

1 ENGROSSED HOUSE  
2 BILL NO. 3017

By: Calvey of the House

and

Sykes of the Senate

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6  
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 power 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 codification;  
providing for noncodification; 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 Advance  
3 Directive Act, Sections 3101.1 through 3101.16 of Title 63 of the  
4 Oklahoma Statutes, as defined in paragraph 6 of Section 3101.3 of  
5 Title 63 of the Oklahoma Statutes; and

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

19 2. That was executed outside this state in compliance with the  
20 laws of the jurisdiction of execution shall have no validity after  
21 ten (10) days following the admission of the patient to an Oklahoma  
22 medical care facility; provided, that a standardized format Oklahoma  
23 physician orders for life-sustaining treatment executed subsequent  
24 to such document's execution shall immediately supersede it.

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

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

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

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

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

21 Below this there shall be a checkbox followed by, in bold font,  
22 "Limited Interventions" followed by, "Includes the use of medical  
23 treatment, oral and intravenous medications, intravenous fluids,  
24 cardiac monitoring as indicated, noninvasive bi-level positive

1 airway pressure, a bag valve mask, or other advanced airway  
2 interventions. Includes treatment listed under "Comfort Measures",  
3 followed by "Do not use intubation or mechanical ventilation.  
4 Transfer to hospital if indicated. Avoid intensive care." followed  
5 by, in bold font, "Treatment Goal: Attempt to preserve life by  
6 basic medical treatments."

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

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

19 E. In Section C of the form, the left block shall contain, in  
20 bold font, "C. Check One", and the right block shall be headed in  
21 bold font "Antibiotics".

22 Below this there shall be a checkbox followed by, in bold font,  
23 "Use Antibiotics to preserve life."  
24

1 Below this there shall be a checkbox followed by, in bold font,  
2 "Trial period of antibiotics if and when infection occurs." After  
3 this there shall be, in italics, "\*Include goals below in E."

4 Below this there shall be a checkbox followed by, in bold font,  
5 "Initially, use antibiotics only to relieve pain and discomfort."  
6 After this there shall be, in italics, "+Contact patient or  
7 patient's representative for further direction."

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

10 F. In Section D of the form, the left block shall contain, in  
11 bold, "D. Check One in Each Column", and the right block shall be  
12 headed in bold font "Assisted Nutrition and Hydration", below which  
13 shall be "Administer oral fluids and nutrition, if necessary by  
14 spoon feeding, if physically possible." Below these the right block  
15 shall be divided into three columns.

16 The leftmost column shall be headed, "TPN (Total Parenteral  
17 Nutrition-provision of nutrition into blood vessels)." Below this  
18 there shall be a checkbox followed by, in bold font, "TPN long-term"  
19 followed by "if needed". Below this there shall be a checkbox  
20 followed by, in bold font, "TPN for a trial period\*". Below this  
21 there shall be a checkbox followed by, in bold font, "Initially, no  
22 TPN+".

23 The middle column shall be headed "Tube Feeding". Below this  
24 there shall be a checkbox followed by, in bold font, "Long-term

1 feeding tube" followed by "if needed". Below this there shall be a  
2 checkbox followed by, in bold font, "Feeding tube for a trial  
3 period\*". Below this there shall be a checkbox followed by, in bold  
4 font, "Initially, no feeding tube".

5 The rightmost column shall be headed, "Intravenous (IV) Fluids  
6 for Hydration". Below this there shall be a checkbox followed by,  
7 in bold font, "Long-term IV fluids" followed by "if needed". Below  
8 this there shall be a checkbox followed by, in bold font, "IV fluids  
9 for a trial period\*". Below this there shall be a checkbox followed  
10 by, in bold font, "Initially, no IV fluids+".

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

15 G. In Section E of the form, the left block shall contain, in  
16 bold, "E. Check all that apply" and the right block shall be  
17 headed, in bold font, "Patient Preferences as a Basis for this POLST  
18 Form" shall include the following:

19 1. Below the heading there shall be a box including the words,  
20 in bold, "Patient Goals/Medical Condition:" followed by an adequate  
21 space for such information;

22 2. Below this there shall be a checkbox followed by, "The  
23 patient has an advance directive for health care in accordance with  
24 Sections 3101.4 or 3101.14 of Title 63 of the Oklahoma Statutes."

1 Below that there shall be a checkbox followed by, "The patient has a  
2 durable power of attorney for health care decisions in accordance  
3 with paragraph 1 of subsection B of Section 1072.1 of Title 58 of  
4 the Oklahoma Statutes." Below that shall be the indented words  
5 "Date of execution" followed by an underlined space. Below that  
6 shall be the words, "If POLST not being executed by patient: We  
7 certify that this POLST is in accordance with the patient's advance  
8 directive." Below this there shall be an underlined space  
9 underneath which shall be positioned the words "Name and Position  
10 (print) Signature" and "Signature of Physician";

11 3. Below these shall be the words, "Directions given by:" and  
12 below that a checkbox followed by "Patient", a checkbox followed by  
13 "Minor's custodial parent or guardian", a checkbox followed by  
14 "Attorney-in-fact", a checkbox followed by "Health care proxy", and  
15 a checkbox followed by "Other legally authorized person:" followed  
16 by an underlined space. Beneath or beside the checkbox and "Other  
17 legally authorized person:" and the underlined space shall be the  
18 words "Basis of Authority:" followed by an underlined space; and

19 4. Below these shall be a four-column table with four rows. In  
20 the top row the first column shall be blank; the second column shall  
21 have the words, "Printed Name"; the third column shall have the  
22 word, "Signature", and the fourth column shall have the word,  
23 "Date". In the remaining rows the second through fourth columns  
24 shall be blank. In the first column of these rows, in the second

1 row shall be the words "Attending physician"; in the third row shall  
2 be the words "Patient or other individual checked above (patient's  
3 representative)"; and in the fourth row shall be the words, "Health  
4 care professional preparing form (besides doctor)."

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

9 "The POLST form is always voluntary and is usually for persons  
10 with advanced illness. Before providing information for or signing  
11 it, carefully read "Information for Patients and Their Families -  
12 Your Medical Treatment Rights Under Oklahoma Law", which the health  
13 care provider must give you. It is especially important to read the  
14 sections on CPR and food and fluids, which have summaries of  
15 Oklahoma laws that may control the directions you may give. POLST  
16 records your wishes for medical treatment in your current state of  
17 health. Once initial medical treatment is begun and the risks and  
18 benefits of further therapy are clear, your treatment wishes may  
19 change. Your medical care and this form can be changed to reflect  
20 your new wishes at any time. However, no form can address all the  
21 medical treatment decisions that may need to be made. An advance  
22 health care directive is recommended, regardless of your health  
23 status. An advance directive allows you to document in detail your  
24

1 future health care instructions and/or name a health care agent to  
2 speak for you if you are unable to speak for yourself.

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

8 If this form is for a minor for whom you are authorized to make  
9 health care decisions, you may not direct denial of medical  
10 treatment in a manner that would violate the child abuse and neglect  
11 laws of Oklahoma. In particular, you may not direct the withholding  
12 of medically indicated treatment from a disabled infant with life-  
13 threatening conditions, as those terms are defined in 42 U.S.C.,  
14 Section 5106g, or regulations implementing it and 42 U.S.C., Section  
15 5106a."

16 I. Section G of the form, which shall have the heading, in bold  
17 font, "Directions for Completing and Implementing Form", shall  
18 include the following three subdivisions:

19 1. The first subdivision, entitled "COMPLETING POLST", shall  
20 have the following language:

21 "POLST must be reviewed and prepared in consultation with  
22 the patient or the patient's representative after that  
23 person has been given a copy of "Information for Patients  
24 and Their Families - Your Medical Treatment Rights Under

1 Oklahoma Law". POLST must be reviewed and signed by a  
2 physician to be valid. Be sure to document the basis for  
3 concluding the patient had or lacked capacity at the time  
4 of execution of the form in the patient's medical record.  
5 If the patient lacks capacity, any current advance  
6 directive form must be reviewed and the patient's  
7 representative and physician must both certify that POLST  
8 complies with it. The signature of the patient or the  
9 patient's representative is required; however, if the  
10 patient's representative is not reasonably available to  
11 sign the original form, a copy of the completed form with  
12 the signature of the patient's representative must be  
13 placed in the medical record as soon as practicable and "on  
14 file" must be written on the appropriate signature line on  
15 this form.";

16 2. The second subdivision, entitled "IMPLEMENTING POLST", shall  
17 have the following language:

18 "If a minor protests a directive to deny the minor life-  
19 preserving medical treatment, the denial of treatment may  
20 not be implemented pending issuance of a judicial order  
21 resolving the conflict. A health care provider unwilling  
22 to comply with POLST must comply with the transfer and  
23 treatment pending transfer requirements of Section 3101.9  
24 of Title 63 of the Oklahoma Statutes as well as those of

1 the Nondiscrimination in Treatment Act, Sections 3090.2 and  
2 3090.3 of Title 63 of the Oklahoma Statutes."; and

3 3. The third subdivision, entitled "REVIEWING POLST", shall  
4 have the following language:

5 "This POLST must be reviewed at least annually or earlier  
6 if:

7 The patient is admitted to or discharged from a medical  
8 care facility; there is substantial change in the patient's  
9 health status; or the treatment preferences of the patient  
10 or patient's representative change."

11 The same requirements for participation of the patient or  
12 patient's representative, and signature by both a physician and the  
13 patient or the patient's representative, that are described under  
14 "COMPLETING POLST" shall also apply when POLST is reviewed, and must  
15 be documented in Section I.

16 J. Section H of the form, which shall have the heading, in bold  
17 font, "REVOCAION OF POLST", shall have the following language, with  
18 the words specified below appearing in bold font on the form:

19 "If POLST is revised or becomes invalid, write in bold the word  
20 "VOID" in large letters on the front of the form. After voiding the  
21 form a new form may be completed. A patient with capacity or the  
22 individual or individuals authorized to sign on behalf of the  
23 patient in Section E of this form may void this form. If no new  
24

1 form is completed, full treatment and resuscitation is to be  
2 provided."

3 K. Section I of the form, which shall have the heading, in bold  
4 font, "REVIEW SECTION", followed by: "Periodic review confirms  
5 current form or may require completion of new form.", shall include  
6 the following columns and a number of rows determined by the State  
7 Board of Medical Licensure and Supervision:

- 8 1. Date of Review;
- 9 2. Location of Review;
- 10 3. Patient or Representative Signature;
- 11 4. Physician Signature; and
- 12 5. Outcome of Review.

13 Each row in column 5 shall include a checkbox followed by "FORM  
14 CONFIRMED - No Change", below which there shall be a checkbox  
15 followed by "FORM VOIDED, see updated form.", below which there  
16 shall be a checkbox followed by, "FORM VOIDED, no new form."

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

1 in the third column both rows shall include "Phone Number" followed  
2 by an adequate space for such information; and in the fourth column  
3 both rows shall include "Email Address" followed by an adequate  
4 space for such information.

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

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

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

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

22 3. Complying with an apparently valid Oklahoma standardized  
23 format physician orders for life-sustaining treatment form on the  
24

1 assumption that the order was valid when made and has not been  
2 revoked or terminated.

3 B. A person who intentionally falsifies, forges, conceals,  
4 defaces, or obliterates an individual's physician orders for life-  
5 sustaining treatment form without the individual's consent, or who  
6 coerces or fraudulently induces an individual to give, revoke, or  
7 not to give a physician orders for life-sustaining treatment form,  
8 is subject to liability to that individual for damages of Two  
9 Hundred Thousand Dollars (\$200,000.00) or actual damages resulting  
10 from the action, whichever is greater, plus reasonable attorney  
11 fees.

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

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

24

1 Section 1072.1 A. The durable power of attorney may show or  
2 state:

3 1. The fact of execution under the provisions of the Uniform  
4 Durable Power of Attorney Act;

5 2. The time and conditions under which the power is to become  
6 effective;

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

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

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

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

16 a. the execution, on behalf of the principal, of a  
17 Directive to Physicians, an Advance Directive for  
18 Health Care, Living Will, or other document, except an  
19 Oklahoma standardized format physician orders for  
20 life-sustaining treatment in accordance with the  
21 provisions of this act, purporting to authorize life-  
22 sustaining treatment decisions, and

23 b. the making of life-sustaining treatment decisions  
24 unless the power complies with the requirements for a

1 health care proxy under the Oklahoma ~~Rights of the~~  
2 ~~Terminally Ill or Persistently Unconscious~~ Advance  
3 Directive Act or the Oklahoma Do-Not-Resuscitate Act;  
4 and

5 2. Property, including homestead property, whether real,  
6 personal, intangible or mixed.

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

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

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

1 Passed the House of Representatives the 25th day of February,  
2016.

4 \_\_\_\_\_  
Presiding Officer of the House  
of Representatives

6 Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2016.

8 \_\_\_\_\_  
Presiding Officer of the Senate