

Senate Bill 109

By: Senators Orrock of the 36th and Unterman of the 45th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated,
 2 relating to general provisions relative to health, so as to clarify the use and effectiveness of
 3 Physician Orders for Life-Sustaining Treatment forms; to provide alternate terminology for
 4 do not resuscitate orders; to amend other Code sections of the Official Code of Georgia
 5 Annotated for purposes of conformity; to provide for related matters; to repeal conflicting
 6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to
 10 general provisions relative to health, is amended by adding a new Code section to read as
 11 follows:

12 "31-1-14.

13 (a) As used in this Code section, the term:

14 (1) 'Attending physician' means the physician who has primary responsibility at the time
 15 of reference for the treatment and care of the patient.

16 (2) 'Authorized person' shall have the same meaning as in Code Section 31-39-2.

17 (3) 'Decision-making capacity' means the ability to understand and appreciate the nature
 18 and consequences of an order regarding end of life care decisions, including the benefits
 19 and disadvantages of such an order, and to reach an informed decision regarding the
 20 order.

21 (4) 'Health care facility' shall have the same meaning as in Code Section 31-32-2.

22 (5) 'Health care provider' shall have the same meaning as in Code Section 31-32-2.

23 (6) 'Life-sustaining procedures' means medications, machines, or other medical
 24 procedures or interventions which, when applied to a patient in a terminal condition or
 25 in a state of permanent unconsciousness, could in reasonable medical judgment keep the
 26 patient alive but cannot cure the patient and where, in the judgment of the attending
 27 physician and a second physician, death will occur without such procedures or

28 interventions. The term 'life-sustaining procedures' shall not include the provision of
29 nourishment or hydration but a patient may direct the withholding or withdrawal of the
30 provision of nourishment or hydration in a POLST form. The term 'life-sustaining
31 procedures' shall not include the administration of medication to alleviate pain or the
32 performance of any medical procedure deemed necessary to alleviate pain.

33 (7) 'Physician Orders for Life-Sustaining Treatment form' or 'POLST form' means a form
34 executed pursuant to this Code section which provides directions regarding the patient's
35 end of life care.

36 (8) 'Provision of nourishment or hydration' means the provision of nutrition or fluids by
37 tube or other medical means.

38 (9) 'State of permanent unconsciousness' means an incurable or irreversible condition in
39 which the patient is not aware of himself or herself or his or her environment and in
40 which the patient is showing no behavioral response to his or her environment.

41 (10) 'Terminal condition' means an incurable or irreversible condition which would result
42 in the patient's death in a relatively short period of time.

43 (b) The department shall develop and make available a Physician Orders for
44 Life-Sustaining Treatment form. Such form shall provide directions regarding the patient's
45 end of life care and may be voluntarily executed by either a patient who has
46 decision-making capacity and an attending physician or, if the patient does not have
47 decision-making capacity, by the patient's authorized person and an attending physician;
48 provided, however, that this shall not prevent a health care facility from imposing
49 additional administrative or procedural requirements regarding a patient's end of life care
50 decisions. A POLST form may be executed when a patient has a serious illness or
51 condition and the attending physician's reasoned judgment is that the patient will die within
52 the next 365 days; provided, however, that a POLST form may be executed at any time if
53 a person has been diagnosed with dementia or another progressive, degenerative disease
54 or condition that attacks the brain and results in impaired memory, thinking, and behavior.
55 A POLST form, if signed by an authorized person, shall indicate the relationship of the
56 authorized person to the patient pursuant to paragraph (3) of Code Section 31-39-2.

57 (c)(1) A POLST form shall constitute a legally sufficient order that may be utilized by
58 a health care provider or health care facility in accordance with its policies and
59 procedures regarding end of life care. Such an order shall remain effective unless the
60 order is revoked by the attending physician upon the consent of the patient or the patient's
61 authorized person. An attending physician who has issued such an order and who
62 transfers care of the patient to another physician shall inform the receiving physician and
63 the health care facility, if applicable, of the order. Review of the POLST form is
64 recommended at care transitions, and such review should be specified on the form.

65 (2) A POLST form signed by the patient and attending physician and indicating 'allow
66 natural death' or 'do not resuscitate' or the equivalent may be implemented without
67 restriction. If the POLST form (i) is signed by the attending physician and an authorized
68 person instead of the patient and (ii) indicates 'allow natural death' or 'do not resuscitate'
69 or the equivalent, in compliance with subsection (c) of Code Section 31-39-4, the POLST
70 form may be implemented or become effective when the patient is a candidate for
71 nonresuscitation, and such consent shall be based in good faith upon what such
72 authorized person determines such candidate for nonresuscitation would have wanted had
73 such candidate for nonresuscitation understood the circumstances under which such order
74 is being considered.

75 (3) A POLST form addressing interventions other than resuscitation and signed by the
76 patient and attending physician may be implemented without restriction. If the POLST
77 form is signed by an authorized person who is the health care agent named by the patient
78 in an advance directive for health care and the attending physician, in compliance with
79 paragraph (1) of subsection (e) of Code Section 31-32-7, all treatment indications on the
80 POLST form may be implemented. If the POLST form is signed by an authorized person
81 who is not the health care agent named by the patient in an advance directive for health
82 care, treatment indications on the POLST form may be implemented or become effective
83 only when the patient is in a terminal condition or a state of permanent unconsciousness;
84 provided, however, that a POLST form may become effective at any time if a person has
85 been diagnosed with dementia or another progressive, degenerative disease or condition
86 that attacks the brain and results in impaired memory, thinking, and behavior.

87 (4) A POLST form shall be portable with the patient across care settings and shall be
88 valid in any health care facility in which the patient who is the subject of such form is
89 being treated; provided, however, that this shall not prevent a health care facility from
90 imposing additional requirements regarding a patient's end of life care decisions. A
91 health care facility and a health care provider, in its discretion, may rely upon a POLST
92 form as legally valid consent by the patient to the terms therein.

93 (5) A copy of a POLST form shall be valid and have the same meaning and effect as the
94 original document.

95 (6) A physician orders for life-sustaining treatment form which was executed in another
96 state, which is valid under the laws of such state and which is substantially similar to the
97 Georgia POLST form, and contains signatures of (i) either the patient or an authorized
98 person and (ii) the attending physician, shall be treated as a POLST form which complies
99 with this Code section.

100 (d)(1) Each health care provider, health care facility, and any other person who acts in
101 good faith reliance on a POLST form shall be protected and released to the same extent

102 as though such provider, facility, or other person had interacted directly with the patient
103 as a fully competent person. Without limiting the generality of the foregoing, the
104 following specific provisions shall also govern, protect, and validate the acts of an
105 authorized person and each such health care provider, health care facility, and any other
106 person acting in good faith reliance on such POLST form:

107 (A) No such health care provider, health care facility, or person shall be subject to civil
108 or criminal liability or discipline for unprofessional conduct solely for complying with
109 a patient's end of life care decisions as provided in a POLST form, even if death or
110 injury to the patient ensues;

111 (B) No such health care provider, health care facility, or person shall be subject to civil
112 or criminal liability or discipline for unprofessional conduct solely for failure to comply
113 with a patient's end of life care decisions in a POLST form, so long as such health care
114 provider, health care facility, or person promptly informs the patient or the patient's
115 authorized person of such health care provider's, health care facility's, or person's
116 refusal or failure to comply with such patient's end of life care decisions in a POLST
117 form. The authorized person shall then be responsible for arranging the patient's
118 transfer to another health care provider or health care facility. A health care provider,
119 health care facility, or person who is unwilling to comply with a patient's end of life
120 care decisions in a POLST form shall continue to provide reasonably necessary
121 consultation and care in connection with the pending transfer;

122 (C) If the actions of a health care provider, health care facility, or person who fails to
123 comply with a patient's end of life care decisions in a POLST form are substantially in
124 accord with reasonable medical standards at the time of reference; and such provider,
125 facility, or person cooperates in the transfer of the patient, then the health care provider,
126 health care facility, or person shall not be subject to civil or criminal liability or
127 discipline for unprofessional conduct for failure to comply with such patient's end of
128 life care decisions in a POLST form;

129 (D) No authorized person who, in good faith, acts with due care for the benefit of the
130 patient and in accordance with a patient's end of life care decisions in a POLST form,
131 or who fails to act, shall be subject to civil or criminal liability for such action or
132 inaction; and

133 (E) If a POLST form is revoked, a person shall not be subject to criminal prosecution
134 or civil liability for acting in good faith reliance upon a patient's end of life care
135 decisions in a POLST form unless such person had actual knowledge of the revocation.

136 (2) No person shall be civilly liable for failing or refusing in good faith to effectuate a
137 patient's end of life care decisions in a POLST form regarding the withholding or

138 withdrawal of life-sustaining procedures or the withholding or withdrawal of the
 139 provision of nourishment or hydration.

140 (3) No physician or any person acting under a physician's direction and no health care
 141 facility or any agent or employee thereof who, acting in good faith in accordance with the
 142 requirements of this Code section, causes the withholding or withdrawal of life-sustaining
 143 procedures or the withholding or withdrawal of the provision of nourishment or hydration
 144 from a patient or who otherwise participates in good faith therein shall be subject to any
 145 civil or criminal liability or guilty of unprofessional conduct therefor.

146 (4) Any person who participates in the withholding or withdrawal of life-sustaining
 147 procedures or the withholding or withdrawal of the provision of nourishment or hydration
 148 pursuant to a patient's end of life care decisions in a POLST form and who has actual
 149 knowledge that such POLST form has been properly revoked shall not have any civil or
 150 criminal immunity otherwise granted under this subsection for such conduct.

151 (e) In the event there are any directions in a patient's previously executed living will,
 152 advance directive for health care, durable power of attorney for health care, do not
 153 resuscitate order, or other legally authorized instrument that conflict with the directions in
 154 a POLST form, the most recent instrument will take precedence to the extent of the
 155 conflict.

156 (f) Nothing in this Code section shall be construed to authorize any act prohibited by Code
 157 Section 16-5-5. Any health care provider, health care facility, or any other person who
 158 violates Code Section 16-5-5 shall not be entitled to any civil immunity provided pursuant
 159 to this Code section."

160 **SECTION 2.**

161 Chapter 39 of Title 31 of the Official Code of Georgia Annotated, relating to
 162 cardiopulmonary resuscitation, is amended by revising subsections (a) and (c) of Code
 163 Section 31-39-4, relating to persons authorized to issue an order not to resuscitate, as follows:

164 "(a) It shall be lawful for the attending physician to issue an order not to resuscitate
 165 pursuant to the requirements of this chapter. Any written order issued by the attending
 166 physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'do not
 167 attempt resuscitation,' 'DNAR,' 'no code,' 'allow natural death,' 'AND,' 'order to allow
 168 natural death,' or substantially similar language in the patient's chart shall constitute a
 169 legally sufficient order and shall authorize a physician, health care professional, nurse,
 170 physician assistant, caregiver, or emergency medical technician to withhold or withdraw
 171 cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the
 172 patient is receiving treatment from or is a resident of a health care facility, until the order
 173 is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked

174 as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician
 175 who has issued such an order and who transfers care of the patient to another physician
 176 shall inform the receiving physician and the health care facility, if applicable, of the order."
 177 "(c) The appropriate authorized person may, after being informed of the provisions of this
 178 Code section, consent orally or in writing to an order not to resuscitate for an adult
 179 candidate for nonresuscitation; provided, however, that such consent is based in good faith
 180 upon what such authorized person determines such candidate for nonresuscitation would
 181 have wanted had such candidate for nonresuscitation understood the circumstances under
 182 which such order is being considered. Where such authorized person is an agent under a
 183 durable power of attorney for health care or a health care agent under an advance directive
 184 for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders
 185 for Life-Sustaining Treatment form with a code status of 'do not resuscitate' or its
 186 equivalent has been executed in accordance with Code Section 31-1-14 by an authorized
 187 person who is an agent under a durable power of attorney for health care or a health care
 188 agent under an advance directive for health care appointed pursuant to Chapter 32 of this
 189 title, the attending physician may issue an order not to resuscitate a candidate for
 190 nonresuscitation pursuant to the requirements of this chapter without the concurrence of
 191 another physician, notwithstanding the provisions of paragraph (4) of Code Section
 192 31-39-2."

193 SECTION 3.

194 Code Section 16-5-5 of the Official Code of Georgia Annotated, relating to assisted suicide
 195 and notification of licensing board regarding violations, is amended by revising paragraphs
 196 (3) and (4) of subsection (c) as follows:

197 "(3) Any person prescribing, dispensing, or administering medications or medical
 198 procedures pursuant to, without limitation, a living will, a durable power of attorney for
 199 health care, an advance directive for health care, a Physician Orders for Life-Sustaining
 200 Treatment form pursuant to Code Section 31-1-14, or a consent pursuant to Code Section
 201 29-4-18 or 31-9-2 when such actions are calculated or intended to relieve or prevent a
 202 patient's pain or discomfort but are not calculated or intended to cause such patient's
 203 death, even if the medication or medical procedure may have the effect of hastening or
 204 increasing the risk of death;

205 (4) Any person discontinuing, withholding, or withdrawing medications, medical
 206 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a
 207 durable power of attorney for health care, an advance directive for health care, a
 208 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,

209 a consent pursuant to Code Section 29-4-18 or 31-9-2, or a written order not to
210 resuscitate; or"

211 **SECTION 4.**

212 Code Section 16-5-101 of the Official Code of Georgia Annotated, relating to neglect to a
213 disabled adult, elder person, or resident, is amended by revising subsection (b) as follows:

214 "(b) The provisions of this Code section shall not apply to a physician nor any person
215 acting under a physician's direction nor to a hospital, hospice, or long-term care facility,
216 nor any agent or employee thereof who is in good faith acting within the scope of his or her
217 employment or agency or who is acting in good faith in accordance with a living will, a
218 durable power of attorney for health care, an advance directive for health care, a Physician
219 Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, an order not
220 to resuscitate, or the instructions of the patient or the patient's lawful surrogate decision
221 maker, nor shall the provisions of this Code section require any physician, any institution
222 licensed in accordance with Chapter 7 of Title 31, or any employee or agent thereof to
223 provide essential services or shelter to any person in the absence of another legal obligation
224 to do so."

225 **SECTION 5.**

226 Code Section 29-4-18 of the Official Code of Georgia Annotated, relating to definitions,
227 requirements, and termination of temporary medical consent guardianship, is amended by
228 revising subsections (k) and (l) as follows:

229 "(k)(1) No hospital or other health care facility, health care provider, or other person or
230 entity shall be subject to civil or criminal liability or discipline for unprofessional conduct
231 solely for relying in good faith on any direction or decision by a temporary medical
232 consent guardian, even if death or injury to the medical consent ward ensues. Each
233 hospital or other health care facility, health care provider, and any other person or entity
234 who acts in good faith reliance on any direction or decision by a temporary medical
235 consent guardian shall be protected and released to the same extent as though such person
236 had interacted directly with the medical consent ward as a fully competent person.

237 (2) No temporary medical consent guardian who, in good faith, acts with due care for the
238 benefit of the medical consent ward, or who fails to act, shall be subject to civil or
239 criminal liability for such action or inaction.

240 ~~(3) Any person who acts in good faith in accordance with a Physician Order for~~
241 ~~Life-sustaining Treatment developed pursuant to subsection (l) of this Code section shall~~
242 ~~have all of the immunity granted pursuant to Code Section 31-32-10.~~

243 ~~(1) The Department of Public Health shall develop and make available a Physician Order~~
244 ~~for Life-sustaining Treatment, a specific form voluntarily executed by a patient or his or~~
245 ~~her authorized person as defined in Code Section 31-39-2 and a physician which provides~~
246 ~~directions regarding end of life care."~~

247

SECTION 6.

248 All laws and parts of laws in conflict with this Act are repealed.