

7729

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, DeMONTE, DINOWITZ, FINCH, GABRYSZAK, GALEF, GUNTHER, JAFFEE, KELLNER, KOON, LANCMAN, V. LOPEZ, MAGNARELLI, PEOPLES, SPANO, STIRPE, TOWNS -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, AUBRY, BENEDETTO, BING, BRADLEY, CHRISTENSEN, CLARK, COOK, CYMBROWITZ, DESTITO, EDDINGTON, ENGLEBRIGHT, FIELDS, GANTT, GIANARIS, GLICK, GREENE, HIKIND, HOOPER, HOYT, JACOBS, JOHN, LATIMER, LAVINE, LIFTON, LUPARDO, MAGEE, MAISEL, MAYERSOHN, McENENY, MENG, MILLMAN, MORELLE, NOLAN, ORTIZ, PAULIN, PHEFFER, PRETLOW, REILLY, N. RIVERA, P. RIVERA, ROBINSON, ROSENTHAL, SCARBOROUGH, SEMINERIO, SWEENEY, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing procedures for making medical treatment decisions on behalf of persons who lack the capacity to decide about treatment for themselves and to repeal certain provisions of such law relating thereto

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 whereby a surrogate is selected and empowered to make health
8 care decisions for patients who lack capacity to make their own health
9 care decisions and who have not otherwise appointed an agent to make
10 health care decisions pursuant to article 29-C of the public health law
11 or provided clear and convincing evidence of their treatment wishes.
12 The legislature does not intend to encourage or discourage any partic-
13 ular health care decision or treatment, or to create or expand a

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

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substantive right of competent adults to decide about treatment for themselves. Further, the legislature does not intend to authorize a surrogate to deny to the patient personal services that every patient would generally receive, such as appropriate food, water, bed rest, room temperature and hygiene. This legislation establishes a procedure to facilitate responsible decision-making by surrogates on behalf of patients who do not have capacity to make their own health care decisions.

This legislation affirms existing laws and policies that limit individual conduct of patients with or without capacity, including those laws and policies against homicide, suicide, assisted suicide and mercy killing.

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

ARTICLE 29-CC

FAMILY HEALTH CARE DECISIONS ACT

SECTION 2994-A. DEFINITIONS.

2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE SEVENTEEN-A GUARDIAN.

2994-C. DETERMINATION OF INCAPACITY.

2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES.

2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR PATIENTS.

2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN.

2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES.

2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE FACILITY.

2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE.

2994-J. REVOCATION OF CONSENT.

2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS.

2994-L. INTERINSTITUTIONAL TRANSFERS.

2994-M. ETHICS REVIEW COMMITTEES.

2994-N. CONSCIENCE OBJECTIONS.

2994-O. IMMUNITY.

2994-P. LIABILITY FOR HEALTH CARE COSTS.

2994-Q. EFFECT ON OTHER RIGHTS.

2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE GUARDIAN FOR MINOR PATIENT.

2994-S. REMEDY.

2994-T. REGULATIONS.

2994-U. RIGHTS TO BE PUBLICIZED.

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

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

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

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

1 4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN
2 REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION
3 OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY
4 ARREST. CARDIOPULMONARY RESUSCITATION SHALL NOT INCLUDE MEASURES TO
5 IMPROVE VENTILATION AND CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

6 5. "CLOSE RELATIVE OR CLOSE FRIEND" MEANS ANY PERSON, EIGHTEEN YEARS
7 OF AGE OR OLDER, WHO IS A RELATIVE OR FRIEND OF THE PATIENT, REGARDLESS
8 OF BLOOD OR LEGAL RELATIONSHIP, AND WHO HAS MAINTAINED SUCH REGULAR
9 CONTACT WITH THE PATIENT AS TO BE FAMILIAR WITH THE PATIENT'S ACTIV-
10 ITIES, HEALTH, AND RELIGIOUS OR MORAL BELIEFS.

11 6. "DECISION-MAKING CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND
12 APPRECIATE THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, INCLUD-
13 ING THE BENEFITS AND RISKS OF, AND ALTERNATIVES TO, ANY SUCH PROPOSED
14 HEALTH CARE, AND TO REACH AN INFORMED DECISION.

15 7. "DEVELOPMENTAL DISABILITY" MEANS A DEVELOPMENTAL DISABILITY AS
16 DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE
17 LAW.

18 8. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER
19 PERSON:

20 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
21 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
22 UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGIS-
23 TERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY
24 MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY,
25 OR FOREIGN JURISDICTION; OR

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

28 (C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR
29 SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A
30 MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO:
31 COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON
32 HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON;
33 SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A)
34 OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP
35 OF THE PERSONS.

36 EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE
37 DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT
38 INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER
39 THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMES-
40 TIC PARTNER" ALSO SHALL NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN
41 YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS
42 RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE
43 TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

44 9. "EMANCIPATED MINOR PATIENT" MEANS A MINOR PATIENT WHO IS THE PARENT
45 OF A CHILD, OR WHO IS SIXTEEN YEARS OF AGE OR OLDER AND LIVING INDEPEND-
46 ENTLY FROM HIS OR HER PARENTS OR GUARDIAN.

47 10. "GENERAL HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVI-
48 SION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

49 11. "GUARDIAN OF A MINOR" OR "GUARDIAN" MEANS A HEALTH CARE GUARDIAN
50 OR A LEGAL GUARDIAN OF THE PERSON OF A MINOR.

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

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

1 14. "HEALTH CARE DECISION" MEANS ANY DECISION TO CONSENT OR REFUSE TO
2 CONSENT TO HEALTH CARE.

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

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

11 17. "HEALTH OR SOCIAL SERVICE PRACTITIONER" MEANS A REGISTERED PROFES-
12 SIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
13 PSYCHOLOGIST OR CERTIFIED SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT
14 TO THE EDUCATION LAW.

15 18. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN
16 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, AND A RESIDENTIAL
17 HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-
18 EIGHT HUNDRED ONE OF THIS CHAPTER, BUT EXCLUDING A WARD, WING, UNIT OR
19 OTHER PART OF A GENERAL HOSPITAL THAT PROVIDES MENTAL HEALTH SERVICES TO
20 MENTALLY ILL PERSONS PURSUANT TO AN OPERATING CERTIFICATE ISSUED BY THE
21 COMMISSIONER OF MENTAL HEALTH OTHER THAN MEDICAL-PSYCHIATRIC UNITS
22 JOINTLY IDENTIFIED BY THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF
23 MENTAL HEALTH.

24 19. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCE-
25 DURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME,
26 AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF
27 MEDICAL CERTAINTY.

28 20. "MENTAL HYGIENE FACILITY" MEANS A RESIDENTIAL FACILITY OPERATED OR
29 LICENSED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDA-
30 TION AND DEVELOPMENTAL DISABILITIES.

31 21. "MENTAL ILLNESS" MEANS A MENTAL ILLNESS AS DEFINED IN SUBDIVISION
32 TWENTY OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, PROVIDED, HOWEVER,
33 THAT MENTAL ILLNESS SHALL NOT INCLUDE DEMENTIA, SUCH AS ALZHEIMER'S
34 DISEASE, OR OTHER DISORDERS RELATED TO DEMENTIA.

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

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

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

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

43 26. "PERSON CONNECTED WITH THE CASE" MEANS THE PATIENT, ANY PERSON ON
44 THE SURROGATE LIST, A PARENT OR GUARDIAN OF A MINOR PATIENT, THE HOSPI-
45 TAL ADMINISTRATOR, AN ATTENDING PHYSICIAN, ANY OTHER HEALTH OR SOCIAL
46 SERVICES PRACTITIONER WHO IS OR HAS BEEN DIRECTLY INVOLVED IN THE
47 PATIENT'S CARE, AND ANY DULY AUTHORIZED STATE AGENCY, INCLUDING THE
48 FACILITY DIRECTOR OR REGIONAL DIRECTOR FOR A PATIENT TRANSFERRED FROM A
49 MENTAL HYGIENE FACILITY AND THE FACILITY DIRECTOR FOR A PATIENT TRANS-
50 FERRED FROM A CORRECTIONAL FACILITY.

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

54 28. "RESIDENTIAL HEALTH CARE FACILITY" MEANS A RESIDENTIAL HEALTH CARE
55 FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED
56 ONE OF THIS CHAPTER.

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

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

6 S 2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE SEVEN-
7 TEEN-A GUARDIAN. A HEALTH CARE DECISION BY A HEALTH CARE AGENT ON A
8 PATIENT'S BEHALF IS GOVERNED BY ARTICLE TWENTY-NINE-C OF THIS CHAPTER
9 AND SHALL HAVE PRIORITY OVER DECISIONS BY ANY OTHER PERSON EXCEPT THE
10 PATIENT OR AS OTHERWISE PROVIDED IN THE HEALTH CARE PROXY. HEALTH CARE
11 PROVIDERS SHALL MAKE REASONABLE EFFORTS TO DETERMINE WHETHER THE PATIENT
12 HAS APPOINTED A HEALTH CARE AGENT AND TO CONTACT THE AGENT BEFORE RELY-
13 ING ON A DECISION BY A SURROGATE UNDER THIS ARTICLE.

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

20 2. DETERMINATION BY ATTENDING PHYSICIAN. A DETERMINATION THAT AN ADULT
21 PATIENT LACKS DECISION-MAKING CAPACITY, AS WELL AS AN ASSESSMENT OF THE
22 CAUSE AND EXTENT OF THE PATIENT'S INCAPACITY AND THE LIKELIHOOD THAT THE
23 PATIENT WILL REGAIN DECISION-MAKING CAPACITY, SHALL BE MADE BY AN
24 ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF CERTAINTY.

25 3. INDEPENDENT DETERMINATIONS. (A) (I) IN A RESIDENTIAL HEALTH CARE
26 FACILITY, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHER-
27 WISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE
28 WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY. IN A GENERAL
29 HOSPITAL, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHER-
30 WISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE
31 WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY IF THE SURRO-
32 GATE'S DECISION CONCERNS THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAIN-
33 ING TREATMENT.

34 (II) IF AN ATTENDING PHYSICIAN HAS DETERMINED THAT THE PATIENT LACKS
35 DECISION-MAKING CAPACITY AND THE HEALTH OR SOCIAL SERVICES PRACTITIONER
36 CONSULTED FOR AN INDEPENDENT DETERMINATION DISAGREES WITH THE ATTENDING
37 PHYSICIAN'S DETERMINATION, THE MATTER SHALL BE REFERRED TO THE ETHICS
38 REVIEW COMMITTEE IF IT CANNOT OTHERWISE BE RESOLVED.

39 (B) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT LACKS DECI-
40 SION-MAKING CAPACITY BECAUSE OF MENTAL RETARDATION OR DEVELOPMENTAL
41 DISABILITY, THE ATTENDING PHYSICIAN WHO MAKES THE DETERMINATION MUST
42 HAVE, OR MUST CONSULT WITH A HEALTH OR SOCIAL SERVICES PRACTITIONER WHO
43 HAS SPECIALIZED TRAINING OR EXPERIENCE IN DIAGNOSING OR TREATING MENTAL
44 ILLNESS OR DEVELOPMENTAL DISABILITIES OF THE SAME OR SIMILAR NATURE.

45 (C) HOSPITALS SHALL ADOPT WRITTEN POLICIES IDENTIFYING THE TRAINING
46 AND CREDENTIALS OF HEALTH OR SOCIAL SERVICES PRACTITIONERS QUALIFIED TO
47 PROVIDE INDEPENDENT DETERMINATIONS OF INCAPACITY.

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

52 (A) TO THE PATIENT, WHERE THERE IS ANY INDICATION OF THE PATIENT'S
53 ABILITY TO COMPREHEND THE INFORMATION; AND

54 (B) TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF
55 PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAIL-

1 ABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-
2 FOUR-D OF THIS ARTICLE.

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

7 6. PRIORITY OF PATIENT'S DECISION. NOTWITHSTANDING A DETERMINATION
8 PURSUANT TO THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING
9 CAPACITY, IF THE PATIENT OBJECTS TO THE DETERMINATION OF INCAPACITY, OR
10 TO THE CHOICE OF A SURROGATE OR TO A HEALTH CARE DECISION MADE BY A
11 SURROGATE OR MADE PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G
12 OF THIS ARTICLE, THE PATIENT'S OBJECTION OR DECISION SHALL PREVAIL
13 UNLESS A COURT OF COMPETENT JURISDICTION HAS DETERMINED THAT THE PATIENT
14 LACKS DECISION-MAKING CAPACITY OR THE PATIENT IS OR HAS BEEN ADJUDGED
15 INCOMPETENT FOR ALL PURPOSES.

16 7. CONFIRMATION OF CONTINUED LACK OF DECISION-MAKING CAPACITY. AN
17 ATTENDING PHYSICIAN SHALL CONFIRM THE ADULT PATIENT'S CONTINUED LACK OF
18 DECISION-MAKING CAPACITY BEFORE COMPLYING WITH HEALTH CARE DECISIONS
19 MADE PURSUANT TO THIS ARTICLE, OTHER THAN THOSE DECISIONS MADE AT OR
20 ABOUT THE TIME OF THE INITIAL DETERMINATION. AN INDEPENDENT DETERMI-
21 NATION OF THE PATIENT'S CONTINUED LACK OF DECISION-MAKING CAPACITY SHALL
22 BE REQUIRED IF THE SUBSEQUENT HEALTH CARE DECISION CONCERNS THE WITH-
23 HOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. HEALTH CARE PROVID-
24 ERS SHALL NOT BE REQUIRED TO INFORM THE PATIENT OR SURROGATE OF THE
25 CONFIRMATION.

26 S 2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES. 1.
27 IDENTIFYING THE SURROGATE. ONE PERSON FROM THE FOLLOWING LIST, CHOSEN
28 FROM THE CLASS HIGHEST IN PRIORITY WHEN PERSONS IN PRIOR CLASSES ARE NOT
29 REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, SHALL BE THE SURRO-
30 GATE FOR AN ADULT PATIENT WITHOUT DECISION-MAKING CAPACITY:

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

33 (B) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, DESIGNATED ORALLY
34 BY THE PATIENT TO SERVE AS SURROGATE, IF SUCH DESIGNATION WAS MADE IN
35 THE PRESENCE OF TWO ADULT WITNESSES, EITHER OF WHOM MAY BE AN EMPLOYEE
36 OF OR AFFILIATED WITH A FACILITY AT WHICH THE PATIENT IS RECEIVING
37 TREATMENT, BUT NEITHER OF WHOM IS DESIGNATED AS THE SURROGATE UNDER THIS
38 PARAGRAPH, AND THOSE WITNESSES AFFIRM THAT THE PATIENT REASONABLY
39 APPEARED TO HAVE DECISION-MAKING CAPACITY TO MAKE SUCH A DESIGNATION;

40 (C) AN INDIVIDUAL, EIGHTEEN YEARS OF AGE OR OLDER, WHO IS A MEMBER OF
41 ANY ONE OF THE CLASSES SET FORTH IN THIS SUBDIVISION AND WHO IS DESIG-
42 NATED BY THE PERSON WHO OTHERWISE WOULD BE CHOSEN TO ACT AS SURROGATE
43 BASED ON THE PRIORITY LIST ESTABLISHED IN THIS SUBDIVISION, PROVIDED
44 THAT NO PERSON IN A CLASS HIGHER IN PRIORITY THAN THE PERSON DESIGNATED
45 OBJECTS;

46 (D) THE SPOUSE, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE
47 DOMESTIC PARTNER;

48 (E) A SON OR DAUGHTER EIGHTEEN YEARS OF AGE OR OLDER;

49 (F) A PARENT;

50 (G) A BROTHER OR SISTER EIGHTEEN YEARS OF AGE OR OLDER;

51 (H) A CLOSE RELATIVE OR CLOSE FRIEND.

52 2. RESTRICTIONS ON WHO MAY BE A SURROGATE. AN OPERATOR, ADMINISTRATOR,
53 OR EMPLOYEE OF A HOSPITAL, A PHYSICIAN WHO HAS PRIVILEGES AT THE HOSPI-
54 TAL OR A HEALTH CARE PROVIDER UNDER CONTRACT WITH THE HOSPITAL MAY NOT
55 SERVE AS THE SURROGATE FOR ANY ADULT WHO IS A PATIENT OF SUCH HOSPITAL,
56 UNLESS SUCH INDIVIDUAL IS RELATED TO THE PATIENT BY BLOOD, MARRIAGE, OR

ADOPTION, OR IS A CLOSE FRIEND OF THE PATIENT WHOSE FRIENDSHIP WITH THE PATIENT PRECEDED THE PATIENT'S ADMISSION TO THE FACILITY. IF A PHYSICIAN SERVES AS SURROGATE, THE PHYSICIAN SHALL NOT ACT AS THE PATIENT'S ATTENDING PHYSICIAN AFTER HIS OR HER AUTHORITY AS SURROGATE BEGINS.

3. AUTHORITY AND DUTIES OF SURROGATE. (A) SCOPE OF SURROGATE'S AUTHORITY.

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

(II) NOTHING IN THIS ARTICLE SHALL OBLIGATE HEALTH CARE PROVIDERS TO SEEK THE CONSENT OF A SURROGATE IF AN ADULT PATIENT HAS ALREADY MADE A DECISION ABOUT THE PROPOSED HEALTH CARE, EXPRESSED ORALLY OR IN WRITING, INCLUDING A DECISION ABOUT WITHDRAWING OR WITHHOLDING LIFE-SUSTAINING TREATMENT. IF AN ATTENDING PHYSICIAN RELIES ON THE PATIENT'S PRIOR DECISION, THE PHYSICIAN SHALL RECORD THE PRIOR DECISION IN THE PATIENT'S MEDICAL RECORD. IF A SURROGATE HAS ALREADY BEEN DESIGNATED FOR THE PATIENT, THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE SURROGATE PRIOR TO IMPLEMENTING THE DECISION.

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

(C) RIGHT AND DUTY TO BE INFORMED. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE SURROGATE SHALL HAVE THE RIGHT TO RECEIVE MEDICAL INFORMATION AND MEDICAL RECORDS NECESSARY TO MAKE INFORMED DECISIONS ABOUT THE PATIENT'S HEALTH CARE. HEALTH CARE PROVIDERS SHALL PROVIDE AND THE SURROGATE SHALL SEEK INFORMATION NECESSARY TO MAKE AN INFORMED DECISION, INCLUDING INFORMATION ABOUT THE PATIENT'S DIAGNOSIS, PROGNOSIS, THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, AND THE BENEFITS AND RISKS OF AND ALTERNATIVE TO PROPOSED HEALTH CARE.

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

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

(II) IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN AND CANNOT WITH REASONABLE DILIGENCE BE ASCERTAINED, IN ACCORDANCE WITH THE PATIENT'S BEST INTERESTS. AN ASSESSMENT OF THE PATIENT'S BEST INTERESTS SHALL INCLUDE: CONSIDERATION OF THE DIGNITY AND UNIQUENESS OF EVERY PERSON; THE POSSIBILITY AND EXTENT OF PRESERVING THE PATIENT'S LIFE; THE PRESERVATION, IMPROVEMENT OR RESTORATION OF THE PATIENT'S HEALTH OR FUNCTIONING; THE RELIEF OF THE PATIENT'S SUFFERING; AND ANY MEDICAL CONDITION AND SUCH OTHER CONCERNS AND VALUES AS A REASONABLE PERSON IN THE PATIENT'S CIRCUMSTANCES WOULD WISH TO CONSIDER.

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

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

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

(II) THE PROVISION OF TREATMENT WOULD INVOLVE SUCH PAIN, SUFFERING OR OTHER BURDEN THAT IT WOULD REASONABLY BE DEEMED INHUMANE OR EXTRAORDINARILY BURDENSOME UNDER THE CIRCUMSTANCES AND THE PATIENT HAS AN IRREVERSIBLE OR INCURABLE CONDITION, AS DETERMINED BY AN ATTENDING PHYSICIAN WITH THE INDEPENDENT CONCURRENCE OF ANOTHER PHYSICIAN TO A REASONABLE DEGREE OF MEDICAL CERTAINTY AND IN ACCORD WITH ACCEPTED MEDICAL STANDARDS.

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

(C) IN A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, IF THE ATTENDING PHYSICIAN OBJECTS TO A SURROGATE'S DECISION, UNDER SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION, TO WITHDRAW OR WITHHOLD NUTRITION AND HYDRATION PROVIDED BY MEANS OF MEDICAL TREATMENT THE DECISION SHALL NOT BE IMPLEMENTED UNTIL THE ETHICS REVIEW COMMITTEE, INCLUDING AT LEAST ONE PHYSICIAN WHO IS NOT DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE, OR A COURT OF COMPETENT JURISDICTION, REVIEWS THE DECISION AND DETERMINES THAT IT MEETS THE STANDARDS SET FORTH IN THIS SUBDIVISION AND SUBDIVISION FOUR OF THIS SECTION.

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

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

6. DECISIONS RELATING TO PATIENTS WITH MENTAL RETARDATION. (A) THIS SUBDIVISION APPLIES TO DECISIONS RELATING TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FOR PATIENTS WHO LACK CAPACITY BECAUSE OF MENTAL RETARDATION, AS DEFINED IN SECTION 1.03 OF THE MENTAL HYGIENE LAW, OR AN IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR THAT MEETS THAT DEFINITION.

(B) SUCH DECISION SHALL BE MADE UNDER THIS ARTICLE BY A SURROGATE, OR IN THE CASE OF A MINOR, BY A PARENT OR GUARDIAN, PROVIDED THAT:

(I) SUCH DECISION IS NOT BASED ON A PRESUMPTION THAT PERSONS WITH MENTAL RETARDATION OR SIMILAR IMPAIRMENTS ARE NOT ENTITLED TO EQUAL RIGHTS, EQUAL PROTECTION, RESPECT, FULL AND EFFICACIOUS HEALTH CARE AND DIGNITY AFFORDED TO PERSONS WITHOUT MENTAL RETARDATION OR OTHER SIMILAR IMPAIRMENTS;

(II) SUCH DECISION IS IMPLEMENTED AFTER ALL OTHER TREATMENT OPTIONS WHICH WOULD HAVE BEEN CONSIDERED FOR A PATIENT WITHOUT MENTAL RETARDATION OR A SIMILAR IMPAIRMENT HAVE BEEN CONSIDERED;

(III) THE DETERMINATION AND CONFIRMATION OF THE PATIENT'S INCAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE

1 AND A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT, IF
2 ANY, ARE DOCUMENTED AND ENTERED ON THE PATIENT'S HEALTH CARE RECORD; AND
3 (IV) AT LEAST FORTY-EIGHT HOURS OR AS SOON AS PRACTICABLE PRIOR TO
4 IMPLEMENTATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
5 TREATMENT, THE ATTENDING PHYSICIAN SHALL NOTIFY THE PATIENT, WHERE THERE
6 IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE INFORMA-
7 TION, AND, IF THE PATIENT RESIDES IN A RESIDENTIAL SETTING CERTIFIED OR
8 LICENSED BY THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND
9 DEVELOPMENTAL DISABILITIES, SUCH COMMISSIONER OR HIS OR HER DESIGNEE.
10 THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL
11 DISABILITIES, AT HIS OR HER DISCRETION, MAY NOTIFY THE MENTAL HYGIENE
12 LEGAL SERVICES. IN ADDITION, THE HOSPITAL SHALL COMPLY WITH THE NOTICE
13 REQUIREMENTS UNDER THIS SECTION.

14 (C) (I) IN THE EVENT OF AN OBJECTION UNDER THIS ARTICLE, BY A PERSON
15 CONNECTED WITH THE CASE, TO A DECISION UNDER THIS SUBDIVISION TO WITH-
16 HOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT SUCH DECISION SHALL BE
17 SUSPENDED PENDING REVIEW BY THE ETHICS REVIEW COMMITTEE.

18 (II) A PHYSICIAN WHO RECEIVES AN ORDER TO IMPLEMENT A DECISION UNDER
19 THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING CARE AND
20 OBJECTS TO SUCH ORDER, SHALL PROMPTLY REFER SUCH MATTER TO THE ETHICS
21 REVIEW COMMITTEE, PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE
22 HUNDRED NINETY-FOUR-F OF THIS ARTICLE.

23 (III) FOR ADULTS UNDER THIS SUBDIVISION WITHOUT A SURROGATE WILLING OR
24 ABLE TO ACT UNDER THIS ARTICLE, A SURROGATE DECISION MAKING COMMITTEE,
25 UNDER ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW, SHALL BE AUTHORIZED TO
26 MAKE A DECISION UNDER THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUS-
27 TAINING TREATMENT.

28 (IV) A SURROGATE ACTING UNDER THIS SUBDIVISION, OR IN THE CASE OF A
29 MINOR, A PARENT OR GUARDIAN, SHALL HAVE THE AFFIRMATIVE OBLIGATION TO
30 ADVOCATE FOR FULL AND EFFICACIOUS CARE FOR THE PATIENT, SUBJECT TO AND
31 CONSISTENT WITH SURROGATE'S DECISION-MAKING AUTHORITY UNDER THIS ARTI-
32 CLE.

33 (V) NOTHING IN THIS SUBDIVISION SHALL IMPOSE AN OBLIGATION ON AN
34 ATTENDING PHYSICIAN TO EVALUATE A PATIENT FOR MENTAL RETARDATION, AS
35 DEFINED IN SECTION 1.03 OF THE MENTAL HYGIENE LAW, OR A SIMILAR IMPAIR-
36 MENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR UNLESS IT
37 IS READILY APPARENT THAT THE PATIENT IS A PERSON WITH MENTAL RETARDATION
38 OR A SIMILAR INTELLECTUAL OR ADAPTIVE IMPAIRMENT OR THE PATIENT IS IDEN-
39 TIFIED AS SUCH PERSON.

40 S 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR
41 PATIENTS. 1. AUTHORITY OF PARENT OR GUARDIAN. THE PARENT OR GUARDIAN OF
42 A MINOR PATIENT SHALL HAVE THE AUTHORITY TO MAKE DECISIONS ABOUT
43 LIFE-SUSTAINING TREATMENT, INCLUDING DECISIONS TO WITHHOLD OR WITHDRAW
44 SUCH TREATMENT, SUBJECT TO THE PROVISIONS OF THIS SECTION AND SUBDIVI-
45 SION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

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

52 (B) AN ATTENDING PHYSICIAN, IN CONSULTATION WITH A MINOR'S PARENT OR
53 GUARDIAN, SHALL DETERMINE WHETHER A MINOR PATIENT HAS DECISION-MAKING
54 CAPACITY FOR A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREAT-
55 MENT. IF THE MINOR HAS SUCH CAPACITY, A PARENT'S OR GUARDIAN'S DECISION

1 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE MINOR MAY NOT
2 BE IMPLEMENTED WITHOUT THE MINOR'S CONSENT.

3 (C) WHERE A PARENT OR GUARDIAN OF A MINOR PATIENT HAS MADE A DECISION
4 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT AND AN ATTENDING
5 PHYSICIAN HAS REASON TO BELIEVE THAT THE MINOR PATIENT HAS A PARENT OR
6 GUARDIAN WHO HAS NOT BEEN INFORMED OF THE DECISION, INCLUDING A NON-CUS-
7 TODIAL PARENT OR GUARDIAN, AN ATTENDING PHYSICIAN OR SOMEONE ACTING ON
8 HIS OR HER BEHALF, SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE
9 UNINFORMED PARENT OR GUARDIAN HAS MAINTAINED SUBSTANTIAL AND CONTINUOUS
10 CONTACT WITH THE MINOR AND, IF SO, SHALL MAKE DILIGENT EFFORTS TO NOTIFY
11 THAT PARENT OR GUARDIAN PRIOR TO IMPLEMENTING THE DECISION.

12 3. DECISION-MAKING STANDARDS AND PROCEDURES FOR EMANCIPATED MINOR
13 PATIENT. (A) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT IS AN
14 EMANCIPATED MINOR PATIENT WITH DECISION-MAKING CAPACITY, THE PATIENT
15 SHALL HAVE THE AUTHORITY TO DECIDE ABOUT LIFE-SUSTAINING TREATMENT. SUCH
16 AUTHORITY SHALL INCLUDE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAIN-
17 ING TREATMENT IF AN ATTENDING PHYSICIAN AND THE ETHICS REVIEW COMMITTEE
18 DETERMINE THAT THE DECISION ACCORDS WITH THE STANDARDS FOR SURROGATE
19 DECISIONS FOR ADULTS, AND THE ETHICS REVIEW COMMITTEE APPROVES THE DECI-
20 SION.

21 (B) IF THE HOSPITAL CAN READILY ASCERTAIN THE IDENTITY OF THE PARENTS
22 OR GUARDIAN OF AN EMANCIPATED MINOR PATIENT, THE HOSPITAL SHALL NOTIFY
23 SUCH PERSONS PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREAT-
24 MENT PURSUANT TO THIS SUBDIVISION.

25 S 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN. 1. AN ATTENDING PHYSI-
26 CIAN INFORMED OF A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING
27 TREATMENT MADE PURSUANT TO THE STANDARDS OF THIS ARTICLE SHALL RECORD
28 THE DECISION IN THE PATIENT'S MEDICAL RECORD, REVIEW THE MEDICAL BASIS
29 FOR THE DECISION, AND SHALL EITHER: (A) IMPLEMENT THE DECISION, OR (B)
30 PROMPTLY MAKE HIS OR HER OBJECTION TO THE DECISION AND THE REASONS FOR
31 THE OBJECTION KNOWN TO THE DECISION-MAKER, AND EITHER MAKE ALL REASON-
32 ABLE EFFORTS TO ARRANGE FOR THE TRANSFER OF THE PATIENT TO ANOTHER
33 PHYSICIAN, IF NECESSARY, OR PROMPTLY REFER THE MATTER TO THE ETHICS
34 REVIEW COMMITTEE.

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

39 (A) A HEALTH OR SOCIAL SERVICES PRACTITIONER CONSULTED FOR AN INDE-
40 PENDENT DETERMINATION THAT AN ADULT PATIENT LACKS DECISION-MAKING CAPAC-
41 ITY DISAGREES WITH THE ATTENDING PHYSICIAN'S DETERMINATION;

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

45 (C) ANY PERSON ON THE SURROGATE LIST OF THE PATIENT OBJECTS TO A
46 SURROGATE'S DECISION; OR

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

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

53 3. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION ONE
54 OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-Q OF THIS ARTICLE, IF A
55 SURROGATE DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL
56 OF WHICH IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE

DEATH OF THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT DOES NOT WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH THE SURROGATE'S DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A WILLING HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS ARTICLE.

S 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES. 1. IDENTIFYING ADULT PATIENTS WITHOUT SURROGATES. WITHIN A REASONABLE TIME AFTER ADMISSION AS AN INPATIENT TO THE HOSPITAL OF EACH ADULT PATIENT, THE HOSPITAL SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE PATIENT HAS APPOINTED A HEALTH CARE AGENT OR IF AT LEAST ONE INDIVIDUAL IS AVAILABLE TO SERVE AS THE PATIENT'S SURROGATE IN THE EVENT THE PATIENT LOSES DECISION-MAKING CAPACITY. IF NO SUCH POTENTIAL SURROGATE IS IDENTIFIED, THE HOSPITAL SHALL IDENTIFY, TO THE EXTENT REASONABLY POSSIBLE, THE PATIENT'S WISHES AND PREFERENCES, INCLUDING THE PATIENT'S RELIGIOUS AND MORAL BELIEFS, ABOUT PENDING HEALTH CARE DECISIONS, AND SHALL RECORD ITS FINDINGS IN THE PATIENT'S MEDICAL RECORD.

2. DECISION-MAKING STANDARDS AND PROCEDURES. ANY HEALTH CARE DECISION MADE PURSUANT TO THIS SECTION SHALL BE MADE IN ACCORDANCE WITH THE STANDARDS SET FORTH IN SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE AND SHALL NOT BE BASED ON THE FINANCIAL INTERESTS OF THE HOSPITAL OR ANY OTHER HEALTH CARE PROVIDER. THE PROCEDURES FOR MAKING HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES ARE SPECIFIED IN THE FOLLOWING SUBDIVISIONS. THE SPECIFIC PROCEDURES TO BE FOLLOWED DEPEND ON WHETHER THE DECISION INVOLVES ROUTINE MEDICAL TREATMENT, MAJOR MEDICAL TREATMENT, OR THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. IN ADDITION, CERTAIN ASPECTS OF THESE PROCEDURES DEPEND ON WHETHER THE PATIENT IS IN A GENERAL HOSPITAL OR A RESIDENTIAL HEALTH CARE FACILITY.

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

(B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, AN ATTENDING PHYSICIAN SHALL BE AUTHORIZED TO DECIDE ABOUT ROUTINE MEDICAL TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE. NOTHING IN THIS SUBDIVISION SHALL REQUIRE HEALTH CARE PROVIDERS TO OBTAIN SPECIFIC CONSENT FOR TREATMENT WHERE SPECIFIC CONSENT IS NOT OTHERWISE REQUIRED BY LAW.

4. MAJOR MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION, "MAJOR MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE OR PROCEDURE TO DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION: (I) WHERE GENERAL ANESTHETIC IS USED; OR (II) WHICH INVOLVES ANY SIGNIFICANT RISK; OR (III) WHICH INVOLVES ANY SIGNIFICANT INVASION OF BODILY INTEGRITY REQUIRING AN INCISION, PRODUCING SUBSTANTIAL PAIN, DISCOMFORT, DEBILITATION OR HAVING A SIGNIFICANT RECOVERY PERIOD; OR (IV) WHICH INVOLVES THE USE OF PHYSICAL RESTRAINTS, AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER, EXCEPT IN AN EMERGENCY; OR (V) WHICH

1 INVOLVES THE USE OF PSYCHOACTIVE MEDICATIONS, EXCEPT WHEN PROVIDED AS
2 PART OF POST-OPERATIVE CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND
3 TREATMENT IS REASONABLY EXPECTED TO BE ADMINISTERED OVER A PERIOD OF
4 FORTY-EIGHT HOURS OR LESS, OR WHEN PROVIDED IN AN EMERGENCY.

5 (B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO
6 ACT, A DECISION TO PROVIDE MAJOR MEDICAL TREATMENT, MADE IN ACCORDANCE
7 WITH THE FOLLOWING REQUIREMENTS, SHALL BE AUTHORIZED FOR AN ADULT
8 PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY PURSU-
9 ANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE.

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

12 (II) IN A GENERAL HOSPITAL, AT LEAST ONE OTHER PHYSICIAN DESIGNATED BY
13 THE HOSPITAL MUST INDEPENDENTLY DETERMINE THAT THE RECOMMENDATION IS
14 APPROPRIATE.

15 (III) IN A RESIDENTIAL HEALTH CARE FACILITY, THE MEDICAL DIRECTOR OF
16 THE FACILITY, OR A PHYSICIAN DESIGNATED BY THE MEDICAL DIRECTOR, MUST
17 INDEPENDENTLY DETERMINE THAT THE RECOMMENDATION IS APPROPRIATE; PROVIDED
18 THAT IF THE MEDICAL DIRECTOR IS THE PATIENT'S ATTENDING PHYSICIAN, A
19 DIFFERENT PHYSICIAN DESIGNATED BY THE RESIDENTIAL HEALTH CARE FACILITY
20 MUST MAKE THIS INDEPENDENT DETERMINATION. ANY HEALTH OR SOCIAL SERVICES
21 PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE
22 FACILITY MAY PROVIDE A SECOND OPINION FOR DECISIONS ABOUT PHYSICAL
23 RESTRAINTS MADE PURSUANT TO THIS SUBDIVISION.

24 5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. (A) IF
25 NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, A
26 COURT OF COMPETENT JURISDICTION MAY MAKE A DECISION TO WITHHOLD OR WITH-
27 DRAW LIFE-SUSTAINING TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETER-
28 MINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE
29 HUNDRED NINETY-FOUR-C OF THIS ARTICLE IF THE COURT FINDS THAT THE DECI-
30 SION ACCORDS WITH STANDARDS FOR DECISIONS FOR ADULTS SET FORTH IN SUBDI-
31 VISIONS FOUR AND FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF
32 THIS ARTICLE.

33 (B) IF NO SURROGATE IS REASONABLY AVAILABLE, WILLING AND COMPETENT TO
34 ACT, AND THE ATTENDING PHYSICIAN, WITH INDEPENDENT CONCURRENCE OF A
35 SECOND PHYSICIAN DESIGNATED BY THE HOSPITAL, DETERMINES TO A REASONABLE
36 DEGREE OF MEDICAL CERTAINTY THAT:

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

40 (II) THE PROVISION OF LIFE-SUSTAINING TREATMENT WOULD VIOLATE ACCEPTED
41 MEDICAL STANDARDS, SUCH TREATMENT MAY BE WITHDRAWN OR WITHHELD FROM AN
42 ADULT PATIENT WHO HAS BEEN DETERMINED TO LACK DECISION-MAKING CAPACITY
43 PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE,
44 WITHOUT JUDICIAL APPROVAL. THIS SUBDIVISION SHALL NOT APPLY TO ANY
45 TREATMENT NECESSARY TO ALLEVIATE PAIN OR DISCOMFORT.

46 6. PHYSICIAN OBJECTION. IF A PHYSICIAN CONSULTED FOR A CONCURRING
47 OPINION OBJECTS TO AN ATTENDING PHYSICIAN'S RECOMMENDATION OR DETERMI-
48 NATION MADE PURSUANT TO THIS SECTION, OR A MEMBER OF THE HOSPITAL STAFF
49 DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OBJECTS TO AN ATTENDING
50 PHYSICIAN'S RECOMMENDATION ABOUT MAJOR MEDICAL TREATMENT OR TREATMENT
51 WITHOUT MEDICAL BENEFIT, THE MATTER SHALL BE REFERRED TO THE ETHICS
52 REVIEW COMMITTEE IF IT CANNOT BE OTHERWISE RESOLVED.

53 S 2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE
54 FACILITY. 1. IF A PATIENT IS TRANSFERRED FROM A MENTAL HYGIENE FACILITY
55 TO A HOSPITAL, OTHER THAN A RESIDENTIAL CARE FACILITY, THE HOSPITAL

1 SHALL NOTIFY THE FACILITY DIRECTOR OR THE MENTAL HEALTH REGIONAL DIREC-
2 TOR WHEN:

3 (A) A DECISION IS MADE, PURSUANT TO SUBDIVISION FOUR OF SECTION TWEN-
4 TY-NINE HUNDRED NINETY-FOUR-G OF THIS ARTICLE, REGARDING MAJOR MEDICAL
5 TREATMENT FOR AN ADULT WITHOUT A SURROGATE; OR

6 (B) A SURROGATE OR A PARENT OF A MINOR CHILD CONSENTS TO WITHHOLD OR
7 WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE PATIENT PURSUANT TO THIS
8 ARTICLE. A MENTAL HYGIENE FACILITY DIRECTOR WHO RECEIVES NOTICES PURSU-
9 ANT TO THIS SUBDIVISION SHALL PROMPTLY CONVEY SUCH NOTICES TO THE MENTAL
10 HYGIENE LEGAL SERVICE.

11 2. NOTHING IN THIS ARTICLE SHALL AFFECT OR DIMINISH THE AUTHORITY OF A
12 SURROGATE DECISION-MAKING PANEL CONVENED TO DECIDE ABOUT MAJOR MEDICAL
13 TREATMENT PURSUANT TO ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW. HEALTH
14 CARE PROVIDERS MAY SEEK AUTHORIZATION FOR MAJOR MEDICAL TREATMENT FOR A
15 PATIENT TRANSFERRED FROM A MENTAL HYGIENE FACILITY WHO HAS NO SURROGATE
16 BY COMMENCING THE PROCESS SET FORTH IN SECTION TWENTY-NINE HUNDRED NINE-
17 TY-FOUR-G OF THIS ARTICLE, OR BY COMMENCING A PROCEEDING PURSUANT TO
18 ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW IN ANY COUNTY WHERE SUCH FACIL-
19 ITY IS OPERATING. IF A PROCEEDING PURSUANT TO ARTICLE EIGHTY OF THE
20 MENTAL HYGIENE LAW IS COMMENCED, THE DECISION AND ALL SUBSEQUENT DECI-
21 SIONS RELATED TO THE MAJOR MEDICAL TREATMENT PROPOSED IN THE INITIAL
22 ARTICLE EIGHTY PROCEEDING SHALL BE MADE PURSUANT TO SUCH ARTICLE, UNLESS
23 THE DECISION MUST BE EXPEDITED TO MEET THE PATIENT'S MEDICAL NEEDS.

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

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

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

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

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

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

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

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

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

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

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

(C) NOTIFY THE PERSON WHO MADE THE DECISION TO WITHHOLD OR WITHDRAW TREATMENT, OR, IF THAT PERSON IS NOT REASONABLY AVAILABLE, TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAILABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE; AND

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

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

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

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

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

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

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

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

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

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

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

3. COMMITTEE MEMBERSHIP. IN A RESIDENTIAL HEALTH CARE FACILITY THE ETHICS REVIEW COMMITTEE SHALL HAVE AT LEAST FIVE MEMBERS. AT LEAST THREE COMMITTEE MEMBERS MUST BE HEALTH OR SOCIAL SERVICES PRACTITIONERS, AT LEAST ONE OF WHOM MUST BE A REGISTERED NURSE AND ONE OF WHOM MUST BE A PHYSICIAN. AT LEAST TWO COMMITTEE MEMBERS MUST BE MEMBERS OF THE RESIDENTS' COUNCIL OF THE FACILITY (OR OF ANOTHER FACILITY THAT PARTICIPATES IN THE COMMITTEE) OR BE A PERSON NOT AFFILIATED WITH THE FACILITY WHO IS

1 A FAMILY MEMBER OF A CURRENT OR FORMER RESIDENT AT THE SAME OR ANOTHER
2 RESIDENTIAL HEALTH CARE FACILITY OR A PERSON WHO HAS EXPERTISE IN OR A
3 DEMONSTRATED COMMITMENT TO PATIENT RIGHTS OR TO THE CARE AND TREATMENT
4 OF THE ELDERLY OR NURSING HOME RESIDENTS THROUGH PROFESSIONAL OR COMMU-
5 NITY ACTIVITIES, OTHER THAN ACTIVITIES PERFORMED AS A HEALTH CARE
6 PROVIDER.

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

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

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

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

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

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

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

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

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

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

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

30 (C) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE STATE COMMISSION ON
31 QUALITY OF CARE FOR THE MENTALLY DISABLED FROM REQUIRING ANY INFORMA-
32 TION, REPORT OR RECORD FROM A HOSPITAL IN ACCORDANCE WITH THE PROVISIONS
33 OF SECTION 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

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

S 2994-0. IMMUNITY. 1. ETHICS REVIEW COMMITTEE. NO PERSON SHALL BE SUBJECT TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFESSIONAL CONDUCT, FOR ACTS PERFORMED REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE AS A MEMBER OF OR AS A CONSULTANT TO AN ETHICS REVIEW COMMITTEE OR AS A PARTICIPANT IN AN ETHICS REVIEW COMMITTEE MEETING.

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

3. SURROGATES AND GUARDIANS. NO PERSON SHALL BE SUBJECTED TO CRIMINAL OR CIVIL LIABILITY FOR MAKING A HEALTH CARE DECISION REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH PURSUANT TO THIS ARTICLE.

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

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

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

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

4. THIS ARTICLE SHALL NOT AFFECT EXISTING LAW WITH RESPECT TO STERILIZATION.

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

S 2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE GUARDIAN FOR MINOR PATIENT. 1. SPECIAL PROCEEDING. ANY PERSON CONNECTED WITH THE CASE AND ANY MEMBER OF THE HOSPITAL ETHICS REVIEW COMMITTEE MAY COMMENCE A SPECIAL PROCEEDING IN A COURT OF COMPETENT JURISDICTION WITH RESPECT TO ANY MATTER ARISING UNDER THIS ARTICLE.

2. COURT ORDERS DESIGNATING SURROGATE. A COURT OF COMPETENT JURISDICTION MAY DESIGNATE ANY INDIVIDUAL FROM THE SURROGATE LIST TO ACT AS SURROGATE, REGARDLESS OF THAT INDIVIDUAL'S PRIORITY ON THE LIST, IF THE COURT DETERMINES THAT SUCH APPOINTMENT WOULD BEST ACCORD WITH THE PATIENT'S WISHES OR, IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN, WITH THE PATIENT'S BEST INTERESTS. UNLESS OTHERWISE DETERMINED BY A COURT, NO SURROGATE DECISION MADE PRIOR TO AN ORDER DESIGNATING A SURROGATE SHALL BE DEEMED TO HAVE BEEN INVALID BECAUSE OF THE ISSUANCE OF A 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 ONE THOUSAND SEVEN HUNDRED FIVE OF THE SURROGATE'S COURT
26 PROCEDURE 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 ISTRAIVE 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 SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT
55 TO THE EDUCATION LAW AND QUALIFIED TO PROVIDE A SECOND OPINION OF CAPAC-
56 ITY AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER.

1 8. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN
2 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER AND A RESIDENTIAL
3 HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-
4 EIGHT HUNDRED ONE OF THIS CHAPTER OR A HOSPITAL AS DEFINED IN SUBDIVI-
5 SION TEN OF SECTION 1.03 OF THE MENTAL HYGIENE LAW OR A SCHOOL NAMED IN
6 SECTION 13.17 OF THE MENTAL HYGIENE LAW.

7 9. "HOSPITAL EMERGENCY SERVICES PERSONNEL" MEANS THE PERSONNEL OF THE
8 EMERGENCY SERVICE OF A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN
9 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, INCLUDING BUT NOT
10 LIMITED TO EMERGENCY SERVICES ATTENDING PHYSICIANS, EMERGENCY SERVICES
11 REGISTERED PROFESSIONAL NURSES, AND REGISTERED PROFESSIONAL NURSES,
12 NURSING STAFF AND REGISTERED PHYSICIANS ASSISTANTS ASSIGNED TO THE
13 GENERAL HOSPITAL'S EMERGENCY SERVICE.

14 10. "MENTAL HYGIENE FACILITY" MEANS A RESIDENTIAL FACILITY OPERATED OR
15 LICENSED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDA-
16 TION AND DEVELOPMENTAL DISABILITIES.

17 11. "NONHOSPITAL ORDER NOT TO RESUSCITATE" MEANS AN ORDER THAT DIRECTS
18 EMERGENCY MEDICAL SERVICES PERSONNEL AND HOSPITAL EMERGENCY SERVICES
19 PERSONNEL NOT TO ATTEMPT CARDIOPULMONARY RESUSCITATION IN THE EVENT A
20 PATIENT SUFFERS CARDIAC OR RESPIRATORY ARREST.

21 12. "PATIENT" MEANS A PERSON WHO HAS BEEN OR WHO MAY BE ISSUED A
22 NONHOSPITAL ORDER NOT TO RESUSCITATE.

23 13. "SURROGATE" MEANS A PERSON OR COMMITTEE OF PERSONS WITH THE
24 AUTHORITY TO CONSENT TO AN ORDER NOT TO RESUSCITATE PURSUANT TO ARTICLE
25 TWENTY-NINE-B OR TWENTY-NINE-CC OF THIS CHAPTER.

26 S 2994-BB. GENERAL PROVISIONS. 1. (A) EMERGENCY MEDICAL SERVICES
27 PERSONNEL AND HOSPITAL EMERGENCY SERVICES PERSONNEL SHALL HONOR NONHOS-
28 PITAL ORDERS NOT TO RESUSCITATE, EXCEPT AS PROVIDED IN SECTION
29 TWENTY-NINE HUNDRED NINETY-FOUR-EE OF THIS ARTICLE.

30 (B) A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE AN
31 ORDER TO WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY
32 RESUSCITATION.

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

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

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

49 3. CONSENT BY A SURROGATE SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-D
50 OF THIS CHAPTER, EXCEPT THAT: (A) A SECOND DETERMINATION OF CAPACITY
51 SHALL BE MADE BY A HEALTH OR SOCIAL SERVICES PRACTITIONER AS DEFINED IN
52 SUBDIVISION SEVEN OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-AA OF THIS
53 ARTICLE; AND (B) THE AUTHORITY OF THE ETHICS REVIEW COMMITTEE SET FORTH
54 IN ARTICLE TWENTY-NINE-CC OF THIS CHAPTER SHALL APPLY ONLY TO NONHOSPI-
55 TAL ORDERS ISSUED IN A HOSPITAL.

1 4. (A) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL
2 THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCI-
3 TATE FOR PATIENTS IN A CORRECTIONAL FACILITY, SUCH SECOND PHYSICIAN
4 SHALL BE SELECTED BY THE CHIEF MEDICAL OFFICER OF THE DEPARTMENT OF
5 CORRECTIONS OR HIS OR HER DESIGNEE.

6 (B) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL
7 THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCI-
8 TATE FOR HOSPICE AND HOME CARE PATIENTS, SUCH SECOND PHYSICIAN SHALL BE
9 SELECTED BY THE HOSPICE MEDICAL DIRECTOR OR HOSPICE NURSE COORDINATOR
10 DESIGNATED BY THE MEDICAL DIRECTOR OR BY THE HOME CARE SERVICES AGENCY
11 DIRECTOR OF PATIENT CARE SERVICES, AS APPROPRIATE TO THE PATIENT.

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

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

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

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

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

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

51 S 2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCITATE.
52 EMERGENCY MEDICAL SERVICES PERSONNEL OR HOSPITAL EMERGENCY SERVICES
53 PERSONNEL WHO ARE PROVIDED WITH A NONHOSPITAL ORDER NOT TO RESUSCITATE,
54 OR WHO IDENTIFY THE STANDARD BRACELET ON THE PATIENT'S BODY, SHALL
55 COMPLY WITH THE TERMS OF SUCH ORDER; PROVIDED, HOWEVER, THAT:

1 1. EMERGENCY MEDICAL SERVICES PERSONNEL OR HOSPITAL EMERGENCY SERVICES
2 PERSONNEL MAY DISREGARD THE ORDER IF:

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

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

7 2. HOSPITAL EMERGENCY SERVICES PHYSICIANS MAY DIRECT THAT THE ORDER BE
8 DISREGARDED IF OTHER SIGNIFICANT AND EXCEPTIONAL MEDICAL CIRCUMSTANCES
9 WARRANT DISREGARDING THE ORDER.

10 S 2994-FF. INTERINSTITUTIONAL TRANSFER. IF A PATIENT WITH A NONHOSPI-
11 TAL ORDER NOT TO RESUSCITATE IS ADMITTED TO A HOSPITAL, THE ORDER SHALL
12 BE TREATED AS AN ORDER NOT TO RESUSCITATE FOR A PATIENT TRANSFERRED FROM
13 ANOTHER HOSPITAL, AND SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-CC OF
14 THIS CHAPTER, EXCEPT THAT ANY SUCH ORDER FOR A PATIENT ADMITTED TO A
15 MENTAL HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF
16 THIS CHAPTER.

17 S 2994-GG. IMMUNITY. NO PERSON SHALL BE SUBJECTED TO CRIMINAL PROSE-
18 CUTION OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFES-
19 SIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH PURSUANT TO
20 THIS SECTION A NONHOSPITAL ORDER NOT TO RESUSCITATE, FOR DISREGARDING A
21 NONHOSPITAL ORDER PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-EE
22 OF THIS ARTICLE, OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH
23 PURSUANT TO THIS SECTION.

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

26 ORDERS NOT TO RESUSCITATE FOR RESIDENTS OF MENTAL HYGIENE
27 FACILITIES

28 S 4. Subdivisions 7, 10, 13 and 16 of section 2961 of the public
29 health law are REPEALED.

30 S 5. Subdivisions 2, 4, 5, 9 and 19 of section 2961 of the public
31 health law, subdivisions 2 and 19 as amended and subdivision 9 as renum-
32 bered by chapter 370 of the laws of 1991 and subdivisions 4, 5 and 9 as
33 added by chapter 818 of the laws of 1987, are amended to read as
34 follows:

35 2. "Attending physician" means the physician selected by or assigned
36 to a patient in a hospital [or, for the purpose of provisions herein
37 governing nonhospital orders not to resuscitate, a patient not in a
38 hospital,] who has primary responsibility for the treatment and care of
39 the patient. Where more than one physician shares such responsibility,
40 any such physician may act as the attending physician pursuant to this
41 article.

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

47 5. "Close RELATIVE OR CLOSE friend" means any person, eighteen years
48 of age or older, who [presents an affidavit to an attending physician
49 stating that he] is a [close] RELATIVE OR friend of the patient, REGARD-
50 LESS OF BLOOD OR LEGAL RELATIONSHIP, and [that he] WHO has maintained
51 such regular contact with the patient as to be familiar with the
52 patient's activities, health, and religious or moral beliefs [and stat-
53 ing the facts and circumstances that demonstrate such familiarity].

54 9. "Hospital" means [a general hospital as defined in subdivision ten
55 of section twenty-eight hundred one of this chapter and a residential
56 health care facility as defined in subdivision three of section twenty-

eight hundred one of this chapter or] a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law or a school named in section 13.17 of the mental hygiene law.

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

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

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

(A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATIONSHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN JURISDICTION; OR

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

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

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

S 7. Subdivision 1, paragraph (b) of subdivision 3 and subdivision 4 of section 2963 of the public health law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987 and paragraph (b) of subdivision 3 as amended by chapter 23 of the laws of 1994, are amended to read as follows:

1. Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise pursuant to this section or pursuant to a court order[. A lack of capacity shall not be presumed from the fact that a committee of the property or conservator has been appointed for the adult pursuant to article seventy-seven or seventy-eight of the mental hygiene law, or that a guardian has been appointed pursuant to article seventeen-A of the surrogate's court procedure act] OR UNLESS A GUARDIAN IS AUTHORIZED TO DECIDE ABOUT HEALTH CARE FOR THE ADULT PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE LAW. FOR PURPOSES OF THIS ARTICLE, THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT SHALL NOT CREATE ANY PRESUMPTION REGARDING THE PATIENT'S DECISION-MAKING CAPACITY. THE ATTENDING PHYSICIAN SHALL NOT RELY ON THE PRESUMPTION STATED IN THIS SUBDIVISION IF CLINICAL INDICIA OF INCAPACITY ARE PRESENT.

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

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

S 8. Subdivisions 3 and 4 of section 2964 of the public health law are REPEALED.

S 9. Paragraph (a) of subdivision 2 of section 2965 of the public health law, as added by chapter 818 of the laws of 1987 and subparagraphs (i), (ii), (iii), (iv), (v) and (vi) as redesignated and such subdivision as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

(a) One person from the following list, to be chosen in order of priority listed, when persons in the prior [subparagraphs] SUBPARAGRAPHS are not reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate, shall have the authority to act as surrogate on behalf of the patient:

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

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

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

(iv) a parent;

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

(vi) a close RELATIVE OR CLOSE friend.

S 10. Paragraph (c) of subdivision 4 and subdivision 5 of section 2965 of the public health law are REPEALED.

S 11. Paragraph (d) of subdivision 4 of section 2965 of the public health law, as added by chapter 818 of the laws of 1987 and such subdivision as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

[(d)] (C) If the attending physician has actual notice of opposition to a surrogate's consent to an order not to resuscitate by any person on the surrogate list[, or, if the patient is in or is transferred from a mental hygiene facility, by the facility director], the [physician] PHYSICIAN shall submit the matter to the dispute mediation system and such order shall not be issued or shall be revoked in accordance with

1 the provisions of subdivision three of section twenty-nine hundred
2 seventy-two of this article.

3 S 12. Subdivision 2 of section 2966 of the public health law is
4 REPEALED.

5 S 13. Paragraph (c) of subdivision 2 of section 2967 of the public
6 health law is REPEALED.

7 S 14. Subdivision 1 of section 2970 of the public health law, as
8 amended by chapter 370 of the laws of 1991, is amended to read as
9 follows:

10 1. For each patient for whom an order not to resuscitate has been
11 issued, the attending physician shall review the patient's chart to
12 determine if the order is still appropriate in light of the patient's
13 condition and shall indicate on the patient's chart that the order has
14 been reviewed[:

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

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

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

27 Failure to comply with this subdivision shall not render an order not
28 to resuscitate ineffective.

29 S 15. Section 2971 of the public health law is amended by adding a new
30 subdivision 3 to read as follows:

31 3. FOR PURPOSES OF THIS SECTION, AN ORDER NOT TO RESUSCITATE ISSUED BY
32 A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT
33 HUNDRED ONE OF THIS CHAPTER, OR BY A RESIDENTIAL HEALTH CARE FACILITY AS
34 DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
35 CHAPTER, SHALL BE DEEMED A HOSPITAL ORDER NOT TO RESUSCITATE.

36 S 16. Subdivision 2 of section 2972 of the public health law, as
37 amended by chapter 370 of the laws of 1991, is amended to read as
38 follows:

39 2. The dispute mediation system shall be authorized to mediate any
40 dispute, including disputes regarding the determination of the patient's
41 capacity, arising under this article between the patient and an attend-
42 ing physician or the hospital that is caring for the patient and, if the
43 patient is a minor, the patient's parent, or among an attending physi-
44 cian, a parent, non-custodial parent, or legal guardian of a minor
45 patient, any person on the surrogate list, AND the hospital that is
46 caring for the patient [and, where the dispute involves a patient who is
47 in or is transferred from a mental hygiene facility, the facility direc-
48 tor].

49 S 17. Subdivision 1 of section 2973 of the public health law, as
50 amended by chapter 577 of the laws of 1993, is amended to read as
51 follows:

52 1. The patient, an attending physician, a parent, non-custodial
53 parent, or legal guardian of a minor patient, any person on the surro-
54 gate list, the hospital that is caring for the patient and[, in disputes
55 involving a patient who is in or is transferred from a mental hygiene or
56 correctional facility,] the facility director, may commence a special

1 proceeding pursuant to article four of the civil practice law and rules,
2 in a court of competent jurisdiction, with respect to any dispute arising
3 under this article, except that the decision of a patient not to
4 consent to issuance of an order not to resuscitate may not be subjected
5 to judicial review. In any proceeding brought pursuant to this subdivision
6 challenging a decision regarding issuance of an order not to resuscitate
7 on the ground that the decision is contrary to the patient's
8 wishes or best interests, the person or entity challenging the decision
9 must show, by clear and convincing evidence, that the decision is
10 contrary to the patient's wishes including consideration of the
11 patient's religious and moral beliefs, or, in the absence of evidence of
12 the patient's wishes, that the decision is contrary to the patient's
13 best interests. In any other proceeding brought pursuant to this subdivision,
14 the court shall make its determination based upon the applicable
15 substantive standards and procedures set forth in this article.

16 S 18. Section 2977 of the public health law is REPEALED.

17 S 19. Subdivision 1 of section 2978 of the public health law is
18 REPEALED and subdivision 2, as added by chapter 818 of the laws of 1987,
19 such section as renumbered by chapter 370 of the laws of 1991, is
20 amended to read as follows:

21 [2.] The commissioners of mental health and mental retardation and
22 developmental disabilities[, in consultation with the commissioner of
23 health,] shall establish such regulations as may be necessary for implementation
24 of this article with respect to those persons in mental
25 hygiene facilities.

26 S 20. The opening paragraph of subdivision 1 of section 2979 of the
27 public health law, as added by chapter 818 of the laws of 1987, such
28 section as renumbered by chapter 370 of the laws of 1991, is amended to
29 read as follows:

30 The [commissioner of health, after consultation with the] commissioners
31 of mental health and mental retardation and developmental disabilities[,]
32 shall prepare a statement summarizing the rights, duties, and
33 requirements of this article and shall require that a copy of such
34 statement:

35 S 21. Subdivisions 3 and 4 of section 2984 of the public health law,
36 as added by chapter 752 of the laws of 1990, are amended and a new
37 subdivision 5 is added to read as follows:

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

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

48 (b) the patient is transferred promptly to another hospital that is
49 reasonably accessible under the circumstances and is willing to honor
50 the agent's decision AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH
51 SUBDIVISION FIVE OF THIS SECTION. If the agent is unable or unwilling
52 to arrange such a transfer, the hospital may intervene to facilitate
53 such a transfer. If such a transfer is not effected, the hospital shall
54 seek judicial relief IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED
55 NINETY-TWO OF THIS ARTICLE or honor the agent's decision.

1 4. Notwithstanding subdivision two of this section, nothing in this
2 article shall be construed to require an individual as a health care
3 provider to honor an agent's health care decision that the individual
4 would not honor if the decision had been made by the principal because
5 the decision is contrary to the individual's religious beliefs or
6 sincerely held moral convictions, provided the individual health care
7 provider promptly informs the health care agent and the hospital of his
8 or her refusal to honor the agent's decision. In such event, the hospi-
9 tal shall promptly transfer responsibility for the patient to another
10 individual health care provider willing to honor the agent's decision.
11 The individual health care provider shall cooperate in facilitating such
12 transfer of the patient AND COMPLY WITH SUBDIVISION FIVE OF THIS
13 SECTION.

14 5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION TWO
15 OF SECTION TWENTY-NINE HUNDRED EIGHTY-NINE OF THIS ARTICLE, IF AN AGENT
16 DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL OF WHICH
17 IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE DEATH OF
18 THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT DOES NOT
19 WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH THE AGENT'S
20 DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A WILLING HOSPITAL OR
21 INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW.

22 S 22. Section 2980 of the public health law is amended by adding a new
23 subdivision 9-a to read as follows:

24 9-A. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCE-
25 DURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME,
26 AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF
27 MEDICAL CERTAINTY.

28 S 23. This act shall take effect on the first of June next succeeding
29 the year in which it shall have become a law.