

Senate Bill 109

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

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

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

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

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

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

24 (b) The department shall develop and make available a Physician Orders for
25 Life-Sustaining Treatment form. Such form shall provide directions regarding the patient's
26 end of life care and shall be voluntarily executed by either a patient who has
27 decision-making capacity and a physician who knows and has provided treatment to the

28 patient or the patient's authorized person and a physician who knows and has provided
29 treatment to the patient; provided, however, that this shall not prevent a health care facility
30 from imposing other requirements regarding a patient's end of life care decisions, such as
31 those required for compliance with federal programs.

32 (c)(1) A POLST form executed pursuant to this Code section shall be portable with the
33 patient across care settings and shall be valid in any health care facility in which the
34 patient who is the subject of such form is being treated. A health care facility and a
35 health care provider may rely upon a POLST form executed in accordance with this Code
36 section as legally valid consent by the patient to the terms therein; provided, however,
37 that this shall not prevent a health care facility from imposing other requirements
38 regarding a patient's end of life care decisions. A POLST form shall be effective when
39 the patient has an incurable or irreversible condition that, without the administration of
40 life-sustaining procedures, in the opinion of the attending physician, will result in death.

41 (2) A copy of a POLST form executed in accordance with this Code section shall be
42 valid and have the same meaning and effect as the original document.

43 (3) A physician orders for life-sustaining treatment form which was executed in another
44 state and is valid under the laws of such state shall be treated as a POLST form which
45 complies with this Code section.

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

53 (1) No such health care provider, health care facility, or person shall be subject to civil
54 or criminal liability or discipline for unprofessional conduct solely for complying with
55 a POLST form executed in accordance with this Code section, even if death or injury to
56 the patient ensues;

57 (2) No such health care provider, health care facility, or person shall be subject to civil
58 or criminal liability or discipline for unprofessional conduct solely for failure to comply
59 with a POLST form executed in accordance with this Code section, so long as such health
60 care provider, health care facility, or person promptly informs the patient's authorized
61 person of such health care provider's, health care facility's, or person's refusal or failure
62 to comply with such POLST form. The authorized person shall then be responsible for
63 arranging the patient's transfer to another health care provider or health care facility. A
64 health care provider, health care facility, or person who is unwilling to comply with a

65 POLST form executed in accordance with this Code section shall continue to provide
 66 reasonably necessary consultation and care in connection with the pending transfer;

67 (3) If the actions of a health care provider, health care facility, or person who fails to
 68 comply with a POLST form executed in accordance with this Code section are
 69 substantially in accord with reasonable medical standards at the time of reference; and
 70 such provider, facility, or person cooperates in the transfer of the patient, then the health
 71 care provider, health care facility, or person shall not be subject to civil or criminal
 72 liability or discipline for unprofessional conduct for failure to comply with such POLST
 73 form;

74 (4) No person acting under a physician's direction and no agent or employee of a health
 75 care facility acting in good faith in accordance with a POLST form shall be subject to any
 76 civil or criminal liability or guilty of unprofessional conduct therefor;

77 (5) No authorized person who in good faith acts with due care for the benefit of the
 78 patient and in accordance with the terms of a POLST form, or who fails to act, shall be
 79 subject to civil or criminal liability for such action or inaction; and

80 (6)(A) If a POLST form is revoked, a health care provider, health care facility, or other
 81 person shall not be subject to criminal prosecution or civil liability for acting in good
 82 faith reliance upon such POLST form unless such provider, facility, or person had
 83 actual knowledge of the revocation.

84 (B) Any person who acts in accordance with a POLST form and who has actual
 85 knowledge that such POLST form has been properly revoked shall not have any civil
 86 or criminal immunity otherwise granted under this Code section for such conduct.

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

92 **SECTION 2.**

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

96 "(a) It shall be lawful for the attending physician to issue an order not to resuscitate
 97 pursuant to the requirements of this chapter. Any written order issued by the attending
 98 physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'do not
 99 attempt resuscitation,' 'DNAR,' 'no code,' 'allow natural death,' 'AND,' 'order to allow
 100 natural death,' or substantially similar language in the patient's chart shall constitute a

101 legally sufficient order and shall authorize a physician, health care professional, nurse,
 102 physician assistant, caregiver, or emergency medical technician to withhold or withdraw
 103 cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the
 104 patient is receiving treatment from or is a resident of a health care facility, until the order
 105 is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked
 106 as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician
 107 who has issued such an order and who transfers care of the patient to another physician
 108 shall inform the receiving physician and the health care facility, if applicable, of the order.”
 109 “(c) The appropriate authorized person may, after being informed of the provisions of this
 110 Code section, consent orally or in writing to an order not to resuscitate for an adult
 111 candidate for nonresuscitation; provided, however, that such consent is based in good faith
 112 upon what such authorized person determines such candidate for nonresuscitation would
 113 have wanted had such candidate for nonresuscitation understood the circumstances under
 114 which such order is being considered. Where such authorized person is an agent under a
 115 durable power of attorney for health care or a health care agent under an advance directive
 116 for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders
 117 for Life-Sustaining Treatment form with a code status of 'do not resuscitate' or its
 118 equivalent has been executed in accordance with Code Section 31-1-14 by a patient who
 119 has decision-making capacity or by an authorized person, the attending physician may issue
 120 an order not to resuscitate a candidate for nonresuscitation pursuant to the requirements of
 121 this chapter without the concurrence of another physician, notwithstanding the provisions
 122 of paragraph (4) of Code Section 31-39-2.”

123 **SECTION 3.**

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

127 “(3) Any person prescribing, dispensing, or administering medications or medical
 128 procedures pursuant to, without limitation, a living will, a durable power of attorney for
 129 health care, an advance directive for health care, a Physician Orders for Life-Sustaining
 130 Treatment form pursuant to Code Section 31-1-14, or a consent pursuant to Code Section
 131 29-4-18 or 31-9-2 when such actions are calculated or intended to relieve or prevent a
 132 patient's pain or discomfort but are not calculated or intended to cause such patient's
 133 death, even if the medication or medical procedure may have the effect of hastening or
 134 increasing the risk of death;

135 (4) Any person discontinuing, withholding, or withdrawing medications, medical
 136 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a

137 durable power of attorney for health care, an advance directive for health care, a
 138 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,
 139 a consent pursuant to Code Section 29-4-18 or 31-9-2, or a written order not to
 140 resuscitate; or"

141 **SECTION 4.**

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

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

155 **SECTION 5.**

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

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

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

170 ~~(3) Any person who acts in good faith in accordance with a Physician Order for~~
171 ~~Life-sustaining Treatment developed pursuant to subsection (1) of this Code section shall~~
172 ~~have all of the immunity granted pursuant to Code Section 31-32-10.~~
173 ~~(1) The Department of Public Health shall develop and make available a Physician Order~~
174 ~~for Life-sustaining Treatment, a specific form voluntarily executed by a patient or his or~~
175 ~~her authorized person as defined in Code Section 31-39-2 and a physician which provides~~
176 ~~directions regarding end of life care."~~

177 **SECTION 6.**

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