

Senate Bill 109

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

**AS PASSED SENATE**

**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 shall be voluntarily executed by either a patient who has  
46 decision-making capacity and an attending physician or the patient's authorized person and  
47 an attending physician; provided, however, that this shall not prevent a health care facility  
48 from imposing additional administrative or procedural requirements as directed by federal  
49 law or regulations. A POLST form may be executed when a patient has a serious illness  
50 or condition and the attending physician's reasoned judgment is that the patient will die  
51 within the next 365 days. Such form, if signed by an authorized person, shall indicate the  
52 relationship of the authorized person to the patient pursuant to paragraph (3) of Code  
53 Section 31-39-2.

54 (c)(1) A POLST form shall constitute a legally sufficient order. Such an order shall  
55 remain effective unless the order is revoked by the patient. An attending physician who  
56 has issued such an order and who transfers care of the patient to another physician shall  
57 inform the receiving physician and the health care facility, if applicable, of the order.  
58 Review of the POLST form is recommended at care transitions and such review should  
59 be specified on the form. A POLST form signed by the patient and attending physician  
60 and indicating 'allow natural death' or 'do not resuscitate' or the equivalent may be  
61 implemented without restriction. If the POLST form (i) is signed by the attending  
62 physician and an authorized person instead of the patient and (ii) indicates 'allow natural  
63 death' or 'do not resuscitate' or the equivalent, in compliance with subsection (c) of Code

64 Section 31-39-4, the POLST form may be implemented or become effective when the  
65 patient is a candidate for nonresuscitation, and such consent shall be based in good faith  
66 upon what such authorized person determines such candidate for nonresuscitation would  
67 have wanted had such candidate for nonresuscitation understood the circumstances under  
68 which such order is being considered. A POLST form addressing interventions other  
69 than resuscitation and signed by the patient and attending physician may be implemented  
70 without restriction. If the POLST form is signed by an authorized person who is the  
71 health care agent named by the patient in an advance directive for health care and the  
72 attending physician, in compliance with paragraph (1) of subsection (e) of Code Section  
73 31-32-7, all treatment indications on the POLST form may be implemented. If the  
74 POLST form is signed by an authorized person who is not the health care agent named  
75 by the patient in an advance directive for health care, treatment indications on the POLST  
76 form may be implemented or become effective only when the patient is in a terminal  
77 condition or a state of permanent unconsciousness.

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

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

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

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

98 (A) No such health care provider, health care facility, or person shall be subject to civil  
99 or criminal liability or discipline for unprofessional conduct solely for complying with  
100 a POLST form, even if death or injury to the patient ensues;

101 (B) No such health care provider, health care facility, or person shall be subject to civil  
102 or criminal liability or discipline for unprofessional conduct solely for failure to comply  
103 with a POLST form, so long as such health care provider, health care facility, or person  
104 promptly informs the patient's authorized person of such health care provider's, health  
105 care facility's, or person's refusal or failure to comply with such POLST form. The  
106 authorized person shall then be responsible for arranging the patient's transfer to  
107 another health care provider or health care facility. A health care provider, health care  
108 facility, or person who is unwilling to comply with a POLST form shall continue to  
109 provide reasonably necessary consultation and care in connection with the pending  
110 transfer;

111 (C) If the actions of a health care provider, health care facility, or person who fails to  
112 comply with a POLST form are substantially in accord with reasonable medical  
113 standards at the time of reference; and such provider, facility, or person cooperates in  
114 the transfer of the patient, then the health care provider, health care facility, or person  
115 shall not be subject to civil or criminal liability or discipline for unprofessional conduct  
116 for failure to comply with such POLST form;

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

120 (E) If a POLST form is revoked, a person shall not be subject to criminal prosecution  
121 or civil liability for acting in good faith reliance upon such POLST form unless such  
122 person had actual knowledge of the revocation.

123 (2) No person shall be civilly liable for failing or refusing in good faith to effectuate a  
124 POLST form regarding the withholding or withdrawal of life-sustaining procedures or  
125 the withholding or withdrawal of the provision of nourishment or hydration.

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

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

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

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

146 **SECTION 2.**

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

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

163 "(c) The appropriate authorized person may, after being informed of the provisions of this  
 164 Code section, consent orally or in writing to an order not to resuscitate for an adult  
 165 candidate for nonresuscitation; provided, however, that such consent is based in good faith  
 166 upon what such authorized person determines such candidate for nonresuscitation would  
 167 have wanted had such candidate for nonresuscitation understood the circumstances under  
 168 which such order is being considered. Where such authorized person is an agent under a  
 169 durable power of attorney for health care or a health care agent under an advance directive  
 170 for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders  
 171 for Life-Sustaining Treatment form with a code status of 'do not resuscitate' or its  
 172 equivalent has been executed in accordance with Code Section 31-1-14 by an authorized

173 person who is an agent under a durable power of attorney for health care or a health care  
 174 agent under an advance directive for health care appointed pursuant to Chapter 32 of this  
 175 title, the attending physician may issue an order not to resuscitate a candidate for  
 176 nonresuscitation pursuant to the requirements of this chapter without the concurrence of  
 177 another physician, notwithstanding the provisions of paragraph (4) of Code Section  
 178 31-39-2."

179 **SECTION 3.**

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

183 "(3) Any person prescribing, dispensing, or administering medications or medical  
 184 procedures pursuant to, without limitation, a living will, a durable power of attorney for  
 185 health care, an advance directive for health care, a Physician Orders for Life-Sustaining  
 186 Treatment form pursuant to Code Section 31-1-14, or a consent pursuant to Code Section  
 187 29-4-18 or 31-9-2 when such actions are calculated or intended to relieve or prevent a  
 188 patient's pain or discomfort but are not calculated or intended to cause such patient's  
 189 death, even if the medication or medical procedure may have the effect of hastening or  
 190 increasing the risk of death;

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

197 **SECTION 4.**

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

200 "(b) The provisions of this Code section shall not apply to a physician nor any person  
 201 acting under a physician's direction nor to a hospital, hospice, or long-term care facility,  
 202 nor any agent or employee thereof who is in good faith acting within the scope of his or her  
 203 employment or agency or who is acting in good faith in accordance with a living will, a  
 204 durable power of attorney for health care, an advance directive for health care, a Physician  
 205 Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14, an order not  
 206 to resuscitate, or the instructions of the patient or the patient's lawful surrogate decision  
 207 maker, nor shall the provisions of this Code section require any physician, any institution

208 licensed in accordance with Chapter 7 of Title 31, or any employee or agent thereof to  
 209 provide essential services or shelter to any person in the absence of another legal obligation  
 210 to do so."

211 **SECTION 5.**

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

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

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

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

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

233 **SECTION 6.**

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