

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3017

By: Calvey

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6 AS INTRODUCED

7 An Act relating to public health and safety; creating
8 the Physician Orders for Life-Sustaining Treatment
9 Act; defining certain terms; requiring State Board of
10 Medical Licensure and Supervision to establish
11 certain form; requiring certain order to be executed
12 in accordance with certain instructions; providing
13 that physician shall not be liable nor receive
14 discipline based on certain acts; providing for
15 certain civil penalties; permitting court to order
16 certain relief; requiring Board to publish certain
17 form in certain time period; amending 58 O.S. 2011,
18 Section 1072.1, which relates to attributes of a
19 durable power of attorney; providing certain
20 exception; providing for codification; providing for
21 noncodification; and providing an effective date.

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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3103.3 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Physician Orders for Life-Sustaining Treatment
5 Act:

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

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

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

23 4. "Health care proxy" means a health care proxy or alternate
24 health care proxy authorized to act pursuant to the Oklahoma Advance

1 Directive Act, Sections 3101.1 through 3101.16 of Title 63 of the
2 Oklahoma Statutes, as defined in paragraph 6 of Section 3101.3 of
3 Title 63 of the Oklahoma Statutes; and

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

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3103.4 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

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

16 B. Oklahoma physician orders for life-sustaining treatment
17 shall be executed, implemented, reviewed and revoked in accordance
18 with the instructions on the form. At the beginning of reviewing
19 and preparing it in consultation with the patient or the patient's
20 legally authorized representative, the attending physician or the
21 health care professional preparing the form or an agent of either
22 shall give that individual a copy of the disclosure statement
23 described in subsection A of Section 3163 of Title 63 of the
24 Oklahoma Statutes.

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

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

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

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3103.5 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 standardized-format Oklahoma
5 physician orders for life-sustaining treatment the following wording
6 in all capitals shall appear against a contrasting color background:
7 "FORM SHALL ACCOMPANY PERSON WHEN TRANSFERRED OR DISCHARGED". At
8 the bottom of the first page the following wording in all capitals
9 shall appear against a contrasting color background: "HIPAA PERMITS
10 DISCLOSURE TO HEALTH CARE PROFESSIONALS AND PROXY DECISION MAKERS AS
11 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 Section F of this form. Any section not completed indicates
19 full treatment for that section. Photocopy or fax copy of this form
20 is legal and valid." The right block of the introductory section
21 shall contain lines for the patient's name, the patient's date of
22 birth, and the effective date of the form followed by the statement
23 "Form must be reviewed at least annually."
24

1 C. In Section A of the form, the left block shall contain in
2 boldface "A. Check One", and the right block shall be headed in
3 boldface "Cardiopulmonary Resuscitation (CPR): Person has no pulse
4 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)". Below the
7 checkboxes shall be the words "When not in cardiopulmonary arrest,
8 follow orders in Sections B, C and D of this form."

9 D. In Section B of the form, the left block shall contain in
10 boldface "B. Check One" and the right block shall be headed in
11 boldface "Medical Interventions: Person has pulse and/or is
12 breathing." Below this there shall be a checkbox followed in
13 boldface by "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 in boldface by "Treatment Goal: Attempt to preserve life by
20 all medically effective means."

21 Below this there shall be a checkbox followed in boldface by
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 Do not use intubation or mechanical ventilation. Transfer to
4 hospital if indicated. Avoid intensive care.", followed in boldface
5 by "Treatment Goal: Attempt to preserve life by basic medical
6 treatments."

7 Below this there shall be a checkbox followed in boldface by
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 needed
12 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 boldface "C. Check One" and the right block shall be headed in
21 boldface "Antibiotics".

22 Below this there shall be a checkbox followed in boldface by
23 "Use antibiotics to preserve life."
24

1 Below this there shall be a checkbox followed in boldface by
2 "Trial period of antibiotics if and when infection occurs." After
3 this there shall be in italics "*Include goals below in Section E of
4 this form."

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

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

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

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

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

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

5 The rightmost column shall be headed "Intravenous (IV) Fluids
6 for Hydration". Below this there shall be a checkbox followed in
7 boldface by "Long-term IV fluids" followed by "if needed". Below
8 this there shall be a checkbox followed in boldface by "IV fluids
9 for a trial period*". Below this there shall be a checkbox followed
10 in boldface by "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
14 Section E of this form. +Contact patient or patient's
15 representative for further direction."

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

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

23 2. Below this there shall be a checkbox followed by "The
24 patient has an advance directive for health care in accordance with

1 Section 3101.4 or 3101.14 of Title 63 of the Oklahoma Statutes."

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

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

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

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

6 H. Section F of the form, which shall have the heading in
7 boldface "Information for Patient or Representative of Patient Named
8 on this Form", shall include the following language, with the
9 portions in boldface below appearing in boldface on the form:

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

1 detail your future health care instructions and/or name a health
2 care agent to 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
17 boldface "Directions for Completing and Implementing Form", shall
18 include the following four 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 the
22 patient or the patient's representative after that person has been
23 given a copy of 'Information for Patients and their Families - Your
24 Medical Treatment Rights under Oklahoma Law'. POLST must be

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

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

15 "If a minor protests a directive to deny the minor life-
16 preserving medical treatment, the denial of treatment may not be
17 implemented pending issuance of a judicial order resolving the
18 conflict. A health care provider unwilling to comply with POLST
19 shall comply with the transfer- and treatment-pending-transfer
20 requirements of Sections 3090.2, 3090.3 and 3101.9 of Title 63 of
21 the Oklahoma Statutes."

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

24 "This POLST shall be reviewed at least annually or earlier if:

- 1 a. the patient is admitted to or discharged from a
2 medical care facility,
3 b. there is a substantial change in the patient's health
4 status, or
5 c. the treatment preferences of the patient or patient's
6 representative change.

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

12 J. Section G of the form, which shall have the heading in
13 boldface "REVOCATION OF POLST", shall have the following language,
14 with the word in boldface below appearing in boldface on the form:

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

22 K. Section H of the form, which shall have the heading in
23 boldface "REVIEW SECTION" followed by ": Periodic review confirms
24 current form or may require completion of new form", shall include

1 the following columns and a number of rows determined by the State
2 Board of Medical Licensure and Supervision:

- 3 1. "Date of Review";
- 4 2. "Location of Review";
- 5 3. "Patient or Representative Signature";
- 6 4. "Physician Signature"; and
- 7 5. "Outcome of Review".

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

12 L. A final section of the form, which shall have the heading in
13 boldface "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.
24

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3103.6 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 not
2 to give a physician-orders-for-life-sustaining-treatment form, is
3 subject to liability to that individual for damages of Two Hundred
4 Thousand Dollars (\$200,000.00) or actual damages resulting from the
5 action, whichever 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. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

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

23 SECTION 7. AMENDATORY 58 O.S. 2011, Section 1072.1, is
24 amended to read as follows:

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 form in accordance with
21 Section 4 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 8. This act shall become effective November 1, 2016.

8
9 55-2-8123 AM 01/14/16