

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"31-1-14.

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

- (1) 'Attending physician' means the physician who has primary responsibility at the time of reference for the treatment and care of the patient.
- (2) 'Authorized person' shall have the same meaning as in Code Section 31-39-2.
- (3) 'Decision-making capacity' means the ability to understand and appreciate the nature and consequences of an order regarding end of life care decisions, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.
- (4) 'Health care facility' shall have the same meaning as in Code Section 31-32-2.
- (5) 'Health care provider' shall have the same meaning as in Code Section 31-32-2.
- (6) 'Life-sustaining procedures' means medications, machines, or other medical procedures or interventions which, when applied to a patient in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the patient alive but cannot cure the patient and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term 'life-sustaining procedures' shall not include the provision of nourishment or hydration but a patient may direct the withholding or withdrawal of the provision of nourishment or hydration in a POLST form. The term 'life-sustaining procedures' shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

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

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

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

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

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

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

(2) A POLST form signed by the patient and attending physician and indicating 'allow natural death' or 'do not resuscitate' or the equivalent may be implemented without restriction. If the POLST form (i) is signed by the attending physician and an authorized person instead of the patient and (ii) indicates 'allow natural death' or 'do not resuscitate' or the equivalent, in compliance with subsection (c) of Code Section 31-39-4, the POLST

form may be implemented or become effective when the patient is a candidate for nonresuscitation, and such consent shall be based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered.

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

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

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

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

(d)(1) Each health care provider, health care facility, and any other person who acts in good faith reliance on a POLST form shall be protected and released to the same extent as though such provider, facility, or other person had interacted directly with the patient as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of an authorized person and each such health care provider, health care facility, and any other person acting in good faith reliance on such POLST form:

- (A) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying with a patient's end of life care decisions as provided in a POLST form, even if death or injury to the patient ensues;
- (B) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with a patient's end of life care decisions in a POLST form, so long as such health care provider, health care facility, or person promptly informs the patient or the patient's authorized person of such health care provider's, health care facility's, or person's refusal or failure to comply with such patient's end of life care decisions in a POLST form. The authorized person shall then be responsible for arranging the patient's transfer to another health care provider or health care facility. A health care provider, health care facility, or person who is unwilling to comply with a patient's end of life care decisions in a POLST form shall continue to provide reasonably necessary consultation and care in connection with the pending transfer;
- (C) If the actions of a health care provider, health care facility, or person who fails to comply with a patient's end of life care decisions in a POLST form are substantially in accord with reasonable medical standards at the time of reference; and such provider, facility, or person cooperates in the transfer of the patient, then the health care provider, health care facility, or person shall not be subject to civil or criminal liability or discipline for unprofessional conduct for failure to comply with such patient's end of life care decisions in a POLST form;
- (D) No authorized person who, in good faith, acts with due care for the benefit of the patient and in accordance with a patient's end of life care decisions in a POLST form, or who fails to act, shall be subject to civil or criminal liability for such action or inaction; and
- (E) If a POLST form is revoked, a person shall not be subject to criminal prosecution or civil liability for acting in good faith reliance upon a patient's end of life care decisions in a POLST form unless such person had actual knowledge of the revocation.
- (2) No person shall be civilly liable for failing or refusing in good faith to effectuate a patient's end of life care decisions in a POLST form regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.
- (3) No physician or any person acting under a physician's direction and no health care facility or any agent or employee thereof who, acting in good faith in accordance with the requirements of this Code section, causes the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration

from a patient or who otherwise participates in good faith therein shall be subject to any civil or criminal liability or guilty of unprofessional conduct therefor.

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

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

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

SECTION 2.

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

"(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'do not attempt resuscitation,' 'DNAR,' 'no code,' 'allow natural death,' 'AND,' 'order to allow natural death,' or substantially similar language in the patient's chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order."

"(c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an order not to resuscitate for an adult candidate for nonresuscitation; provided, however, that such consent is based in good faith

upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered. Where such authorized person is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders for Life-Sustaining Treatment form with a code status of 'do not resuscitate' or its equivalent has been executed in accordance with Code Section 31-1-14 by an authorized person who is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title, the attending physician may issue an order not to resuscitate a candidate for nonresuscitation pursuant to the requirements of this chapter without the concurrence of another physician, notwithstanding the provisions of paragraph (4) of Code Section 31-39-2."

SECTION 3.

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

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

(4) Any person discontinuing, withholding, or withdrawing medications, medical procedures, nourishment, or hydration pursuant to, without limitation, a living will, a durable power of attorney for health care, an advance directive for health care, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, a consent pursuant to Code Section 29-4-18 or 31-9-2, or a written order not to resuscitate; or"

SECTION 4.

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

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

SECTION 5.

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

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

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

SECTION 6.

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