



## **FAMILY ISSUE FACT SHEET**

No. 2008-05 (March 2008)

### **HB 2823 – Jesse’s Law (Health Care; Presumptions)**

#### **EXECUTIVE SUMMARY**

HB 2823 requires a court to issue a temporary order maintaining or restoring food and fluid when a petition is filed to challenge a surrogate’s health-care decisions on behalf of a patient who cannot express his wishes. This bill addresses one of several gaps in Arizona law that came to light through the real-life events of Jesse Ramirez, who was nearly starved to death when his feeding tube was removed prematurely. Fortunately, nutrition was restored to Jesse, and he is now on the path to recovery.

#### **BACKGROUND**

In May 2007, Jesse Ramirez suffered extensive injuries from an auto accident. Just ten days after the accident, and only a short time after his last brain surgery, Jesse’s feeding tube was removed in violation of state law,<sup>1</sup> and he was transferred to a hospice facility. His sister and mother filed a petition to challenge the decision to remove Jesse’s feeding tube, and the hospice facility reinserted the tube. By the time the nutrition was restored, Jesse had gone 5 days without food and fluid. The court appointed a guardian *ad litem* for Jesse, and the family’s attorneys were able to work out an agreement to have Jesse examined by a neurologist. That examination revealed that Jesse was conscious and responsive. He was transferred out of hospice to a facility where he would receive rehabilitation and therapy. In October, Jesse was released from the hospital and he was able to walk out of the facility. He continues to make tremendous rehabilitation progress.

Jesse’s situation revealed a number of problems with the current Arizona statutes that address health care when a person is incapable of communicating his own wishes. HB 2823 takes the first step in addressing one of those problems by requiring a court to issue a temporary order maintaining or restoring food and fluid in compliance with the law when a petition is filed to challenge a surrogate’s decision.

#### **TALKING POINTS**

- **We need to protect patients like Jesse Ramirez from being starved to death against their wishes.** Jesse’s experience highlights the dangers of removing food and fluid when the patient’s wishes are not known. But for legal intervention, Jesse would not be here to tell his story.

- **When there is any question about what the patient’s wishes really are, the law should safeguard the patient from a surrogate decision-maker’s actions that will lead to certain death.** When a person does not have a written advance directive or medical power-of-attorney or when the validity of those documents is in question, the court should act immediately to protect the patient’s life until the issues are resolved. Food and fluid should be maintained while the court resolves the dispute.
- **The state has a vital interest in ensuring that deaths by removal of food or fluid only take place when there is clear evidence of the patient’s wishes.**<sup>2</sup> Patients have the legal right to refuse medical treatment, including food and fluid, but the state has the obligation to protect them if their wishes are unclear.

## CONCLUSION

Jesse Ramirez’s life was saved through legal intervention and the persistence of his family in seeking help from attorneys. The law should not be a trap from which family members must fight to save the patient’s life where there is not clear evidence of his wishes. Rather, the law should protect the patient’s life while the questions about his wishes are resolved. HB 2823 will protect patients and maintain the status quo when a dispute arises.

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<sup>1</sup> Ariz. Rev. Stat. § 36-3231(D) forbids a surrogate decision-maker who is not the patient’s agent under an advance directive or the patient’s guardian appointed by the court from withdrawing food and fluid from the patient. HB 2823 makes a technical change to move this section to § 36-3203. Section 36-3203 addresses surrogate authority.

<sup>2</sup> *Cruzan v. Dir. Mo. Dep’t of Health*, 497 U.S. 261, 284 (1989).