



Ohio Revised Code

Section 2133.15 Document executed prior to effective date of provisions.

Effective: July 9, 1998

Legislation: House Bill 354 - 122nd General Assembly

(A) Sections 2133.01 to 2133.15 of the Revised Code apply to any written document that was executed anywhere prior to October 10, 1991, that voluntarily was so executed by an adult who was of sound mind, that was signed by the adult or by another individual at the direction of the adult, that was or was not witnessed or acknowledged before a notary public as described in division (B) of section 2133.02 of the Revised Code, and that specifies the adult's intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if the adult is at any time in a terminal condition, in a permanently unconscious state, or in either a terminal condition or a permanently unconscious state, if the adult is at that time no longer able to make informed decisions regarding the administration of life-sustaining treatment, and if at that time there is no reasonable possibility that the adult will regain the capacity to make those informed decisions. The document shall be considered to be a declaration, shall be given effect as if it had been executed on or after October 10, 1991, in accordance with sections 2133.01 to 2133.15 of the Revised Code, and, except as otherwise provided in division (B) of this section, shall be subject to all provisions of sections 2133.01 to 2133.15 of the Revised Code pertaining to declarations.

(B)(1) If a declaration as described in division (A) of this section does not state that, or does not contain a checked or marked box or line adjacent to a statement indicating that, the declarant authorizes the declarant's attending physician to withhold or withdraw nutrition or hydration when the declarant is in a permanently unconscious state and when the declarant's attending physician and at least one other physician who has examined the declarant determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to the declarant or alleviate the declarant's pain, then, if the declaration becomes operative under section 2133.03 of the Revised Code because the declarant is in a permanently unconscious state, the attending physician of the declarant shall apply to the probate court of the county in which the declarant is located for the issuance of an order whether or not the attending physician is required to provide the declarant with nutrition and hydration for as long as the declarant is in the permanently unconscious state. Upon the filing of the application, the clerk of the probate court shall schedule a hearing on it and cause a copy of it and a



notice of the hearing to be served in accordance with the Rules of Civil Procedure upon the attending physician and the individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code, which service shall be made, if possible, within three days after the filing of the application. The hearing shall be conducted at the earliest possible time, but no sooner than the thirtieth business day, and no later than the sixtieth business day, after that service has been completed.

(2) At the hearing, the attending physician and any individual described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code shall be permitted to testify and present evidence relative to the use or continuation, or the withholding or withdrawal, of nutrition and hydration for as long as the declarant is in the permanently unconscious state. Immediately following the hearing, the court shall enter on its journal its determination, based on the evidence presented by all of the parties at the hearing on the application and subject to division (B)(3) of this section, whether or not the attending physician is required to provide the declarant with nutrition and hydration for as long as the declarant is in the permanently unconscious state.

(3) The court shall issue an order that authorizes the declarant's attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the declarant only if the applicant establishes, by clear and convincing evidence, that the order would be consistent with one of the following:

(a) The declarant's previously expressed intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the declarant subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration;

(b) In the absence of a previously expressed intention of that nature, the type of informed consent decision that the declarant would have made if the declarant had expressed the declarant's intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the declarant subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, as inferred from the lifestyle and character of the declarant, and from any other evidence of the declarant's desires, prior to the declarant becoming no longer able to make informed decisions regarding the administration of nutrition and hydration. The Rules of Evidence shall not be binding for purposes of this division.



(4) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician of the declarant are prohibited from filing an application under division (B) of this section and from joining or being joined as parties to a hearing conducted under division (B) of this section, including joining by way of intervention.