, Astumbo and Barrigada senior centers on August 22 and 23, 1995. These efforts were coordinated between the Office of Senator Lou Leon Guerrero and SPIMA. Senior citizens were bused into these senior centers from various villages. Approximately 350 senior citizens attended. Both Filipino and Chamorro languages were used to communicate the issues regarding Bill 194.

The senior citizens were attentive, concerned and asked pertinent questions. There were a few in the audience who already signed a living will. Overall, the public hearing was well attended and the Committee's goals of presenting the basic concepts of Bill 194 were met. Those Committee members present at the public hearings were: Senator Lou Leon Guerrero, Senator Ben Pangelinan, Senator Tom Ada, Senator Judy Won-Pat Borja, Senator Hope Cristobal and Senator Carlotta Leon Guerrero.

It was recommended by the Committee to add in Section 91101. Legislative findings and intent: (g) The Legislature further finds that the role of the family should be considered and participate in the decision by a person in a terminal condition or permanent unconscious condition.

The Committee on Health, Welfare & Senior Citizens hereby recommends
TO DO PASS AS SUBSTITUTED.

TWENTY-THIRD GUAM LEGISLATURE
1995 (First) Regular Session

Bill No. 194
Introduced by:

Lou Leon Guerrero *LS.*
Tom C. Ada *TC*
Hope A. Cristobal *HCristobal*
V. C. Pangelinan *VCP*

AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1 §91100. Title. This act shall be known and cited as the Natural Death Act.

2 §91101. Legislative findings and intent.

3 (a) The Legislature finds that an adult person has the fundamental right to
4 control the decisions relating to the rendering of his or her own medical care,
5 including the decision to have life-sustaining treatment withheld or withdrawn
6 in instances of a terminal condition or permanent unconscious condition.

7 (b) The Legislature further finds that modern medical technology has
8 made possible the artificial prolongation of human life beyond natural limits.

9 (c) The Legislature further finds that, in the interest of protecting
10 individual autonomy, such prolongation of the process of dying for a person
11 with a terminal condition or permanent unconscious condition for whom
12 continued medical treatment does not improve the prognosis for recovery may
13 violate patient dignity and cause unnecessary pain and suffering, while
14 providing nothing medically necessary or beneficial to the person.

15 (d) In recognition of the dignity and privacy that a person has a right to
16 expect, the Legislature hereby declares that the laws of the Territory of Guam
17 shall recognize the right of any adult person to make a written declaration
18 instructing his or her physician to withhold or withdraw life-sustaining
19 treatment in the event of a terminal condition or permanent unconscious
20 condition, in the event that the person is unable to make those decisions for
21 himself or herself.

22 (e) The Legislature further declares that, in the absence of controversy, a
23 court normally is not the proper forum in which to make decisions regarding
24 life-sustaining treatment.

1 (f) To avoid treatment that is not desired by a person in a terminal
2 condition or permanent unconscious condition, the Legislature declares that this
3 chapter is in the interest of the public health and welfare.

4 §91102. Definitions. As used in this chapter, unless the context otherwise
5 requires:

6 (a) "Attending physician" means the physician who has primary
7 responsibility for the treatment and care of the patient.

8 (b) "Declaration" means a writing executed in accordance with the
9 requirements of subdivision (a) of Section 91103.

10 (c) "Health care provider" means a person who is licensed, certified, or
11 otherwise authorized by the laws of this Territory to administer health care in
12 the ordinary course of business or practice of a profession.

13 (d) "Life-sustaining treatment" means any medical procedure or
14 intervention that, when administered to a qualified patient, will serve only to
15 prolong the process of dying or an irreversible coma or persistent vegetative
16 state. "Life-sustaining treatment" shall not include the administration of
17 medication or the performance of any medical procedure deemed necessary to
18 alleviate pain or for nutrition or hydration.

19 (e) "Permanent unconscious condition" means an incurable and
20 irreversible condition that, within reasonable medical judgment, renders the
21 patient in an irreversible coma or persistent vegetative state.

22 (f) "Person" means an individual, corporation, business trust, estate, trust,
23 partnership, association, joint venture, government, governmental subdivision
24 or agency, or any other legal or commercial entity.

25 (g) "Physician" means an individual licensed to practice medicine in the
26 Territory of Guam.

27 (h) "Qualified patient" means a patient 18 or more years of age who has
28 executed a declaration and who has been diagnosed and certified in writing by
29 the attending physician and a second physician who has personally examined
30 the patient to be in a terminal condition or permanent unconscious condition.

31 (i) "State" means a state of the United States, the District of Columbia, the
32 Commonwealth of Puerto Rico, or a territory or insular possession subject to the
33 jurisdiction of the United States.

34 (j) "Terminal condition" means an incurable and irreversible condition
35 that, without the administration of life-sustaining treatment, will, within
36 reasonable medical judgment, result in death within a relatively short time.

1 §91103. Declaration concerning life-sustaining treatment; execution
2 requirements.

3 (a) An individual of sound mind and 18 or more years of age may execute
4 at any time a declaration governing the withholding or withdrawal of
5 life-sustaining treatment. The declaration shall be signed by the declarant, or
6 another at the declarant's direction and in the declarant's presence, and
7 witnessed by two individuals neither of whom may be a person who is entitled
8 to any portion of the estate of the qualified patient upon his or her death under
9 any will or codicil thereto of the qualified patient existing at the time of
10 execution of the declaration or by operation of law. In addition, a health care
11 provider, an employee of a health care provider, the operator of a community
12 care facility, an employee of an operator of a community care facility, the
13 operator of a residential care facility for the elderly , or an employee of an
14 operator of a residential care facility for the elderly may not be a witness.

15 (b) A declaration shall substantially contain the following provisions:

16 DECLARATION

17 If I should have an incurable and irreversible condition that has been
18 diagnosed by two physicians and that will result in my death within a relatively
19 short time without the administration of life-sustaining treatment or has
20 produced an irreversible coma or persistent vegetative state, and I am no longer
21 able to make decisions regarding my medical treatment, I direct my attending
22 physician, pursuant to the Natural Death Act of Guam, to withhold or withdraw
23 life-sustaining treatment that only prolongs the process of dying or the
24 irreversible coma or persistent vegetative state and is not necessary for my
25 comfort, nutrition, hydration or to alleviate pain.

26 If I have been diagnosed as pregnant, and that diagnosis is known to my
27 physician, this declaration shall have no force or effect during my pregnancy.

28 Signed _____ this day of _____, _____
29 Signature _____
30 Address _____

31 The declarant voluntarily signed this writing in my presence. I am not
32 entitled to any portion of the estate of the declarant upon his or her death under
33 any will or codicil thereto of the declarant now existing or by operation of law. I
34 am not a health care provider, an employee of a health care provider, the
35 operator of a community care facility, an employee of an operator of a

1 community care facility, the operator of a residential care facility for the elderly,
2 or an employee of an operator of a residential care facility for the elderly.

3 Witness _____ Witness _____

4 Address _____ Address _____

5 (c) A physician or other health care provider who is furnished a copy of
6 the declaration shall make it a part of the declarant's medical record and, if
7 unwilling to comply with the declaration, promptly so advise the declarant.

8 **§91104. Patients in nursing homes; affect of declaration.**

9 A declaration shall have no force or effect if the declarant is a person in a
10 skilled nursing facility as defined in 10 Guam Code Annotated Section 7102(a), at
11 the time the declaration is executed unless one of the two witnesses to the
12 declaration is a patient advocate or ombudsman as may be designated by the
13 Administrator of the Division of Senior Citizens, Department of Public Health &
14 Social Services, for this purpose.

15 **§91105. Operative effect of declaration.**

16 A declaration becomes operative when (a) it is communicated to the
17 attending physician and (b) the declarant is diagnosed and certified in writing by
18 the attending physician and a second physician who has personally examined
19 the declarant to be in a terminal condition or permanent unconscious condition
20 and no longer able to make decisions regarding administration of life-sustaining
21 treatment. When the declaration becomes operative, the attending physician and
22 other health care providers shall act in accordance with its provisions or comply
23 with the transfer requirements of Section 91109.

24 **§91106. Revocation of declaration.**

25 (a) A declarant may revoke a declaration at any time and in any manner,
26 without regard to the declarant's mental or physical condition. A revocation is
27 effective upon its communication to the attending physician or other health care
28 provider by the declarant or a witness to the revocation.

29 (b) The attending physician or other health care provider shall make the
30 revocation a part of the declarant's medical record.

31 **§91107. Terminal or permanent unconscious condition; records.**

32 Upon determining that the declarant is in a terminal condition or
33 permanent unconscious condition, the attending physician who knows of a
34 declaration shall record the determination and the terms of the declaration in
35 the declarant's medical record and file a copy of the declaration in the record.

91108. Self-determination by patient; pregnant patients.

(a) A qualified patient may make decisions regarding life sustaining treatment as long as the patient is able to do so.

(b) This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care or alleviation of pain.

(c) The declaration of a qualified patient known to the attending physician to be pregnant shall not be given effect as long as the patient is pregnant. The attending physician shall cause a test to be made to determine if a female qualified patient in a terminal condition is pregnant.

91109. Physician or health care provider unwilling to comply with chapter; transfer of patient.

An attending physician or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

91110. Civil or criminal liability; unprofessional conduct.

(a) A physician or other health care provider is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.

(b) A physician or other health care provider, whose action under this chapter is in accord with reasonable medical standards, is not subject to criminal liability, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction if the physician or health care provider believes in good faith that the action is consistent with this chapter and the desires of the declarant expressed in the declaration.

91111. Willful failure to act; fraudulent conduct; penalties.

(a) A physician or other health care provider who willfully fails to transfer care of a patient in accordance with Section 91109 is guilty of a felony of the third degree.

(b) A physician who willfully fails to record a determination of terminal condition or permanent unconscious condition or the terms of a declaration in accordance with Section 91107 is guilty of a felony of the third degree.

(c) An individual who willfully conceals, cancels, defaces, or obliterates a declaration of another individual without the declarant's consent or who

1 falsifies or forges a revocation of the declaration of another individual is guilty
2 of a felony of the third degree.

3 (d) An individual who falsifies or forges the declaration of another
4 individual, or willfully conceals or withholds personal knowledge of a
5 revocation is guilty of a felony of the third degree.

6 (e) A personal who requires or prohibits the execution of a declaration as a
7 condition for being insured for, or receiving, health care services is guilty of a
8 felony of the third degree.

9 (f) A person who coerces or fraudulently induces an individual to execute
10 a declaration is guilty of a felony of the third degree.

11 (g) The sanctions provided in this section do not displace any sanction
12 applicable under other law.

13 **§91112. Construction of chapter, characterization of death resulting from**
14 **decisions made in accordance with chapter; effect of declaration on**
15 **life insurance or annuities; deliberate acts or omissions to end life.**

16 (a) Death resulting from the withholding or withdrawal of a
17 life-sustaining treatment in accordance with this Act does not constitute, for any
18 purpose, a suicide or homicide.

19 (b) The making of a declaration pursuant to Section 91103 does not affect
20 in any manner the sale, procurement, or issuance of any policy of life insurance
21 or annuity, nor does it affect, impair, or modify the terms of an existing policy of
22 life insurance or annuity. A policy of life insurance or annuity is not legally
23 impaired or invalidated by the withholding or withdrawal of life sustaining
24 treatment from an insured, notwithstanding any term to the contrary.

25 (c) A person may not prohibit or require the execution of a declaration as a
26 condition for being insured for, or receiving, health care services.

27 (d) This Act creates no presumption concerning the intention of an
28 individual who has revoked or has not executed a declaration with respect to the
29 use, withholding, or withdrawal of life-sustaining treatment in the event of a
30 terminal condition or permanent conscious condition.

31 (e) This Act does not affect the right of a patient to make decisions
32 regarding use of life-sustaining treatment, so long as the patient is able to do so,
33 or impair or supersede a right or responsibility that a person has to effect the
34 withholding or withdrawal of medical treatment.

35 (f) This Act does not require any physician or other health care provider to
36 take any action contrary to reasonable medical standards.

1 (g) This Act does not condone, authorize, or approve mercy killing or
2 assisted suicide or permit any affirmative or deliberate act or omission to end life
3 other than to permit the natural process of dying.

4 (h) The rights granted by this Act are in addition to, and not in derogation
5 of, rights under any other statutory or case law.

6 (i) A person shall be considered dead if in the opinion of a physician, based
7 on ordinary standards of current medical practice, the person has experienced
8 irreversible cessation of spontaneous respiratory and circulatory function. Death
9 will have occurred at the time when the irreversible cessation of the function
10 first occurred.

11 (j) In the event that artificial means of support preclude a determination
12 that respiratory and circulatory functions have ceased, a person shall be
13 considered dead if, in the opinion of the attending physician and one other
14 physician, based on ordinary standards of medical practice, the person has
15 experienced irreversible cessation of all function of the brain, including brain
16 stem. The opinions of the physicians shall be evidenced by signed statements.
17 Death will have occurred at the time when the irreversible cessation of all
18 functions of the entire brain, including the brain stem, first occurred. Death shall
19 be pronounced before artificial means of support are withdrawn and before any
20 vital organ is removed for purposes of transplantation.

21 **§91113. Declaration presumed in compliance and valid.**

22 In the absence of knowledge to the contrary, a physician or other health
23 care provider may presume that a declaration complies with this Act and is
24 valid.

25 **§91114. Instruments executed in other states.**

26 An instrument governing the withholding or withdrawal of life-
27 sustaining treatment executed in another state in compliance with the laws of
28 that state or of the Territory of Guam, is valid for purposes of this Act.

29 **§91115. Instruments to be given effect pursuant to Act.** The following
30 instruments shall be given effect pursuant to the provisions of this Act.

31 (a) An instrument executed before the effective date of this Act that
32 substantially complies with subdivision (a) of Section 91103.

33 (b) An instrument governing the withholding or withdrawal of
34 life-sustaining treatment executed in another state that does not comply with the
35 laws of that state, but substantially complies with the laws of the Territory of
36 Guam.

1 §91116. Severability of provisions.

2 If any provision of this Act or its application to any person or
3 circumstance is held invalid, the invalidity shall not affect other provisions or
4 applications of this Act which can be given effect without the invalid provision
5 or application, and to this end the provisions of this Act are severable.

6 §91116. Uniform law; construction of Act.

7 To the extent that a provision of this Act conforms to the Uniform Rights
8 of the Terminally Ill Act, that provision shall be applied and construed to
9 effectuate its general purpose to make uniform the law with respect to the
10 subject of this Act among states enacting it.

bevilacqua



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JUN 05 1985

JOSEPH E. RIVERA
DIRECTOR

FRANCES J. BALAJAI
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 194 and 258 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Both bills are administrative in nature and poses no fiscal impact on the Government's coffers at this time.

frances J. Balajai
JOSEPH E. RIVERA
Acting

AGENDA

COMMITTEE ON

HEALTH, WELFARE & SENIOR CITIZENS

PUBLIC HEARING

Friday, May 19, 1995

Legislature Public Hearing Room
starting at 2:00 p.m.

Appointment of

**Roger Cauley, May Camacho
and Philip Tydingco to**

Department of Mental Health & Substance Abuse Advisory Council

Francisco A. Espinosa to the Board of Cosmetology

and

Bill 194,

**AN ACT TO ADD A NEW CHAPTER TO TITLE 10, GUAM CODE
ANNOTATED TO ESTABLISH THE NATURAL DEATH ACT**

COMMITTEE ON HEALTH, WELFARE & SENIOR CITIZENS

• Sen. Lou Leon Guerrero, RN, MPH, Chairperson

• Sen. Ben C. Pangelinan, Vice Chair

• Sen. Tom C. Ada, member *✖*

Sen. Mark C. Charfauros, member *abs*

• Sen. Hope A. Cristobal, member

Vice Speaker Ted S. Nelson, member *✖*

Sen. Angel L.G. Santos, member *-*

Sen. Judith Won Pat-Borja, member

Sen. Anthony C. Blaz, member *abs*

Sen. Felix P. Camacho, member *abs*

Sen. Alberto Lamorena V, member *-*

• Sen. Carlotta Leon Guerrero, member

The undersigned have appeared and/or submitted testimony to the Committee on Health, Welfare & Senior Citizens to testify on Bill 194, AN ACT TO ADD A NEW CHAPTER TO TITLE 10, GUAM CODE ANNOTATED TO ESTABLISH THE NATURAL DEATH ACT.

Name Ruth Gurusamy
Representing self - Registered Nurse - Critical Care
Address/Phone _____

Name Ulla Craia
Representing HOSPICE & NOG
Address/Phone _____

Name Roy Antonio, SW Justice/Kosier
Name Taberch G. Gerling
Representing National Spiritual Assembly of the Bahá'ís of Mariana Isl
Address/Phone P.O. Box 20280 G.M.F. GU. 96921 (828-8639)

Name FR. ADRIAN CRISTOBAL
Representing ARCHBISHOP ANTHONY APURON
Address/Phone 734-4573

Name FR. ERIC FORBES
Representing self
Address/Phone 135 Gunat Cir AGANA HTS GU

Name Elizabeth P. Arriola
Representing Lay Committee on Bill 194
Address/Phone 646-4739, 647-5234

Name Vincent A. Ojencas
Representing Self
Address/Phone 110 South Sabana Dr
Barrigada HTS, Guam 96913

Name Roger Cauley
Representing GUAM NURSES ASSOCIATION
Address/Phone _____

BILL 194

The undersigned have appeared and/or submitted testimony to the Committee on Health, Welfare & Senior Citizens to testify on Bill 194, AN ACT TO ADD A NEW CHAPTER TO TITLE 10, GUAM CODE ANNOTATED TO ESTABLISH THE NATURAL DEATH ACT.

Name Peter C. MAYER, Familia Tertub
Representing Myself
Address/Phone P.O. Box 25921, GME, 96921-5921-
Phone 649-68

Name Ceria Kapake
Representing
Address/Phone

Name Sister M. Callista Lanza
Representing
Address/Phone

Name John Lierking
Representing
Address/Phone

Name Maria Tensio - ORAL TESTIMONY / ON
Representing
Address/Phone

- Ben
- ~~Tom~~
- ~~Ted~~
- Tom
- Carlotta
- Tony
- Judy
- Hope

Name
Representing
Address/Phone

Name
Representing
Address/Phone

Name
Representing
Address/Phone

May 19, 1995

Twenty-Third Guam Legislature
Committee on Health, Welfare &
Senior Citizens
324 W. Soledad Avenue
Agana, GU 96910

Good Afternoon Madam Chair and Members of the Committee on Health, Welfare and Senior Citizens. My name is Ruth Gurusamy, I am a registered nurse and I am here to testify on Bill 194. I am in support of the intent of Bill 194, To Establish the Natural Death Act.

As a professional, I believe in supporting a patient's right to make decisions that involve their healthcare. As a critical care nurse it is my responsibilities to make rapid decisions in managing care of patients in the acute phase of the dying process. However throughout this entire process, critical care nurses continue to recognize and support the patient's dignity in the dying process.

In nursing education, we teach students that dying is an integral part of life. It is natural and predictable as being born. The "living-dying" process is the time between diagnosis to death. The goal of the dying process is to maintain the dignity of the dying person by providing quality care.

I have experienced on a personal level, how to support a friend, who was diagnosed with a terminal illness, through the dying process. The only supportive measure that I could do was ask him how he wanted to die. He had clearly outlined exactly what and how this process was to happen. My friend died exactly the way he had requested. Through my grieving, I have felt comfort because I was able to recognize and support his request of dying and not impose my views on how he should die.

I have some recommendations to make in regards to the Bill.

1. The title of the Bill, To Establish the Natural Death Act can be perceived as how a person should die. My understanding of the Bill is to allow a person the right to make their own decision on their dying process.
2. Remove all reference to anything that has to do with a person that is determined dead. For example, on pg. 7 lines 11-20 makes reference to the determination of brain death. This paragraph, to me, implies that the natural death act is necessary to make organ donation possible. The choices to make once death is determined is different from supporting a persons right in dying.

The question I have to the committee is-How is this Bill different from an Advance Directive? It is my understanding, that Guam Memorial Hospital has documents that reflect advance directives that are based on the patient's right to self-determination.

Thank you for the opportunity to testify in support of Bill 194.

→ see attached

Ruth Gurusamy

The dying person's bill of rights

- I have the right to be treated as a living human being until I die.
- I have the right to maintain a sense of hopefulness however changing its focus may be.
- I have the right to be cared for by those who can maintain a sense of hopefulness, however changing this might be.
- I have the right to express my feelings and emotions about my approaching death in my own way.
- I have the right to participate in decisions concerning my care.
- I have the right to expect continuing medical and nursing attention even though "cure" goals must be changed to "comfort" goals.
- I have the right not to die alone.
- I have the right to be free from pain.
- I have the right to have my questions answered honestly.
- I have the right not to be deceived.
- I have the right to have help from and for my family in accepting my death.
- I have the right to die in peace and dignity.
- I have the right to retain my individuality and not be judged for my decisions, which may be contrary to beliefs of others.
- I have the right to discuss and enlarge my religious and/or spiritual experiences, whatever these may mean to others.
- I have the right to expect that the sanctity of the human body will be respected after death.
- I have the right to be cared for by caring, sensitive, knowledgeable people who will attempt to understand my needs and will be able to gain some satisfaction in helping me face my death.

This Bill of Rights was created at a workshop on "The Terminally Ill Patient and the Helping Person," in Lansing, Mich, sponsored by the Southwestern Michigan Inservice Education Council and conducted by Amelia J. Barbous, Associate Professor of Nursing, Wayne State University, Detroit, 1975.

Source: Long, B., Phipps, W.J. & Cassmeyer, V.L. (1993). *Medical-Surgical Nursing: A Nursing Process Approach*. Mosby, St. Louis, MO.



UNIVERSITY OF GUAM
UNIBETSEDAT GUAHAN

COLLEGE OF NURSING AND HEALTH SCIENCES

Health Science Building, Room 100
UOG Station, Mangilao, Guam 96923
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TESTIMONY FOR BILL 194, AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

Ladies and Gentlemen:

I have come to testify for Bill 194. I do so as a faculty member of the College of Nursing & Health Sciences and as president of Hospice Guam, which has been founded to assist persons with terminal diseases during their final illness.

Hospice philosophy encourages patients to make a "living will". By not having a living will we lose control over our bodies and our medical fate. Not only are our treatment wishes ignored when we can no longer speak for ourselves, but also our family members and loved ones may be frustrated in trying to intervene on our behalf, despite knowing exactly what kind of care we would want or not want. This is an awful and increasingly common fate. We are all aware that modern technology may keep our bodies "alive" even when we are suffering without relief or are unconscious with no hope of recovery. Biomedical development allows medical providers to postpone and negotiate the timing of death indefinitely. External factors, such as the modern hospital environment where human and technological effort are commonly expended to avoid death, or financial incentives where reimbursement rates or methods may become more decisive than our treatment choices, can influence an institution's action. Additionally, concerns or personal beliefs of individual medical personnel or disagreement among family members often prevent actions that are in our best interest.

Such forces may converge to take control of our bodies away from us and leave us suspended indefinitely in a helpless state. Our fears of such a frightening scenario may lead us to contemplate extreme, preemptive measures such as suicide or asking someone to help us die should our medical situation ever become hopeless. Suicide and assisted suicide are not only deeply disturbing, they are also illegal in most states and violate the tenets and principles of the major religions. There are ways we can act within the law and within our religion to protect ourselves and retain legal control over end-of-life decisions. The best protection is to plan ahead and fill out an advanced directive such as a living will or durable power of attorney for health care.

By exercising our legal right to fill out a living will or appoint a durable power of attorney for health care which specify our wishes for a natural death when our time has come, we need not

worry that we are forsaking our moral or religious beliefs. The main current of opinion among the major religious groups in the United States--Catholicism, Protestantism and Judaism--supports the moral right of individuals to refuse extraordinary medical treatment. For the island of Guam with its strong roots in the Catholic Church, it is important to remember that Pope John Paul II publicly stated in "Declaration on Euthanasia": "When inevitable death is imminent in spite of the means used, it is permitted in conscience to take a decision to refuse forms of treatment that would only secure a precarious and burdensome prolongation of life."

The legality of allowing individuals to assure a natural death was assured by the Cruzan case when the U.S. Supreme Court had affirmed that individuals were constitutionally protected from unwanted treatment. This decision was given a big boost when Congress passed the Patient Self Determination Act (PSDA) in December 1991, which mandates that all health care providers receiving Medicare or Medicaid must inform patients upon admission about their right to accept or refuse treatment and to fill out advance directives such as living wills. Living wills, which allow for the natural death of persons suffering from terminal medical conditions or who are in a persistent vegetative state with no chance for improvement or recovery, are now recognized in every state and the District of Columbia. The content of these living wills may vary, but in most cases a living will can be transported from one state to another without losing its validity.

Bill 194 will provide the legal foundation and proper framework for living wills or durable powers of attorney for health care. This bill when passed into law will strengthen our position at the end of our lives. The bill will help us to retain control of our bodies and what can and cannot be done to us, and therefore assuring a natural death, a death with dignity, for terminally ill patients and those suffering from an irreversible vegetative state or coma. Bill 194 will enlist everyone around us--from health care institutions to the doctor, nurse, social workers, friends and family members--as part of the support system responsible for making sure our wishes are carried out. It is a law long overdue on Guam and we congratulate Senator Leon Guerrero and the Committee on Health, Welfare and Ecology for promulgating this important legislation.

I appreciate the opportunity to address this matter.

Sincerely,

Ulla Katrina Craig

Ulla-Katrina Craig, DrPh

NATIONAL SPIRITUAL ASSEMBLY
OF THE
BAHÁ'ÍS OF THE MARIANA ISLANDS

P.O. Box 20280, Guam Main Facility, Guam, Mariana Islands 96921, Tel: (671) 828-8639 • Fax: (671) 828-8112

19 May 1995

Senator Lou Leon Guerrero, RN, MPH
Chairperson
Committee on Health, Welfare, and Senior Citizens
Twenty-Third Guam Legislature

Dear Senator Leon Guerrero,

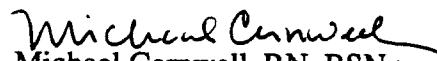
The National Spiritual Assembly of the Bahá'ís of the Mariana Islands thanks you for your invitation to submit testimony on the proposed Natural Death Act.

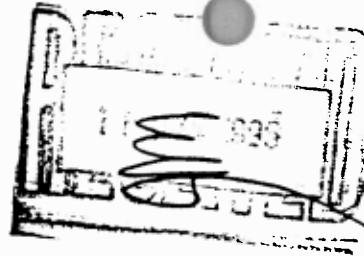
On behalf of the Marianas Bahá'í Community, we offer the following for your consideration:

In general the Bahá'í Teachings indicate that God, the Giver of Life, can alone dispose of it as He deems best. In the case of individuals making a written declaration governing the withholding or withdrawal of life sustaining treatment, it is left to the conscience of the individual concerned whether to subscribe to this or not.

We send you our warmest regards,

NATIONAL SPIRITUAL ASSEMBLY
OF THE BAHÁ'IS OF THE MARIANA ISLANDS


Michael Cornwell, RN, BSN
Chief Executive Officer



ARCHDIOCESE OF AGANA

196 B Cuesta San Ramon

Agana, Guam 96910

Tel. (671) 472-6116

Fax. (671) 477-3519

Archbishop's Office

May 16, 1995

Committee for Health, Welfare and Senior Citizens

Twenty Third Guam Legislature

Senator Lou Leon Guerrero, Chair

Senator Vicente Pangelinan, Vice Chair

Senator Tom C. Ada

Senator Tony Blaz

Senator Felix Camacho

Senator Mark Charfauros

Senator Hope A. Cristobal

Senator Alberto Lamorena

Senator Carlotta Leon Guerrero

Senator Ted Nelson, Vice Speaker

Senator Angel Santos

Senator Judy Won-Pat Borja

Re: Natural Death Bill 194

Dear Senators:

Please accept this letter as my written testimony in opposition to certain specific aspects of Bill 194.

It is my view that a properly drafted Natural Death Law would benefit Guam, however there are serious deficiencies in Bill 194 which must be changed before enactment.

Before addressing the needed changes, I wish to make a few preliminary comments. Bill 194 raises serious moral and ethical problems related to withdrawing and withholding of life-sustaining treatment. For the reasons outlined below, the said Bill is ethically unsound and would have the result of further compromising the right to life and respect for life in Guam. I do not support the present Bill 194 and urge

Committee for Health, Welfare and Senior Citizens

May 16, 1995

Page 2

that it not be passed in its present form. The recommended changes are, however, few in number and absolutely necessary for the protection of the lives and well-being of the elderly, the weak, the ill, the disabled and the marginalized in our community.

The moral tradition of the Roman Catholic Church absolutely rejects euthanasia, by which is meant "an act or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated" (Vatican Declaration on Euthanasia, 1980). We maintain that one is obliged to use "ordinary" means of preserving life - that is, means which can effectively preserve life without imposing grave burdens on the patient. We see the failure to supply such means as equivalent to euthanasia (U.S. catholic Conference, Ethical and Religious Directives for Catholic Health Facilities). But we also recognize and defend a patient's right to refuse "extraordinary" means - that is, means which provide no benefit or which involve too grave a burden.

I am most concerned about the Bill's definition of a "terminal condition" and the defacto exclusion of family members from the process of withholding treatment.

Issue of terminal condition: Pope John Paul II recently authored the Encyclical Letter, **The Gospel of Life: Evangelium Vitae**, which directly supports our community's views concerning the deficiencies in Bill 194. A "terminal condition" exists when death is "imminent". "When death is clearly imminent and inevitable, one can in conscience refuse forms of treatment that would only secure a precarious and burdensome prolongation of life" (Evangelium Vitae, Section 65). The present definition in Bill 194 (91102(j)) speaks of a condition which will "result in death within a relatively short time". A number of Natural Death Acts reject such definition due to its vagueness and subjectiveness. In matters of life and death we should strive for certainty in any legislation.

Committee for Health, Welfare and Senior Citizen
May 16, 1995
Page 3

Family participation: Bill 194 contains no mechanism that the family of the ill person will be involved. Family members are not allowed to witness the Declaration and there is no provision in the Bill that the family be informed of, and participate in, the treatment plan. This is contrary to our deep cultural belief that life's joy as well as life's suffering is a family matter. Bill 194 tends to isolate the ill and separate the ill from the natural comfort and support of their families. The companionship of the family is most important as an elder or ill person faces the reality of death. When faced with the temptation to give up in utter desperation in the face of serious illness, our tradition teaches us that wisdom comes from several sources; first the ill person who must knowingly participate in health care decisions, the physician who has made an oath to preserve life, and the patient's loving family.

Let me now summarize the seven areas which must, in my view, be changed.

- 1. Definitions:** The present Bill does not mention the word "euthanasia" or disclaim it. This is a serious omission. The definition of "terminal condition" now states that it exists if death will result in a "relatively short" time. This term is much too vague. The attorneys for the National Catholic Conference advise against such term. The state of Wisconsin uses the word "imminently". I recommend that Guam do the same.
- 2. Nutrition and Hydration:** The present Bill wisely states that nutrition and hydration are not considered "life sustaining", but in order to be clear, the law should directly state that nutrition and hydration may not be withheld.
- 3. Presumption in Favor of Life:** The present Bill contains no presumption in favor of life. This is extremely important in view of what has sometimes been called the "culture of death" in America.
- 4. Disclaimer of Euthanasia:** The present Bill does not directly disclaim euthanasia. It should do so.
- 5. Family Members:** The present Bill does not allow any family members to be witnesses on the Declaration of the patient. To assure family members will be informed of the making a Declaration, and in order to be sensitive to our strong family ties, notification of family members is very important before life sustaining measures are withdrawn.

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May 16, 1995
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6. Assurances of Patients' Understanding: The simple addition stating that it is the policy to encourage communication of medical treatment questions among the family, physician and patient, is very important to protect the rights of the feeble, old and disabled.

7. Deletion of Section 91115, "Substantial Compliance": The provision excusing actual compliance with the law is very inappropriate in cases of life and death and should be deleted. This section would allow reliance upon writings executed before the adoption of the Act which do not comply with the Act, and it would also allow reliance upon writings executed in Guam or elsewhere after the adoption of the Act which do not comply with the Act.

Based upon the above summary, I have prepared the following list of specific changes which must be made to Bill 194:

1. Definitions:

Add:

"91102 (k) 'Euthanasia' means the failure to use means which can effectively preserve life without imposing grave burdens on the patient."
(Source: Vatican, Declaration on Euthanasia, 1980).

Change:

"91102(j) 'Terminal condition' means an incurable and irreversible condition that, without, the administration of life-sustaining treatment, will, within reasonable medical judgment, imminently result in death, and shall not include permanent unconsciousness and advanced Alzheimer's disease."
(Source: Wisconsin Natural Death Act, Wisc. Stat. Ann., Section 154.01, et seq.).

2. Nutrition and Hydration:

Add the following sentence to 91102(d) and 91108(b): "Nutrition and hydration may not be withheld from a qualified patient".

3. Presumption in Favor of Life:

Add:

"91101 (g) **Presumption in Favor of life.** It is the intention of this Act to recognize a presumption in favor of human life. It is further recognized that the right to refuse treatment is limited by the territorial interest in preserving human life, preventing suicide and homicide, protecting dependent third parties, and maintaining sound ethics in the medical profession".

(Source: Bill 602, Twenty-First Guam Legislature, Section 87101.)

4. Disclaimer of Euthanasia:

Add: "91101 (h) Disclaimer of Euthanasia This Act does not condone, authorize, or approve euthanasia."

(Source: Bill 87, Twenty-First Guam Legislature, Section 87116.07.)

5. Family Members:

Add: "91103(d) Notification of Family Members. When a qualified patient has been certified to be in a terminal condition and the physician or other health care provider has been furnished an originally signed declaration, the physician or other health care provider shall, not less than 48 hours prior to withholding life sustaining procedures, inform the patient's immediate family members who may bring an action in the Superior Court of Guam, for good cause, to set aside the declaration."

(Source: Based on Colorado Medical Treatment Decision Act, Colo. Rev. Stat., Section 1518-101, et seq.).

6. Assurances of Patient's Understanding:

Add the following sentence to Section 91130(a);

"Notwithstanding, the provisions in this section, it is the policy of the Act to encourage communication regarding treatment decisions among patients, their families and physicians.

7. Delete section 91115:

(Note: This section would allow reliance upon writings executed before the adoption of the Act which do not comply with the Act, and it would also allow reliance upon writings executed in Guam or elsewhere after the adoption of the Act which do not comply with the Act. "Substantial compliance" with the Act, since it involves a matter of life or death, is not sufficient.)


Committee for Health, Welfare and Senior Citizens

May 16, 1995

Page 6

In summary, Bill 194 does not accomplish its purpose of protecting the rights of the terminally ill and disabled. We are dealing with a matter of the life or death of some of the most helpless members of our community. We must appreciate the importance of examining Bill 194 in the light of sound moral principles. Public policy in this area, must be based on a positive attitude toward disabled and terminally ill patients, who have a right to live with dignity and with reasonable care until the moment of death.

Sincerely yours,


Most Rev. Anthony Sablan Apuron, OFM Cap., DD
Archbishop of Agana

cc: Senator Tom Ada
Senator Joe T. San Agustin
Senator John P. Aguon
Senator Elizabeth Barret-Andersen
Senator Anthony Blaz
Senator Judith Wonpat-Borja
Senator Joanne Brown
Senator Felix Camacho
Senator Mark Charfauros
Senator Mark Forbes
Senator Lou Cristobal-Hope
Senator Alberto Lamorena
Senator Carlotta Leon Guerrero
Senator Lou Leon Guerrero
Senator Ted Nelson
Senator Sonny Lujan Orsini
Senator Ben Pangelinan
Senator Don Parkinson
Senator Angel Santos
Senator F. Santos
Senator Tony Unpingco

May 19, 1995
Fr. Adrian Cristobal, Pastor
San Vicene Church, Barrigada
Public Hearing on Bill 194

As for myself, let me first of all say that I stand along with the Archbishop in recommending that the said changes to Bill 194 be implemented.

With regards to this issue, the questions arises: "should medicine do all that it can?" This subject is quite complex, and it seems that the answers can be just as complicated. We should consider not only the bodily aspects of caring for the terminally ill, but we should also consider the familial, personal and moral aspects of health care.

In dealing with the *moral art* of caring for the terminally ill, we as a society composed of the medical, religious, governmental and familial components of the community should consider the following:

- a.) knowledge of the patient - his/her history, values, beliefs, hopes, desires, plans and the value this person places on human life. What are the person's moral principles.
- b.) the person's expressed wishes for treatment when in a terminal condition.
- c.) the role of the family must be always considered. The decision and judgment of the family, or a proxy, should become the guiding word when the patient cannot or has not expressed his or her wishes about treatment when in a terminal condition.
- d.) the burden the patient must shoulder by way of treatment, physical discomfort, or physical and mental impairment as well as the burden (financial or otherwise) on the patient's family.
- e.) the hope of reversing an illness and restoring the patient to a reasonable level of well-being.

Bill 194 must recognize first of all, the dignity of human life and the natural moral rights of the person. Secondly, it must carefully draw out and delineate provisions to protect those terminally ill patients without living wills. Lastly, bill 194 must prohibit any form of active euthanasia.

Andrew Gustaf

Good afternoon. My name is Fr. Eric Forbes; I am a Roman Catholic priest. I am testifying today on Bill 194 as a private citizen. Although I am not here to represent anyone or any group in an official capacity, nonetheless I would venture to say that the overall approach I have to Bill 194 probably represents a philosophy of life, sickness and death which is held by many other residents of this Territory who are of Catholic faith. As representatives elected by the people, I believe that our senators ought to represent that public will to the best of their ability.

When I first heard about this bill, I was reminded of the first time I had ever heard of what is termed the Right to Die. I was only in junior high when I heard about the Karen Quinlan case. Since that time, up until now, I have tried to understand what is meant by the Right to Die. Bill 194 specifically states that it does not include the right to be killed. The bill seems to say that the Right to Die simply means that a patient, faced with the sure expectation of death in a relatively short time, has the right to refuse life-sustaining treatment that would only prolong the process of dying. Normal care for the body, such as feeding and hydration, the administration of pain-killers, among other things, is not included here. I suppose we are trying to avoid forcing people into suffering much longer than unaided nature would allow them. In these cases, life-sustaining treatment would simply be "suffering-prolongation treatment" without any real expectation of recovery.

Sounds good to me, and sounds to be in keeping with my own personal moral philosophy, which is consonant with the moral teachings of the Catholic Church. But I have been alerted to possible vagueness in the bill's language that could be interpreted in such a way that would allow for action to be taken which I would find objectionable. For

example : it isn't clear to me whether comatose patients feel pain. Can something be called painful which isn't felt? According to the bill, then, a doctor would not be obliged, under the conditions stated in the bill, to treat a malignant tumor that developed in a comatose patient, since it can be argued that such treatment does not alleviate pain and that such treatment would only prolong the dying process of the comatose patient. Conceivably, a comatose patient who had signed a Living Will could be allowed to develop cancer and not be treated for it. It just isn't clear to me.

There is also the possibility that a patient, who feels he is just a burden to the family, could get a doctor to agree to withhold treatment when, in fact, that treatment could be beneficial to the patient, but perhaps only after a long and financially burdensome time for the family and patient. What provisions exist in the bill to prevent this from happening? I just don't know. There are concerns about the vagueness of the term "relatively short time" and concerns about the issue of family notification. There are other concerns about this bill that have been voiced by more legally-trained minds.

Legislation concerning matters of life and death is extremely serious and should be thoroughly examined and discussed in a public forum. I guess I am asking that this committee allow the public to examine this bill more thoroughly before legislative action is taken on it. We have nothing to lose and everything to gain from discussion and education. What I am afraid of is that this committee be satisfied with this one public hearing and call for immediate floor action, without the benefit of substantial input from the public they were elected to represent.

Testimony on Bill No. 194

Elizabeth P. Arriola

Senator Lou Leon Guerrero, Chairperson of the Committee on Health, Welfare and Senior Citizens and members of your Committee.

I'm Elizabeth Perez Arriola representing the Lay Committee especially formed to address our concerns on Bill No. 194.

At the onset our reaction to Bill No. 194 is that Bill No. 194 is not needed from our perspective. "The Natural Death Act" or "The Living Will" are misnomers to this bill's concept. To die naturally need not be staturized^{it}—it is the surest thing. In today's world, to be born may not be a sure thing. "The Living Will" is not a will at all but a "death wish" or "wishes". No doctor has ever been convicted of letting a patient die a natural death; all it takes or is necessary is to make a patient as comfortable and peaceful as possible and that is the ultimate that a doctor can do in keeping with his oath as a professional person.

California failed to pass a natural death act. If the reasons are purely for cutting costs to patient and health care providers that this bill is to be enacted, conditional support is in the offing pending certain conditions that we would like to see incorporated or deleted in the present form.

Our island community is pro-life. “We respect human life and its preservation”. This is of paramount importance to us as a people and as a community. We would like to see in the Legislative findings a statement to this effect:

- “1. We respect human life and its preservation.
2. That this Act doesn’t condone or approve ‘**euthanasia**’ or ‘**mercy killing**’.”

This is culturally correct for us. In a very close knit society as Guam, our families especially at a time of imminent death of a family member. We share plans, we share grief and we comfort one another. A member of the family should be notified in advance about impending withdrawal of other machines. We must assure the families of all treatments for the patient.

Attached is a list of recommended changes by the legal counsel of the Lay Committee.

RECOMMENDED CHANGES IN NATURAL DEATH BILL
(Twenty-Third Guam Legislature)

1. Definitions.

Add:

"91102 (k) 'Euthanasia' means the failure to use means which can effectively preserve life without imposing grave burdens on the patient."

(Source: Vatican, Declaration on Euthanasia, 1980).

Change:

"91102(j) 'Terminal condition' means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, imminently result in death, and shall not include permanent unconsciousness and advanced Alzheimer's disease."

(Source: Wisconsin Natural Death Act, Wisc. Stat. Ann., Section 154.01, et seq.).

2. Nutrition and Hydration:

Add the following sentence to 91102(d) and 91108(b): "Nutrition and hydration may not be withheld from a qualified patient".

3. Presumption in Favor of Life

Add:

"91101 (g) *Presumption in Favor of Life.* It is the intention of this Act to recognize a presumption in favor of human life. It is further recognized that the right to refuse treatment is limited by the territorial interest in preserving human life, preventing suicide and homicide, protecting dependent third parties, and maintaining sound ethics in the medical profession".

(Source: Bill 602, Twenty-First Guam Legislature, Section 87101.)

4. Disclaimer of Euthanasia

Add: "91101 (h) *Disclaimer of Euthanasia.* This Act does not condone, authorize, or approve euthanasia."

(Source: Bill 87, Twenty-First Guam Legislature, Section 87116.07.)

5. Family Members

Add: "91103(d) *Notification of Family Members.* When a qualified patient has been certified to be in a terminal condition and the physician or other health care provider has been furnished an originally signed declaration, the physician or other health care provider shall, not less than 48 hours prior to withholding life sustaining procedures, inform the patient's immediate family members who may bring an action in the Superior Court of Guam, for good cause, to set aside the declaration.

(Source: Based on Colorado Medical Treatment Decision Act, Colo. Rev. Stat., Section 15-18-101, et seq.).

**RECOMMENDED CHANGES TO NATURAL DEATH BILL
PAGE 2**

7. Assurances of Patient's Understanding.

Add the following sentence to Section 91103(a);

"Notwithstanding, the provisions in this section, it is the policy of the Act to encourage communication regarding treatment decisions among patients, their families and physicians."

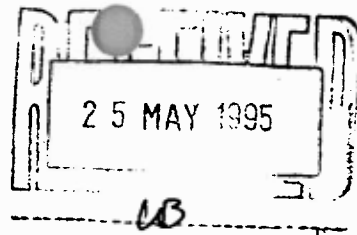
8. Delete section 91115.

(Note: This section would allow reliance upon writings executed before the adoption of the Act which do not comply with the Act, and it would also allow reliance upon writings executed in Guam or elsewhere after the adoption of the Act which do not comply with the Act. "Substantial compliance" with the Act, since it involves a matter of life or death, is not sufficient.)

Dated May 8, 1995

JCD

abNd5-8.0D



* Thank you for giving me the opportunity to share my concerns regarding Bill 194

* Despite its flaws--it is an attempt to get people thinking about health-care proxies and living wills before illness strikes and rational thinking goes out the window.

1. * When it comes to dying we need wisdom--employing knowledge and experience to judge the most sound course of action.

Insights/wisdom can be drawn from the experience of a caring physician (who knows the facts);

the condition of the dying person (who expresses his wishes);

input of the family (who is looking out for the loved one);

input from religious counselors (for godly guidance)

Bill 194 should include as its policy to encourage these relationships and communication as a wellspring of wisdom for the person facing the dying process.

2. A serious flaw of Bill 194 is its view of the person with disability. The persistent vegetative state (PVS) is a person in a coma and in a suspended sleep state from which he may or may not awaken. A person in persistent vegetative state is awake, has sleep cycles, but almost always cannot relate to those around them.

Many are said to be hopelessly beyond recovery. Ultimately, that means they are in danger of losing personhood (and all the rights that go with being a person, including the right to life).

The PVS is being used as the hard case in order to get people used to the idea that there are some in our society whose lives aren't worthwhile, who can be terminated.

The question is usually: Why can't we let this person (PVS) die?
People in coma or PVS aren't dying. They are severely disabled. Underline severely because some of these people can't swallow, others can.

Some make movements that are intentional, others reflexive.

They are nonverbal; they depend on the sensitive interpretations of their caretakers, just as the mother of the newborn can sense differences in their baby's whimper.

And some even dramatically recover after spending years in a coma or vegetative state.

But all things considered, they are disabled. And people, no matter how severe their handicap condition are entitled to treatment and care.

But there is one perspective about an individual in a long-term coma or PVS--The Spirit of God is able to work in the spirit of such a person, perhaps more so than at any other time in his life.

Remember that the work of God is spiritual activity, often very separate from a person's intellect or even basic brain activity (e.g. St. John the Baptist in-utero) Matt. 16:17; Luke 1:44-45

The Bible shows that God may not require a mind through which he can reveal himself.

This is good news for people who

- *don't have a high IQ
- * for child or adult who is mentally retarded
- * for people who are in comatose states

God does not need their brains whether injured or traumatized to reveal His truth.

And when the time comes for the person in coma or PVS to depart this earth? You simply commend the person to God's mercy . Can a person be

saved by God's grace in the moments of unconsciousness preceding death?
Certainly!

Admittedly, a truckload of arguments for "pulling the plug" of respirators or feeding tubes can be stockpiled against the needs of people in comas or vegetative states: Medical expenses, quality of life, family stress, patient suffering, court rulings, pressure from the public.

We should stop evaluating by what the world thinks about them or by what they seem to be like on the outside.

Terminal conditions should not include the PVS.

At first glance, living wills sound good. You have the chance to write down on paper exactly how "extraordinary" you want extraordinary medical treatment to be. But living wills have problems.

1. Sends a signal that you don't want to have anything done. For instance, in a crowded emergency room, the overworked doctors on duty could interpret a living will to mean that you do not want to be resuscitated, period. Your stretcher is shoved against a wall while other emergencies in line are ushered in.

2. A living will can not be erased at the last minute. You have no idea when you write it what sort of death you will face, or what sort of new treatment may become available.

People tend to think that a living will gives them control over the way they will die. But in fact, when you sign a living will, you give up rights and control to any doctor who happens to be on the scene to decipher it. There is no guarantee that your favorite friendly physician will be the one interpreting the vague wording of a living will.

"But can't my family member explain to the doctor what I meant?"

True, family members can take a stab at deciphering what you meant but the doctor on the scene does not have to heed the advice. The law gives complete power and protection to the physician who has the document in his hands.

So which is it?

Living wills or a designated proxy?

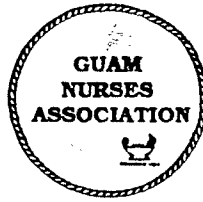
It boils down to this: Do you want to be represented by a piece of paper or a person?

I want a person to speak for me. A person, unlike a living will, is flexible and can be responsive to the circumstances.

To be honest, neither living wills nor designated health proxies are perfect answers to the dilemma of dying, but of the two, the power of attorney holds sway.



**DR. VINCENT A. DUENAS
THE DOCTORS' CLINIC
851 CAMACHO ROAD
TAMUNING, GUAM 96911**



May 19, 1995

Twenty-Third Guam Legislature
Committee on Health, Welfare &
Senior Citizens
324 W. Soledad Avenue
Agana, Guam 97910

Good Afternoon Madam Chair and Members of the Committee on Health, Welfare & Senior Citizens. My name is Roger Cauley, I am registered nurse and I am here today as the representative of the Guam Nurses Association where I serve as the Chairperson.

Guam Nurses Association supports the passage of **Bill No 194, To Establish the Natural Death Act**. In reviewing this Bill, the Guam Nurses Association recognizes and supports the adult patients fundamental right to control the decision relating to his or her medical care. This includes the patient end-of-life care.

The American Nurses Association in which Guam Nurses Association is a chartered State member has issued Position Statements on Assisted Suicide and Active Euthanasia.

Guam Nurses Association in conjunction with the American Nurses Association believes:

"that the nurses should not participate in assisted suicide. Such an act is in violation of the Code for Nurses with Interpretive Statements (Code for Nurses) and the ethical traditions of the profession. Nurses, individually and collectively, have an obligation to provide comprehensive and compassionate end-of-life care which includes the promotion of comfort and the relief of pain, and at times, foregoing life-sustaining treatments."

Page 2
Testimony, Bill 194
May 19, 1995

"that the nurse should not participate in active euthanasia because such an act is in direct violation of the Code for Nurses with Interpretive Statements (Code for Nurses), the ethical traditions and goals of the profession, and its covenant with society. Nurses have an obligation to provide timely, humane, comprehensive and compassionate end-of-life care (1994)."¹

Guam Nurses Association supports Bill 194, as it is noted on page 7, (g):

This Act does not condone, authorize; or approve mercy killing or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

Guam Nurses Association suggests to change the title of the Act from "TO ESTABLISH THE NATURAL DEATH ACT" to "RIGHT TO DIE NATURALLY".

On behalf of the Guam Nurses Association, thank you for the opportunity to testify in support of **Bill 194**.

Sincerely,



ROGER L. CAULEY, RN
Director at Large, GNA

¹American Nurses Association Center for Ethics and Human Rights
Communique, Volume 4, Number 1, Spring 1995

=====

T E R R I T O R Y O F G U A M

TESTIMONY ON BILL

NATURAL DEATH ACT

=====

Members of the Legislature, my name is Cerila M. Rapadas, President of the Island Board of Christian Mothers, an Organization of the Archdiocese of Agana which is composed of the Presidents/Officers of each Parish Christian Mother Unit.

I join these other concerned people in testifying on the Bill called the "Natural Death Act."

I am coming from the perspective of a mother and one who believes that only God gives and takes life. As a community, we come together to express our concerns and to make sure our voices are heard because after all, this Bill is a matter of life or death.

The intent of the Bill is to allow an adult person (over 18-years of age) to complete and sign a declaration form stating that no life-sustaining treatment will be administered to prolong the process of dying. The diagnosis has to be concurred by two (2) physicians that the condition is incurable, irreversible and death will result in a relatively short time.

The intent is good, but the term "death will result in a relatively short short time" is not specific enough. Perhaps it should read "Death Will Result Immediately" or "Immediate Death Will Result."

A good part of the Bill is giving the opportunity to the attending physician or health care provider to transfer the

Page 2
Mrs. Cerila M. Rapadas
Testimony On Bill
Natural Death Act
May 19, 1995

patient to another physician who is willing to comply with the wishes of the declarant, if they do not wish to participate in this process. Professionals who have a strong commitment to preserve life or have reservations will be respected.

There are conditions for when the declaration becomes operative in Section - 91105. The attending physician is the one who will insure that this Section is complied with. Although the wishes of the declarant has to remain private, here in Guam, this is very difficult to maintain. For an important decision such as this, our culture always involves family discussions. Families & family network always come together to assist in fiestas, fandangos, baptisms, funerals, and most specially we seek family opinions and advise in making personal decisions; such as what college to attend, what course to take, etc. We must insure that this practice continues and give families an opportunity to be informed of the decision to terminate life supporting measures.

As a people we are more accepting of pain & personal sacrifices; we are more into keeping & maintaining life; this should be reflected in the Bill to make it the people of Guam Bill and not one coming out of another state.

At this point in time I am not even sure how many people will want to avail themselves of this declaration if it becomes Law.

This Bill is perhaps a forward looking Bill and is looking ahead to a time when it will be needed. Let us make sure

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it is not used to allow food and hydration to be discontinued to the Elderly or disabled, or to advance the cause of killing the unwanted elderly or disabled; this is totally unacceptable. The language should be clear so it can't be challenged.

Thank you very much for the opportunity to comment. May the Holy Spirit continue to guide us in our endeavors.

WRITTEN BY:

Cerila M. Rapadas

MRS. CERILA M. RAPADAS
President
Island Board of Christian Mother
Executive Director
Catholic Social Service

5/19/95

DATE

CMR:mh

=====

T E R R I T O R Y O F G U A M

TESTIMONY ON BILL

NATURAL DEATH ACT

=====

Members of the Guam Legislature, my name is Sister M. Callista Camacho, RSM, Deputy Director of CATHOLIC SOCIAL SERVICE.

Your findings and intent on the fundamental rights of the adult person to control and decide on his/her medical care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of terminal or unconscious condition, although commendable, need to be further defined and discussed in the light of Christian values. By virtue of our Catholic belief, sensitivity and respect to one's right to live, family members need to share in the decision making.

Whatever the motive and means, there is the possibility of direct euthansia which consists in putting an end to the lives of the sick, persons with disabilities or the dying person which is morally unacceptable.

Human life is sacred and no one under any circumstance can claim for oneself the right to take one's life or the life of another. There is the danger of directly and intentionally bringing about a person's death by refusing assistance. Life must be protected with the utmost care.

An act of omission which of itself or by intention causes death in order to eliminate human suffering constitute a murder gravely contrary to the rights of the human person and to our respect due to the living God, our source of life.

Page 2

Testimony of Bill

Natural Death Act

Sr. M. Callista Camacho, RSM

Deputy Director Catholic Social Service

May 18, 1995

We need to be aware of the possible error of judgement into which one can fall in good faith, it does not change the nature of murderous act.

To qualify the NATURAL DEATH ACT, here is the direct quote from the "Catechism of the Catholic Church." "Even if death is thought eminent, the ordinary care owed the sick person cannot be legitimately interrupted. The use of painkillers to alleviate the sufferings of the dying, even at the risk of shortening their days, can be morally in conformity with human dignity, if death is not willed as either an end or a means, but only foreseen and tolerated as inevitable. Palliative care is a special form of disinterested charity. As such it should be encouraged."

WRITTEN BY:

Sr. M. Callista Camacho, RSM

5/19/95

SR. M. CALLISTA CAMACHO, RSM

DATE

Deputy Director

Catholic Social Service

SCC:mh

Copy

CATHOLIC SOCIAL SERVICE

TESTIMONIES ON BILL 194

In the interest of enhancing and preserving the human life and dignity, Catholic Social Service will support the intent of Bill 194, the Natural Death Act, provided that the rights of the individuals concerned are fully protected.

While Catholic Social Service provides certain, special assistance in the lives of those in need especially the elderly, the poor, the homeless, the abused both children and spouses and other unfortunate individuals seeking help for basic daily survival, etc., it also is cognizant of the human compassion to the terminally ill people who do not wish or have the desire of any modern medical technological treatments that will further prolong their human life beyond the natural limits.

The adult person has every fundamental right in that the decisions whether or not to render or withhold life sustaining treatment must strictly be the choice of the individual. Notwithstanding, Catholic Social Service will continue to preserve as much as possible, God's greatest gift, i.e. LIFE in the community in a much more comfortable process by providing the ailing individuals with various services.

With this in mind, this bill if enacted into law by this August Body must further guarantee that the decision to allow the right to choose Natural Death must never be compromised under any circumstances so that any family members, heirs or other individuals responsible for the terminally ill, but the patient himself be permitted to decide.

To help accomplish this, it is recommended that an islandwide awareness education program be initiated on the substance of this testimony. While people are still alert and capable of deciding, they can be encouraged to draw written wills, etc., acceptable in the courts of law. This will minimize the burden of society having to decide such drastic terminal condition for any ailing individuals.

Since the inception of Catholic Social Service in September 1979, the agency has administered various programs for the Sick, Frail and other elderly clients. A good number of CSS clients afflicted with such incurable and irreversible diseases were placed on a life-sustaining treatment. But still death was inevitable. Each time, however, CSS would witness countless of clients go through a deteriorating stage, an experience that only brought unbearable pain and life long sufferings.

Not too long ago, CSS knew of a Client to be terminally ill by practicing physicians in both Hawaii and Guam. Had the life support system been discontinued, the patient would have died long before today. But with God's miraculous powers this individual has come out from coma, and is now enjoying life with her family.

In closing, CSS asks that when you deliberate, be mindful of God's precious gift and the caring, loving, sharing and understanding needed to sustain life as much as possible.

May God continue to guide you in achieving the wonderful public services the people of Guam have elected you to accomplish.

JOHN PALOMO
PROJECT DIR
INHOME SERV

CSC

5/19/95

Senator Lou Leon Guerrero
Committee on Health, Welfare and Senior Citizens
Guam Legislature

Re: NATURAL DEATH ACT

THIS CORRESPONDENCE IS TO EXPRESS MY SUPPORT FOR YOUR PROPOSED LEGISLATION TO ALLOW TERMINALLY ILL CITIZENS TO CHOOSE NOT TO HAVE THEIR "LIFE" EXTENDED BY BEING KEPT ON LIFE SUPPORT SYSTEMS OR OTHER EXTRAORDINARY MEANS. I SALUTE YOUR COURAGE IN INTRODUCING THIS LEGISLATION . I HAVE HAD PERSONAL EXPERIENCE WITH THIS MATTER AND HAVE SEEN FAMILIES RUINED FINANCIALLY BY THE MEDICAL SERVICES FORCED ON THEM AND THEIR TERMINALLY ILL LOVED ONES. MY FATHER WAS IN JUST SUCH A CONDITION AND THE RESULT WAS HIS WIDOW HAD TO LIQUIDATE THEIR FAMILY ASSETS, INCLUDING THEIR HOME, TO PAY FOR THE EXTREMELY EXPENSIVE MEDICAL LIFE SUPPORT THAT NEITHER HE NOR HIS IMMEDIATE FAMILY WANTED HIM TO BE SUBJECTED TO. THANK YOU FOR TRYING TO ALLOW OUR PEOPLE TO CHOOSE TO DIE IN A HUMANE AND DIGNIFIED MANNER. WE DESERVE THIS RIGHT AND OUR FAMILIES DESERVE THE PEACE AND RELIEF IT CAN BRING. NEITHER THE CHURCH NOR THE MEDICAL SHOULD BE PERMITTED TO DICTATE IN THIS VERY PERSONAL AND PRIVATE DECISION.

JACK STANTON CROSS
CHALAN PAGO

(H) 472-6337

Mr. Frank Portusach
P.O. Box 3525
Agaña, Guam 96910

May 17, 1995

The Honorable
Lou Leon Guerrero
Chairperson, Committee on
Health, Welfare and Senior Citizens


Dear Senator Leon Guerrero:

I wish to present my testimony in favor of Bill 194, AN ACT TO ADD A NEW CHAPTER TO TITLE 10, GUAM CODE ANNOTATED TO ESTABLISH THE NATURAL DEATH ACT.

It is a good practice to execute a "Living Will" which tells everyone how you would like to be treated or not treated when you no longer have the capacity to do so. This bill makes it clear how a Living Will is made and how it will take effect. Medical professionals and family members will have the proper guidance on how to follow your wishes.

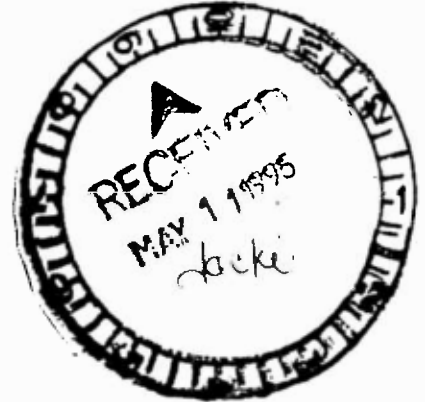
I commend the authors of the bill for your wisdom in proposing this measure. I advise the other senators to support the measure.

Sincerely,


Frank Portusach

**John C. Dierking
Attorney at Law
140 Route 8
Agana, Guam 96910**

May 11, 1995



**Staff of Senator Lou Leon Guerrero
Twenty-Third Guam Legislature
Agana, Guam**

Re: Public Hearing regarding Natural Death Bill 194, May 19, 1995

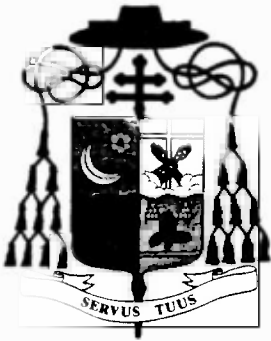
Dear Staff:

Please place the following names on the list of persons who will testify concerning Bill 194 on the above date.

- 1. Father Adrian Cristobal**
- 2. Father Eric Forbes**
- 3. Deacon John Dierking**
- 4. Mrs. Elizabeth Arriola**
- 5. Mrs. Josephine McDonald**
- 6. Mrs. Maria Tenorio**
- 7. Mrs. Cerila Rapadas**
- 8. Mrs. Patricia Perry**
- 9. Sister Callista Camacho**

Yours truly,

John Dierking

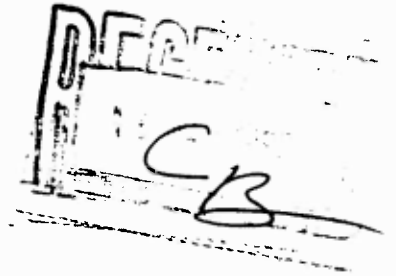


ARCHDIOCESE OF AGANA
196 B Cuesta San Ramon
Agana, Guam 96910
Tel. (671) 472-6116
Fax. (671) 477-3519

Archbishop's Office

May 15, 1995

Staff of Senator Lou Leon Guerrero
Twenty-Third Guam Legislature
Agana, Guam 96910




Re: Public Hearing regarding Natural Death Bill 194, May 19, 1995

Dear Staff:

Please place the following names on the list of persons who will testify concerning Bill 194 on the above date.

1. Father Adrian Cristobal
2. Father Eric Forbes, OFMCap.
3. Deacon John Dierking
4. Mrs. Elizabeth Arriola
5. Mrs. Josephine McDonald
6. Mrs. Maria Tenorio
7. Mrs. Cerila Rapadas
8. Mrs. Patricia Perry
9. Sister Callista Camacho

Servus tuus,


Most Rev. Anthony Sablan Apuron, OFMCap., D.D.
Archbishop of Agana

Testimony on Bill No. 194

Elizabeth P. Arriola

Senator Lou Leon Guerrero, Chairperson of the Committee on Health, Welfare and Senior Citizens and members of your Committee.

I'm Elizabeth Perez Arriola representing the Lay Committee especially formed to address our concerns on Bill No. 194.

At the onset our reaction to Bill No. 194 is that Bill No. 194 is not needed from our perspective. "The Natural Death Act" or "The Living Will" are misnomers to this bill's concept. To die naturally need not be staturized^{ed}—it is the surest thing. In today's world, to be born may not be a sure thing. "The Living Will" is not a will at all but a "death wish" or "wishes". No doctor has ever been convicted of letting a patient die a natural death; all it takes or is necessary is to make a patient as comfortable and peaceful as possible and that is the ultimate that a doctor can do in keeping with his oath as a professional person.

California failed to pass a natural death act. If the reasons are purely for cutting costs to patient and health care providers that this bill is to be enacted, conditional support is in the offing pending certain conditions that we would like to see incorporated or deleted in the present form.

Our island community is pro-life. “We respect human life and its preservation”. This is of paramount importance to us as a people and as a community. We would like to see in the Legislative findings a statement to this effect:

- “1. We respect human life and its preservation.
2. That this Act doesn’t condone or approve ‘**euthanasia**’ or ‘**mercy killing**’.”

This is culturally correct for us. In a very close knit society as Guam, our families especially at a time of imminent death of a family member. We share plans, we share grief and we comfort one another. A member of the family should be notified in advance about impending withdrawal of other machines. We must assure the families of all treatments for the patient.

Attached is a list of recommended changes by the legal counsel of the Lay Committee.

RECOMMENDED CHANGES IN NATURAL DEATH BILL
(Twenty-Third Guam Legislature)

1. Definitions.

Add:

"91102 (k) 'Euthanasia' means the failure to use means which can effectively preserve life without imposing grave burdens on the patient."

(Source: Vatican, Declaration on Euthanasia, 1980).

Change:

"91102(j) 'Terminal condition' means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, imminently result in death, and shall not include permanent unconsciousness and advanced Alzheimer's disease."

(Source: Wisconsin Natural Death Act, Wisc. Stat. Ann., Section 154.01; et seq.).

2. Nutrition and Hydration:

Add the following sentence to 91102(d) and 91108(b): "Nutrition and hydration may not be withheld from a qualified patient".

3. Presumption in Favor of Life

Add:

"91101 (g) *Presumption in Favor of Life*. It is the intention of this Act to recognize a presumption in favor of human life. It is further recognized that the right to refuse treatment is limited by the territorial interest in preserving human life, preventing suicide and homicide, protecting dependent third parties, and maintaining sound ethics in the medical profession".

(Source: Bill 602, Twenty-First Guam Legislature, Section 87101.)

4. Disclaimer of Euthanasia

Add: "91101 (h) *Disclaimer of Euthanasia*. This Act does not condone, authorize, or approve euthanasia."

(Source: Bill 87, Twenty-First Guam Legislature, Section 87116.07.)

5. Family Members

Add: "91103(d) *Notification of Family Members*. When a qualified patient has been certified to be in a terminal condition and the physician or other health care provider has been furnished an originally signed declaration, the physician or other health care provider shall, not less than 48 hours prior to withholding life sustaining procedures, inform the patient's immediate family members who may bring an action in the Superior Court of Guam, for good cause, to set aside the declaration.

(Source: Based on Colorado Medical Treatment Decision Act, Colo. Rev. Stat., Section 15-18-101, et seq.).

**RECOMMENDED CHANGES TO NATURAL DEATH BILL
PAGE 2**

7. Assurances of Patient's Understanding.

Add the following sentence to Section 91103(a);

"Notwithstanding, the provisions in this section, it is the policy of the Act to encourage communication regarding treatment decisions among patients, their families and physicians."

8. Delete section 91115.

(Note: This section would allow reliance upon writings executed before the adoption of the Act which do not comply with the Act, and it would also allow reliance upon writings executed in Guam or elsewhere after the adoption of the Act which do not comply with the Act. "Substantial compliance" with the Act, since it involves a matter of life or death, is not sufficient.)

Dated May 8, 1995

JCD

abN45-8.03

TWENTY-THIRD GUAM LEGISLATURE
1995 (First) Regular Session

DEC 09 1995

Bill No. 443(LS)
Introduced by:

Lou Leon Guerrero
Tom C. Ada
Hope A. Cristobal
ben c. pangelinan
Judith Won Pat-Borja
Anthony Blaz

AN ACT TO ADD A NEW CHAPTER 91 TO TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE NATURAL DEATH ACT.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

- 1 §91100. Title. This act shall be known and cited as The Natural Death Act.
- 2 §91101. Legislative Findings And Intent.
- 3 (a) The Legislature finds that an adult person has the fundamental right to
- 4 control the decisions relating to the rendering of his or her own medical care,
- 5 including the decision to have life-sustaining treatment withheld or withdrawn
- 6 in instances of a terminal condition or permanent unconscious condition.
- 7 (b) The Legislature further finds that modern medical technology has made
- 8 possible the artificial prolongation of human life beyond natural limits.
- 9 (c) The Legislature further finds that, in the interest of protecting individual
- 10 autonomy, such prolongation of the process of dying for a person with a
- 11 terminal condition or permanent unconscious condition for whom continued
- 12 medical treatment does not improve the prognosis for recovery may violate
- 13 patient dignity and cause unnecessary pain and suffering, while providing
- 14 nothing medically necessary or beneficial to the person.
- 15 (d) In recognition of the dignity and privacy that a person has a right to expect,
- 16 the Legislature hereby declares that the laws of the Territory of Guam shall
- 17 recognize the right of any adult person to make a written declaration instructing
- 18 his or her physician to withhold or withdraw life-sustaining treatment in the
- 19 event of a terminal condition or permanent unconscious condition, in the event
- 20 that the person is unable to make those decisions for himself or herself.

1 (e) The Legislature further declares that, in the absence of controversy, a court
2 normally is not the proper forum in which to make decisions regarding
3 life-sustaining treatment.

4 (f) To avoid treatment that is not desired by a person in a terminal condition or
5 permanent unconscious condition, the Legislature declares that this chapter is in
6 the interest of the public health and welfare.

7 (g) The Legislature further finds that the family should be encouraged to openly
8 express their opinion and concerns with the individual. It recognizes the
9 importance family plays in supporting the decision of the individual.

10 **§91102. Definitions. As Used In This Chapter, Unless The Context Otherwise**
11 **Requires:**

12 (a) "Attending physician" means the physician who has primary responsibility
13 for the treatment and care of the patient.

14 (b) "Declaration" means a writing executed in accordance with the requirements
15 of subdivision (a) of Section 91103.

16 (c) "Health care provider" means a person who is licensed, certified, or otherwise
17 authorized by the laws of this Territory to administer health care in the ordinary
18 course of business or practice of a profession.

19 (d) "Life-sustaining treatment" means any medical procedure or intervention
20 that, when administered to a qualified patient, will serve only to prolong the
21 process of dying or an irreversible coma or persistent vegetative state.
22 "Life-sustaining treatment" shall not include the administration of medication
23 or the performance of any medical procedure deemed necessary to alleviate pain
24 or for nutrition or hydration.

25 (e) "Permanent unconscious condition" means an incurable and irreversible
26 condition that, within reasonable medical judgment, renders the patient in an
27 irreversible coma or persistent vegetative state.

28 (f) "Person" means an individual, corporation, business trust, estate, trust,
29 partnership, association, joint venture, government, governmental subdivision
30 or agency, or any other legal or commercial entity.

31 (g) "Physician" means an individual licensed to practice medicine in the
32 Territory of Guam.

33 (h) "Qualified patient" means a patient 18 or more years of age who has executed
34 a declaration and who has been diagnosed and certified in writing by the
35 attending physician and a second physician who has personally examined the
36 patient to be in a terminal condition or permanent unconscious condition.

1 (i) "State" means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, or a territory or insular possession subject to the
3 jurisdiction of the United States.

4 (j) "Terminal condition" means an incurable and irreversible condition that,
5 without the administration of life-sustaining treatment, will, within reasonable
6 medical judgment, result in death within a relatively short time.

7 **§91103. Declaration Concerning Life-Sustaining Treatment; Execution**
8 **Requirements.**

9 (a) An individual of sound mind and 18 or more years of age may execute at any
10 time a declaration governing the withholding or withdrawal of life-sustaining
11 treatment. The declaration shall be signed by the declarant, or another at the
12 declarant's direction and in the declarant's presence, and witnessed by two
13 individuals neither of whom may be a person who is entitled to any portion of
14 the estate of the qualified patient upon his or her death under any will or codicil
15 thereto of the qualified patient existing at the time of execution of the declaration
16 or by operation of law. In addition, a health care provider, an employee of a
17 health care provider, the operator of a community care facility, an employee of
18 an operator of a community care facility, the operator of a residential care facility
19 for the elderly , or an employee of an operator of a residential care facility for the
20 elderly may not be a witness.

21 (b) A declaration shall substantially contain the following provisions:

22 **DECLARATION**

23 If I should have an incurable and irreversible condition that has been diagnosed
24 by two physicians and that will result in my death within a relatively short time
25 without the administration of life-sustaining treatment or has produced an
26 irreversible coma or persistent vegetative state, and I am no longer able to make
27 decisions regarding my medical treatment, I direct my attending physician,
28 pursuant to the Natural Death Act of Guam, to withhold or withdraw
29 life-sustaining treatment that only prolongs the process of dying or the
30 irreversible coma or persistent vegetative state and is not necessary for my
31 comfort, nutrition, hydration or to alleviate pain.

32 If I have been diagnosed as pregnant, and that diagnosis is known to my
33 physician, this declaration shall have no force or effect during my pregnancy.

34 Signed _____ this day of _____, _____

35 Signature _____

36 Address _____

1 The declarant voluntarily signed this writing in my presence. I am not entitled to
2 any portion of the estate of the declarant upon his or her death under any will or
3 codicil thereto of the declarant now existing or by operation of law. I am not a
4 health care provider, an employee of a health care provider, the operator of a
5 community care facility, an employee of an operator of a community care facility,
6 the operator of a residential care facility for the elderly, or an employee of an
7 operator of a residential care facility for the elderly.

8 Witness _____ Witness _____
9 Address _____ Address _____

10 (c) A physician or other health care provider who is furnished a copy of the
11 declaration shall make it a part of the declarant's medical record and, if
12 unwilling to comply with the declaration, promptly so advise the declarant.

13 **§91104. Patients In Nursing Homes; Effect Of Declaration.**

14 A declaration shall have no force or effect if the declarant is a person in a skilled
15 nursing facility as defined in 10 Guam Code Annotated Section 7102(a), at the
16 time the declaration is executed unless one of the two witnesses to the
17 declaration is a patient advocate or ombudsman as may be designated by the
18 Administrator of the Division of Senior Citizens, Department of Public Health &
19 Social Services, for this purpose.

20 **§91105. Operative Effect Of Declaration.**

21 A declaration becomes operative when (a) it is communicated to the attending
22 physician and (b) the declarant is diagnosed and certified in writing by the
23 attending physician and a second physician who has personally examined the
24 declarant to be in a terminal condition or permanent unconscious condition and
25 no longer able to make decisions regarding administration of life-sustaining
26 treatment. When the declaration becomes operative, the attending physician and
27 other health care providers shall act in accordance with its provisions or comply
28 with the transfer requirements of Section 91109.

29 **§91106. Revocation Of Declaration.**

30 (a) A declarant may revoke a declaration at any time and in any manner, without
31 regard to the declarant's mental or physical condition. A revocation is effective
32 upon its communication to the attending physician or other health care provider
33 by the declarant or a witness to the revocation.

34 (b) The attending physician or other health care provider shall make the
35 revocation a part of the declarant's medical record.

36

1 **§91107. Terminal Or Permanent Unconscious Condition; Records.**

2 Upon determining that the declarant is in a terminal condition or permanent
3 unconscious condition, the attending physician who knows of a declaration shall
4 record the determination and the terms of the declaration in the declarant's
5 medical record and file a copy of the declaration in the record.

6 **§91108. Self-Determination By Patient; Pregnant Patients.**

7 (a) A qualified patient may make decisions regarding life sustaining treatment as
8 long as the patient is able to do so.

9 (b) This chapter does not affect the responsibility of the attending physician or
10 other health care provider to provide treatment for a patient's comfort, care or
11 alleviation of pain.

12 (c) The declaration of a qualified patient known to the attending physician to be
13 pregnant shall not be given effect as long as the patient is pregnant. The
14 attending physician shall cause a test to be made to determine if a female
15 qualified patient in a terminal condition is pregnant.

16 **§91109. Physician Or Health Care Provider Unwilling To Comply With Chapter;
17 Transfer Of Patient.**

18 An attending physician or other health care provider who is unwilling to
19 comply with this chapter shall take all reasonable steps as promptly as practicable
20 to transfer care of the declarant to another physician or health care provider who
21 is willing to do so .

22 **§91110. Civil Or Criminal Liability; Unprofessional Conduct.**

23 (a) A physician or other health care provider is not subject to civil or criminal
24 liability, or discipline for unprofessional conduct, for giving effect to a
25 declaration in the absence of knowledge of the revocation of a declaration.

26 (b) A physician or other health care provider, whose action under this chapter is
27 in accord with reasonable medical standards, is not subject to criminal
28 prosecution, civil liability, discipline for unprofessional conduct, administrative
29 sanction, or any other sanction if the physician or health care provider believes
30 in good faith that the action is consistent with this chapter and the desires of the
31 declarant expressed in the declaration.

32 **§91111. Willful Failure To Act; Fraudulent Conduct; Penalties.**

33 (a) A physician or other health care provide who willfully fails to transfer the
34 care of a patient in accordance with Section 91109 is guilty of a felony of the third
35 degree.

1 (b) A physician who willfully fails to record a determination of terminal
2 condition or permanent unconscious condition or the terms of a declaration in
3 accordance with Section 91107 is guilty of a felony of the third degree.

4 (c) An individual who willfully conceals, cancels, defaces, or obliterates the
5 declaration of another individual without the declarant's consent or who
6 falsifies or forges a revocation of the declaration of another individual is guilty of
7 a felony of the third degree.

8 (d) An individual who falsifies or forges the declaration of another individual,
9 or willfully conceals or withholds personal knowledge of a revocation is guilty of
10 a felony of the third degree.

11 (e) A personal who requires or prohibits the execution of a declaration as a
12 condition for being insured for, or receiving, health care services is guilty of a
13 felony of the third degree.

14 (f) A person who coerces or fraudulently induces an individual to execute a
15 declaration is guilty of a felony of the third degree.

16 (g) The sanctions provided in this section do not displace any sanction applicable
17 under other law.

18 **§91112. Construction Of Chapter, Characterization Of Death Resulting From**
19 **Decisions Made In Accordance With Chapter; Effect Of Declaration On Life**
20 **Insurance Or Annuities; Deliberate Acts Or Omissions To End Life.**

21 (a) Death resulting from the withholding or withdrawal of a life-sustaining
22 treatment in accordance with this Act does not constitute, for any purpose, a
23 suicide or homicide.

24 (b) The making of a declaration pursuant to Section 91103 does not affect in any
25 manner the sale, procurement, or issuance of any policy of life insurance or
26 annuity, nor does it affect, impair, or modify the terms of an existing policy of life
27 insurance or annuity. A policy of life insurance or annuity is not legally
28 impaired or invalidated by the withholding or withdrawal of life sustaining
29 treatment from an insured, notwithstanding any term to the contrary.

30 (c) A person may not prohibit or require the execution of a declaration as a
31 condition for being insured for, or receiving, health care services.

32 (d) This Act creates no presumption concerning the intention of an individual
33 who has revoked or has not executed a declaration with respect to the use,
34 withholding, or withdrawal of life-sustaining treatment in the event of a
35 terminal condition or permanent conscious condition.

1 (e) This Act does not affect the right of a patient to make decisions regarding use
2 of life-sustaining treatment, so long as the patient is able to do so, or impair or
3 supersede a right or responsibility that a person has to effect the withholding or
4 withdrawal of medical treatment.

5 (f) This Act does not require any physician or other health care provider to take
6 any action contrary to reasonable medical standards.

7 (g) This Act does not condone, authorize, or approve mercy killing or assisted
8 suicide or permit any affirmative or deliberate act or omission to end life other
9 than to permit the natural process of dying.

10 (h) The rights granted by this Act are in addition to, and not in derogation of,
11 rights under any other statutory or case law.

12 (i) A person shall be considered dead if in the opinion of a physician, based on
13 ordinary standards of current medical practice, the person has experienced
14 irreversible cessation of spontaneous respiratory and circulatory function. Death
15 will have occurred at the time when the irreversible cessation of the function
16 first occurred.

17 (j) In the event that artificial means of support preclude a determination that
18 respiratory and circulatory functions have ceased, a person shall be considered
19 dead if, in the opinion of the attending physician and one other physician, based
20 on ordinary standards of medical practice, the person has experienced
21 irreversible cessation of all function of the brain, including brain stem. The
22 opinions of the physicians shall be evidenced by signed statements. Death will
23 have occurred at the time when the irreversible cessation of all functions of the
24 entire brain, including the brain stem, first occurred. Death shall be pronounced
25 before artificial means of support are withdrawn and before any vital organ is
26 removed for purposes of transplantation.

27 **§91113. Declaration Presumed In Compliance And Valid.**

28 In the absence of knowledge to the contrary, a physician or other health care
29 provider may presume that a declaration complies with this Act and is valid.

30 **§91114. Instruments Executed In Other States.**

31 An instrument governing the withholding or withdrawal of life-sustaining
32 treatment executed in another state in compliance with the laws of that state or
33 of the Territory of Guam, is valid for purposes of this Act.

34 **§91115. Instruments To Be Given Effect Pursuant To Act.** The following
35 instruments shall be given effect pursuant to the provisions of this Act.

1 (a) An instrument executed before the effective date of this Act that substantially
2 complies with subdivision (a) of Section 91103.

3 (b) An instrument governing the withholding or withdrawal of life-sustaining
4 treatment executed in another state that does not comply with the laws of that
5 state, but substantially complies with the laws of the Territory of Guam.

6 **§91116. Severability Of Provisions.**

7 If any provision of this Act or its application to any person or circumstance is
8 held invalid, the invalidity shall not affect other provisions or applications of
9 this Act which can be given effect without the invalid provision or application,
10 and to this end the provisions of this Act are severable.

11 **§91117. Uniform Law; Construction Of Act.**

12 To the extent that a provision of this Act conforms to the Uniform Rights of the
13 Terminally Ill Act, that provision shall be applied and construed to effectuate its
14 general purpose to make uniform the law with respect to the subject of this Act
15 among states enacting it.