

7729--D

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. GOTTFRIED, SCHIMMINGER, BACALLES, BARRON, BOYLAND, BRENNAN, CAHILL, CASTRO, DelMONTE, DINOWITZ, FINCH, GABRYSZAK, GALEF, GUNTHER, JAFFEE, KELLNER, KOON, LANCMAN, V. LOPEZ, MAGNARELLI, PEOPLES-STOKES, SPANO, STIRPE, TOWNS, SCHROEDER, BRODSKY, HOYT, PERRY, CONTE, CHRISTENSEN -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, AUBRY, BENEDETTO, BING, BURLING, CALHOUN, CLARK, COOK, CROUCH, CYMBROWITZ, DESTITO, DUPREY, ENGLEBRIGHT, FIELDS, GANTT, GIANARIS, GIGLIO, GLICK, HIKIND, HOOPER, JACOBS, JOHN, LATIMER, LAVINE, LIFTON, LUPARDO, MAGEE, MAISEL, MARKEY, MAYERSOHN, McDONOUGH, McENENY, MENG, MILLMAN, MOLINARO, MORELLE, NOLAN, O'DONNELL, ORTIZ, PAULIN, PHEFFER, PRETLOW, REILLY, N. RIVERA, P. RIVERA, ROBINSON, ROSENTHAL, SCARBOROUGH, SCHIMEL, SKARTADOS, SWEENEY, THIELE, TITONE, WEINSTEIN, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the mental hygiene law and the surrogate's court procedure act, in relation to establishing procedures for making medical treatment decisions on behalf of persons who lack the capacity to decide about treatment for themselves; directing the New York state task force on life and law to form a special advisory committee to consider the procedures and practices for withholding or withdrawal of life sustaining treatment for patients with mental illness or mental retardation and developmental disabilities; and to repeal certain provisions of the public health law and the mental hygiene law relating thereto

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05935-16-0

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. Under article 29-C of the public health
2 law, competent adults have a powerful way to control their medical
3 treatment even after they lose decision-making capacity, by appointing
4 someone they trust to decide on their behalf. This legislation fills a
5 gap that remains in New York law. It adds, inter alia, a new article
6 29-CC to the public health law, which establishes a decision-making
7 process, applicable to decisions in general hospitals and nursing homes,
8 whereby a surrogate is selected and empowered to make health care deci-
9 sions for patients who lack capacity to make their own health care deci-
10 sions and who have not otherwise appointed an agent to make health care
11 decisions pursuant to article 29-C of the public health law or provided
12 clear and convincing evidence of their treatment wishes.

13 The legislature does not intend to encourage or discourage any partic-
14 ular health care decision or treatment, or to create or expand a
15 substantive right of competent adults to decide about treatment for
16 themselves, or to impair the right of patients to object to treatment
17 under applicable law including court decisions. Further, the legislature
18 does not intend to authorize a surrogate to deny to the patient personal
19 services that every patient would generally receive, such as appropriate
20 food, water, bed rest, room temperature and hygiene. This legislation
21 establishes a procedure to facilitate responsible decision-making by
22 surrogates on behalf of patients who do not have capacity to make their
23 own health care decisions.

24 This legislation affirms existing laws and policies that limit indi-
25 vidual conduct of patients with or without capacity, including those
26 laws and policies against homicide, suicide, assisted suicide and mercy
27 killing.

28 S 2. The public health law is amended by adding two new articles 29-CC
29 and 29-CCC to read as follows:

ARTICLE 29-CC

FAMILY HEALTH CARE DECISIONS ACT

- 30
31 SECTION 2994-A. DEFINITIONS.
32 2994-B. APPLICABILITY; PRIORITY OF CERTAIN OTHER SURROGATE DECI-
33 SION-MAKING LAWS AND REGULATIONS.
34 2994-C. DETERMINATION OF INCAPACITY.
35 2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES.
36 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR
37 PATIENTS.
38 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN.
39 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURRO-
40 GATES.
41 2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE.
42 2994-J. REVOCATION OF CONSENT.
43 2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS.
44 2994-L. INTERINSTITUTIONAL TRANSFERS.
45 2994-M. ETHICS REVIEW COMMITTEES.
46 2994-N. CONSCIENCE OBJECTIONS.
47 2994-O. IMMUNITY.
48 2994-P. LIABILITY FOR HEALTH CARE COSTS.
49 2994-Q. EFFECT ON OTHER RIGHTS.
50 2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE
51 GUARDIAN FOR MINOR PATIENT.
52 2994-S. REMEDY.
53

1 2994-T. REGULATIONS.

2 2994-U. RIGHTS TO BE PUBLICIZED.

3 S 2994-A. DEFINITIONS. THE FOLLOWING WORDS OR PHRASES, USED IN THIS
4 ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT OTHERWISE
5 REQUIRES:

6 1. "ADULT" MEANS ANY PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER OR
7 HAS MARRIED.

8 2. "ATTENDING PHYSICIAN" MEANS A PHYSICIAN, SELECTED BY OR ASSIGNED TO
9 A PATIENT PURSUANT TO HOSPITAL POLICY, WHO HAS PRIMARY RESPONSIBILITY
10 FOR THE TREATMENT AND CARE OF THE PATIENT. WHERE MORE THAN ONE PHYSICIAN
11 SHARES SUCH RESPONSIBILITY, OR WHERE A PHYSICIAN IS ACTING ON THE
12 ATTENDING PHYSICIAN'S BEHALF, ANY SUCH PHYSICIAN MAY ACT AS AN ATTENDING
13 PHYSICIAN PURSUANT TO THIS ARTICLE.

14 3. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN
15 REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION
16 OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY
17 ARREST. CARDIOPULMONARY RESUSCITATION SHALL NOT INCLUDE MEASURES TO
18 IMPROVE VENTILATION AND CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

19 4. "CLOSE FRIEND" MEANS ANY PERSON, EIGHTEEN YEARS OF AGE OR OLDER,
20 WHO IS A CLOSE FRIEND OF THE PATIENT, OR A RELATIVE OF THE PATIENT
21 (OTHER THAN A SPOUSE, ADULT CHILD, PARENT, BROTHER OR SISTER), WHO HAS
22 MAINTAINED SUCH REGULAR CONTACT WITH THE PATIENT AS TO BE FAMILIAR WITH
23 THE PATIENT'S ACTIVITIES, HEALTH, AND RELIGIOUS OR MORAL BELIEFS, AND
24 WHO PRESENTS A SIGNED STATEMENT TO THAT EFFECT TO THE ATTENDING PHYSI-
25 CIAN.

26 5. "DECISION-MAKING CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND
27 APPRECIATE THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, INCLUD-
28 ING THE BENEFITS AND RISKS OF AND ALTERNATIVES TO PROPOSED HEALTH CARE,
29 AND TO REACH AN INFORMED DECISION.

30 6. "DEVELOPMENTAL DISABILITY" MEANS A DEVELOPMENTAL DISABILITY AS
31 DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE
32 LAW.

33 7. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER
34 PERSON:

35 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
36 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
37 UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGIS-
38 TERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY
39 MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY,
40 OR FOREIGN JURISDICTION; OR

41 (B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER
42 THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

43 (C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR
44 SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A
45 MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO:
46 COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON
47 HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON;
48 SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A)
49 OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP
50 OF THE PERSONS.

51 EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE
52 DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT
53 INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER
54 THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMES-
55 TIC PARTNER" ALSO SHALL NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN
56 YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS

1 RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE
2 TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

3 8. "EMANCIPATED MINOR PATIENT" MEANS A MINOR PATIENT WHO IS THE PARENT
4 OF A CHILD, OR WHO IS SIXTEEN YEARS OF AGE OR OLDER AND LIVING INDEPEND-
5 ENTLY FROM HIS OR HER PARENTS OR GUARDIAN.

6 9. "ETHICS REVIEW COMMITTEE" MEANS THE INTERDISCIPLINARY COMMITTEE
7 ESTABLISHED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION TWENTY-NINE
8 HUNDRED NINETY-FOUR-M OF THIS ARTICLE.

9 10. "GENERAL HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVI-
10 SION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER EXCLUDING A
11 WARD, WING, UNIT OR OTHER PART OF A GENERAL HOSPITAL OPERATED FOR THE
12 PURPOSE OF PROVIDING SERVICES FOR PERSONS WITH MENTAL ILLNESS PURSUANT
13 TO AN OPERATING CERTIFICATE ISSUED BY THE COMMISSIONER OF MENTAL HEALTH.

14 11. "GUARDIAN OF A MINOR" OR "GUARDIAN" MEANS A HEALTH CARE GUARDIAN
15 OR A LEGAL GUARDIAN OF THE PERSON OF A MINOR.

16 12. "HEALTH CARE" MEANS ANY TREATMENT, SERVICE, OR PROCEDURE TO DIAG-
17 NOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION. PROVIDING
18 NUTRITION OR HYDRATION ORALLY, WITHOUT RELIANCE ON MEDICAL TREATMENT, IS
19 NOT HEALTH CARE UNDER THIS ARTICLE AND IS NOT SUBJECT TO THIS ARTICLE.

20 13. "HEALTH CARE AGENT" MEANS A HEALTH CARE AGENT DESIGNATED BY AN
21 ADULT PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER.

22 14. "HEALTH CARE DECISION" MEANS ANY DECISION TO CONSENT OR REFUSE TO
23 CONSENT TO HEALTH CARE.

24 15. "HEALTH CARE GUARDIAN" MEANS AN INDIVIDUAL APPOINTED BY A COURT,
25 PURSUANT TO SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED
26 NINETY-FOUR-R OF THIS ARTICLE, AS THE GUARDIAN OF A MINOR PATIENT SOLELY
27 FOR THE PURPOSE OF DECIDING ABOUT LIFE-SUSTAINING TREATMENT PURSUANT TO
28 THIS ARTICLE.

29 16. "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL OR FACILITY LICENSED,
30 CERTIFIED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER
31 HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PROFESSIONAL PRACTICE.

32 17. "HEALTH OR SOCIAL SERVICE PRACTITIONER" MEANS A REGISTERED PROFES-
33 SIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
34 PSYCHOLOGIST OR LICENSED CLINICAL SOCIAL WORKER, LICENSED OR CERTIFIED
35 PURSUANT TO THE EDUCATION LAW ACTING WITHIN HIS OR HER SCOPE OF PRAC-
36 TICE.

37 18. "HOSPITAL" MEANS A GENERAL HOSPITAL OR A RESIDENTIAL HEALTH CARE
38 FACILITY.

39 19. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCE-
40 DURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME,
41 AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF
42 MEDICAL CERTAINTY. FOR THE PURPOSE OF THIS ARTICLE, CARDIOPULMONARY
43 RESUSCITATION IS PRESUMED TO BE LIFE-SUSTAINING TREATMENT WITHOUT THE
44 NECESSITY OF A DETERMINATION BY AN ATTENDING PHYSICIAN.

45 20. "MENTAL HYGIENE FACILITY" MEANS A FACILITY OPERATED OR LICENSED BY
46 THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDATION AND
47 DEVELOPMENTAL DISABILITIES AS DEFINED IN SUBDIVISION SIX OF SECTION 1.03
48 OF THE MENTAL HYGIENE LAW.

49 21. "MENTAL ILLNESS" MEANS A MENTAL ILLNESS AS DEFINED IN SUBDIVISION
50 TWENTY OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, AND DOES NOT INCLUDE
51 DEMENTIA, SUCH AS ALZHEIMER'S DISEASE, OR OTHER DISORDERS RELATED TO
52 DEMENTIA.

53 22. "MINOR" MEANS ANY PERSON WHO IS NOT AN ADULT.

54 23. "ORDER NOT TO RESUSCITATE" MEANS AN ORDER NOT TO ATTEMPT CARDIOP-
55 ULMONARY RESUSCITATION IN THE EVENT A PATIENT SUFFERS CARDIAC OR RESPIR-
56 ATORY ARREST.

1 24. "PARENT", FOR THE PURPOSE OF A HEALTH CARE DECISION ABOUT A MINOR
2 PATIENT, MEANS A PARENT WHO HAS CUSTODY OF, OR WHO HAS MAINTAINED
3 SUBSTANTIAL AND CONTINUOUS CONTACT WITH, THE MINOR PATIENT.

4 25. "PATIENT" MEANS A PERSON ADMITTED TO A HOSPITAL.

5 26. "PERSON CONNECTED WITH THE CASE" MEANS THE PATIENT, ANY PERSON ON
6 THE SURROGATE LIST, A PARENT OR GUARDIAN OF A MINOR PATIENT, THE HOSPI-
7 TAL ADMINISTRATOR, AN ATTENDING PHYSICIAN, ANY OTHER HEALTH OR SOCIAL
8 SERVICES PRACTITIONER WHO IS OR HAS BEEN DIRECTLY INVOLVED IN THE
9 PATIENT'S CARE, AND ANY DULY AUTHORIZED STATE AGENCY, INCLUDING THE
10 FACILITY DIRECTOR OR REGIONAL DIRECTOR FOR A PATIENT TRANSFERRED FROM A
11 MENTAL HYGIENE FACILITY AND THE FACILITY DIRECTOR FOR A PATIENT TRANS-
12 FERRED FROM A CORRECTIONAL FACILITY.

13 27. "REASONABLY AVAILABLE" MEANS THAT A PERSON TO BE CONTACTED CAN BE
14 CONTACTED WITH DILIGENT EFFORTS BY AN ATTENDING PHYSICIAN, ANOTHER
15 PERSON ACTING ON BEHALF OF AN ATTENDING PHYSICIAN, OR THE HOSPITAL.

16 28. "RESIDENTIAL HEALTH CARE FACILITY" MEANS A RESIDENTIAL HEALTH CARE
17 FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED
18 ONE OF THIS CHAPTER.

19 29. "SURROGATE" MEANS THE PERSON SELECTED TO MAKE A HEALTH CARE DECI-
20 SION ON BEHALF OF A PATIENT PURSUANT TO SECTION TWENTY-NINE HUNDRED
21 NINETY-FOUR-D OF THIS ARTICLE.

22 30. "SURROGATE LIST" MEANS THE LIST SET FORTH IN SUBDIVISION ONE OF
23 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

24 S 2994-B. APPLICABILITY; PRIORITY OF CERTAIN OTHER SURROGATE DECI-
25 SION-MAKING LAWS AND REGULATIONS. 1. THIS ARTICLE SHALL APPLY TO HEALTH
26 CARE DECISIONS REGARDING HEALTH CARE PROVIDED IN A HOSPITAL TO A PATIENT
27 WHO LACKS DECISION-MAKING CAPACITY, EXCEPT AS LIMITED BY THIS SECTION.

28 2. PRIOR TO SEEKING OR RELYING UPON A HEALTH CARE DECISION BY A SURRO-
29 GATE FOR A PATIENT UNDER THIS ARTICLE, THE ATTENDING PHYSICIAN SHALL
30 MAKE REASONABLE EFFORTS TO DETERMINE WHETHER THE PATIENT HAS A HEALTH
31 CARE AGENT APPOINTED PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER.
32 IF SO, HEALTH CARE DECISIONS FOR THE PATIENT SHALL BE GOVERNED BY SUCH
33 ARTICLE, AND SHALL HAVE PRIORITY OVER DECISIONS BY ANY OTHER PERSON
34 EXCEPT THE PATIENT OR AS OTHERWISE PROVIDED IN THE HEALTH CARE PROXY.

35 3. PRIOR TO SEEKING OR RELYING UPON A HEALTH CARE DECISION BY A SURRO-
36 GATE FOR A PATIENT UNDER THIS ARTICLE, IF THE ATTENDING PHYSICIAN HAS
37 REASON TO BELIEVE THAT THE PATIENT HAS A HISTORY OF RECEIVING SERVICES
38 FOR MENTAL RETARDATION OR A DEVELOPMENTAL DISABILITY; IT REASONABLY
39 APPEARS TO THE ATTENDING PHYSICIAN THAT THE PATIENT HAS MENTAL RETARDA-
40 TION OR A DEVELOPMENTAL DISABILITY; OR THE ATTENDING PHYSICIAN HAS
41 REASON TO BELIEVE THAT THE PATIENT HAS BEEN TRANSFERRED FROM A MENTAL
42 HYGIENE FACILITY OPERATED OR LICENSED BY THE OFFICE OF MENTAL HEALTH,
43 THEN SUCH PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO DETERMINE WHETHER
44 PARAGRAPHS (A), (B) OR (C) OF THIS SUBDIVISION ARE APPLICABLE:

45 (A) IF THE PATIENT HAS A GUARDIAN APPOINTED BY A COURT PURSUANT TO
46 ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT, HEALTH CARE
47 DECISIONS FOR THE PATIENT SHALL BE GOVERNED BY SECTION SEVENTEEN HUNDRED
48 FIFTY-B OF THE SURROGATE'S COURT PROCEDURE ACT AND NOT BY THIS ARTICLE.

49 (B) IF A PATIENT DOES NOT HAVE A GUARDIAN APPOINTED BY A COURT PURSU-
50 ANT TO ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT BUT
51 FALLS WITHIN THE CLASS OF PERSONS DESCRIBED IN PARAGRAPH (A) OF SUBDIVI-
52 SION ONE OF SECTION SEVENTEEN HUNDRED FIFTY-B OF SUCH ACT, DECISIONS TO
53 WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT FOR THE PATIENT SHALL BE
54 GOVERNED BY SECTION SEVENTEEN HUNDRED FIFTY-B OF THE SURROGATE'S COURT
55 PROCEDURE ACT AND NOT BY THIS ARTICLE.

1 (C) IF A HEALTH CARE DECISION FOR A PATIENT CANNOT BE MADE UNDER PARA-
2 GRAPHS (A) OR (B) OF THIS SUBDIVISION, BUT CONSENT FOR THE DECISION MAY
3 BE PROVIDED PURSUANT TO THE MENTAL HYGIENE LAW OR REGULATIONS OF THE
4 OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDATION AND DEVELOP-
5 MENTAL DISABILITIES, THEN THE DECISION SHALL BE GOVERNED BY SUCH STATUTE
6 OR REGULATIONS AND NOT BY THIS ARTICLE.

7 4. IF, AFTER REASONABLE EFFORTS, IT IS DETERMINED THAT A HEALTH CARE
8 DECISION FOR THE PATIENT CANNOT BE MADE PURSUANT TO SUBDIVISION TWO OR
9 THREE OF THIS SECTION, THEN THE HEALTH CARE DECISION SHALL BE MADE
10 PURSUANT TO THIS ARTICLE.

11 S 2994-C. DETERMINATION OF INCAPACITY. 1. PRESUMPTION OF CAPACITY. FOR
12 PURPOSES OF THIS ARTICLE, EVERY ADULT SHALL BE PRESUMED TO HAVE DECI-
13 SION-MAKING CAPACITY UNLESS DETERMINED OTHERWISE PURSUANT TO THIS
14 SECTION OR PURSUANT TO COURT ORDER, OR UNLESS A GUARDIAN IS AUTHORIZED
15 TO DECIDE ABOUT HEALTH CARE FOR THE ADULT PURSUANT TO ARTICLE EIGHTY-ONE
16 OF THE MENTAL HYGIENE LAW.

17 2. INITIAL DETERMINATION BY ATTENDING PHYSICIAN. AN ATTENDING PHYSI-
18 CIAN SHALL MAKE AN INITIAL DETERMINATION THAT AN ADULT PATIENT LACKS
19 DECISION-MAKING CAPACITY TO A REASONABLE DEGREE OF MEDICAL CERTAINTY.
20 SUCH DETERMINATION SHALL INCLUDE AN ASSESSMENT OF THE CAUSE AND EXTENT
21 OF THE PATIENT'S INCAPACITY AND THE LIKELIHOOD THAT THE PATIENT WILL
22 REGAIN DECISION-MAKING CAPACITY.

23 3. CONCURRING DETERMINATIONS. (A) AN INITIAL DETERMINATION THAT A
24 PATIENT LACKS DECISION-MAKING CAPACITY SHALL BE SUBJECT TO A CONCURRING
25 DETERMINATION, INDEPENDENTLY MADE, WHERE REQUIRED BY THIS SUBDIVISION. A
26 CONCURRING DETERMINATION SHALL INCLUDE AN ASSESSMENT OF THE CAUSE AND
27 EXTENT OF THE PATIENT'S INCAPACITY AND THE LIKELIHOOD THAT THE PATIENT
28 WILL REGAIN DECISION-MAKING CAPACITY, AND SHALL BE INCLUDED IN THE
29 PATIENT'S MEDICAL RECORD. HOSPITALS SHALL ADOPT WRITTEN POLICIES IDENTI-
30 FYING THE TRAINING AND CREDENTIALS OF HEALTH OR SOCIAL SERVICES PRACTI-
31 TIONERS QUALIFIED TO PROVIDE CONCURRING DETERMINATIONS OF INCAPACITY.

32 (B) (I) IN A RESIDENTIAL HEALTH CARE FACILITY, A HEALTH OR SOCIAL
33 SERVICES PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH
34 THE FACILITY MUST INDEPENDENTLY DETERMINE WHETHER AN ADULT PATIENT LACKS
35 DECISION-MAKING CAPACITY.

36 (II) IN A GENERAL HOSPITAL A HEALTH OR SOCIAL SERVICES PRACTITIONER
37 EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE FACILITY MUST
38 INDEPENDENTLY DETERMINE WHETHER AN ADULT PATIENT LACKS DECISION-MAKING
39 CAPACITY IF THE SURROGATE'S DECISION CONCERNS THE WITHDRAWAL OR WITH-
40 HOLDING OF LIFE-SUSTAINING TREATMENT.

41 (C) (I) IF THE ATTENDING PHYSICIAN MAKES AN INITIAL DETERMINATION THAT
42 A PATIENT LACKS DECISION-MAKING CAPACITY BECAUSE OF MENTAL ILLNESS,
43 EITHER SUCH PHYSICIAN MUST HAVE THE FOLLOWING QUALIFICATIONS, OR ANOTHER
44 PHYSICIAN WITH THE FOLLOWING QUALIFICATIONS MUST INDEPENDENTLY DETERMINE
45 WHETHER THE PATIENT LACKS DECISION-MAKING CAPACITY: A PHYSICIAN LICENSED
46 TO PRACTICE MEDICINE IN NEW YORK STATE, WHO IS A DIPLOMATE OR ELIGIBLE
47 TO BE CERTIFIED BY THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY OR WHO
48 IS CERTIFIED BY THE AMERICAN OSTEOPATHIC BOARD OF NEUROLOGY AND PSYCHIA-
49 TRY OR IS ELIGIBLE TO BE CERTIFIED BY THAT BOARD. A RECORD OF SUCH
50 CONSULTATION SHALL BE INCLUDED IN THE PATIENT'S MEDICAL RECORD.

51 (II) IF THE ATTENDING PHYSICIAN MAKES AN INITIAL DETERMINATION THAT A
52 PATIENT LACKS DECISION-MAKING CAPACITY BECAUSE OF MENTAL RETARDATION OR
53 A DEVELOPMENTAL DISABILITY, EITHER SUCH PHYSICIAN MUST HAVE THE FOLLOW-
54 ING QUALIFICATIONS, OR ANOTHER PROFESSIONAL WITH THE FOLLOWING QUALI-
55 FICATIONS MUST INDEPENDENTLY DETERMINE WHETHER THE PATIENT LACKS DECI-
56 SION-MAKING CAPACITY: A PHYSICIAN OR CLINICAL PSYCHOLOGIST WHO EITHER IS

1 EMPLOYED BY A SCHOOL NAMED IN SECTION 13.17 OF THE MENTAL HYGIENE LAW,
2 OR WHO HAS BEEN EMPLOYED FOR A MINIMUM OF TWO YEARS TO RENDER CARE AND
3 SERVICE IN A FACILITY OPERATED OR LICENSED BY THE OFFICE OF MENTAL
4 RETARDATION AND DEVELOPMENTAL DISABILITIES, OR WHO HAS BEEN APPROVED BY
5 THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES IN
6 ACCORDANCE WITH REGULATIONS PROMULGATED BY SUCH COMMISSIONER. SUCH REGU-
7 LATIONS SHALL REQUIRE THAT A PHYSICIAN OR CLINICAL PSYCHOLOGIST POSSESS
8 SPECIALIZED TRAINING OR THREE YEARS EXPERIENCE IN TREATING DEVELOPMENTAL
9 DISABILITIES. A RECORD OF SUCH CONSULTATION SHALL BE INCLUDED IN THE
10 PATIENT'S MEDICAL RECORD.

11 (D) IF AN ATTENDING PHYSICIAN HAS DETERMINED THAT THE PATIENT LACKS
12 DECISION-MAKING CAPACITY AND IF THE HEALTH OR SOCIAL SERVICES PRACTI-
13 TIONER CONSULTED FOR A CONCURRING DETERMINATION DISAGREES WITH THE
14 ATTENDING PHYSICIAN'S DETERMINATION, THE MATTER SHALL BE REFERRED TO THE
15 ETHICS REVIEW COMMITTEE IF IT CANNOT OTHERWISE BE RESOLVED.

16 4. INFORMING THE PATIENT AND SURROGATE. NOTICE OF A DETERMINATION THAT
17 A SURROGATE WILL MAKE HEALTH CARE DECISIONS BECAUSE THE ADULT PATIENT
18 HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY SHALL PROMPTLY BE
19 GIVEN:

20 (A) TO THE PATIENT, WHERE THERE IS ANY INDICATION OF THE PATIENT'S
21 ABILITY TO COMPREHEND THE INFORMATION;

22 (B) TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF
23 PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAIL-
24 ABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-
25 FOUR-D OF THIS ARTICLE;

26 (C) IF THE PATIENT WAS TRANSFERRED FROM A MENTAL HYGIENE FACILITY, TO
27 THE DIRECTOR OF THE MENTAL HYGIENE FACILITY AND TO THE MENTAL HYGIENE
28 LEGAL SERVICE UNDER ARTICLE FORTY-SEVEN OF THE MENTAL HYGIENE LAW.

29 5. LIMITED PURPOSE OF DETERMINATION. A DETERMINATION MADE PURSUANT TO
30 THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY SHALL
31 NOT BE CONSTRUED AS A FINDING THAT THE PATIENT LACKS CAPACITY FOR ANY
32 OTHER PURPOSE.

33 6. PRIORITY OF PATIENT'S DECISION. NOTWITHSTANDING A DETERMINATION
34 PURSUANT TO THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING
35 CAPACITY, IF THE PATIENT OBJECTS TO THE DETERMINATION OF INCAPACITY, OR
36 TO THE CHOICE OF A SURROGATE OR TO A HEALTH CARE DECISION MADE BY A
37 SURROGATE OR MADE PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G
38 OF THIS ARTICLE, THE PATIENT'S OBJECTION OR DECISION SHALL PREVAIL
39 UNLESS: (A) A COURT OF COMPETENT JURISDICTION HAS DETERMINED THAT THE
40 PATIENT LACKS DECISION-MAKING CAPACITY OR THE PATIENT IS OR HAS BEEN
41 ADJUDGED INCOMPETENT FOR ALL PURPOSES AND, IN THE CASE OF A PATIENT'S
42 OBJECTION TO TREATMENT, MAKES ANY OTHER FINDING REQUIRED BY LAW TO
43 AUTHORIZE THE TREATMENT, OR (B) ANOTHER LEGAL BASIS EXISTS FOR OVERRID-
44 ING THE PATIENT'S DECISION.

45 7. CONFIRMATION OF CONTINUED LACK OF DECISION-MAKING CAPACITY. AN
46 ATTENDING PHYSICIAN SHALL CONFIRM THE ADULT PATIENT'S CONTINUED LACK OF
47 DECISION-MAKING CAPACITY BEFORE COMPLYING WITH HEALTH CARE DECISIONS
48 MADE PURSUANT TO THIS ARTICLE, OTHER THAN THOSE DECISIONS MADE AT OR
49 ABOUT THE TIME OF THE INITIAL DETERMINATION. A CONCURRING DETERMINATION
50 OF THE PATIENT'S CONTINUED LACK OF DECISION-MAKING CAPACITY SHALL BE
51 REQUIRED IF THE SUBSEQUENT HEALTH CARE DECISION CONCERNS THE WITHHOLDING
52 OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. HEALTH CARE PROVIDERS SHALL
53 NOT BE REQUIRED TO INFORM THE PATIENT OR SURROGATE OF THE CONFIRMATION.

54 S 2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES. 1.
55 IDENTIFYING THE SURROGATE. ONE PERSON FROM THE FOLLOWING LIST FROM THE
56 CLASS HIGHEST IN PRIORITY WHEN PERSONS IN PRIOR CLASSES ARE NOT REASON-

1 ABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, SHALL BE THE SURROGATE
2 FOR AN ADULT PATIENT WHO LACKS DECISION-MAKING CAPACITY. HOWEVER, SUCH
3 PERSON MAY DESIGNATE ANY OTHER PERSON ON THE LIST TO BE SURROGATE,
4 PROVIDED NO ONE IN A CLASS HIGHER IN PRIORITY THAN THE PERSON DESIGNATED
5 OBJECTS:

6 (A) A GUARDIAN AUTHORIZED TO DECIDE ABOUT HEALTH CARE PURSUANT TO
7 ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW;

8 (B) THE SPOUSE, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE
9 DOMESTIC PARTNER;

10 (C) A SON OR DAUGHTER EIGHTEEN YEARS OF AGE OR OLDER;

11 (D) A PARENT;

12 (E) A BROTHER OR SISTER EIGHTEEN YEARS OF AGE OR OLDER;

13 (F) A CLOSE FRIEND.

14 2. RESTRICTIONS ON WHO MAY BE A SURROGATE. AN OPERATOR, ADMINISTRATOR,
15 OR EMPLOYEE OF A HOSPITAL OR A MENTAL HYGIENE FACILITY FROM WHICH THE
16 PATIENT WAS TRANSFERRED, OR A PHYSICIAN WHO HAS PRIVILEGES AT THE HOSPI-
17 TAL OR A HEALTH CARE PROVIDER UNDER CONTRACT WITH THE HOSPITAL MAY NOT
18 SERVE AS THE SURROGATE FOR ANY ADULT WHO IS A PATIENT OF SUCH HOSPITAL,
19 UNLESS SUCH INDIVIDUAL IS RELATED TO THE PATIENT BY BLOOD, MARRIAGE,
20 DOMESTIC PARTNERSHIP, OR ADOPTION, OR IS A CLOSE FRIEND OF THE PATIENT
21 WHOSE FRIENDSHIP WITH THE PATIENT PRECEDED THE PATIENT'S ADMISSION TO
22 THE FACILITY. IF A PHYSICIAN SERVES AS SURROGATE, THE PHYSICIAN SHALL
23 NOT ACT AS THE PATIENT'S ATTENDING PHYSICIAN AFTER HIS OR HER AUTHORITY
24 AS SURROGATE BEGINS.

25 3. AUTHORITY AND DUTIES OF SURROGATE. (A) SCOPE OF SURROGATE'S AUTHOR-
26 ITY.

27 (I) SUBJECT TO THE STANDARDS AND LIMITATIONS OF THIS ARTICLE, THE
28 SURROGATE SHALL HAVE THE AUTHORITY TO MAKE ANY AND ALL HEALTH CARE DECI-
29 SIONS ON THE ADULT PATIENT'S BEHALF THAT THE PATIENT COULD MAKE.

30 (II) NOTHING IN THIS ARTICLE SHALL OBLIGATE HEALTH CARE PROVIDERS TO
31 SEEK THE CONSENT OF A SURROGATE IF AN ADULT PATIENT HAS ALREADY MADE A
32 DECISION ABOUT THE PROPOSED HEALTH CARE, EXPRESSED ORALLY OR IN WRITING
33 OR, WITH RESPECT TO A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING
34 TREATMENT EXPRESSED EITHER ORALLY DURING HOSPITALIZATION IN THE PRESENCE
35 OF TWO WITNESSES EIGHTEEN YEARS OF AGE OR OLDER, AT LEAST ONE OF WHOM IS
36 A HEALTH OR SOCIAL SERVICES PRACTITIONER AFFILIATED WITH THE HOSPITAL,
37 OR IN WRITING. IF AN ATTENDING PHYSICIAN RELIES ON THE PATIENT'S PRIOR
38 DECISION, THE PHYSICIAN SHALL RECORD THE PRIOR DECISION IN THE PATIENT'S
39 MEDICAL RECORD. IF A SURROGATE HAS ALREADY BEEN DESIGNATED FOR THE
40 PATIENT, THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY
41 THE SURROGATE PRIOR TO IMPLEMENTING THE DECISION; PROVIDED THAT IN THE
42 CASE OF A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT,
43 THE ATTENDING PHYSICIAN SHALL MAKE DILIGENT EFFORTS TO NOTIFY THE SURRO-
44 GATE AND, IF UNABLE TO NOTIFY THE SURROGATE, SHALL DOCUMENT THE EFFORTS
45 THAT WERE MADE TO DO SO.

46 (B) COMMENCEMENT OF SURROGATE'S AUTHORITY. THE SURROGATE'S AUTHORITY
47 SHALL COMMENCE UPON A DETERMINATION, MADE PURSUANT TO SECTION
48 TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE, THAT THE ADULT
49 PATIENT LACKS DECISION-MAKING CAPACITY AND UPON IDENTIFICATION OF A
50 SURROGATE PURSUANT TO SUBDIVISION ONE OF THIS SECTION. IN THE EVENT AN
51 ATTENDING PHYSICIAN DETERMINES THAT THE PATIENT HAS REGAINED
52 DECISION-MAKING CAPACITY, THE AUTHORITY OF THE SURROGATE SHALL CEASE.

53 (C) RIGHT AND DUTY TO BE INFORMED. NOTWITHSTANDING ANY LAW TO THE
54 CONTRARY, THE SURROGATE SHALL HAVE THE RIGHT TO RECEIVE MEDICAL INFORMA-
55 TION AND MEDICAL RECORDS NECESSARY TO MAKE INFORMED DECISIONS ABOUT THE
56 PATIENT'S HEALTH CARE. HEALTH CARE PROVIDERS SHALL PROVIDE AND THE

1 SURROGATE SHALL SEEK INFORMATION NECESSARY TO MAKE AN INFORMED DECISION,
2 INCLUDING INFORMATION ABOUT THE PATIENT'S DIAGNOSIS, PROGNOSIS, THE
3 NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, AND THE BENEFITS AND
4 RISKS OF AND ALTERNATIVE TO PROPOSED HEALTH CARE.

5 4. DECISION-MAKING STANDARDS. (A) THE SURROGATE SHALL MAKE HEALTH CARE
6 DECISIONS:

7 (I) IN ACCORDANCE WITH THE PATIENT'S WISHES, INCLUDING THE PATIENT'S
8 RELIGIOUS AND MORAL BELIEFS; OR

9 (II) IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN AND CANNOT WITH
10 REASONABLE DILIGENCE BE ASCERTAINED, IN ACCORDANCE WITH THE PATIENT'S
11 BEST INTERESTS. AN ASSESSMENT OF THE PATIENT'S BEST INTERESTS SHALL
12 INCLUDE: CONSIDERATION OF THE DIGNITY AND UNIQUENESS OF EVERY PERSON;
13 THE POSSIBILITY AND EXTENT OF PRESERVING THE PATIENT'S LIFE; THE PRESER-
14 VATION, IMPROVEMENT OR RESTORATION OF THE PATIENT'S HEALTH OR FUNCTION-
15 ING; THE RELIEF OF THE PATIENT'S SUFFERING; AND ANY MEDICAL CONDITION
16 AND SUCH OTHER CONCERNS AND VALUES AS A REASONABLE PERSON IN THE
17 PATIENT'S CIRCUMSTANCES WOULD WISH TO CONSIDER.

18 (B) IN ALL CASES, THE SURROGATE'S ASSESSMENT OF THE PATIENT'S WISHES
19 AND BEST INTERESTS SHALL BE PATIENT-CENTERED; HEALTH CARE DECISIONS
20 SHALL BE MADE ON AN INDIVIDUALIZED BASIS FOR EACH PATIENT, AND SHALL BE
21 CONSISTENT WITH THE VALUES OF THE PATIENT, INCLUDING THE PATIENT'S RELI-
22 GIOUS AND MORAL BELIEFS, TO THE EXTENT REASONABLY POSSIBLE.

23 5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. IN
24 ADDITION TO THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION,
25 DECISIONS BY SURROGATES TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREAT-
26 MENT SHALL BE AUTHORIZED ONLY IF THE FOLLOWING CONDITIONS ARE SATISFIED,
27 AS APPLICABLE:

28 (A)(I) TREATMENT WOULD BE AN EXTRAORDINARY BURDEN TO THE PATIENT AND
29 AN ATTENDING PHYSICIAN DETERMINES, WITH THE INDEPENDENT CONCURRENCE OF
30 ANOTHER PHYSICIAN, THAT, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND
31 IN ACCORD WITH ACCEPTED MEDICAL STANDARDS, (A) THE PATIENT HAS AN
32 ILLNESS OR INJURY WHICH CAN BE EXPECTED TO CAUSE DEATH WITHIN SIX
33 MONTHS, WHETHER OR NOT TREATMENT IS PROVIDED; OR (B) THE PATIENT IS
34 PERMANENTLY UNCONSCIOUS; OR

35 (II) THE PROVISION OF TREATMENT WOULD INVOLVE SUCH PAIN, SUFFERING OR
36 OTHER BURDEN THAT IT WOULD REASONABLY BE DEEMED INHUMANE OR EXTRAOR-
37 DINARILY BURDENSOME UNDER THE CIRCUMSTANCES AND THE PATIENT HAS AN IRRE-
38 VERSIBLE OR INCURABLE CONDITION, AS DETERMINED BY AN ATTENDING PHYSICIAN
39 WITH THE INDEPENDENT CONCURRENCE OF ANOTHER PHYSICIAN TO A REASONABLE
40 DEGREE OF MEDICAL CERTAINTY AND IN ACCORD WITH ACCEPTED MEDICAL STAND-
41 ARDS.

42 (B) IN A RESIDENTIAL HEALTH CARE FACILITY, A SURROGATE SHALL HAVE THE
43 AUTHORITY TO REFUSE LIFE-SUSTAINING TREATMENT UNDER SUBPARAGRAPH (II) OF
44 PARAGRAPH (A) OF THIS SUBDIVISION ONLY IF THE ETHICS REVIEW COMMITTEE,
45 INCLUDING AT LEAST ONE PHYSICIAN WHO IS NOT DIRECTLY RESPONSIBLE FOR THE
46 PATIENT'S CARE, OR A COURT OF COMPETENT JURISDICTION, REVIEWS THE DECI-
47 SION AND DETERMINES THAT IT MEETS THE STANDARDS SET FORTH IN THIS ARTI-
48 CLE. THIS REQUIREMENT SHALL NOT APPLY TO A DECISION TO WITHHOLD CARDIOP-
49 ULMONARY RESUSCITATION.

50 (C) IN A GENERAL HOSPITAL, IF THE ATTENDING PHYSICIAN OBJECTS TO A
51 SURROGATE'S DECISION, UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS
52 SUBDIVISION, TO WITHDRAW OR WITHHOLD NUTRITION AND HYDRATION PROVIDED BY
53 MEANS OF MEDICAL TREATMENT, THE DECISION SHALL NOT BE IMPLEMENTED UNTIL
54 THE ETHICS REVIEW COMMITTEE, INCLUDING AT LEAST ONE PHYSICIAN WHO IS NOT
55 DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE, OR A COURT OF COMPETENT
56 JURISDICTION, REVIEWS THE DECISION AND DETERMINES THAT IT MEETS THE

1 STANDARDS SET FORTH IN THIS SUBDIVISION AND SUBDIVISION FOUR OF THIS
2 SECTION.

3 (D) PROVIDING NUTRITION AND HYDRATION ORALLY, WITHOUT RELIANCE ON
4 MEDICAL TREATMENT, IS NOT HEALTH CARE UNDER THIS ARTICLE AND IS NOT
5 SUBJECT TO THIS ARTICLE.

6 (E) EXPRESSION OF DECISIONS. THE SURROGATE SHALL EXPRESS A DECISION TO
7 WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT EITHER ORALLY TO AN
8 ATTENDING PHYSICIAN OR IN WRITING.

9 S 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR
10 PATIENTS. 1. AUTHORITY OF PARENT OR GUARDIAN. THE PARENT OR GUARDIAN OF
11 A MINOR PATIENT SHALL HAVE THE AUTHORITY TO MAKE DECISIONS ABOUT
12 LIFE-SUSTAINING TREATMENT, INCLUDING DECISIONS TO WITHHOLD OR WITHDRAW
13 SUCH TREATMENT, SUBJECT TO THE PROVISIONS OF THIS SECTION AND SUBDIVI-
14 SION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

15 2. DECISION-MAKING STANDARDS AND PROCEDURES FOR MINOR PATIENT. (A) THE
16 PARENT OR GUARDIAN OF A MINOR PATIENT SHALL MAKE DECISIONS IN ACCORDANCE
17 WITH THE MINOR'S BEST INTERESTS, CONSISTENT WITH THE STANDARDS SET FORTH
18 IN SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS
19 ARTICLE, TAKING INTO ACCOUNT THE MINOR'S WISHES AS APPROPRIATE UNDER THE
20 CIRCUMSTANCES.

21 (B) AN ATTENDING PHYSICIAN, IN CONSULTATION WITH A MINOR'S PARENT OR
22 GUARDIAN, SHALL DETERMINE WHETHER A MINOR PATIENT HAS DECISION-MAKING
23 CAPACITY FOR A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREAT-
24 MENT. IF THE MINOR HAS SUCH CAPACITY, A PARENT'S OR GUARDIAN'S DECISION
25 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE MINOR MAY NOT
26 BE IMPLEMENTED WITHOUT THE MINOR'S CONSENT.

27 (C) WHERE A PARENT OR GUARDIAN OF A MINOR PATIENT HAS MADE A DECISION
28 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT AND AN ATTENDING
29 PHYSICIAN HAS REASON TO BELIEVE THAT THE MINOR PATIENT HAS A PARENT OR
30 GUARDIAN WHO HAS NOT BEEN INFORMED OF THE DECISION, INCLUDING A NON-CUS-
31 TODIAL PARENT OR GUARDIAN, AN ATTENDING PHYSICIAN OR SOMEONE ACTING ON
32 HIS OR HER BEHALF, SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE
33 UNINFORMED PARENT OR GUARDIAN HAS MAINTAINED SUBSTANTIAL AND CONTINUOUS
34 CONTACT WITH THE MINOR AND, IF SO, SHALL MAKE DILIGENT EFFORTS TO NOTIFY
35 THAT PARENT OR GUARDIAN PRIOR TO IMPLEMENTING THE DECISION.

36 3. DECISION-MAKING STANDARDS AND PROCEDURES FOR EMANCIPATED MINOR
37 PATIENT. (A) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT IS AN
38 EMANCIPATED MINOR PATIENT WITH DECISION-MAKING CAPACITY, THE PATIENT
39 SHALL HAVE THE AUTHORITY TO DECIDE ABOUT LIFE-SUSTAINING TREATMENT. SUCH
40 AUTHORITY SHALL INCLUDE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAIN-
41 ING TREATMENT IF AN ATTENDING PHYSICIAN AND THE ETHICS REVIEW COMMITTEE
42 DETERMINE THAT THE DECISION ACCORDS WITH THE STANDARDS FOR SURROGATE
43 DECISIONS FOR ADULTS, AND THE ETHICS REVIEW COMMITTEE APPROVES THE DECI-
44 SION.

45 (B) IF THE HOSPITAL CAN WITH REASONABLE EFFORTS ASCERTAIN THE IDENTITY
46 OF THE PARENTS OR GUARDIAN OF AN EMANCIPATED MINOR PATIENT, THE HOSPITAL
47 SHALL NOTIFY SUCH PERSONS PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUS-
48 TAINING TREATMENT PURSUANT TO THIS SUBDIVISION.

49 S 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN. 1. AN ATTENDING PHYSI-
50 CIAN INFORMED OF A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING
51 TREATMENT MADE PURSUANT TO THE STANDARDS OF THIS ARTICLE SHALL RECORD
52 THE DECISION IN THE PATIENT'S MEDICAL RECORD, REVIEW THE MEDICAL BASIS
53 FOR THE DECISION, AND SHALL EITHER: (A) IMPLEMENT THE DECISION, OR (B)
54 PROMPTLY MAKE HIS OR HER OBJECTION TO THE DECISION AND THE REASONS FOR
55 THE OBJECTION KNOWN TO THE DECISION-MAKER, AND EITHER MAKE ALL REASON-
56 ABLE EFFORTS TO ARRANGE FOR THE TRANSFER OF THE PATIENT TO ANOTHER

1 PHYSICIAN, IF NECESSARY, OR PROMPTLY REFER THE MATTER TO THE ETHICS
2 REVIEW COMMITTEE.

3 2. IF AN ATTENDING PHYSICIAN HAS ACTUAL NOTICE OF THE FOLLOWING
4 OBJECTIONS OR DISAGREEMENTS, HE OR SHE SHALL PROMPTLY REFER THE MATTER
5 TO THE ETHICS REVIEW COMMITTEE IF THE OBJECTION OR DISAGREEMENT CANNOT
6 OTHERWISE BE RESOLVED:

7 (A) A HEALTH OR SOCIAL SERVICES PRACTITIONER CONSULTED FOR A CONCUR-
8 RING DETERMINATION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY
9 DISAGREES WITH THE ATTENDING PHYSICIAN'S DETERMINATION; OR

10 (B) ANY PERSON ON THE SURROGATE LIST OBJECTS TO THE DESIGNATION OF THE
11 SURROGATE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED
12 NINETY-FOUR-D OF THIS ARTICLE; OR

13 (C) ANY PERSON ON THE SURROGATE LIST OBJECTS TO A SURROGATE'S DECI-
14 SION; OR

15 (D) A PARENT OR GUARDIAN OF A MINOR PATIENT OBJECTS TO THE DECISION BY
16 ANOTHER PARENT OR GUARDIAN OF THE MINOR; OR

17 (E) A MINOR PATIENT REFUSES LIFE-SUSTAINING TREATMENT, AND THE MINOR'S
18 PARENT OR GUARDIAN WISHES THE TREATMENT TO BE PROVIDED, OR THE MINOR
19 PATIENT OBJECTS TO AN ATTENDING PHYSICIAN'S DETERMINATION ABOUT DECI-
20 SION-MAKING CAPACITY OR RECOMMENDATION ABOUT LIFE-SUSTAINING TREATMENT.

21 3. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION ONE
22 OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-Q OF THIS ARTICLE, IF A
23 SURROGATE DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL
24 OF WHICH IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE
25 DEATH OF THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT
26 DOES NOT WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH
27 THE SURROGATE'S DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A
28 WILLING HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW
29 IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS
30 ARTICLE.

31 S 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES.
32 1. IDENTIFYING ADULT PATIENTS WITHOUT SURROGATES. WITHIN A REASONABLE
33 TIME AFTER ADMISSION AS AN INPATIENT TO THE HOSPITAL OF EACH ADULT
34 PATIENT, THE HOSPITAL SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE
35 PATIENT HAS APPOINTED A HEALTH CARE AGENT OR HAS A GUARDIAN, OR IF AT
36 LEAST ONE INDIVIDUAL IS AVAILABLE TO SERVE AS THE PATIENT'S SURROGATE IN
37 THE EVENT THE PATIENT LACKS OR LOSES DECISION-MAKING CAPACITY. WITH
38 RESPECT TO A PATIENT WHO LACKS CAPACITY, IF NO SUCH HEALTH CARE AGENT,
39 GUARDIAN OR POTENTIAL SURROGATE IS IDENTIFIED, THE HOSPITAL SHALL IDEN-
40 TIFY, TO THE EXTENT REASONABLY POSSIBLE, THE PATIENT'S WISHES AND PREF-
41 ERENCES, INCLUDING THE PATIENT'S RELIGIOUS AND MORAL BELIEFS, ABOUT
42 PENDING HEALTH CARE DECISIONS, AND SHALL RECORD ITS FINDINGS IN THE
43 PATIENT'S MEDICAL RECORD.

44 2. DECISION-MAKING STANDARDS AND PROCEDURES. (A) THE PROCEDURES SPEC-
45 IFIED IN THIS AND THE FOLLOWING SUBDIVISIONS OF THIS SECTION APPLY TO
46 HEALTH CARE DECISIONS FOR ADULT PATIENTS WHO WOULD QUALIFY FOR SURROGATE
47 DECISION-MAKING UNDER THIS ARTICLE BUT FOR WHOM NO SURROGATE IS REASON-
48 ABLY AVAILABLE, WILLING OR COMPETENT TO ACT.

49 (B) ANY HEALTH CARE DECISION MADE PURSUANT TO THIS SECTION SHALL BE
50 MADE IN ACCORDANCE WITH THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF
51 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE AND SHALL NOT
52 BE BASED ON THE FINANCIAL INTERESTS OF THE HOSPITAL OR ANY OTHER HEALTH
53 CARE PROVIDER. THE SPECIFIC PROCEDURES TO BE FOLLOWED DEPEND ON WHETHER
54 THE DECISION INVOLVES ROUTINE MEDICAL TREATMENT, MAJOR MEDICAL TREAT-
55 MENT, OR THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT, AND
56 THE LOCATION WHERE THE TREATMENT IS PROVIDED.

1 3. ROUTINE MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION,
2 "ROUTINE MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE, OR PROCEDURE
3 TO DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION, SUCH
4 AS THE ADMINISTRATION OF MEDICATION, THE EXTRACTION OF BODILY FLUIDS FOR
5 ANALYSIS, OR DENTAL CARE PERFORMED WITH A LOCAL ANESTHETIC, FOR WHICH
6 HEALTH CARE PROVIDERS ORDINARILY DO NOT SEEK SPECIFIC CONSENT FROM THE
7 PATIENT OR AUTHORIZED REPRESENTATIVE. IT SHALL NOT INCLUDE THE LONG-TERM
8 PROVISION OF TREATMENT SUCH AS VENTILATOR SUPPORT OR A NASOGASTRIC TUBE
9 BUT SHALL INCLUDE SUCH TREATMENT WHEN PROVIDED AS PART OF POST-OPERATIVE
10 CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND RECOVERY IS REASONABLY
11 EXPECTED WITHIN ONE MONTH OR LESS.

12 (B) AN ATTENDING PHYSICIAN SHALL BE AUTHORIZED TO DECIDE ABOUT ROUTINE
13 MEDICAL TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK
14 DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINE-
15 TY-FOUR-C OF THIS ARTICLE. NOTHING IN THIS SUBDIVISION SHALL REQUIRE
16 HEALTH CARE PROVIDERS TO OBTAIN SPECIFIC CONSENT FOR TREATMENT WHERE
17 SPECIFIC CONSENT IS NOT OTHERWISE REQUIRED BY LAW.

18 4. MAJOR MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION,
19 "MAJOR MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE OR PROCEDURE TO
20 DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION: (I)
21 WHERE GENERAL ANESTHETIC IS USED; OR (II) WHICH INVOLVES ANY SIGNIFICANT
22 RISK; OR (III) WHICH INVOLVES ANY SIGNIFICANT INVASION OF BODILY INTEG-
23 RITY REQUIRING AN INCISION, PRODUCING SUBSTANTIAL PAIN, DISCOMFORT,
24 DEBILITATION OR HAVING A SIGNIFICANT RECOVERY PERIOD; OR (IV) WHICH
25 INVOLVES THE USE OF PHYSICAL RESTRAINTS, AS SPECIFIED IN REGULATIONS
26 PROMULGATED BY THE COMMISSIONER, EXCEPT IN AN EMERGENCY; OR (V) WHICH
27 INVOLVES THE USE OF PSYCHOACTIVE MEDICATIONS, EXCEPT WHEN PROVIDED AS
28 PART OF POST-OPERATIVE CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND
29 TREATMENT IS REASONABLY EXPECTED TO BE ADMINISTERED OVER A PERIOD OF
30 FORTY-EIGHT HOURS OR LESS, OR WHEN PROVIDED IN AN EMERGENCY.

31 (B) A DECISION TO PROVIDE MAJOR MEDICAL TREATMENT, MADE IN ACCORDANCE
32 WITH THE FOLLOWING REQUIREMENTS, SHALL BE AUTHORIZED FOR AN ADULT
33 PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSU-
34 ANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE.

35 (I) AN ATTENDING PHYSICIAN SHALL MAKE A RECOMMENDATION IN CONSULTATION
36 WITH HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE.

37 (II) IN A GENERAL HOSPITAL, AT LEAST ONE OTHER PHYSICIAN DESIGNATED BY
38 THE HOSPITAL MUST INDEPENDENTLY DETERMINE THAT HE OR SHE CONCURS THAT
39 THE RECOMMENDATION IS APPROPRIATE.

40 (III) IN A RESIDENTIAL HEALTH CARE FACILITY THE MEDICAL DIRECTOR OF
41 THE FACILITY, OR A PHYSICIAN DESIGNATED BY THE MEDICAL DIRECTOR, MUST
42 INDEPENDENTLY DETERMINE THAT HE OR SHE CONCURS THAT THE RECOMMENDATION
43 IS APPROPRIATE; PROVIDED THAT IF THE MEDICAL DIRECTOR IS THE PATIENT'S
44 ATTENDING PHYSICIAN, A DIFFERENT PHYSICIAN DESIGNATED BY THE RESIDENTIAL
45 HEALTH CARE FACILITY MUST MAKE THIS INDEPENDENT DETERMINATION. ANY
46 HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY
47 AFFILIATED WITH THE FACILITY MAY PROVIDE A SECOND OPINION FOR DECISIONS
48 ABOUT PHYSICAL RESTRAINTS MADE PURSUANT TO THIS SUBDIVISION.

49 5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. (A) A
50 COURT OF COMPETENT JURISDICTION MAY MAKE A DECISION TO WITHHOLD OR WITH-
51 DRAW LIFE-SUSTAINING TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETER-
52 MINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE
53 HUNDRED NINETY-FOUR-C OF THIS ARTICLE IF THE COURT FINDS THAT THE DECI-
54 SION ACCORDS WITH STANDARDS FOR DECISIONS FOR ADULTS SET FORTH IN SUBDI-
55 VISIONS FOUR AND FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF
56 THIS ARTICLE.

1 (B) IF THE ATTENDING PHYSICIAN, WITH INDEPENDENT CONCURRENCE OF A
2 SECOND PHYSICIAN DESIGNATED BY THE HOSPITAL, DETERMINES TO A REASONABLE
3 DEGREE OF MEDICAL CERTAINTY THAT:

4 (I) LIFE-SUSTAINING TREATMENT OFFERS THE PATIENT NO MEDICAL BENEFIT
5 BECAUSE THE PATIENT WILL DIE IMMINENTLY, EVEN IF THE TREATMENT IS
6 PROVIDED; AND

7 (II) THE PROVISION OF LIFE-SUSTAINING TREATMENT WOULD VIOLATE ACCEPTED
8 MEDICAL STANDARDS, THEN SUCH TREATMENT MAY BE WITHDRAWN OR WITHHELD FROM
9 AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACI-
10 TY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTI-
11 CLE, WITHOUT JUDICIAL APPROVAL. THIS PARAGRAPH SHALL NOT APPLY TO ANY
12 TREATMENT NECESSARY TO ALLEVIATE PAIN OR DISCOMFORT.

13 6. PHYSICIAN OBJECTION. IF A PHYSICIAN CONSULTED FOR A CONCURRING
14 OPINION OBJECTS TO AN ATTENDING PHYSICIAN'S RECOMMENDATION OR DETERMI-
15 NATION MADE PURSUANT TO THIS SECTION, OR A MEMBER OF THE HOSPITAL STAFF
16 DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OBJECTS TO AN ATTENDING
17 PHYSICIAN'S RECOMMENDATION ABOUT MAJOR MEDICAL TREATMENT OR TREATMENT
18 WITHOUT MEDICAL BENEFIT, THE MATTER SHALL BE REFERRED TO THE ETHICS
19 REVIEW COMMITTEE IF IT CANNOT BE OTHERWISE RESOLVED.

20 S 2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE. AN ORDER
21 NOT TO RESUSCITATE SHALL BE WRITTEN IN THE PATIENT'S MEDICAL RECORD.
22 CONSENT TO AN ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE CONSENT TO
23 WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY RESUSCITATION.

24 S 2994-J. REVOCATION OF CONSENT. 1. A PATIENT, SURROGATE, OR PARENT OR
25 GUARDIAN OF A MINOR PATIENT MAY AT ANY TIME REVOKE HIS OR HER CONSENT TO
26 WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT BY INFORMING AN ATTENDING
27 PHYSICIAN OR A MEMBER OF THE MEDICAL OR NURSING STAFF OF THE REVOCATION.

28 2. AN ATTENDING PHYSICIAN INFORMED OF A REVOCATION OF CONSENT MADE
29 PURSUANT TO THIS SECTION SHALL IMMEDIATELY:

30 (A) RECORD THE REVOCATION IN THE PATIENT'S MEDICAL RECORD;

31 (B) CANCEL ANY ORDERS IMPLEMENTING THE DECISION TO WITHHOLD OR WITH-
32 DRAW TREATMENT; AND

33 (C) NOTIFY THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S
34 CARE OF THE REVOCATION AND ANY CANCELLATIONS.

35 3. ANY MEMBER OF THE MEDICAL OR NURSING STAFF INFORMED OF A REVOCATION
36 MADE PURSUANT TO THIS SECTION SHALL IMMEDIATELY NOTIFY AN ATTENDING
37 PHYSICIAN OF THE REVOCATION.

38 S 2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS. 1. HOSPITALS SHALL
39 ADOPT WRITTEN POLICIES REQUIRING IMPLEMENTATION AND REGULAR REVIEW OF
40 DECISIONS TO WITHHOLD OR WITHDREW LIFE-SUSTAINING TREATMENT IN ACCORD-
41 ANCE WITH ACCEPTED MEDICAL STANDARDS. HOSPITALS SHALL ALSO DEVELOP POLI-
42 CIES IN ACCORD WITH ACCEPTED MEDICAL STANDARDS REGARDING DOCUMENTATION
43 OF CLINICAL DETERMINATIONS AND DECISIONS BY SURROGATES AND HEALTH CARE
44 PROVIDERS PURSUANT TO THIS ARTICLE.

45 2. IF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT HAS
46 BEEN MADE PURSUANT TO THIS ARTICLE, AND AN ATTENDING PHYSICIAN DETER-
47 MINES AT ANY TIME THAT THE DECISION IS NO LONGER APPROPRIATE OR AUTHOR-
48 IZED BECAUSE THE PATIENT HAS REGAINED DECISION-MAKING CAPACITY OR
49 BECAUSE THE PATIENT'S CONDITION HAS OTHERWISE IMPROVED, THE PHYSICIAN
50 SHALL IMMEDIATELY:

51 (A) INCLUDE SUCH DETERMINATION IN THE PATIENT'S MEDICAL RECORD;

52 (B) CANCEL ANY ORDERS OR PLANS OF CARE IMPLEMENTING THE DECISION TO
53 WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT;

54 (C) NOTIFY THE PERSON WHO MADE THE DECISION TO WITHHOLD OR WITHDRAW
55 TREATMENT, OR, IF THAT PERSON IS NOT REASONABLY AVAILABLE, TO AT LEAST
56 ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF PRIORITY LISTED

1 WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAILABLE PURSUANT TO
2 SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS
3 ARTICLE; AND

4 (D) NOTIFY THE HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S
5 CARE OF ANY CANCELLED ORDERS OR PLANS OF CARE.

6 S 2994-L. INTERINSTITUTIONAL TRANSFERS. IF A PATIENT WITH AN ORDER TO
7 WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT IS TRANSFERRED FROM A
8 MENTAL HYGIENE FACILITY TO A HOSPITAL OR FROM A HOSPITAL TO A DIFFERENT
9 HOSPITAL, ANY SUCH ORDER OR PLAN SHALL REMAIN EFFECTIVE UNTIL AN ATTEND-
10 ING PHYSICIAN FIRST EXAMINES THE TRANSFERRED PATIENT, WHEREUPON AN
11 ATTENDING PHYSICIAN MUST EITHER:

12 1. ISSUE APPROPRIATE ORDERS TO CONTINUE THE PRIOR ORDER OR PLAN. SUCH
13 ORDERS MAY BE ISSUED WITHOUT OBTAINING ANOTHER CONSENT TO WITHHOLD OR
14 WITHDRAW LIFE-SUSTAINING TREATMENT PURSUANT TO THIS ARTICLE; OR

15 2. CANCEL SUCH ORDER, IF THE ATTENDING PHYSICIAN DETERMINES THAT THE
16 ORDER IS NO LONGER APPROPRIATE OR AUTHORIZED. BEFORE CANCELING THE ORDER
17 THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE
18 PERSON WHO MADE THE DECISION TO WITHHOLD OR WITHDRAW TREATMENT AND THE
19 HOSPITAL STAFF DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OF ANY SUCH
20 CANCELLATION. IF SUCH NOTICE CANNOT REASONABLY BE MADE PRIOR TO CANCEL-
21 ING THE ORDER OR PLAN, THE ATTENDING PHYSICIAN SHALL MAKE SUCH NOTICE AS
22 SOON AS REASONABLY PRACTICABLE AFTER CANCELLATION.

23 S 2994-M. ETHICS REVIEW COMMITTEES. 1. ESTABLISHMENT OF AN ETHICS
24 REVIEW COMMITTEE, WRITTEN POLICY. EACH HOSPITAL SHALL ESTABLISH AT LEAST
25 ONE ETHICS REVIEW COMMITTEE OR PARTICIPATE IN AN ETHICS REVIEW COMMITTEE
26 THAT SERVES MORE THAN ONE HOSPITAL, AND SHALL ADOPT A WRITTEN POLICY
27 GOVERNING COMMITTEE FUNCTIONS, COMPOSITION, AND PROCEDURE, IN ACCORDANCE
28 WITH THE REQUIREMENTS OF THIS ARTICLE. A HOSPITAL MAY DESIGNATE AN
29 EXISTING COMMITTEE, OR SUBCOMMITTEE THEREOF, TO CARRY OUT THE FUNCTIONS
30 OF THE ETHICS REVIEW COMMITTEE PROVIDED THE REQUIREMENTS OF THIS SECTION
31 ARE SATISFIED.

32 2. FUNCTIONS OF THE ETHICS REVIEW COMMITTEE. (A) THE ETHICS REVIEW
33 COMMITTEE SHALL CONSIDER AND RESPOND TO ANY HEALTH CARE MATTER PRESENTED
34 TO IT BY A PERSON CONNECTED WITH THE CASE.

35 (B) THE ETHICS REVIEW COMMITTEE RESPONSE TO A HEALTH CARE MATTER MAY
36 INCLUDE:

37 (I) PROVIDING ADVICE ON THE ETHICAL ASPECTS OF PROPOSED HEALTH CARE;

38 (II) MAKING A RECOMMENDATION ABOUT PROPOSED HEALTH CARE; OR

39 (III) PROVIDING ASSISTANCE IN RESOLVING DISPUTES ABOUT PROPOSED HEALTH
40 CARE.

41 (C) RECOMMENDATIONS AND ADVICE BY THE ETHICS REVIEW COMMITTEE SHALL BE
42 ADVISORY AND NONBINDING, EXCEPT AS SPECIFIED IN SUBDIVISION FIVE OF
43 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE AND SUBDIVI-
44 SION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-E OF THIS ARTICLE.

45 3. COMMITTEE MEMBERSHIP. THE MEMBERSHIP OF ETHICS REVIEW COMMITTEES
46 MUST BE INTERDISCIPLINARY AND MUST INCLUDE AT LEAST FIVE MEMBERS WHO
47 HAVE DEMONSTRATED AN INTEREST IN OR COMMITMENT TO PATIENT'S RIGHTS OR TO
48 THE MEDICAL, PUBLIC HEALTH, OR SOCIAL NEEDS OF THOSE WHO ARE ILL. AT
49 LEAST THREE ETHICS REVIEW COMMITTEE MEMBERS MUST BE HEALTH OR SOCIAL
50 SERVICES PRACTITIONERS, AT LEAST ONE OF WHOM MUST BE A REGISTERED NURSE
51 AND ONE OF WHOM MUST BE A PHYSICIAN. AT LEAST ONE MEMBER MUST BE A
52 PERSON WITHOUT ANY GOVERNANCE, EMPLOYMENT OR CONTRACTUAL RELATIONSHIP
53 WITH THE HOSPITAL. IN A RESIDENTIAL HEALTH CARE FACILITY THE FACILITY
54 MUST OFFER THE RESIDENTS' COUNCIL OF THE FACILITY (OR OF ANOTHER FACILI-
55 TY THAT PARTICIPATES IN THE COMMITTEE) THE OPPORTUNITY TO APPOINT UP TO
56 TWO PERSONS TO THE ETHICS REVIEW COMMITTEE, NONE OF WHOM MAY BE A RESI-

1 DENT OF OR A FAMILY MEMBER OF A RESIDENT OF SUCH FACILITY, AND BOTH OF
2 WHOM SHALL BE PERSONS WHO HAVE EXPERTISE IN OR A DEMONSTRATED COMMITMENT
3 TO PATIENT RIGHTS OR TO THE CARE AND TREATMENT OF THE ELDERLY OR NURSING
4 HOME RESIDENTS THROUGH PROFESSIONAL OR COMMUNITY ACTIVITIES, OTHER THAN
5 ACTIVITIES PERFORMED AS A HEALTH CARE PROVIDER.

6 4. PROCEDURES FOR ETHICS REVIEW COMMITTEE. (A) THESE PROCEDURES ARE
7 REQUIRED ONLY WHEN: (I) THE ETHICS REVIEW COMMITTEE IS CONVENED TO
8 REVIEW A DECISION BY A SURROGATE TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
9 TREATMENT FOR: (A) A PATIENT IN A RESIDENTIAL HEALTH CARE FACILITY
10 PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE
11 HUNDRED NINETY-FOUR-D OF THIS ARTICLE; (B) A PATIENT IN A GENERAL HOSPI-
12 TAL PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE
13 HUNDRED NINETY-FOUR-D OF THIS ARTICLE; OR (C) AN EMANCIPATED MINOR
14 PATIENT PURSUANT TO SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED
15 NINETY-FOUR-E OF THIS ARTICLE; OR (II) WHEN A PERSON CONNECTED WITH THE
16 CASE REQUESTS THE ETHICS REVIEW COMMITTEE TO PROVIDE ASSISTANCE IN
17 RESOLVING A DISPUTE ABOUT PROPOSED CARE. NOTHING IN THIS SECTION SHALL
18 BAR HEALTH CARE PROVIDERS FROM FIRST STRIVING TO RESOLVE DISPUTES
19 THROUGH LESS FORMAL MEANS, INCLUDING THE INFORMAL SOLICITATION OF
20 ETHICAL ADVICE FROM ANY SOURCE.

21 (B)(I) A PERSON CONNECTED WITH THE CASE MAY NOT PARTICIPATE AS AN
22 ETHICS REVIEW COMMITTEE MEMBER IN THE CONSIDERATION OF THAT CASE.

23 (II) THE ETHICS REVIEW COMMITTEE SHALL RESPOND PROMPTLY, AS REQUIRED
24 BY THE CIRCUMSTANCES, TO ANY REQUEST FOR ASSISTANCE IN RESOLVING A
25 DISPUTE OR CONSIDERATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUS-
26 TAINING TREATMENT PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION FIVE
27 OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE MADE BY A
28 PERSON CONNECTED WITH THE CASE. THE COMMITTEE SHALL PERMIT PERSONS
29 CONNECTED WITH THE CASE TO PRESENT THEIR VIEWS TO THE COMMITTEE, AND TO
30 HAVE THE OPTION OF BEING ACCOMPANIED BY AN ADVISOR WHEN PARTICIPATING IN
31 A COMMITTEE MEETING.

32 (III) THE ETHICS REVIEW COMMITTEE SHALL PROMPTLY PROVIDE THE PATIENT,
33 WHERE THERE IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE
34 INFORMATION, THE SURROGATE, OTHER PERSONS ON THE SURROGATE LIST DIRECTLY
35 INVOLVED IN THE DECISION OR DISPUTE REGARDING THE PATIENT'S CARE, ANY
36 PARENT OR GUARDIAN OF A MINOR PATIENT DIRECTLY INVOLVED IN THE DECISION
37 OR DISPUTE REGARDING THE MINOR PATIENT'S CARE, AN ATTENDING PHYSICIAN,
38 THE HOSPITAL, AND OTHER PERSONS THE COMMITTEE DEEMS APPROPRIATE, WITH
39 THE FOLLOWING:

40 (A) NOTICE OF ANY PENDING CASE CONSIDERATION CONCERNING THE PATIENT,
41 INCLUDING, FOR PATIENTS, PERSONS ON THE SURROGATE LIST, PARENTS AND
42 GUARDIANS, INFORMATION ABOUT THE ETHICS REVIEW COMMITTEE'S PROCEDURES,
43 COMPOSITION AND FUNCTION; AND

44 (B) THE COMMITTEE'S RESPONSE TO THE CASE, INCLUDING A WRITTEN STATE-
45 MENT OF THE REASONS FOR APPROVING OR DISAPPROVING THE WITHHOLDING OR
46 WITHDRAWAL OF LIFE-SUSTAINING TREATMENT FOR DECISIONS CONSIDERED PURSU-
47 ANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION
48 TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE. THE COMMITTEE'S
49 RESPONSE TO THE CASE SHALL BE INCLUDED IN THE PATIENT'S MEDICAL RECORD.

50 (IV) FOLLOWING ETHICS REVIEW COMMITTEE CONSIDERATION OF A CASE
51 CONCERNING THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT,
52 TREATMENT SHALL NOT BE WITHDRAWN OR WITHHELD UNTIL THE PERSONS IDENTI-
53 FIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH HAVE BEEN INFORMED OF THE
54 COMMITTEE'S RESPONSE TO THE CASE.

55 5. ACCESS TO MEDICAL RECORDS AND INFORMATION; PATIENT CONFIDENTIALITY.
56 ETHICS REVIEW COMMITTEE MEMBERS AND CONSULTANTS SHALL HAVE ACCESS TO

1 MEDICAL INFORMATION AND MEDICAL RECORDS NECESSARY TO PERFORM THEIR FUNC-
2 TION UNDER THIS ARTICLE. ANY SUCH INFORMATION OR RECORDS DISCLOSED TO
3 COMMITTEE MEMBERS, CONSULTANTS, OR OTHERS SHALL BE KEPT CONFIDENTIAL
4 EXCEPT TO THE EXTENT NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTI-
5 CLE OR AS OTHERWISE PROVIDED BY LAW.

6 6. ETHICS REVIEW COMMITTEE CONFIDENTIALITY. NOTWITHSTANDING ANY OTHER
7 PROVISIONS OF LAW, THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW
8 COMMITTEE SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE RELEASED BY
9 COMMITTEE MEMBERS, COMMITTEE CONSULTANTS, OR OTHER PERSONS PRIVY TO SUCH
10 PROCEEDINGS AND RECORDS; THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW
11 COMMITTEE SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION IN ANY
12 MANNER, INCLUDING UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ARTI-
13 CLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES; AND, NO PERSON SHALL
14 TESTIFY AS TO THE PROCEEDINGS OR RECORDS OF AN ETHICS REVIEW COMMITTEE,
15 NOR SHALL SUCH PROCEEDINGS AND RECORDS OTHERWISE BE ADMISSIBLE AS
16 EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY KIND IN ANY COURT OR BEFORE
17 ANY OTHER TRIBUNAL, BOARD, AGENCY OR PERSON, EXCEPT THAT:

18 (A) ETHICS REVIEW COMMITTEE PROCEEDINGS AND RECORDS, IN CASES WHERE A
19 COMMITTEE APPROVES OR DISAPPROVES OF THE WITHHOLDING OR WITHDRAWAL OF
20 LIFE-SUSTAINING TREATMENT PURSUANT TO SUBDIVISION FIVE OF SECTION TWEN-
21 TY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE, OR SUBDIVISION THREE OF
22 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-E OF THIS ARTICLE, MAY BE
23 OBTAINED BY OR RELEASED TO THE DEPARTMENT;

24 (B) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE PATIENT, THE SURRO-
25 GATE, OTHER PERSONS ON THE SURROGATE LIST, OR A PARENT OR GUARDIAN OF A
26 MINOR PATIENT FROM VOLUNTARILY DISCLOSING, RELEASING OR TESTIFYING ABOUT
27 COMMITTEE PROCEEDINGS OR RECORDS; AND

28 (C) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE STATE COMMISSION ON
29 QUALITY OF CARE AND ADVOCACY FOR PERSONS WITH DISABILITIES OR ANY AGENCY
30 OR PERSON WITHIN OR UNDER CONTRACT WITH THE COMMISSION WHICH PROVIDES
31 PROTECTION AND ADVOCACY SERVICES FROM REQUIRING ANY INFORMATION, REPORT
32 OR RECORD FROM A HOSPITAL IN ACCORDANCE WITH THE PROVISIONS OF SECTION
33 45.09 OF THE MENTAL HYGIENE LAW.

34 S 2994-N. CONSCIENCE OBJECTIONS. 1. PRIVATE HOSPITALS. NOTHING IN THIS
35 ARTICLE SHALL BE CONSTRUED TO REQUIRE A PRIVATE HOSPITAL TO HONOR A
36 HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE IF:

37 (A) THE DECISION IS CONTRARY TO A FORMALLY ADOPTED POLICY OF THE
38 HOSPITAL THAT IS EXPRESSLY BASED ON SINCERELY HELD RELIGIOUS BELIEFS OR
39 SINCERELY HELD MORAL CONVICTIONS CENTRAL TO THE FACILITY'S OPERATING
40 PRINCIPLES;

41 (B) THE HOSPITAL HAS INFORMED THE PATIENT, FAMILY, OR SURROGATE OF
42 SUCH POLICY PRIOR TO OR UPON ADMISSION, IF REASONABLY POSSIBLE; AND

43 (C) THE PATIENT IS TRANSFERRED PROMPTLY TO ANOTHER HOSPITAL THAT IS
44 REASONABLY ACCESSIBLE UNDER THE CIRCUMSTANCES AND WILLING TO HONOR THE
45 DECISION AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH SUBDIVISION
46 THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE. IF
47 THE PATIENT'S FAMILY OR SURROGATE IS UNABLE OR UNWILLING TO ARRANGE SUCH
48 A TRANSFER, THE HOSPITAL MAY INTERVENE TO FACILITATE SUCH A TRANSFER. IF
49 SUCH A TRANSFER IS NOT EFFECTED, THE HOSPITAL SHALL SEEK JUDICIAL RELIEF
50 IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS
51 ARTICLE OR HONOR THE DECISION.

52 2. INDIVIDUAL HEALTH CARE PROVIDERS. NOTHING IN THIS ARTICLE SHALL BE
53 CONSTRUED TO REQUIRE AN INDIVIDUAL AS A HEALTH CARE PROVIDER TO HONOR A
54 HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE IF:

55 (A) THE DECISION IS CONTRARY TO THE INDIVIDUAL'S SINCERELY HELD RELI-
56 GIOUS BELIEFS OR SINCERELY HELD MORAL CONVICTION; AND

1 (B) THE INDIVIDUAL HEALTH CARE PROVIDER PROMPTLY INFORMS THE PERSON
2 WHO MADE THE DECISION AND THE HOSPITAL OF HIS OR HER REFUSAL TO HONOR
3 THE DECISION. IN SUCH EVENT, THE HOSPITAL SHALL PROMPTLY TRANSFER
4 RESPONSIBILITY FOR THE PATIENT TO ANOTHER INDIVIDUAL HEALTH CARE PROVID-
5 ER WILLING TO HONOR THE DECISION. THE INDIVIDUAL HEALTH CARE PROVIDER
6 SHALL COOPERATE IN FACILITATING SUCH TRANSFER AND COMPLY WITH SUBDIVI-
7 SION THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE.

8 S 2994-O. IMMUNITY. 1. ETHICS REVIEW COMMITTEE. NO PERSON SHALL BE
9 SUBJECT TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN
10 UNPROFESSIONAL CONDUCT, FOR ACTS PERFORMED REASONABLY AND IN GOOD FAITH
11 PURSUANT TO THIS ARTICLE AS A MEMBER OF OR AS A CONSULTANT TO AN ETHICS
12 REVIEW COMMITTEE OR AS A PARTICIPANT IN AN ETHICS REVIEW COMMITTEE MEET-
13 ING.

14 2. PROVIDERS. NO HEALTH CARE PROVIDER OR EMPLOYEE THEREOF SHALL BE
15 SUBJECT TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED
16 IN UNPROFESSIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH A
17 HEALTH CARE DECISION MADE PURSUANT TO THIS ARTICLE OR FOR OTHER ACTIONS
18 TAKEN REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE.

19 3. SURROGATES AND GUARDIANS. NO PERSON SHALL BE SUBJECT TO CRIMINAL
20 OR CIVIL LIABILITY FOR MAKING A HEALTH CARE DECISION REASONABLY AND IN
21 GOOD FAITH PURSUANT TO THIS ARTICLE OR FOR OTHER ACTIONS TAKEN REASON-
22 ABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE.

23 S 2994-P. LIABILITY FOR HEALTH CARE COSTS. LIABILITY FOR THE COST OF
24 HEALTH CARE PROVIDED TO AN ADULT PATIENT PURSUANT TO THIS ARTICLE SHALL
25 BE THE SAME AS IF THE HEALTH CARE WERE PROVIDED PURSUANT TO THE
26 PATIENT'S DECISION. NO PERSON SHALL BECOME LIABLE FOR THE COST OF HEALTH
27 CARE FOR A MINOR SOLELY BY VIRTUE OF MAKING A DECISION AS A GUARDIAN OF
28 A MINOR PURSUANT TO THIS ARTICLE.

29 S 2994-Q. EFFECT ON OTHER RIGHTS. 1. NOTHING IN THIS ARTICLE CREATES,
30 EXPANDS, DIMINISHES, IMPAIRS, OR SUPERSEDES ANY AUTHORITY THAT AN INDI-
31 VIDUAL MAY HAVE UNDER LAW TO MAKE OR EXPRESS DECISIONS, WISHES, OR
32 INSTRUCTIONS REGARDING HEALTH CARE ON HIS OR HER OWN BEHALF, INCLUDING
33 DECISIONS ABOUT LIFE-SUSTAINING TREATMENT.

34 2. NOTHING IN THIS ARTICLE SHALL AFFECT EXISTING LAW CONCERNING
35 IMPLIED CONSENT TO HEALTH CARE IN AN EMERGENCY.

36 3. NOTHING IN THIS ARTICLE IS INTENDED TO PERMIT OR PROMOTE SUICIDE,
37 ASSISTED SUICIDE, OR EUTHANASIA.

38 4. THIS ARTICLE SHALL NOT AFFECT EXISTING LAW WITH RESPECT TO STERILI-
39 ZATION.

40 5. NOTHING IN THIS ARTICLE DIMINISHES THE DUTY OF PARENTS AND LEGAL
41 GUARDIANS UNDER EXISTING LAW TO CONSENT TO TREATMENT FOR MINORS.

42 S 2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE
43 GUARDIAN FOR MINOR PATIENT. 1. SPECIAL PROCEEDING. ANY PERSON CONNECTED
44 WITH THE CASE AND ANY MEMBER OF THE HOSPITAL ETHICS REVIEW COMMITTEE MAY
45 COMMENCE A SPECIAL PROCEEDING PURSUANT TO ARTICLE FOUR OF THE CIVIL
46 PRACTICE LAW AND RULES IN A COURT OF COMPETENT JURISDICTION WITH RESPECT
47 TO ANY MATTER ARISING UNDER THIS ARTICLE.

48 2. COURT ORDERS DESIGNATING SURROGATE. A COURT OF COMPETENT JURISDIC-
49 TION MAY DESIGNATE ANY INDIVIDUAL FROM THE SURROGATE LIST TO ACT AS
50 SURROGATE, REGARDLESS OF THAT INDIVIDUAL'S PRIORITY ON THE LIST, IF THE
51 COURT DETERMINES THAT SUCH APPOINTMENT WOULD BEST ACCORD WITH THE
52 PATIENT'S WISHES OR, IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN,
53 WITH THE PATIENT'S BEST INTERESTS. UNLESS OTHERWISE DETERMINED BY A
54 COURT, NO SURROGATE DECISION MADE PRIOR TO AN ORDER DESIGNATING A SURRO-
55 GATE SHALL BE DEEMED TO HAVE BEEN INVALID BECAUSE OF THE ISSUANCE OF A
56 DESIGNATING ORDER.

1 3. COURT ORDERS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. A
2 COURT OF COMPETENT JURISDICTION MAY AUTHORIZE THE WITHHOLDING OR WITH-
3 DRAWAL OF LIFE-SUSTAINING TREATMENT FROM A PERSON IF THE COURT DETER-
4 MINES THAT THE PERSON LACKS DECISION-MAKING CAPACITY, AND WITHDRAWING OR
5 WITHHOLDING THE TREATMENT WOULD ACCORD WITH THE STANDARDS SET FORTH IN
6 SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS
7 ARTICLE.

8 4. HEALTH CARE GUARDIAN FOR A MINOR PATIENT. (A) NO APPOINTMENT SHALL
9 BE MADE PURSUANT TO THIS SUBDIVISION IF A PARENT OR LEGAL GUARDIAN OF
10 THE PERSON IS AVAILABLE, WILLING, AND COMPETENT TO DECIDE ABOUT TREAT-
11 MENT FOR THE MINOR.

12 (B) THE FOLLOWING PERSONS MAY COMMENCE A SPECIAL PROCEEDING IN A COURT
13 OF COMPETENT JURISDICTION TO SEEK APPOINTMENT AS THE HEALTH CARE GUARDI-
14 AN OF A MINOR PATIENT SOLELY FOR THE PURPOSE OF DECIDING ABOUT LIFE-SUS-
15 TAINING TREATMENT PURSUANT TO THIS ARTICLE:

16 (I) THE HOSPITAL ADMINISTRATOR;

17 (II) AN ATTENDING PHYSICIAN;

18 (III) THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR THE LOCAL COMMIS-
19 SIONER OF HEALTH, AUTHORIZED TO MAKE MEDICAL TREATMENT DECISIONS FOR THE
20 MINOR PURSUANT TO SECTION THREE HUNDRED EIGHTY-THREE-B OF THE SOCIAL
21 SERVICES LAW; OR

22 (IV) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, WHO HAS ASSUMED
23 CARE OF THE MINOR FOR A SUBSTANTIAL AND CONTINUOUS PERIOD OF TIME.

24 (C) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO THE PERSONS IDENTIFIED
25 IN SECTION SEVENTEEN HUNDRED FIVE OF THE SURROGATE'S COURT PROCEDURE
26 ACT.

27 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SEEKING APPOINTMENT OR
28 BEING APPOINTED AS A HEALTH CARE GUARDIAN SHALL NOT OTHERWISE AFFECT THE
29 LEGAL STATUS OR RIGHTS OF THE INDIVIDUAL SEEKING OR OBTAINING SUCH
30 APPOINTMENT.

31 S 2994-S. REMEDY. 1. ANY HOSPITAL OR ATTENDING PHYSICIAN THAT REFUSES
32 TO HONOR A HEALTH CARE DECISION BY A SURROGATE MADE PURSUANT TO THIS
33 ARTICLE AND IN ACCORD WITH THE STANDARDS SET FORTH IN THIS ARTICLE SHALL
34 NOT BE ENTITLED TO COMPENSATION FOR TREATMENT, SERVICES, OR PROCEDURES
35 REFUSED BY THE SURROGATE, EXCEPT THAT THIS SUBDIVISION SHALL NOT APPLY:

36 (A) WHEN A HOSPITAL OR PHYSICIAN EXERCISES THE RIGHTS GRANTED BY
37 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-N OF THIS ARTICLE, PROVIDED THAT
38 THE PHYSICIAN OR HOSPITAL PROMPTLY FULFILLS THE OBLIGATIONS SET FORTH IN
39 SECTION TWENTY-NINE HUNDRED NINETY-FOUR-N OF THIS ARTICLE;

40 (B) WHILE A MATTER IS UNDER CONSIDERATION BY THE ETHICS REVIEW COMMIT-
41 TEE, PROVIDED THAT THE MATTER IS PROMPTLY REFERRED TO AND CONSIDERED BY
42 THE COMMITTEE;

43 (C) IN THE EVENT OF A DISPUTE BETWEEN INDIVIDUALS ON THE SURROGATE
44 LIST; OR

45 (D) IF THE PHYSICIAN OR HOSPITAL PREVAILS IN ANY LITIGATION CONCERNING
46 THE SURROGATE'S DECISION TO REFUSE THE TREATMENT, SERVICES OR PROCEDURE.
47 NOTHING IN THIS SECTION SHALL DETERMINE OR AFFECT HOW DISPUTES AMONG
48 INDIVIDUALS ON THE SURROGATE LIST ARE RESOLVED.

49 2. THE REMEDY PROVIDED IN THIS SECTION IS IN ADDITION TO AND CUMULA-
50 TIVE WITH ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY OR BY ADMIN-
51 ISTRATIVE PROCEEDINGS TO A PATIENT, A HEALTH CARE AGENT APPOINTED PURSU-
52 ANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER, OR A PERSON AUTHORIZED TO
53 MAKE HEALTH CARE DECISIONS PURSUANT TO THIS ARTICLE, INCLUDING INJUNC-
54 TIVE AND DECLARATORY RELIEF, AND ANY OTHER PROVISIONS OF THIS CHAPTER
55 GOVERNING FINES, PENALTIES, OR FORFEITURES.

1 S 2994-T. REGULATIONS. 1. THE COMMISSIONER SHALL ESTABLISH SUCH REGU-
2 LATIONS AS MAY BE NECESSARY TO IMPLEMENT THIS ARTICLE.

3 2. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONERS OF THE
4 OFFICE OF MENTAL HEALTH AND THE OFFICE OF MENTAL RETARDATION AND DEVEL-
5 OPMENTAL DISABILITIES, SHALL PROMULGATE REGULATIONS IDENTIFYING THE
6 CREDENTIALS OF HEALTH CARE PROFESSIONALS QUALIFIED TO PROVIDE AN INDE-
7 PENDENT DETERMINATION, PURSUANT TO SUBDIVISION THREE OF SECTION TWENTY-
8 NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE, THAT A PATIENT LACKS DECI-
9 SION-MAKING CAPACITY BECAUSE OF MENTAL ILLNESS OR DEVELOPMENTAL
10 DISABILITY.

11 S 2994-U. RIGHTS TO BE PUBLICIZED. THE COMMISSIONER SHALL PREPARE A
12 STATEMENT SUMMARIZING THE RIGHTS, DUTIES, AND REQUIREMENTS OF THIS ARTI-
13 CLE AND SHALL REQUIRE THAT A COPY OF SUCH STATEMENT BE FURNISHED TO
14 PATIENTS OR TO PERSONS ON THE SURROGATE LIST KNOWN TO THE HOSPITAL, OR
15 TO THE PARENTS OR GUARDIANS OF MINOR PATIENTS, AT OR PRIOR TO ADMISSION
16 TO THE HOSPITAL, OR WITHIN A REASONABLE TIME THEREAFTER, AND TO EACH
17 MEMBER OF THE HOSPITAL'S STAFF DIRECTLY INVOLVED WITH PATIENT CARE.

18 ARTICLE 29-CCC

19 NONHOSPITAL ORDERS NOT TO RESUSCITATE

20 SECTION 2994-AA. DEFINITIONS.

21 2994-BB. GENERAL PROVISIONS.

22 2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE.

23 2994-DD. MANAGING A NONHOSPITAL ORDER NOT TO RESUSCITATE.

24 2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCI-
25 TATE.

26 2994-FF. INTERINSTITUTIONAL TRANSFER.

27 2994-GG. IMMUNITY.

28 S 2994-AA. DEFINITIONS. 1. "ADULT" MEANS ANY PERSON WHO IS EIGHTEEN
29 YEARS OF AGE OR OLDER, OR IS THE PARENT OF A CHILD OR HAS MARRIED.

30 2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY RESPONSI-
31 BILITY FOR THE TREATMENT AND CARE OF THE PATIENT. WHERE MORE THAN ONE
32 PHYSICIAN SHARES SUCH RESPONSIBILITY, ANY SUCH PHYSICIAN MAY ACT AS THE
33 ATTENDING PHYSICIAN PURSUANT TO THIS ARTICLE.

34 3. "CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND APPRECIATE THE
35 NATURE AND CONSEQUENCES OF A NONHOSPITAL ORDER NOT TO RESUSCITATE,
36 INCLUDING THE BENEFITS AND DISADVANTAGES OF SUCH AN ORDER, AND TO REACH
37 AN INFORMED DECISION REGARDING THE ORDER.

38 4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN
39 REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION
40 OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY
41 ARREST. SUCH TERM SHALL NOT INCLUDE MEASURES TO IMPROVE VENTILATION AND
42 CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

43 5. "EMERGENCY MEDICAL SERVICES PERSONNEL" MEANS THE PERSONNEL OF A
44 SERVICE OR AGENCY ENGAGED IN PROVIDING INITIAL EMERGENCY MEDICAL ASSIST-
45 ANCE, INCLUDING BUT NOT LIMITED TO FIRST RESPONDERS, EMERGENCY MEDICAL
46 TECHNICIANS, ADVANCED EMERGENCY MEDICAL TECHNICIANS AND PERSONNEL
47 ENGAGED IN PROVIDING HEALTH CARE AT CORRECTIONAL FACILITIES, AS THAT
48 TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION
49 LAW.

50 6. "HEALTH CARE AGENT" MEANS A HEALTH CARE AGENT OF THE PATIENT DESIG-
51 NATED PURSUANT TO ARTICLE TWENTY-NINE-C OF THIS CHAPTER.

52 7. "HEALTH OR SOCIAL SERVICES PRACTITIONER" MEANS A REGISTERED PROFES-
53 SIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
54 PSYCHOLOGIST OR CERTIFIED, LICENSED MASTER SOCIAL WORKER OR LICENSED

1 CLINICAL SOCIAL WORKER, LICENSED OR CERTIFIED PURSUANT TO THE EDUCATION
2 LAW, ACTING WITHIN HIS OR HER SCOPE OF PRACTICE.

3 8. "HOME CARE SERVICES AGENCY" MEANS AN ENTITY CERTIFIED, LICENSED OR
4 EXEMPT UNDER ARTICLE THIRTY-SIX OF THIS CHAPTER.

5 9. "HOSPICE" MEANS A HOSPICE AS DEFINED IN ARTICLE FORTY OF THIS CHAP-
6 TER.

7 10. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN
8 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER AND A RESIDENTIAL
9 HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-
10 EIGHT HUNDRED ONE OF THIS CHAPTER OR A HOSPITAL AS DEFINED IN SUBDIVI-
11 SION TEN OF SECTION 1.03 OF THE MENTAL HYGIENE LAW OR A SCHOOL NAMED IN
12 SECTION 13.17 OF THE MENTAL HYGIENE LAW.

13 11. "HOSPITAL EMERGENCY SERVICES PERSONNEL" MEANS THE PERSONNEL OF THE
14 EMERGENCY SERVICE OF A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN
15 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, INCLUDING BUT NOT
16 LIMITED TO EMERGENCY SERVICES ATTENDING PHYSICIANS, EMERGENCY SERVICES
17 REGISTERED PROFESSIONAL NURSES, AND REGISTERED PROFESSIONAL NURSES,
18 NURSING STAFF AND REGISTERED PHYSICIAN ASSISTANTS ASSIGNED TO THE GENER-
19 AL HOSPITAL'S EMERGENCY SERVICE.

20 12. "MENTAL HYGIENE FACILITY" MEANS A RESIDENTIAL FACILITY OPERATED OR
21 LICENSED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDA-
22 TION AND DEVELOPMENTAL DISABILITIES.

23 13. "NONHOSPITAL ORDER NOT TO RESUSCITATE" MEANS AN ORDER THAT DIRECTS
24 EMERGENCY MEDICAL SERVICES PERSONNEL AND HOSPITAL EMERGENCY SERVICES
25 PERSONNEL NOT TO ATTEMPT CARDIOPULMONARY RESUSCITATION IN THE EVENT A
26 PATIENT SUFFERS CARDIAC OR RESPIRATORY ARREST.

27 14. "PATIENT" MEANS A PERSON WHO HAS BEEN OR WHO MAY BE ISSUED A
28 NONHOSPITAL ORDER NOT TO RESUSCITATE.

29 15. "SURROGATE" MEANS A PERSON AUTHORIZED TO MAKE A HEALTH CARE DECI-
30 SION ON BEHALF OF A PATIENT PURSUANT TO ARTICLE TWENTY-NINE-CC OF THIS
31 CHAPTER.

32 S 2994-BB. GENERAL PROVISIONS. 1. (A) EMERGENCY MEDICAL SERVICES
33 PERSONNEL, HOME CARE SERVICES AGENCY PERSONNEL, HOSPICE PERSONNEL, AND
34 HOSPITAL EMERGENCY SERVICES PERSONNEL SHALL HONOR NONHOSPITAL ORDERS NOT
35 TO RESUSCITATE, EXCEPT AS PROVIDED IN SECTION TWENTY-NINE HUNDRED NINE-
36 TY-FOUR-EE OF THIS ARTICLE.

37 (B) A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE AN
38 ORDER TO WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY
39 RESUSCITATION.

40 2. A NONHOSPITAL ORDER NOT TO RESUSCITATE MAY BE ISSUED DURING HOSPI-
41 TALIZATION TO TAKE EFFECT AFTER HOSPITALIZATION, OR MAY BE ISSUED FOR A
42 PERSON WHO IS NOT A PATIENT IN, OR A RESIDENT OF, A HOSPITAL.

43 S 2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE. 1. AN
44 ADULT WITH DECISION-MAKING CAPACITY, A HEALTH CARE AGENT, OR A SURROGATE
45 MAY CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE ORALLY TO THE
46 ATTENDING PHYSICIAN OR IN WRITING. IF A PATIENT CONSENTS TO A NONHOSPI-
47 TAL ORDER NOT TO RESUSCITATE WHILE IN A CORRECTIONAL FACILITY, NOTICE OF
48 THE PATIENT'S CONSENT SHALL BE GIVEN TO THE FACILITY DIRECTOR AND
49 REASONABLE EFFORTS SHALL BE MADE TO NOTIFY AN INDIVIDUAL DESIGNATED BY
50 THE PATIENT TO RECEIVE SUCH NOTICE PRIOR TO THE ISSUANCE OF THE NONHOS-
51 PITAL ORDER NOT TO RESUSCITATE. NOTIFICATION TO THE FACILITY DIRECTOR OR
52 THE INDIVIDUAL DESIGNATED BY THE PATIENT SHALL NOT DELAY ISSUANCE OF A
53 NONHOSPITAL ORDER NOT TO RESUSCITATE.

54 2. CONSENT BY A HEALTH CARE AGENT SHALL BE GOVERNED BY ARTICLE TWEN-
55 TY-NINE-C OF THIS CHAPTER.

1 3. CONSENT BY A SURROGATE SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-CC
2 OF THIS CHAPTER, EXCEPT THAT: (A) A SECOND DETERMINATION OF CAPACITY
3 SHALL BE MADE BY A HEALTH OR SOCIAL SERVICES PRACTITIONER; AND (B) THE
4 AUTHORITY OF THE ETHICS REVIEW COMMITTEE SET FORTH IN ARTICLE
5 TWENTY-NINE-CC OF THIS CHAPTER SHALL APPLY ONLY TO NONHOSPITAL ORDERS
6 ISSUED IN A HOSPITAL.

7 4. (A) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL
8 THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCI-
9 TATE FOR PATIENTS IN A CORRECTIONAL FACILITY, SUCH SECOND PHYSICIAN
10 SHALL BE SELECTED BY THE CHIEF MEDICAL OFFICER OF THE DEPARTMENT OF
11 CORRECTIONAL SERVICES OR HIS OR HER DESIGNEE.

12 (B) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL
13 THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCI-
14 TATE FOR HOSPICE AND HOME CARE PATIENTS, SUCH SECOND PHYSICIAN SHALL BE
15 SELECTED BY THE HOSPICE MEDICAL DIRECTOR OR HOSPICE NURSE COORDINATOR
16 DESIGNATED BY THE MEDICAL DIRECTOR OR BY THE HOME CARE SERVICES AGENCY
17 DIRECTOR OF PATIENT CARE SERVICES, AS APPROPRIATE TO THE PATIENT.

18 5. CONSENT BY A PATIENT OR A SURROGATE FOR A PATIENT IN A MENTAL
19 HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF THIS
20 CHAPTER.

21 S 2994-DD. MANAGING A NONHOSPITAL ORDER NOT TO RESUSCITATE. 1. THE
22 ATTENDING PHYSICIAN SHALL RECORD THE ISSUANCE OF A NONHOSPITAL ORDER NOT
23 TO RESUSCITATE IN THE PATIENT'S MEDICAL RECORD.

24 2. A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL BE ISSUED UPON A STAN-
25 DARD FORM PRESCRIBED BY THE COMMISSIONER. THE COMMISSIONER SHALL ALSO
26 DEVELOP A STANDARD BRACELET THAT MAY BE WORN BY A PATIENT WITH A NONHOS-
27 PITAL ORDER NOT TO RESUSCITATE TO IDENTIFY THAT STATUS; PROVIDED, HOWEV-
28 ER, THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AND
29 THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AS A CONDI-
30 TION FOR HONORING A NONHOSPITAL ORDER NOT TO RESUSCITATE OR FOR PROVID-
31 ING HEALTH CARE SERVICES.

32 3. AN ATTENDING PHYSICIAN WHO HAS ISSUED A NONHOSPITAL ORDER NOT TO
33 RESUSCITATE, AND WHO TRANSFERS CARE OF THE PATIENT TO ANOTHER PHYSICIAN,
34 SHALL INFORM THE PHYSICIAN OF THE ORDER.

35 4. FOR EACH PATIENT FOR WHOM A NONHOSPITAL ORDER NOT TO RESUSCITATE
36 HAS BEEN ISSUED, THE ATTENDING PHYSICIAN SHALL REVIEW WHETHER THE ORDER
37 IS STILL APPROPRIATE IN LIGHT OF THE PATIENT'S CONDITION EACH TIME HE OR
38 SHE EXAMINES THE PATIENT, WHETHER IN THE HOSPITAL OR ELSEWHERE, BUT AT
39 LEAST EVERY NINETY DAYS, PROVIDED THAT THE REVIEW NEED NOT OCCUR MORE
40 THAN ONCE EVERY SEVEN DAYS. THE ATTENDING PHYSICIAN SHALL RECORD THE
41 REVIEW IN THE PATIENT'S MEDICAL RECORD PROVIDED, HOWEVER, THAT A REGIS-
42 TERED NURSE WHO PROVIDES DIRECT CARE TO THE PATIENT MAY RECORD THE
43 REVIEW IN THE MEDICAL RECORD AT THE DIRECTION OF THE PHYSICIAN. IN SUCH
44 CASE, THE ATTENDING PHYSICIAN SHALL INCLUDE A CONFIRMATION OF THE REVIEW
45 IN THE PATIENT'S MEDICAL RECORD WITHIN FOURTEEN DAYS OF SUCH REVIEW.
46 FAILURE TO COMPLY WITH THIS SUBDIVISION SHALL NOT RENDER A NONHOSPITAL
47 ORDER NOT TO RESUSCITATE INEFFECTIVE.

48 5. A PERSON WHO HAS CONSENTED TO A NONHOSPITAL ORDER NOT TO RESUSCI-
49 TATE MAY AT ANY TIME REVOKE HIS OR HER CONSENT TO THE ORDER BY ANY ACT
50 EVIDENCING A SPECIFIC INTENT TO REVOKE SUCH CONSENT. ANY HEALTH CARE
51 PROFESSIONAL INFORMED OF A REVOCATION OF CONSENT TO A NONHOSPITAL ORDER
52 NOT TO RESUSCITATE SHALL NOTIFY THE ATTENDING PHYSICIAN OF THE REVOCA-
53 TION. AN ATTENDING PHYSICIAN WHO IS INFORMED THAT A NONHOSPITAL ORDER
54 NOT TO RESUSCITATE HAS BEEN REVOKED SHALL RECORD THE REVOCATION IN THE
55 PATIENT'S MEDICAL RECORD, CANCEL THE ORDER AND MAKE DILIGENT EFFORTS TO
56 RETRIEVE THE FORM ISSUING THE ORDER, AND THE STANDARD BRACELET, IF ANY.

1 6. THE COMMISSIONER MAY AUTHORIZE THE USE OF ONE OR MORE ALTERNATIVE
2 FORMS FOR ISSUING A NONHOSPITAL ORDER NOT TO RESUSCITATE (IN PLACE OF
3 THE STANDARD FORM PRESCRIBED BY THE COMMISSIONER UNDER SUBDIVISION TWO
4 OF THIS SECTION). SUCH ALTERNATIVE FORM OR FORMS MAY ALSO BE USED TO
5 ISSUE A NON-HOSPITAL DO NOT INTUBATE ORDER. ANY SUCH ALTERNATIVE FORMS
6 INTENDED FOR USE FOR PERSONS WITH MENTAL RETARDATION OR DEVELOPMENTAL
7 DISABILITIES OR PERSONS WITH MENTAL ILLNESS WHO ARE INCAPABLE OF MAKING
8 THEIR OWN HEALTH CARE DECISIONS OR WHO HAVE A GUARDIAN OF THE PERSON
9 APPOINTED PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW OR
10 ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT MUST ALSO BE
11 APPROVED BY THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL
12 DISABILITIES OR THE COMMISSIONER OF MENTAL HEALTH, AS APPROPRIATE. AN
13 ALTERNATIVE FORM UNDER THIS SUBDIVISION SHALL OTHERWISE CONFORM WITH
14 APPLICABLE FEDERAL AND STATE LAW. THIS SUBDIVISION DOES NOT LIMIT,
15 RESTRICT OR IMPAIR THE USE OF AN ALTERNATIVE FORM FOR ISSUING AN ORDER
16 NOT TO RESUSCITATE IN A GENERAL HOSPITAL OR RESIDENTIAL HEALTH CARE
17 FACILITY UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER OR A HOSPITAL UNDER
18 SUBDIVISION TEN OF SECTION 1.03 OF THE MENTAL HYGIENE LAW OR A SCHOOL
19 UNDER SECTION 13.17 OF THE MENTAL HYGIENE LAW.

20 S 2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCITATE.
21 EMERGENCY MEDICAL SERVICES PERSONNEL, HOME CARE SERVICES AGENCY PERSON-
22 NEL, HOSPICE PERSONNEL, OR HOSPITAL EMERGENCY SERVICES PERSONNEL WHO ARE
23 PROVIDED WITH A NONHOSPITAL ORDER NOT TO RESUSCITATE, OR WHO IDENTIFY
24 THE STANDARD BRACELET ON THE PATIENT'S BODY, SHALL COMPLY WITH THE TERMS
25 OF SUCH ORDER; PROVIDED, HOWEVER, THAT:

26 1. EMERGENCY MEDICAL SERVICES PERSONNEL, HOME CARE SERVICES AGENCY
27 PERSONNEL, HOSPICE PERSONNEL, OR HOSPITAL EMERGENCY SERVICES PERSONNEL
28 MAY DISREGARD THE ORDER IF:

29 (A) THEY BELIEVE IN GOOD FAITH THAT CONSENT TO THE ORDER HAS BEEN
30 REVOKED, OR THAT THE ORDER HAS BEEN CANCELLED; OR

31 (B) FAMILY MEMBERS OR OTHERS ON THE SCENE, EXCLUDING SUCH PERSONNEL,
32 OBJECT TO THE ORDER AND PHYSICAL CONFRONTATION APPEARS LIKELY; AND

33 2. HOSPITAL EMERGENCY SERVICES PHYSICIANS MAY DIRECT THAT THE ORDER BE
34 DISREGARDED IF OTHER SIGNIFICANT AND EXCEPTIONAL MEDICAL CIRCUMSTANCES
35 WARRANT DISREGARDING THE ORDER.

36 S 2994-FF. INTERINSTITUTIONAL TRANSFER. IF A PATIENT WITH A NONHOSPI-
37 TAL ORDER NOT TO RESUSCITATE IS ADMITTED TO A HOSPITAL, THE ORDER SHALL
38 BE TREATED AS AN ORDER NOT TO RESUSCITATE FOR A PATIENT TRANSFERRED FROM
39 ANOTHER HOSPITAL, AND SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-CC OF
40 THIS CHAPTER, EXCEPT THAT ANY SUCH ORDER FOR A PATIENT ADMITTED TO A
41 MENTAL HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF
42 THIS CHAPTER.

43 S 2994-GG. IMMUNITY. NO PERSON SHALL BE SUBJECTED TO CRIMINAL PROSE-
44 CUTION OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFES-
45 SIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH PURSUANT TO
46 THIS SECTION A NONHOSPITAL ORDER NOT TO RESUSCITATE, FOR DISREGARDING A
47 NONHOSPITAL ORDER PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-EE
48 OF THIS ARTICLE, OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH
49 PURSUANT TO THIS SECTION.

50 S 3. Subdivision 1 of section 2805-q of the public health law, as
51 added by chapter 471 of the laws of 2004, is amended to read as follows:

52 1. No domestic partner OR SURROGATE AS DEFINED BY SUBDIVISION TWENTY-
53 NINE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-A OF THIS CHAPTER shall
54 be denied any rights of visitation of his or her domestic partner OR OF
55 THE PATIENT OR RESIDENT FOR WHOM HE OR SHE IS THE SURROGATE, when such

1 rights are accorded to spouses and next-of-kin at any hospital, nursing
2 home or health care facility.

3 S 4. The article heading of article 29-B of the public health law, as
4 added by chapter 818 of the laws of 1987, is amended to read as follows:

5 ORDERS NOT TO RESUSCITATE FOR RESIDENTS OF MENTAL HYGIENE
6 FACILITIES

7 S 5. Subdivisions 7, 10, 13 and 16 of section 2961 of the public
8 health law are REPEALED.

9 S 6. Subdivisions 2, 4, 5, 9 and 19 of section 2961 of the public
10 health law, subdivisions 2 and 19 as amended and subdivision 9 as renum-
11 bered by chapter 370 of the laws of 1991 and subdivisions 4, 5 and 9 as
12 added by chapter 818 of the laws of 1987, are amended to read as
13 follows:

14 2. "Attending physician" means the physician selected by or assigned
15 to a patient in a hospital [or, for the purpose of provisions herein
16 governing nonhospital orders not to resuscitate, a patient not in a
17 hospital,] who has primary responsibility for the treatment and care of
18 the patient. Where more than one physician shares such responsibility,
19 any such physician may act as the attending physician pursuant to this
20 article.

21 4. "Cardiopulmonary resuscitation" means measures[, as specified in
22 regulations promulgated by the commissioner,] to restore cardiac func-
23 tion or to support ventilation in the event of a cardiac or respiratory
24 arrest. Cardiopulmonary resuscitation shall not include measures to
25 improve ventilation and cardiac functions in the absence of an arrest.

26 5. "Close friend" means any person, eighteen years of age or older,
27 who [presents an affidavit to an attending physician stating that he] is
28 a close friend of the patient [and that he], OR RELATIVE OF THE PATIENT
29 (OTHER THAN A SPOUSE, ADULT CHILD, PARENT, BROTHER OR SISTER) WHO has
30 maintained such regular contact with the patient as to be familiar with
31 the patient's activities, health, and religious or moral beliefs [and
32 stating the facts and circumstances that demonstrate such familiarity]
33 AND WHO PRESENTS A SIGNED STATEMENT TO THAT EFFECT TO THE ATTENDING
34 PHYSICIAN.

35 9. "Hospital" means [a general hospital as defined in subdivision ten
36 of section twenty-eight hundred one of this chapter and a residential
37 health care facility as defined in subdivision three of section twenty-
38 eight hundred one of this chapter or] a hospital as defined in subdivi-
39 sion ten of section 1.03 of the mental hygiene law or a school named in
40 section 13.17 of the mental hygiene law.

41 19. "Patient" means a person admitted to a hospital [or, for the
42 purpose of provisions herein governing nonhospital orders not to resus-
43 citate, a person who has or may be issued a nonhospital order not to
44 resuscitate].

45 S 7. Section 2961 of the public health law is amended by adding a new
46 subdivision 6-a to read as follows:

47 6-A. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER
48 PERSON:

49 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
50 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
51 UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGIS-
52 TERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY
53 MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY,
54 OR FOREIGN JURISDICTION; OR

55 (B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER
56 THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

1 (C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR
2 SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A
3 MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO:
4 COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON
5 HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON;
6 SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A)
7 OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP
8 OF THE PERSONS.

9 EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE
10 DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT
11 INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER
12 THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMESTIC
13 PARTNER" ALSO SHALL NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN
14 YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS
15 RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE
16 TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

17 S 8. Subdivision 1, paragraph (b) of subdivision 3 and subdivision 4
18 of section 2963 of the public health law, subdivisions 1 and 4 as added
19 by chapter 818 of the laws of 1987 and paragraph (b) of subdivision 3 as
20 amended by chapter 23 of the laws of 1994, are amended to read as
21 follows:

22 1. Every adult shall be presumed to have the capacity to make a deci-
23 sion regarding cardiopulmonary resuscitation unless determined otherwise
24 pursuant to this section or pursuant to a court order[. A lack of capac-
25 ity shall not be presumed from the fact that a committee of the property
26 or conservator has been appointed for the adult pursuant to article
27 seventy-seven or seventy-eight of the mental hygiene law, or that a
28 guardian has been appointed pursuant to article seventeen-A of the
29 surrogate's court procedure act] OR UNLESS A GUARDIAN IS AUTHORIZED TO
30 DECIDE ABOUT HEALTH CARE FOR THE ADULT PURSUANT TO ARTICLE EIGHTY-ONE OF
31 THE MENTAL HYGIENE LAW OR ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT
32 PROCEDURE ACT. THE ATTENDING PHYSICIAN SHALL NOT RELY ON THE PRESUMP-
33 TION STATED IN THIS SUBDIVISION IF CLINICAL INDICIA OF INCAPACITY ARE
34 PRESENT.

35 (b) If the attending physician [of a patient in a general hospital]
36 determines that a patient lacks capacity because of mental illness, the
37 concurring determination required by paragraph (a) of this subdivision
38 shall be provided by a physician licensed to practice medicine in New
39 York state, who is a diplomate or eligible to be certified by the Ameri-
40 can Board of Psychiatry and Neurology or who is certified by the Ameri-
41 can Osteopathic Board of Neurology and Psychiatry or is eligible to be
42 certified by that board.

43 4. Notice of a determination that the patient lacks capacity shall
44 promptly be given (a) to the patient, where there is any indication of
45 the patient's ability to comprehend such notice, together with a copy of
46 a statement prepared in accordance with section twenty-nine hundred
47 seventy-eight of this article, AND (b) to the person on the surrogate
48 list highest in order of priority listed, when persons in prior subpara-
49 graphs are not reasonably available[, and (c) if the patient is in or is
50 transferred from a mental hygiene facility, to the facility director].
51 Nothing in this subdivision shall preclude or require notice to more
52 than one person on the surrogate list.

53 S 9. Subdivisions 3 and 4 of section 2964 of the public health law
54 are REPEALED.

55 S 10. Paragraph (a) of subdivision 2 of section 2965 of the public
56 health law, as added by chapter 818 of the laws of 1987 and subpara-

1 graphs (i), (ii), (iii), (iv), (v) and (vi) as redesignated and such
2 subdivision as renumbered by chapter 370 of the laws of 1991, is amended
3 to read as follows:

4 (a) One person from the following list, to be chosen in order of
5 priority listed, when persons in the prior [subparagraphs] SUBPARAGRAPHS
6 are not reasonably available, willing to make a decision regarding issu-
7 ance of an order not to resuscitate, and competent to make a decision
8 regarding issuance of an order not to resuscitate, shall have the
9 authority to act as surrogate on behalf of the patient. HOWEVER, SUCH
10 PERSON MAY DESIGNATE ANY OTHER PERSON ON THE LIST TO BE SURROGATE,
11 PROVIDED NO ONE IN A HIGHER CLASS THAN THE PERSON DESIGNATED OBJECTS:

12 (i) a [committee of the person or] GUARDIAN AUTHORIZED TO DECIDE ABOUT
13 HEALTH CARE PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW OR
14 a guardian OF A PERSON appointed [pursuant to] UNDER article seventeen-A
15 of the surrogate's court procedure act, provided that this paragraph
16 shall not be construed to require the appointment of a [committee of the
17 person or] guardian for the purpose of making the resuscitation deci-
18 sion;

19 (ii) the spouse, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE
20 DOMESTIC PARTNER;

21 (iii) a son or daughter eighteen years of age or older;

22 (iv) a parent;

23 (v) a brother or sister eighteen years of age or older; and

24 (vi) a close friend.

25 S 11. Paragraph (c) of subdivision 4 and subdivision 5 of section 2965
26 of the public health law are REPEALED.

27 S 12. Paragraph (d) of subdivision 4 of section 2965 of the public
28 health law, as added by chapter 818 of the laws of 1987 and such subdi-
29 vision as renumbered by chapter 370 of the laws of 1991, is amended to
30 read as follows:

31 [(d)] (C) If the attending physician has actual notice of opposition
32 to a surrogate's consent to an order not to resuscitate by any person on
33 the surrogate list[, or, if the patient is in or is transferred from a
34 mental hygiene facility, by the facility director], the [physician]
35 PHYSICIAN shall submit the matter to the dispute mediation system and
36 such order shall not be issued or shall be revoked in accordance with
37 the provisions of subdivision three of section twenty-nine hundred
38 seventy-two of this article.

39 S 13. Subdivision 2 of section 2966 of the public health law is
40 REPEALED.

41 S 14. Subdivision 3 of section 2966 of the public health law, as
42 added by chapter 818 of the laws of 1987, is amended to read as follows:

43 3. Notwithstanding any other provision of this section, where a deci-
44 sion to consent to an order not to resuscitate has been made, notice of
45 the decision shall be given to the patient where there is any indication
46 of the patient's ability to comprehend such notice[, except where a
47 determination has been made pursuant to subdivision three of section
48 twenty-nine hundred sixty-four of this article]. If the patient objects,
49 an order not to resuscitate shall not be issued.

50 S 15. Paragraph (c) of subdivision 2 of section 2967 of the public
51 health law is REPEALED.

52 S 16. Subdivision 1 of section 2970 of the public health law, as
53 amended by chapter 370 of the laws of 1991, is amended to read as
54 follows:

55 1. For each patient for whom an order not to resuscitate has been
56 issued, the attending physician shall review the patient's chart to

1 determine if the order is still appropriate in light of the patient's
2 condition and shall indicate on the patient's chart that the order has
3 been reviewed[:

4 (a) for a patient, excluding outpatients described in paragraph (b) of
5 this subdivision and alternate level of care patients, in a hospital,
6 other than a residential health care facility, at least every seven
7 days;

8 (b) for an outpatient whose order not to resuscitate is effective
9 while the patient receives care in a hospital, each time the attending
10 physician examines the patient, whether in the hospital or elsewhere,
11 provided that the review need not occur more than once every seven days;
12 and

13 (c) for a patient in a residential health care facility or an alter-
14 nate level of care patient in a hospital,] each time the patient is
15 required to be seen by a physician but at least every sixty days.

16 Failure to comply with this subdivision shall not render an order not
17 to resuscitate ineffective.

18 S 17. Section 2971 of the public health law is amended by adding a new
19 subdivision 3 to read as follows:

20 3. FOR PURPOSES OF THIS SECTION, AN ORDER NOT TO RESUSCITATE ISSUED BY
21 A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT
22 HUNDRED ONE OF THIS CHAPTER, OR BY A RESIDENTIAL HEALTH CARE FACILITY AS
23 DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
24 CHAPTER, SHALL BE DEEMED A HOSPITAL ORDER NOT TO RESUSCITATE.

25 S 18. Subdivision 2 of section 2972 of the public health law, as
26 amended by chapter 370 of the laws of 1991, is amended to read as
27 follows:

28 2. The dispute mediation system shall be authorized to mediate any
29 dispute, including disputes regarding the determination of the patient's
30 capacity, arising under this article between the patient and an attend-
31 ing physician or the hospital that is caring for the patient and, if the
32 patient is a minor, the patient's parent, or among an attending physi-
33 cian, a parent, non-custodial parent, or legal guardian of a minor
34 patient, any person on the surrogate list, AND the hospital that is
35 caring for the patient [and, where the dispute involves a patient who is
36 in or is transferred from a mental hygiene facility, the facility direc-
37 tor].

38 S 19. Subdivision 1 of section 2973 of the public health law, as
39 amended by chapter 577 of the laws of 1993, is amended to read as
40 follows:

41 1. The patient, an attending physician, a parent, non-custodial
42 parent, or legal guardian of a minor patient, any person on the surro-
43 gate list, the hospital that is caring for the patient and[, in disputes
44 involving a patient who is in or is transferred from a mental hygiene or
45 correctional facility,] the facility director, may commence a special
46 proceeding pursuant to article four of the civil practice law and rules,
47 in a court of competent jurisdiction, with respect to any dispute aris-
48 ing under this article, except that the decision of a patient not to
49 consent to issuance of an order not to resuscitate may not be subjected
50 to judicial review. In any proceeding brought pursuant to this subdivi-
51 sion challenging a decision regarding issuance of an order not to resus-
52 citate on the ground that the decision is contrary to the patient's
53 wishes or best interests, the person or entity challenging the decision
54 must show, by clear and convincing evidence, that the decision is
55 contrary to the patient's wishes including consideration of the
56 patient's religious and moral beliefs, or, in the absence of evidence of

1 the patient's wishes, that the decision is contrary to the patient's
2 best interests. In any other proceeding brought pursuant to this subdi-
3 vision, the court shall make its determination based upon the applicable
4 substantive standards and procedures set forth in this article.

5 S 20. Section 2977 of the public health law is REPEALED.

6 S 21. Subdivision 1 of section 2978 of the public health law is
7 REPEALED and subdivision 2, as added by chapter 818 of the laws of 1987,
8 such section as renumbered by chapter 370 of the laws of 1991, is
9 amended to read as follows:

10 [2.] The commissioners of mental health and mental retardation and
11 developmental disabilities[, in consultation with the commissioner of
12 health,] shall establish such regulations as may be necessary for imple-
13 mentation of this article with respect to those persons in mental
14 hygiene facilities.

15 S 22. The opening paragraph of subdivision 1 of section 2979 of the
16 public health law, as added by chapter 818 of the laws of 1987, such
17 section as renumbered by chapter 370 of the laws of 1991, is amended to
18 read as follows:

19 The [commissioner of health, after consultation with the] commission-
20 ers of mental health and mental retardation and developmental disabili-
21 ties[,] shall prepare a statement summarizing the rights, duties, and
22 requirements of this article and shall require that a copy of such
23 statement:

24 S 23. Subdivisions 3 and 4 of section 2984 of the public health law,
25 as added by chapter 752 of the laws of 1990, are amended and a new
26 subdivision 5 is added to read as follows:

27 3. Notwithstanding subdivision two of this section, nothing in this
28 article shall be construed to require a private hospital to honor an
29 agent's health care decision that the hospital would not honor if the
30 decision had been made by the principal because the decision is contrary
31 to a formally adopted policy of the hospital that is expressly based on
32 religious beliefs or sincerely held moral convictions central to the
33 facility's operating principles and the hospital would be permitted by
34 law to refuse to honor the decision if made by the principal, provided:

35 (a) the hospital has informed the patient or the health care agent of
36 such policy prior to or upon admission, if reasonably possible; and

37 (b) the patient is transferred promptly to another hospital that is
38 reasonably accessible under the circumstances and is willing to honor
39 the agent's decision AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH
40 SUBDIVISION FIVE OF THIS SECTION. If the agent is unable or unwilling
41 to arrange such a transfer, the hospital may intervene to facilitate
42 such a transfer. If such a transfer is not effected, the hospital shall
43 seek judicial relief IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED
44 NINETY-TWO OF THIS ARTICLE or honor the agent's decision.

45 4. Notwithstanding subdivision two of this section, nothing in this
46 article shall be construed to require an individual as a health care
47 provider to honor an agent's health care decision that the individual
48 would not honor if the decision had been made by the principal because
49 the decision is contrary to the individual's religious beliefs or
50 sincerely held moral convictions, provided the individual health care
51 provider promptly informs the health care agent and the hospital of his
52 or her refusal to honor the agent's decision. In such event, the hospi-
53 tal shall promptly transfer responsibility for the patient to another
54 individual health care provider willing to honor the agent's decision.
55 The individual health care provider shall cooperate in facilitating such

1 transfer of the patient AND COMPLY WITH SUBDIVISION FIVE OF THIS
2 SECTION.

3 5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION TWO
4 OF SECTION TWENTY-NINE HUNDRED EIGHTY-NINE OF THIS ARTICLE, IF AN AGENT
5 DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL OF WHICH
6 IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE DEATH OF
7 THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT DOES NOT
8 WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH THE AGENT'S
9 DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A WILLING HOSPITAL OR
10 INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW IN ACCORDANCE WITH
11 SECTION TWENTY-NINE HUNDRED NINETY-TWO OF THIS ARTICLE.

12 S 24. Section 2980 of the public health law is amended by adding a new
13 subdivision 9-a to read as follows:

14 9-A. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCE-
15 DURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME,
16 AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF
17 MEDICAL CERTAINTY. FOR PURPOSES OF THIS ARTICLE, CARDIOPULMONARY RESUS-
18 CITATION IS PRESUMED TO BE A LIFE SUSTAINING TREATMENT WITHOUT THE
19 NECESSITY OF A DETERMINATION BY AN ATTENDING PHYSICIAN.

20 S 25. Paragraph 8 of subdivision (a) of section 81.22 of the mental
21 hygiene law, as amended by chapter 438 of the laws of 2004, is amended
22 to read as follows:

23 8. [consent to or refuse generally accepted routine or major medical
24 or dental treatment subject to the provisions of subdivision (e) of
25 section 81.29 of this article dealing with life sustaining treatment;
26 the guardian shall make treatment decisions consistent with the findings
27 under section 81.15 of this article and in accordance with the patient's
28 wishes, including the patient's religious and moral beliefs, or if the
29 patient's wishes are not known and cannot be ascertained with reasonable
30 diligence, in accordance with the person's best interests, including a
31 consideration of the dignity and uniqueness of every person, the possi-
32 bility and extent of preserving the person's life, the preservation,
33 improvement or restoration of the person's health or functioning, the
34 relief of the person's suffering, the adverse side effects associated
35 with the treatment, any less intrusive alternative treatments, and such
36 other concerns and values as a reasonable person in the incapacitated
37 person's circumstances would wish to consider] (I) FOR DECISIONS IN
38 HOSPITALS AS DEFINED BY SUBDIVISION EIGHTEEN OF SECTION TWENTY-NINE
39 HUNDRED NINETY-FOUR-A OF THE PUBLIC HEALTH LAW, ACT AS THE PATIENT'S
40 SURROGATE PURSUANT TO AND SUBJECT TO ARTICLE TWENTY-NINE-CC OF THE
41 PUBLIC HEALTH LAW, AND (II) IN ALL OTHER CIRCUMSTANCES, TO CONSENT TO OR
42 REFUSE GENERALLY ACCEPTED ROUTINE OR MAJOR MEDICAL OR DENTAL TREATMENT,
43 SUBJECT TO THE DECISION-MAKING STANDARD IN SUBDIVISION FOUR OF SECTION
44 TWENTY-NINE HUNDRED NINETY-FOUR-D OF THE PUBLIC HEALTH LAW;

45 S 26. Subdivision (e) of section 81.29 of the mental hygiene law is
46 REPEALED.

47 S 27. The opening paragraph and paragraphs (a) and (b) of subdivision
48 1 and the opening paragraph of subdivision 4 of section 1750-b of the
49 surrogate's court procedure act, the opening paragraph of subdivision 1
50 as amended and paragraphs (a) and (b) of subdivision 1 as added by chap-
51 ter 105 of the laws of 2007, the closing paragraph of paragraph (a) of
52 subdivision 1 as amended by chapter 12 of the laws of 2009 and the open-
53 ing paragraph of subdivision 4 as added by chapter 500 of the laws of
54 2002, are amended to read as follows:

55 Unless specifically prohibited by the court after consideration of the
56 determination, if any, regarding a mentally retarded person's capacity

1 to make health care decisions, which is required by section seventeen
2 hundred fifty of this article, the guardian of such person appointed
3 pursuant to section seventeen hundred fifty of this article shall have
4 the authority to make any and all health care decisions, as defined by
5 subdivision six of section twenty-nine hundred eighty of the public
6 health law, on behalf of the mentally retarded person that such person
7 could make if such person had capacity. Such decisions may include deci-
8 sions to withhold or withdraw life-sustaining treatment[, as defined in
9 subdivision (e) of section 81.29 of the mental hygiene law]. FOR
10 PURPOSES OF THIS SECTION, "LIFE-SUSTAINING TREATMENT" MEANS MEDICAL
11 TREATMENT, INCLUDING CARDIOPULMONARY RESUSCITATION AND NUTRITION AND
12 HYDRATION PROVIDED BY MEANS OF MEDICAL TREATMENT, WHICH IS SUSTAINING
13 LIFE FUNCTIONS AND WITHOUT WHICH, ACCORDING TO REASONABLE MEDICAL JUDG-
14 MENT, THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME PERIOD.
15 CARDIOPULMONARY RESUSCITATION IS PRESUMED TO BE LIFE-SUSTAINING TREAT-
16 MENT WITHOUT THE NECESSITY OF A MEDICAL JUDGMENT BY AN ATTENDING PHYSI-
17 CIAN. The provisions of this article are not intended to permit or
18 promote suicide, assisted suicide or euthanasia; accordingly, nothing in
19 this section shall be construed to permit a guardian to consent to any
20 act or omission to which the mentally retarded person could not consent
21 if such person had capacity.

22 (a) For the purposes of making a decision to withhold or withdraw
23 life-sustaining treatment pursuant to this section, in the case of a
24 person for whom no guardian has been appointed pursuant to section
25 seventeen hundred fifty or seventeen hundred fifty-a of this article, a
26 "guardian" shall also mean a family member of a person who (i) has
27 mental retardation, or (ii) has a developmental disability, as defined
28 in section 1.03 of the mental hygiene law, which (A) includes mental
29 retardation, or (B) results in a similar impairment of general intellec-
30 tual functioning or adaptive behavior so that such person is incapable
31 of managing himself or herself, and/or his or her affairs by reason of
32 such developmental disability. Qualified family members shall be
33 included in a prioritized list OF SAID FAMILY MEMBERS pursuant to regu-
34 lations established by the commissioner of mental retardation and devel-
35 opmental disabilities. Such family members must have a significant and
36 ongoing involvement in a person's life so as to have sufficient know-
37 ledge of their needs and, when reasonably known or ascertainable, the
38 person's wishes, including moral and religious beliefs. IN THE CASE OF
39 A PERSON WHO WAS A RESIDENT OF THE FORMER WILLOWBROOK STATE SCHOOL ON
40 MARCH SEVENTEENTH, NINETEEN HUNDRED SEVENTY-TWO AND THOSE INDIVIDUALS
41 WHO WERE IN COMMUNITY CARE STATUS ON THAT DATE AND SUBSEQUENTLY RETURNED
42 TO WILLOWBROOK OR A RELATED FACILITY, WHO ARE FULLY REPRESENTED BY THE
43 CONSUMER ADVISORY BOARD AND WHO HAVE NO GUARDIANS APPOINTED PURSUANT TO
44 THIS ARTICLE OR HAVE NO QUALIFIED FAMILY MEMBERS TO MAKE SUCH A DECI-
45 SION, THEN A "GUARDIAN" SHALL ALSO MEAN THE WILLOWBROOK CONSUMER ADVI-
46 SORY BOARD. A decision of such family member OR THE WILLOWBROOK CONSUMER
47 ADVISORY BOARD to withhold or withdraw life-sustaining treatment shall
48 be subject to all of the protections, procedures and safeguards which
49 apply to the decision of a guardian to withhold or withdraw life-sus-
50 taining treatment pursuant to this section.

51 In the case of a person for whom no guardian has been appointed pursu-
52 ant to this article or for whom there is no qualified family member OR
53 THE WILLOWBROOK CONSUMER ADVISORY BOARD available to make such a deci-
54 sion, a "guardian" shall also mean, notwithstanding the definitions in
55 section 80.03 of the mental hygiene law, a surrogate decision-making
56 committee, as defined in article eighty of the mental hygiene law. All

1 declarations and procedures, including expedited procedures, to comply
2 with this section shall be established by regulations promulgated by the
3 commission on quality of care and advocacy for persons with disabili-
4 ties.

5 (b) Regulations establishing the prioritized list OF QUALIFIED FAMILY
6 MEMBERS required by paragraph (a) of this subdivision shall be developed
7 by the commissioner of mental retardation and developmental disabilities
8 in conjunction with parents, advocates and family members of persons who
9 are mentally retarded. REGULATIONS TO IMPLEMENT THE AUTHORITY OF THE
10 WILLOWBROOK CONSUMER ADVISORY BOARD PURSUANT TO PARAGRAPH (A) OF THIS
11 SUBDIVISION MAY BE PROMULGATED BY THE COMMISSIONER OF THE OFFICE OF
12 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WITH ADVICE FROM THE
13 WILLOWBROOK CONSUMER ADVISORY BOARD.

14 The guardian shall have the affirmative obligation to advocate for the
15 full and efficacious provision of health care, including life-sustaining
16 treatment [as defined in subdivision (e) of section 81.29 of the mental
17 hygiene law]. In the event that a guardian makes a decision to withdraw
18 or withhold life-sustaining treatment from a mentally retarded person:

19 S 28. Issues to be considered by the task force on life and the law;
20 special advisory committee. The New York state task force on life and
21 the law (referred to in this section as the "task force"), a body
22 created by executive order number 56 (issued December 20, 1984), shall
23 consider and make regulatory and statutory recommendations relating to
24 the family health care decisions act (article 29-CC of the public health
25 law, referred to in this section as the "FHCD A"), including the follow-
26 ing:

27 1. The task force shall consider whether the FHCD A should be amended
28 to incorporate procedures, standards and practices for decisions about
29 the withdrawal or withholding of life-sustaining treatment from patients
30 with mental illness or mental retardation or developmental disabilities,
31 and from patients residing in mental health facilities. The task force
32 shall form a special advisory committee to advise the task force in its
33 work under this subdivision. The special advisory committee shall
34 consist of six task force members, selected by the chair of the task
35 force, three persons selected by the commissioner of the office of
36 mental health, and three persons selected by the commissioner of the
37 office of mental retardation and developmental disabilities. The special
38 advisory committee shall solicit comments from a broader range of inter-
39 ested persons.

40 2. The task force shall consider whether the FHCD A should be amended
41 to apply to health care decisions in settings other than general hospi-
42 tals and residential health care facilities.

43 S 29. This act shall take effect immediately; provided that sections
44 one through twenty-six of this act shall take effect on the first of
45 June next succeeding the date on which this act shall have become a law;
46 and provided further that effective immediately it shall be lawful for a
47 hospital, as defined in subdivision 18 of section 2994-a of the public
48 health law, as added by this act to adopt a policy that is consistent
49 with the requirements of article 29-CC of the public health law as added
50 by section two of this act or the mental hygiene law as amended by
51 sections twenty-five and twenty-six of this act and for a health care
52 provider to accept and carry out a health care decision in accordance
53 with such requirements for a patient in a hospital that has adopted such
54 policy.