

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1403

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to healthcare; creating the Physician
8 Orders for Life-Sustaining Treatment Act; providing
9 short title; providing definitions; directing State
10 Board of Medical Licensure and Supervision to
11 establish format for certain form; requiring certain
12 orders to conform to certain requirements; requiring
13 certain information to be provided to patient or
14 patient representative; prohibiting validity of
15 certain forms under certain circumstances;
16 prescribing contents, phrasing, and format of certain
17 form; providing immunity from certain liability;
18 providing liability for certain persons; permitting
19 court enjoinder under certain circumstances;
20 requiring certain orders under certain circumstances;
21 amending 58 O.S. 2011, Section 1072.1, which relates
22 to durable powers of attorney; providing certain
23 exception; clarifying language; directing State Board
24 of Medical Licensure and Supervision to establish and
publish certain format; providing for
noncodification; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3105.1 of Title 63, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Physician
2 Orders for Life-Sustaining Treatment Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3105.2 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Physician Orders for Life-Sustaining Treatment
7 Act:

8 1. "Attorney-in-fact" means an attorney-in-fact authorized to
9 act pursuant to the Uniform Durable Power of Attorney Act, Sections
10 1071 through 1077 of Title 58 of the Oklahoma Statutes, with
11 authority to act regarding the patient's health and medical care
12 decisions, subject to the limitations under paragraph 1 of
13 subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes;

14 2. "Guardian" means a general guardian of the person appointed
15 pursuant to subsection A of Section 3-112 of Title 30 of the
16 Oklahoma Statutes, or a limited guardian of the person appointed
17 pursuant to subsection B of Section 3-112 of Title 30 of the
18 Oklahoma Statutes with authority to make personal medical decisions
19 as determined under paragraph 5 of subsection B of Section 3-113 of
20 Title 30 of the Oklahoma Statutes;

21 3. "Health care provider" means a person who is licensed,
22 certified, or otherwise authorized by the laws of this state to
23 administer health care in the ordinary course of business or
24 practice of a profession;

1 4. "Health care proxy" means a health care proxy (or alternate
2 health care proxy) authorized to act pursuant to the Oklahoma
3 Advance Directive Act, Sections 3101.1 through 3101.16 of Title 63
4 of the Oklahoma Statutes, as defined in paragraph 6 of Section
5 3101.3 of Title 63 of the Oklahoma Statutes;

6 5. "Other legally authorized person" means a person, other than
7 a minor's custodial parent or guardian, the patient, or the
8 patient's attorney-in-fact, guardian or health care proxy, who has
9 authority to make health care decisions for the patient under common
10 law.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3105.3 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The State Board of Medical Licensure and Supervision shall
15 establish the standardized format for a form in accordance with the
16 provisions of Section 4 of this act, adhering to the directions,
17 sequence and wording in those provisions.

18 B. An Oklahoma physician orders for life-sustaining treatment
19 shall be executed, implemented, reviewed, and revoked in accordance
20 with the instructions on the form required by this section. At the
21 beginning of reviewing and preparing it in consultation with the
22 patient or the patient's legally authorized representative, the
23 attending physician or the health care professional preparing the
24 form or an agent of either shall give that person a copy of the

1 disclosure statement described in Subsection A of Section 3163 of
2 Title 63 of the Oklahoma Statutes.

3 C. A physician orders for life-sustaining treatment (POLST),
4 physician orders for scope of treatment (POST), medical orders for
5 life-sustaining treatment (MOLST), medical orders for scope of
6 treatment (MOST), transportable physician orders for patient
7 preferences (TPOPP), or similar document that does not comply with
8 the standardized format for an Oklahoma physician orders for life-
9 sustaining treatment established by regulations promulgated in
10 accordance with this section:

11 a. that was executed in this state prior to the effective
12 date of the standardized format established in
13 accordance with this section shall have no validity
14 after forty-five (45) days following that effective
15 date or after ten (10) days following the admission of
16 the patient to an Oklahoma medical care facility,
17 whichever is later; provided, that a standardized
18 format Oklahoma physician orders for life-sustaining
19 treatment executed subsequent to such document's
20 execution shall immediately supersede it, or

21 b. that was executed outside this state in compliance
22 with the laws of the jurisdiction of execution shall
23 have no validity after ten (10) days following the
24 admission of the patient to an Oklahoma medical care

1 facility; provided, that a standardized format
2 Oklahoma physician orders for life-sustaining
3 treatment executed subsequent to such document's
4 execution shall immediately supersede it.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3105.4 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 1. At the top of the first page of the standardized format
9 Oklahoma physician orders for life-sustaining treatment the
10 following wording in all capitals shall appear against a contrasting
11 color background: "FORM SHALL ACCOMPANY PERSON WHEN TRANSFERRED OR
12 DISCHARGED"; at the bottom of the first page the following wording
13 in all capitals shall appear against a contrasting color background:
14 "HIPAA PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS AND PROXY
15 DECISION MAKERS AS NECESSARY FOR TREATMENT".

16 2. There shall be an introductory section, the left block of
17 which shall contain the name "Oklahoma Physician Orders for Life-
18 Sustaining Treatment (POLST)" followed by the words, "This Physician
19 Order set is based on the patient's current medical condition and
20 wishes and is to be reviewed for potential replacement in the case
21 of a substantial change in either, as well as in other cases listed
22 under F. Any section not completed indicates full treatment for
23 that section. Photocopy or fax copy of this form is legal and
24 valid." and the right block of which shall contain lines for the

1 patient's name, the patient's date of birth, and the effective date
2 of the form followed by the statement "Form must be reviewed at
3 least annually."

4 3. In Section A of the form, the left block shall contain, in
5 bold font, "A. Check One", and the right block shall be headed in
6 bold font, "Cardiopulmonary Resuscitation (CPR): Person has no
7 pulse and is not breathing." below which there shall be a checkbox
8 followed by "Attempt Resuscitation (CPR)", then a checkbox followed
9 by "Do Not Attempt Resuscitation (DNR/ no CPR)", and below which
10 shall be the words, "When not in cardiopulmonary arrest, follow
11 orders in B, C and D below."

12 4. In Section B of the form, the left block shall contain, in
13 bold, "B. Check One", and the right block shall be headed in bold
14 "Medical Interventions: Person has pulse and/or is breathing."
15 Below this there shall be a checkbox followed by, in bold, "Full
16 Treatment" followed by, "Includes the use of intubation, advanced
17 airway interventions, mechanical ventilation, defibrillation or
18 cardio version as indicated, medical treatment, intravenous fluids,
19 and cardiac monitor as indicated. Transfer to hospital if
20 indicated. Include intensive care. Includes treatment listed under
21 "Limited Interventions" and "Comfort Measures", followed by, in
22 bold, "Treatment Goal: Attempt to preserve life by all medically
23 effective means."

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1 Below this there shall be a checkbox followed by, in bold,
2 "Limited Interventions" followed by, "Includes the use of medical
3 treatment, oral and intravenous medications, intravenous fluids,
4 cardiac monitoring as indicated, noninvasive bi-level positive
5 airway pressure, a bag valve mask, or other advanced airway
6 interventions. Includes treatment listed under "Comfort Measures",
7 followed by "Do not use intubation or mechanical ventilation.
8 Transfer to hospital if indicated. Avoid intensive care." followed
9 by, in bold, "Treatment Goal: Attempt to preserve life by basic
10 medical treatments."

11 Below this there shall be a checkbox followed by, in bold,
12 "Comfort Measures only" followed by, "Includes keeping the patient
13 clean, warm, and dry; use of medication by any route; positioning,
14 wound care, and other measures to relieve pain and suffering. Use
15 oxygen, suction, and manual treatment of airway obstruction as
16 needed for comfort. Transfer from current location to intermediate
17 facility only if needed and adequate to meet comfort needs and to
18 hospital only if comfort needs cannot otherwise be met in the
19 patient's current location (e.g., hip fracture; if intravenous route
20 of comfort measures is required)."

21 Below this there shall be, in italics, "Additional Orders:"
22 followed by an underlined space for other instructions.

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1 5. In Section C of the form, the left block shall contain, in
2 bold, "C. Check One", and the right block shall be headed in bold
3 "Antibiotics".

4 Below this there shall be a checkbox followed by, in bold, "Use
5 Antibiotics to preserve life."

6 Below this there shall be a checkbox followed by, in bold,
7 "Trial period of antibiotics if and when infection occurs." After
8 this there shall be, in italics, "*Include goals below in E."

9 Below this there shall be a checkbox followed by, in bold,
10 "Initially, use antibiotics only to relieve pain and discomfort."
11 After this there shall be, in italics, "+Contact patient or
12 patient's representative for further direction."

13 Below this there shall be, in italics, "Additional Orders:"
14 followed by an underlined space for other instructions.

15 6. In Section D of the form, the left block shall contain, in
16 bold, "D. Check One in Each Column", and the right block shall be
17 headed in bold "Assisted Nutrition and Hydration", below which shall
18 be "Administer oral fluids and nutrition, if necessary by spoon
19 feeding, if physically possible." Below these the right block shall
20 be divided into three columns.

21 The leftmost column shall be headed, "TPN (Total Parenteral
22 Nutrition-provision of nutrition into blood vessels)." Below this
23 there shall be a checkbox followed by, in bold, "TPN long-term"
24 followed by "if needed". Below this there shall be a checkbox

1 followed by, in bold, "TPN for a trial period*". Below this there
2 shall be a checkbox followed by, in bold, "Initially, no TPN+".

3 The middle column shall be headed "Tube Feeding". Below this
4 there shall be a checkbox followed by, in bold, "Long-term feeding
5 tube" followed by "if needed". Below this there shall be a checkbox
6 followed by, in bold, "Feeding tube for a trial period*". Below
7 this there shall be a checkbox followed by, in bold, "Initially, no
8 feeding tube".

9 The rightmost column shall be headed, "Intravenous (IV) Fluids
10 for Hydration". Below this there shall be a checkbox followed by,
11 in bold, "Long-term IV fluids" followed by "if needed". Below this
12 there shall be a checkbox followed by, in bold, "IV fluids for a
13 trial period*". Below this there shall be a checkbox followed by,
14 in bold, "Initially, no IV fluids+".

15 Running below all the columns there shall be, in italics,
16 "Additional Orders:" followed by an underlined space for other
17 instructions, followed by, in italics, "*Include goals below in E.
18 +Contact patient or patient's representative for further direction."

19 7. In Section E of the form, the left block shall contain, in
20 bold, "E. Check all that apply" and the right block shall be
21 headed, in bold, "Patient Preferences as a Basis for this POLST
22 Form" shall include the following:

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- 1 a. below the heading there shall be a box including the
2 words, in bold, "Patient Goals/Medical Condition:"
3 followed by an adequate space for such information,
- 4 b. below this there shall be a checkbox followed by, "The
5 patient has an advance directive for health care in
6 accordance with Sections 3101.4 or 3101.14 of Title 63
7 of the Oklahoma Statutes." Below that there shall be
8 a checkbox followed by, "The patient has a durable
9 power of attorney for health care decisions in
10 accordance with paragraph 1 of subsection B of Section
11 1072.1 of Title 58 of the Oklahoma Statutes." Below
12 that shall be the indented words "Date of execution"
13 followed by an underlined space. Below that shall be
14 the words, "If POLST not being executed by patient: We
15 certify that this POLST is in accordance with the
16 patient's advance directive." Below this there shall
17 be an underlined space underneath which shall be
18 positioned the words "Name and Position (print)
19 Signature" and "Signature of Physician",
- 20 c. below these shall be the words, "Directions given by:"
21 and below that a checkbox followed by "Patient", a
22 checkbox followed by "Minor's custodial parent or
23 guardian", a checkbox followed by "Attorney-in-fact",
24 a checkbox followed by "Health care proxy", and a

checkbox followed by "Other legally authorized person:" followed by an underlined space. Beneath or beside the checkbox and "Other legally authorized person:" and the underlined space shall be the words "Basis of Authority:" followed by an underlined space, and

d. below these shall be a four-column table with four rows. In the top row the first column shall be blank; the second column shall have the words, "Printed Name"; the third column shall have the word, "Signature", and the fourth column shall have the word, "Date". In the remaining rows the second through fourth columns shall be blank. In the first column of these rows, in the second row shall be the words "Attending physician"; in the third row shall be the words "Patient or other individual checked above (patient's representative)"; and in the fourth row shall be the words, "Health care professional preparing form (besides doctor)."

8. Section F of the form, which shall have the heading, in bold, "Information for Patient or Representative of Patient Named on this Form", shall include the following language, appearing in bold on the form:

1 "The POLST form is always voluntary and is usually for persons
2 with advanced illness. Before providing information for or signing
3 it, carefully read "Information for Patients and Their Families -
4 Your Medical Treatment Rights Under Oklahoma Law", which the health
5 care provider must give you. It is especially important to read the
6 sections on CPR and food and fluids, which have summaries of
7 Oklahoma laws that may control the directions you may give. POLST
8 records your wishes for medical treatment in your current state of
9 health. Once initial medical treatment is begun and the risks and
10 benefits of further therapy are clear, your treatment wishes may
11 change. Your medical care and this form can be changed to reflect
12 your new wishes at any time. However, no form can address all the
13 medical treatment decisions that may need to be made. An advance
14 health care directive is recommended, regardless of your health
15 status. An advance directive allows you to document in detail your
16 future health care instructions and/or name a health care agent to
17 speak for you if you are unable to speak for yourself.

18 The State of Oklahoma affirms that the lives of all are of equal
19 dignity regardless of age or disability and emphasizes that no one
20 should ever feel pressured to agree to forego life-preserving
21 medical treatment because of age, disability, or fear of being
22 regarded as a burden.

23 If this form is for a minor for whom you are authorized to make
24 health care decisions, you may not direct denial of medical

1 treatment in a manner that would violate the child abuse and neglect
2 laws of Oklahoma. In particular, you may not direct the withholding
3 of medically indicated treatment from a disabled infant with life-
4 threatening conditions, as those terms are defined in 42 U.S.C.,
5 Section 5106g, or regulations implementing it and 42 U.S.C., Section
6 5106a."

7 9. Section G of the form, which shall have the heading, in
8 bold, "Directions for Completing and Implementing Form", shall
9 include the following four (4) subdivisions:

- 10 a. the first subdivision, entitled "COMPLETING POLST",
11 shall have the following language:
12 POLST must be reviewed and prepared in consultation
13 with the patient or the patient's representative after
14 that person has been given a copy of "Information for
15 Patients and Their Families - Your Medical Treatment
16 Rights Under Oklahoma Law. POLST must be reviewed and
17 signed by a physician to be valid. Be sure to
18 document the basis for concluding the patient had or
19 lacked capacity at the time of execution of the form
20 in the patient's medical record. If the patient lacks
21 capacity, any current advance directive form must be
22 reviewed and the patient's representative and
23 physician must both certify that POLST complies with
24 it. The signature of the patient or the patient's

1 representative is required; however, if the patient's
2 representative is not reasonably available to sign the
3 original form, a copy of the completed form with the
4 signature of the patient's representative must be
5 placed in the medical record as soon as practicable
6 and "on file" must be written on the appropriate
7 signature line on this form.

- 8 b. the second subdivision, entitled "IMPLEMENTING POLST",
9 shall have the following language:

10 "If a minor protests a directive to deny the minor
11 life-preserving medical treatment, the denial of
12 treatment may not be implemented pending issuance of a
13 judicial order resolving the conflict. A health care
14 provider unwilling to comply with POLST must comply
15 with the transfer and treatment pending transfer
16 requirements of Section 3101.9 of Title 63 of the
17 Oklahoma Statutes as well as those of the
18 Nondiscrimination in Treatment Act, Sections 3090.2
19 and 3090.3 of Title 63 of the Oklahoma Statutes", and

- 20 c. the third subdivision, entitled "REVIEWING POLST",
21 shall have the following language:

22 "This POLST must be reviewed at least annually or
23 earlier if:
24

1 The patient is admitted to or discharged from a
2 medical care facility; there is substantial change in
3 the patient's health status; or the treatment
4 preferences of the patient or patient's representative
5 change."

6 The same requirements for participation of the patient or
7 patient's representative, and signature by both a physician and the
8 patient or the patient's representative, that are described under
9 "COMPLETING POLST" shall also apply when POLST is reviewed, and must
10 be documented in Section I.

11 10. Section G of the form, which shall have the heading, in
12 bold, "REVOCATION OF POLST", shall have the following language, with
13 the words specified below appearing in bold on the form:

14 "If POLST is revised or becomes invalid, write in bold the word
15 "VOID" in large letters on the front of the form. After voiding the
16 form a new form may be completed. A patient with capacity or the
17 individual or individuals authorized to sign on behalf of the
18 patient in Section E of this form may void this form. If no new
19 form is completed, full treatment and resuscitation is to be
20 provided."

21 11. Section H of the form, which shall have the heading, in
22 bold, "REVIEW SECTION", followed by: "Periodic review confirms
23 current form or may require completion of new form," shall include
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1 the following columns and a number of rows determined by the State
2 Board of Medical Licensure and Supervision:

- 3 a. Date of Review,
- 4 b. Location of Review,
- 5 c. Patient or Representative Signature,
- 6 d. Physician Signature, and
- 7 e. Outcome of Review.

8 Each row in column (5) shall include a checkbox followed by
9 "FORM CONFIRMED - No Change", below which there shall be a checkbox
10 followed by "FORM VOIDED, see updated form.", below which there
11 shall be a checkbox followed by, "FORM VOIDED, no new form."

12 A final section of the form, which shall have the heading, in
13 bold, "Contact Information:", shall include two rows of four
14 columns. In the first column, the first row shall include
15 "Patient/Representative" followed by an adequate space for such
16 information, and the second column shall include "Health Care
17 Professional Preparing Form" followed by an adequate space for such
18 information. In the second column both rows shall include
19 "Relationship" followed by an adequate space for such information;
20 in the third column both rows shall include "Phone Number" followed
21 by an adequate space for such information; and in the fourth column
22 both rows shall include "Email Address" followed by an adequate
23 space for such information.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3105.5 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A physician or other health care provider acting in good
5 faith and in accordance with reasonable medical standards applicable
6 to the physician or other health care provider is not subject to
7 civil or criminal liability or to discipline for unprofessional
8 conduct for:

9 1. Executing an Oklahoma standardized format physician orders
10 for life-sustaining treatment form in compliance with a health care
11 decision of a person apparently having authority to make a health
12 care decision for a patient, including a decision to provide,
13 withhold or withdraw health care;

14 2. Declining to execute a physician orders for life-sustaining
15 treatment form in compliance with a health care decision of a person
16 based on a reasonable belief that the person then lacked authority;
17 or

18 3. Complying with an apparently valid Oklahoma standardized
19 format physician orders for life-sustaining treatment form on the
20 assumption that the order was valid when made and has not been
21 revoked or terminated.

22 B. A person who intentionally falsifies, forges, conceals,
23 defaces, or obliterates an individual's physician orders for life-
24 sustaining treatment form without the individual's consent, or who

1 coerces or fraudulently induces an individual to give, revoke, or
2 not to give a physician orders for life-sustaining treatment form,
3 is subject to liability to that individual for damages of
4 \$200,000.00 or actual damages resulting from the action, whichever
5 is greater, plus reasonable attorney fees.

6 C. On petition of a health care provider or facility involved
7 with the patient's care, the patient or the patient's custodial
8 parent or guardian, attorney-in-fact, guardian or health care proxy,
9 or other person who has authority to make health care decisions for
10 the patient under common law, any court of competent jurisdiction
11 may enjoin or direct a health care decision related to a physician
12 orders for life-sustaining treatment form, or order other
13 appropriate equitable relief. The court shall issue such temporary
14 orders as necessary to preserve the life of the patient pending a
15 final judgment in such litigation, including any appeals.

16 SECTION 6. AMENDATORY 58 O.S. 2011, Section 1072.1, is
17 amended to read as follows:

18 Section 1072.1. A. The durable power of attorney may show or
19 state:

20 1. The fact of execution under the provisions of the Uniform
21 Durable Power of Attorney Act;

22 2. The time and conditions under which the power is to become
23 effective;

24 3. The extent and scope of the powers conferred; and

1 4. Who is to exercise the power, including any successor
2 attorney-in-fact if a prior appointed attorney-in-fact dies, ceases
3 to act, refuses or is unable to serve, or resigns.

4 B. The power may grant complete or limited authority with
5 respect to the principal's:

6 1. Person, including, but not limited to, health and medical
7 care decisions and a do-not-resuscitate consent on the principal's
8 behalf, but excluding:

9 a. the execution, on behalf of the principal, of a
10 Directive to Physicians, an Advance Directive for
11 Health Care, Living Will, or other document, except an
12 Oklahoma standardized form physician orders for life-
13 sustaining treatment in accordance with the provisions
14 of this act, purporting to authorize life-sustaining
15 treatment decisions, and

16 b. the making of life-sustaining treatment decisions
17 unless the power complies with the requirements for a
18 health care proxy under the Oklahoma ~~Rights of the~~
19 ~~Terminally Ill or Persistently Unconscious~~ Advance
20 Directive Act or the Oklahoma Do-Not-Resuscitate Act;
21 and

22 2. Property, including homestead property, whether real,
23 personal, intangible or mixed.

24

1 SECTION 7. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 The State Board of Medical Licensure and Supervision shall
4 establish the standardized format for physician orders for life-
5 sustaining treatment in accordance with Sections 3 and 4 of this act
6 within sixty (60) days of the act's effective date and publish it on
7 its website.

8 SECTION 8. This act shall become effective in accordance with
9 the provisions of Section 58 of Article V of the Oklahoma
10 Constitution.

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