

**REPORT OF THE JUDICIAL COUNCIL
END OF LIFE DECISIONS ADVISORY COMMITTEE
FEBRUARY 4, 2008**

BACKGROUND

In December 2005, the Judicial Council assigned to its End of Life Decisions Advisory Committee (Committee) the task of reviewing Kansas statutes relating to durable powers of attorney for health care decisions and other advance directives such as living wills with the goal of consolidating these statutes into a single act. The Committee was also asked to consider including new provisions as appropriate to a comprehensive advance directives act.

COMMITTEE MEMBERSHIP

The following persons served on the Committee during the study:

Gerald L. Goodell, Chair, Topeka, practicing lawyer and member of Kansas Judicial Council.

Bob Bethell, Alden, State Representative from the 113th district and Chair of the Social Services Budget Committee.

Terry Bruce, Hutchinson, State Senator from the 34th district, Vice-chair of the Senate Judiciary Committee and practicing lawyer.

Sam K. Bruner, Overland Park, Retired District Judge from the 10th Judicial District and Chair of the Judicial Council Guardianship and Conservatorship Advisory Committee.

John G. Carney, Kansas City, Vice-President of Aging and End of Life at the Center for Practical Bioethics, specializing in the ethical dimensions of decision making at the end of life.

William H. Colby, Prairie Village, Lawyer, represented the family of Nancy Cruzan, author of Long Goodbye: The Deaths of Nancy Cruzan and Unplugged: Reclaiming Our Right to Die in America, fellow at the Center for Practical Bioethics in Kansas City, Missouri.

Anne-Marie Hughey, Shawnee, Legislative and Policy Advocate for the Southeast Kansas Independent Living Resource Center and former Executive Director of the National Council on Independent Living.

Lance Kinzer, Olathe, State Representative from the 14th District, Vice-chair of the House Judiciary Committee and practicing lawyer.

Sandy Kuhlman, Phillipsburg, State Chair of the Kansas Hospice and Palliative Care Organization.

Kirk Lowry, Topeka, Litigation Director of the Disability Rights Center of Kansas.

Hon. Anthony Powell, Wichita, District Court Judge for the 18th Judicial District.

Tom Welk, Wichita, Catholic priest with a doctorate in medical ethics and Director of Professional Education and Pastoral Care at Harry Hynes Memorial Hospice.

Charles W. Wurth, Wichita, Chairman of the Board of Kansas Health Ethics, owner and operator of nursing homes and former Executive Director of the Institute of Logopedics.

Craig H. Yorke, Topeka, physician, with a specialty in neurosurgery.

METHOD AND STUDY

The Committee held 11 meetings on the topic between May 2006 and January 2008. As part of its study, the Committee reviewed Kansas statutes relating to durable power of attorney for health care decisions (K.S.A. 58-625 through 58-632) and the Natural Death Act (K.S.A. 65-28,101 *et seq.*). The Committee also considered recommending new statutory provisions relating to surrogate decision-making and permission for health-care providers to refuse medically ineffective health care. While Kansas currently lacks these kinds of statutory provisions, they are relatively common in other jurisdictions.

After a brief attempt to simply update the Kansas statutes, the Committee decided that a better approach would be to study the Uniform Health-Care Decisions Act as a possible replacement for the current Kansas statutes on durable powers of attorney for health care decisions and living wills (the Natural Death Act). In addition to consolidating the law on advance directives into a single act, the Uniform Act contains some of the new concepts such as surrogacy which the Committee wanted to consider for recommendation.

The Committee members brought a wide range of knowledge, expertise, and differing points of view to the study. The Committee also invited participation from other interested persons. At different times during the study, the following persons attended meetings and offered input: Kathy Ostrowski, Legislative Director of Kansans for Life; Burke Balch, Director of the National Right to Life Committee's Robert Powell Center for Medical Ethics; and Deborah Stern, Vice President and Legal Counsel for the Kansas Hospital Association. The Committee

also considered an advisory opinion from the Robert Powell Center for Medical Ethics containing proposed amendments to the Uniform Health Care Decisions Act.

RECOMMENDATION

After much discussion and debate, the Committee by a vote of 8-1 agreed to recommend the attached Kansas Uniform Health-Care Decisions Act for adoption. The Committee made substantial amendments to the Uniform Act, many of which are based on current Kansas law. The attached draft contains Kansas comments which explain how and why the Committee amended the Uniform Act.

The Uniform Act, as amended by the Committee, represents a compromise position on the very difficult and emotionally-charged issues surrounding end of life decision-making. As an example of one such compromise, the Committee found the issue of withholding or withdrawing nutrition and hydration to be a controversial one. Some believe that providing nutrition and hydration through medical intervention is no different from any other kind of medical treatment; however, others view nutrition and hydration as fundamental necessities which should always be provided, no matter what decision is made as to other kinds of medical treatment. Recognizing this dichotomy, the Committee agreed that decisions regarding nutrition and hydration required special treatment. Accordingly, the Committee amended to the Uniform Act to require that any individual instruction or power of attorney for health care address nutrition and hydration provided through medical intervention in a separately initialed or signed section of the directive to ensure that the individual's intent is clearly expressed.