

3164

2009-2010 Regular Sessions

I N S E N A T E

March 12, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed 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
14 substantive right of competent adults to decide about treatment for
15 themselves. Further, the legislature does not intend to authorize a
16 surrogate to deny to the patient personal services that every patient
17 would generally receive, such as appropriate food, water, bed rest, room
18 temperature and hygiene. This legislation establishes a procedure to
19 facilitate responsible decision-making by surrogates on behalf of
20 patients who do not have capacity to make their own health care deci-
21 sions.

22 This legislation affirms existing laws and policies that limit indi-
23 vidual conduct of patients with or without capacity, including those

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

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1 laws and policies against homicide, suicide, assisted suicide and mercy
2 killing.

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

5 ARTICLE 29-CC

6 FAMILY HEALTH CARE DECISIONS ACT

7 SECTION 2994-A. DEFINITIONS.

8 2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE
9 SEVENTEEN-A GUARDIAN.

10 2994-C. DETERMINATION OF INCAPACITY.

11 2994-D. HEALTH CARE DECISIONS FOR ADULT PATIENTS BY SURROGATES.

12 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR
13 PATIENTS.

14 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN.

15 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURRO-
16 GATES.

17 2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE
18 FACILITY.

19 2994-I. SPECIFIC POLICIES FOR ORDERS NOT TO RESUSCITATE.

20 2994-J. REVOCATION OF CONSENT.

21 2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS.

22 2994-L. INTERINSTITUTIONAL TRANSFERS.

23 2994-M. ETHICS REVIEW COMMITTEES.

24 2994-N. CONSCIENCE OBJECTIONS.

25 2994-O. IMMUNITY.

26 2994-P. LIABILITY FOR HEALTH CARE COSTS.

27 2994-Q. EFFECT ON OTHER RIGHTS.

28 2994-R. SPECIAL PROCEEDING AUTHORIZED; COURT ORDERS; HEALTH CARE
29 GUARDIAN FOR MINOR PATIENT.

30 2994-S. REMEDY.

31 2994-T. REGULATIONS.

32 2994-U. RIGHTS TO BE PUBLICIZED.

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

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

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

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

47 4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN
48 REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION
49 OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY
50 ARREST. CARDIOPULMONARY RESUSCITATION SHALL NOT INCLUDE MEASURES TO
51 IMPROVE VENTILATION AND CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

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

1 6. "DECISION-MAKING CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND
2 APPRECIATE THE NATURE AND CONSEQUENCES OF PROPOSED HEALTH CARE, INCLUD-
3 ING THE BENEFITS AND RISKS OF, AND ALTERNATIVES TO, ANY SUCH PROPOSED
4 HEALTH CARE, AND TO REACH AN INFORMED DECISION.

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

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

10 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
11 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
12 UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGIS-
13 TERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY
14 MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY,
15 OR FOREIGN JURISDICTION; OR

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

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

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

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

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

39 11. "GUARDIAN OF A MINOR" OR "GUARDIAN" MEANS A HEALTH CARE GUARDIAN
40 OR A LEGAL GUARDIAN OF THE PERSON OF A MINOR.

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

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

47 14. "HEALTH CARE DECISION" MEANS ANY DECISION TO CONSENT OR REFUSE TO
48 CONSENT TO HEALTH CARE.

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

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

1 17. "HEALTH OR SOCIAL SERVICE PRACTITIONER" MEANS A REGISTERED PROFES-
2 SIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
3 PSYCHOLOGIST OR CERTIFIED SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT
4 TO THE EDUCATION LAW.

5 18. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN
6 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, AND A RESIDENTIAL
7 HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-
8 EIGHT HUNDRED ONE OF THIS CHAPTER, BUT EXCLUDING A WARD, WING, UNIT OR
9 OTHER PART OF A GENERAL HOSPITAL THAT PROVIDES MENTAL HEALTH SERVICES TO
10 MENTALLY ILL PERSONS PURSUANT TO AN OPERATING CERTIFICATE ISSUED BY THE
11 COMMISSIONER OF MENTAL HEALTH OTHER THAN MEDICAL-PSYCHIATRIC UNITS
12 JOINTLY IDENTIFIED BY THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF
13 MENTAL HEALTH.

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

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

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

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

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

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

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

33 26. "PERSON CONNECTED WITH THE CASE" MEANS THE PATIENT, ANY PERSON ON
34 THE SURROGATE LIST, A PARENT OR GUARDIAN OF A MINOR PATIENT, THE HOSPI-
35 TAL ADMINISTRATOR, AN ATTENDING PHYSICIAN, ANY OTHER HEALTH OR SOCIAL
36 SERVICES PRACTITIONER WHO IS OR HAS BEEN DIRECTLY INVOLVED IN THE
37 PATIENT'S CARE, AND ANY DULY AUTHORIZED STATE AGENCY, INCLUDING THE
38 FACILITY DIRECTOR OR REGIONAL DIRECTOR FOR A PATIENT TRANSFERRED FROM A
39 MENTAL HYGIENE FACILITY AND THE FACILITY DIRECTOR FOR A PATIENT TRANS-
40 FERRED FROM A CORRECTIONAL FACILITY.

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

44 28. "RESIDENTIAL HEALTH CARE FACILITY" MEANS A RESIDENTIAL HEALTH CARE
45 FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED
46 ONE OF THIS CHAPTER.

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

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

52 S 2994-B. PRIORITY OF DECISION BY HEALTH CARE AGENT AND ARTICLE SEVEN-
53 TEEN-A GUARDIAN. A HEALTH CARE DECISION BY A HEALTH CARE AGENT ON A
54 PATIENT'S BEHALF IS GOVERNED BY ARTICLE TWENTY-NINE-C OF THIS CHAPTER
55 AND SHALL HAVE PRIORITY OVER DECISIONS BY ANY OTHER PERSON EXCEPT THE
56 PATIENT OR AS OTHERWISE PROVIDED IN THE HEALTH CARE PROXY. HEALTH CARE

1 PROVIDERS SHALL MAKE REASONABLE EFFORTS TO DETERMINE WHETHER THE PATIENT
2 HAS APPOINTED A HEALTH CARE AGENT AND TO CONTACT THE AGENT BEFORE RELY-
3 ING ON A DECISION BY A SURROGATE UNDER THIS ARTICLE.

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

10 2. DETERMINATION BY ATTENDING PHYSICIAN. A DETERMINATION THAT AN ADULT
11 PATIENT LACKS DECISION-MAKING CAPACITY, AS WELL AS AN ASSESSMENT OF THE
12 CAUSE AND EXTENT OF THE PATIENT'S INCAPACITY AND THE LIKELIHOOD THAT THE
13 PATIENT WILL REGAIN DECISION-MAKING CAPACITY, SHALL BE MADE BY AN
14 ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF CERTAINTY.

15 3. INDEPENDENT DETERMINATIONS. (A) (I) IN A RESIDENTIAL HEALTH CARE
16 FACILITY, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHER-
17 WISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE
18 WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY. IN A GENERAL
19 HOSPITAL, A HEALTH OR SOCIAL SERVICES PRACTITIONER EMPLOYED BY OR OTHER-
20 WISE FORMALLY AFFILIATED WITH THE FACILITY MUST INDEPENDENTLY DETERMINE
21 WHETHER AN ADULT PATIENT LACKS DECISION-MAKING CAPACITY IF THE SURRO-
22 GATE'S DECISION CONCERNS THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAIN-
23 ING TREATMENT.

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

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

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

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

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

44 (B) TO AT LEAST ONE PERSON ON THE SURROGATE LIST HIGHEST IN ORDER OF
45 PRIORITY LISTED WHEN PERSONS IN PRIOR CLASSES ARE NOT REASONABLY AVAIL-
46 ABLE PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-NINE HUNDRED NINETY-
47 FOUR-D OF THIS ARTICLE.

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

52 6. PRIORITY OF PATIENT'S DECISION. NOTWITHSTANDING A DETERMINATION
53 PURSUANT TO THIS SECTION THAT AN ADULT PATIENT LACKS DECISION-MAKING
54 CAPACITY, IF THE PATIENT OBJECTS TO THE DETERMINATION OF INCAPACITY, OR
55 TO THE CHOICE OF A SURROGATE OR TO A HEALTH CARE DECISION MADE BY A
56 SURROGATE OR MADE PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-G

1 OF THIS ARTICLE, THE PATIENT'S OBJECTION OR DECISION SHALL PREVAIL
2 UNLESS A COURT OF COMPETENT JURISDICTION HAS DETERMINED THAT THE PATIENT
3 LACKS DECISION-MAKING CAPACITY OR THE PATIENT IS OR HAS BEEN ADJUDGED
4 INCOMPETENT FOR ALL PURPOSES.

5 7. CONFIRMATION OF CONTINUED LACK OF DECISION-MAKING CAPACITY. AN
6 ATTENDING PHYSICIAN SHALL CONFIRM THE ADULT PATIENT'S CONTINUED LACK OF
7 DECISION-MAKING CAPACITY BEFORE COMPLYING WITH HEALTH CARE DECISIONS
8 MADE PURSUANT TO THIS ARTICLE, OTHER THAN THOSE DECISIONS MADE AT OR
9 ABOUT THE TIME OF THE INITIAL DETERMINATION. AN INDEPENDENT DETERMI-
10 NATION OF THE PATIENT'S CONTINUED LACK OF DECISION-MAKING CAPACITY SHALL
11 BE REQUIRED IF THE SUBSEQUENT HEALTH CARE DECISION CONCERNS THE WITH-
12 HOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT. HEALTH CARE PROVID-
13 ERS SHALL NOT BE REQUIRED TO INFORM THE PATIENT OR SURROGATE OF THE
14 CONFIRMATION.

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

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

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

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

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

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

38 (F) A PARENT;

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

40 (H) A CLOSE RELATIVE OR CLOSE FRIEND.

41 2. RESTRICTIONS ON WHO MAY BE A SURROGATE. AN OPERATOR, ADMINISTRATOR,
42 OR EMPLOYEE OF A HOSPITAL, A PHYSICIAN WHO HAS PRIVILEGES AT THE HOSPI-
43 TAL OR A HEALTH CARE PROVIDER UNDER CONTRACT WITH THE HOSPITAL MAY NOT
44 SERVE AS THE SURROGATE FOR ANY ADULT WHO IS A PATIENT OF SUCH HOSPITAL,
45 UNLESS SUCH INDIVIDUAL IS RELATED TO THE PATIENT BY BLOOD, MARRIAGE, OR
46 ADOPTION, OR IS A CLOSE FRIEND OF THE PATIENT WHOSE FRIENDSHIP WITH THE
47 PATIENT PRECEDED THE PATIENT'S ADMISSION TO THE FACILITY. IF A PHYSICIAN
48 SERVES AS SURROGATE, THE PHYSICIAN SHALL NOT ACT AS THE PATIENT'S
49 ATTENDING PHYSICIAN AFTER HIS OR HER AUTHORITY AS SURROGATE BEGINS.

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

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

55 (II) NOTHING IN THIS ARTICLE SHALL OBLIGATE HEALTH CARE PROVIDERS TO
56 SEEK THE CONSENT OF A SURROGATE IF AN ADULT PATIENT HAS ALREADY MADE A

1 DECISION ABOUT THE PROPOSED HEALTH CARE, EXPRESSED ORALLY OR IN WRITING,
2 INCLUDING A DECISION ABOUT WITHDRAWING OR WITHHOLDING LIFE-SUSTAINING
3 TREATMENT. IF AN ATTENDING PHYSICIAN RELIES ON THE PATIENT'S PRIOR DECI-
4 SION, THE PHYSICIAN SHALL RECORD THE PRIOR DECISION IN THE PATIENT'S
5 MEDICAL RECORD. IF A SURROGATE HAS ALREADY BEEN DESIGNATED FOR THE
6 PATIENT, THE ATTENDING PHYSICIAN SHALL MAKE REASONABLE EFFORTS TO NOTIFY
7 THE SURROGATE PRIOR TO IMPLEMENTING THE DECISION.

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

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

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

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

26 (II) IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN AND CANNOT WITH
27 REASONABLE DILIGENCE BE ASCERTAINED, IN ACCORDANCE WITH THE PATIENT'S
28 BEST INTERESTS. AN ASSESSMENT OF THE PATIENT'S BEST INTERESTS SHALL
29 INCLUDE: CONSIDERATION OF THE DIGNITY AND UNIQUENESS OF EVERY PERSON;
30 THE POSSIBILITY AND EXTENT OF PRESERVING THE PATIENT'S LIFE; THE PRESER-
31 VATION, IMPROVEMENT OR RESTORATION OF THE PATIENT'S HEALTH OR FUNCTION-
32 ING; THE RELIEF OF THE PATIENT'S SUFFERING; AND ANY MEDICAL CONDITION
33 AND SUCH OTHER CONCERNS AND VALUES AS A REASONABLE PERSON IN THE
34 PATIENT'S CIRCUMSTANCES WOULD WISH TO CONSIDER.

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

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

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

52 (II) THE PROVISION OF TREATMENT WOULD INVOLVE SUCH PAIN, SUFFERING OR
53 OTHER BURDEN THAT IT WOULD REASONABLY BE DEEMED INHUMANE OR EXTRAOR-
54 DINARILY BURDENSOME UNDER THE CIRCUMSTANCES AND THE PATIENT HAS AN IRRE-
55 VERSIBLE OR INCURABLE CONDITION, AS DETERMINED BY AN ATTENDING PHYSICIAN
56 WITH THE INDEPENDENT CONCURRENCE OF ANOTHER PHYSICIAN TO A REASONABLE

1 DEGREE OF MEDICAL CERTAINTY AND IN ACCORD WITH ACCEPTED MEDICAL STAND-
2 ARDS.

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

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

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

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

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

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

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

40 (II) SUCH DECISION IS IMPLEMENTED AFTER ALL OTHER TREATMENT OPTIONS
41 WHICH WOULD HAVE BEEN CONSIDERED FOR A PATIENT WITHOUT MENTAL RETARDA-
42 TION OR A SIMILAR IMPAIRMENT HAVE BEEN CONSIDERED;

43 (III) THE DETERMINATION AND CONFIRMATION OF THE PATIENT'S INCAPACITY
44 PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE
45 AND A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT, IF
46 ANY, ARE DOCUMENTED AND ENTERED ON THE PATIENT'S HEALTH CARE RECORD; AND

47 (IV) AT LEAST FORTY-EIGHT HOURS OR AS SOON AS PRACTICABLE PRIOR TO
48 IMPLEMENTATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
49 TREATMENT, THE ATTENDING PHYSICIAN SHALL NOTIFY THE PATIENT, WHERE THERE
50 IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE INFORMA-
51 TION, AND, IF THE PATIENT RESIDES IN A RESIDENTIAL SETTING CERTIFIED OR
52 LICENSED BY THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND
53 DEVELOPMENTAL DISABILITIES, SUCH COMMISSIONER OR HIS OR HER DESIGNEE.
54 THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL
55 DISABILITIES, AT HIS OR HER DISCRETION, MAY NOTIFY THE MENTAL HYGIENE

1 LEGAL SERVICES. IN ADDITION, THE HOSPITAL SHALL COMPLY WITH THE NOTICE
2 REQUIREMENTS UNDER THIS SECTION.

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

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

12 (III) FOR ADULTS UNDER THIS SUBDIVISION WITHOUT A SURROGATE WILLING OR
13 ABLE TO ACT UNDER THIS ARTICLE, A SURROGATE DECISION MAKING COMMITTEE,
14 UNDER ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW, SHALL BE AUTHORIZED TO
15 MAKE A DECISION UNDER THIS SUBDIVISION TO WITHHOLD OR WITHDRAW LIFE-SUS-
16 TAINING TREATMENT.

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

22 (V) NOTHING IN THIS SUBDIVISION SHALL IMPOSE AN OBLIGATION ON AN
23 ATTENDING PHYSICIAN TO EVALUATE A PATIENT FOR MENTAL RETARDATION, AS
24 DEFINED IN SECTION 1.03 OF THE MENTAL HYGIENE LAW, OR A SIMILAR IMPAIR-
25 MENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR UNLESS IT
26 IS READILY APPARENT THAT THE PATIENT IS A PERSON WITH MENTAL RETARDATION
27 OR A SIMILAR INTELLECTUAL OR ADAPTIVE IMPAIRMENT OR THE PATIENT IS IDEN-
28 TIFIED AS SUCH PERSON.

29 S 2994-E. DECISIONS ABOUT LIFE-SUSTAINING TREATMENT FOR MINOR
30 PATIENTS. 1. AUTHORITY OF PARENT OR GUARDIAN. THE PARENT OR GUARDIAN OF
31 A MINOR PATIENT SHALL HAVE THE AUTHORITY TO MAKE DECISIONS ABOUT
32 LIFE-SUSTAINING TREATMENT, INCLUDING DECISIONS TO WITHHOLD OR WITHDRAW
33 SUCH TREATMENT, SUBJECT TO THE PROVISIONS OF THIS SECTION AND SUBDIVI-
34 SION FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE.

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

41 (B) AN ATTENDING PHYSICIAN, IN CONSULTATION WITH A MINOR'S PARENT OR
42 GUARDIAN, SHALL DETERMINE WHETHER A MINOR PATIENT HAS DECISION-MAKING
43 CAPACITY FOR A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREAT-
44 MENT. IF THE MINOR HAS SUCH CAPACITY, A PARENT'S OR GUARDIAN'S DECISION
45 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT FOR THE MINOR MAY NOT
46 BE IMPLEMENTED WITHOUT THE MINOR'S CONSENT.

47 (C) WHERE A PARENT OR GUARDIAN OF A MINOR PATIENT HAS MADE A DECISION
48 TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT AND AN ATTENDING
49 PHYSICIAN HAS REASON TO BELIEVE THAT THE MINOR PATIENT HAS A PARENT OR
50 GUARDIAN WHO HAS NOT BEEN INFORMED OF THE DECISION, INCLUDING A NON-CUS-
51 TODIAL PARENT OR GUARDIAN, AN ATTENDING PHYSICIAN OR SOMEONE ACTING ON
52 HIS OR HER BEHALF, SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE
53 UNINFORMED PARENT OR GUARDIAN HAS MAINTAINED SUBSTANTIAL AND CONTINUOUS
54 CONTACT WITH THE MINOR AND, IF SO, SHALL MAKE DILIGENT EFFORTS TO NOTIFY
55 THAT PARENT OR GUARDIAN PRIOR TO IMPLEMENTING THE DECISION.

1 3. DECISION-MAKING STANDARDS AND PROCEDURES FOR EMANCIPATED MINOR
2 PATIENT. (A) IF AN ATTENDING PHYSICIAN DETERMINES THAT A PATIENT IS AN
3 EMANCIPATED MINOR PATIENT WITH DECISION-MAKING CAPACITY, THE PATIENT
4 SHALL HAVE THE AUTHORITY TO DECIDE ABOUT LIFE-SUSTAINING TREATMENT. SUCH
5 AUTHORITY SHALL INCLUDE A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAIN-
6 ING TREATMENT IF AN ATTENDING PHYSICIAN AND THE ETHICS REVIEW COMMITTEE
7 DETERMINE THAT THE DECISION ACCORDS WITH THE STANDARDS FOR SURROGATE
8 DECISIONS FOR ADULTS, AND THE ETHICS REVIEW COMMITTEE APPROVES THE DECI-
9 SION.

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

14 S 2994-F. OBLIGATIONS OF ATTENDING PHYSICIAN. 1. AN ATTENDING PHYSI-
15 CIAN INFORMED OF A DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING
16 TREATMENT MADE PURSUANT TO THE STANDARDS OF THIS ARTICLE SHALL RECORD
17 THE DECISION IN THE PATIENT'S MEDICAL RECORD, REVIEW THE MEDICAL BASIS
18 FOR THE DECISION, AND SHALL EITHER: (A) IMPLEMENT THE DECISION, OR (B)
19 PROMPTLY MAKE HIS OR HER OBJECTION TO THE DECISION AND THE REASONS FOR
20 THE OBJECTION KNOWN TO THE DECISION-MAKER, AND EITHER MAKE ALL REASON-
21 ABLE EFFORTS TO ARRANGE FOR THE TRANSFER OF THE PATIENT TO ANOTHER
22 PHYSICIAN, IF NECESSARY, OR PROMPTLY REFER THE MATTER TO THE ETHICS
23 REVIEW COMMITTEE.

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

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

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

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

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

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

42 3. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR SUBDIVISION ONE
43 OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-Q OF THIS ARTICLE, IF A
44 SURROGATE DIRECTS THE PROVISION OF LIFE-SUSTAINING TREATMENT, THE DENIAL
45 OF WHICH IN REASONABLE MEDICAL JUDGMENT WOULD BE LIKELY TO RESULT IN THE
46 DEATH OF THE PATIENT, A HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER THAT
47 DOES NOT WISH TO PROVIDE SUCH TREATMENT SHALL NONETHELESS COMPLY WITH
48 THE SURROGATE'S DECISION PENDING EITHER TRANSFER OF THE PATIENT TO A
49 WILLING HOSPITAL OR INDIVIDUAL HEALTH CARE PROVIDER, OR JUDICIAL REVIEW
50 IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS
51 ARTICLE.

52 S 2994-G. HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES.
53 1. IDENTIFYING ADULT PATIENTS WITHOUT SURROGATES. WITHIN A REASONABLE
54 TIME AFTER ADMISSION AS AN INPATIENT TO THE HOSPITAL OF EACH ADULT
55 PATIENT, THE HOSPITAL SHALL MAKE REASONABLE EFFORTS TO DETERMINE IF THE
56 PATIENT HAS APPOINTED A HEALTH CARE AGENT OR IF AT LEAST ONE INDIVIDUAL

1 IS AVAILABLE TO SERVE AS THE PATIENT'S SURROGATE IN THE EVENT THE
2 PATIENT LOSES DECISION-MAKING CAPACITY. IF NO SUCH POTENTIAL SURROGATE
3 IS IDENTIFIED, THE HOSPITAL SHALL IDENTIFY, TO THE EXTENT REASONABLY
4 POSSIBLE, THE PATIENT'S WISHES AND PREFERENCES, INCLUDING THE PATIENT'S
5 RELIGIOUS AND MORAL BELIEFS, ABOUT PENDING HEALTH CARE DECISIONS, AND
6 SHALL RECORD ITS FINDINGS IN THE PATIENT'S MEDICAL RECORD.

7 2. DECISION-MAKING STANDARDS AND PROCEDURES. ANY HEALTH CARE DECISION
8 MADE PURSUANT TO THIS SECTION SHALL BE MADE IN ACCORDANCE WITH THE STAN-
9 DARDS SET FORTH IN SUBDIVISION FOUR OF SECTION TWENTY-NINE HUNDRED NINE-
10 TY-FOUR-D OF THIS ARTICLE AND SHALL NOT BE BASED ON THE FINANCIAL INTER-
11 ESTS OF THE HOSPITAL OR ANY OTHER HEALTH CARE PROVIDER. THE PROCEDURES
12 FOR MAKING HEALTH CARE DECISIONS FOR ADULT PATIENTS WITHOUT SURROGATES
13 ARE SPECIFIED IN THE FOLLOWING SUBDIVISIONS. THE SPECIFIC PROCEDURES TO
14 BE FOLLOWED DEPEND ON WHETHER THE DECISION INVOLVES ROUTINE MEDICAL
15 TREATMENT, MAJOR MEDICAL TREATMENT, OR THE WITHHOLDING OR WITHDRAWAL OF
16 LIFE-SUSTAINING TREATMENT. IN ADDITION, CERTAIN ASPECTS OF THESE PROCE-
17 DURES DEPEND ON WHETHER THE PATIENT IS IN A GENERAL HOSPITAL OR A RESI-
18 DENTIAL HEALTH CARE FACILITY.

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

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

37 4. MAJOR MEDICAL TREATMENT. (A) FOR PURPOSES OF THIS SUBDIVISION,
38 "MAJOR MEDICAL TREATMENT" MEANS ANY TREATMENT, SERVICE OR PROCEDURE TO
39 DIAGNOSE OR TREAT AN INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION: (I)
40 WHERE GENERAL ANESTHETIC IS USED; OR (II) WHICH INVOLVES ANY SIGNIFICANT
41 RISK; OR (III) WHICH INVOLVES ANY SIGNIFICANT INVASION OF BODILY INTEG-
42 RITY REQUIRING AN INCISION, PRODUCING SUBSTANTIAL PAIN, DISCOMFORT,
43 DEBILITATION OR HAVING A SIGNIFICANT RECOVERY PERIOD; OR (IV) WHICH
44 INVOLVES THE USE OF PHYSICAL RESTRAINTS, AS SPECIFIED IN REGULATIONS
45 PROMULGATED BY THE COMMISSIONER, EXCEPT IN AN EMERGENCY; OR (V) WHICH
46 INVOLVES THE USE OF PSYCHOACTIVE MEDICATIONS, EXCEPT WHEN PROVIDED AS
47 PART OF POST-OPERATIVE CARE OR IN RESPONSE TO AN ACUTE ILLNESS AND
48 TREATMENT IS REASONABLY EXPECTED TO BE ADMINISTERED OVER A PERIOD OF
49 FORTY-EIGHT HOURS OR LESS, OR WHEN PROVIDED IN AN EMERGENCY.

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

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

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

4 (III) IN A RESIDENTIAL HEALTH CARE FACILITY, THE MEDICAL DIRECTOR OF
5 THE FACILITY, OR A PHYSICIAN DESIGNATED BY THE MEDICAL DIRECTOR, MUST
6 INDEPENDENTLY DETERMINE THAT THE RECOMMENDATION IS APPROPRIATE; PROVIDED
7 THAT IF THE MEDICAL DIRECTOR IS THE PATIENT'S ATTENDING PHYSICIAN, A
8 DIFFERENT PHYSICIAN DESIGNATED BY THE RESIDENTIAL HEALTH CARE FACILITY
9 MUST MAKE THIS INDEPENDENT DETERMINATION. ANY HEALTH OR SOCIAL SERVICES
10 PRACTITIONER EMPLOYED BY OR OTHERWISE FORMALLY AFFILIATED WITH THE
11 FACILITY MAY PROVIDE A SECOND OPINION FOR DECISIONS ABOUT PHYSICAL
12 RESTRAINTS MADE PURSUANT TO THIS SUBDIVISION.

13 5. DECISIONS TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. (A) IF
14 NO SURROGATE IS REASONABLY AVAILABLE, WILLING, AND COMPETENT TO ACT, A
15 COURT OF COMPETENT JURISDICTION MAY MAKE A DECISION TO WITHHOLD OR WITH-
16 DRAW LIFE-SUSTAINING TREATMENT FOR AN ADULT PATIENT WHO HAS BEEN DETER-
17 MINED TO LACK DECISION-MAKING CAPACITY PURSUANT TO SECTION TWENTY-NINE
18 HUNDRED NINETY-FOUR-C OF THIS ARTICLE IF THE COURT FINDS THAT THE DECI-
19 SION ACCORDS WITH STANDARDS FOR DECISIONS FOR ADULTS SET FORTH IN SUBDI-
20 VISIONS FOUR AND FIVE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF
21 THIS ARTICLE.

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

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

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

35 6. PHYSICIAN OBJECTION. IF A PHYSICIAN CONSULTED FOR A CONCURRING
36 OPINION OBJECTS TO AN ATTENDING PHYSICIAN'S RECOMMENDATION OR DETERMI-
37 NATION MADE PURSUANT TO THIS SECTION, OR A MEMBER OF THE HOSPITAL STAFF
38 DIRECTLY RESPONSIBLE FOR THE PATIENT'S CARE OBJECTS TO AN ATTENDING
39 PHYSICIAN'S RECOMMENDATION ABOUT MAJOR MEDICAL TREATMENT OR TREATMENT
40 WITHOUT MEDICAL BENEFIT, THE MATTER SHALL BE REFERRED TO THE ETHICS
41 REVIEW COMMITTEE IF IT CANNOT BE OTHERWISE RESOLVED.

42 S 2994-H. DECISIONS FOR PATIENTS TRANSFERRED FROM A MENTAL HYGIENE
43 FACILITY. 1. IF A PATIENT IS TRANSFERRED FROM A MENTAL HYGIENE FACILITY
44 TO A HOSPITAL, OTHER THAN A RESIDENTIAL CARE FACILITY, THE HOSPITAL
45 SHALL NOTIFY THE FACILITY DIRECTOR OR THE MENTAL HEALTH REGIONAL DIREC-
46 TOR WHEN:

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

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

55 2. NOTHING IN THIS ARTICLE SHALL AFFECT OR DIMINISH THE AUTHORITY OF A
56 SURROGATE DECISION-MAKING PANEL CONVENED TO DECIDE ABOUT MAJOR MEDICAL

1 TREATMENT PURSUANT TO ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW. HEALTH
2 CARE PROVIDERS MAY SEEK AUTHORIZATION FOR MAJOR MEDICAL TREATMENT FOR A
3 PATIENT TRANSFERRED FROM A MENTAL HYGIENE FACILITY WHO HAS NO SURROGATE
4 BY COMMENCING THE PROCESS SET FORTH IN SECTION TWENTY-NINE HUNDRED NINE-
5 TY-FOUR-G OF THIS ARTICLE, OR BY COMMENCING A PROCEEDING PURSUANT TO
6 ARTICLE EIGHTY OF THE MENTAL HYGIENE LAW IN ANY COUNTY WHERE SUCH FACIL-
7 ITY IS OPERATING. IF A PROCEEDING PURSUANT TO ARTICLE EIGHTY OF THE
8 MENTAL HYGIENE LAW IS COMMENCED, THE DECISION AND ALL SUBSEQUENT DECI-
9 SIONS RELATED TO THE MAJOR MEDICAL TREATMENT PROPOSED IN THE INITIAL
10 ARTICLE EIGHTY PROCEEDING SHALL BE MADE PURSUANT TO SUCH ARTICLE, UNLESS
11 THE DECISION MUST BE EXPEDITED TO MEET THE PATIENT'S MEDICAL NEEDS.

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

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

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

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

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

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

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

30 S 2994-K. IMPLEMENTATION AND REVIEW OF DECISIONS. 1. HOSPITALS SHALL
31 ADOPT WRITTEN POLICIES REQUIRING IMPLEMENTATION AND REGULAR REVIEW OF
32 DECISIONS TO WITHHOLD OR WITHDREW LIFE-SUSTAINING TREATMENT IN ACCORD-
33 ANCE WITH ACCEPTED MEDICAL STANDARDS. HOSPITALS SHALL ALSO DEVELOP POLI-
34 CIES IN ACCORD WITH ACCEPTED MEDICAL STANDARDS REGARDING DOCUMENTATION
35 OF CLINICAL DETERMINATIONS AND DECISIONS BY SURROGATES AND HEALTH CARE
36 PROVIDERS PURSUANT TO THIS ARTICLE.

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

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

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

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

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

54 S 2994-L. INTERINSTITUTIONAL TRANSFERS. IF A PATIENT WITH AN ORDER TO
55 WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT IS TRANSFERRED FROM A
56 MENTAL HYGIENE FACILITY OR FROM A HOSPITAL TO A DIFFERENT HOSPITAL, ANY

1 SUCH ORDER OR PLAN SHALL REMAIN EFFECTIVE UNTIL AN ATTENDING PHYSICIAN
2 FIRST EXAMINES THE TRANSFERRED PATIENT, WHEREUPON AN ATTENDING PHYSICIAN
3 MUST EITHER:

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

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

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

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

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

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

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

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

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

37 3. COMMITTEE MEMBERSHIP. IN A RESIDENTIAL HEALTH CARE FACILITY THE
38 ETHICS REVIEW COMMITTEE SHALL HAVE AT LEAST FIVE MEMBERS. AT LEAST THREE
39 COMMITTEE MEMBERS MUST BE HEALTH OR SOCIAL SERVICES PRACTITIONERS, AT
40 LEAST ONE OF WHOM MUST BE A REGISTERED NURSE AND ONE OF WHOM MUST BE A
41 PHYSICIAN. AT LEAST TWO COMMITTEE MEMBERS MUST BE MEMBERS OF THE RESI-
42 DENTS' COUNCIL OF THE FACILITY (OR OF ANOTHER FACILITY THAT PARTICIPATES
43 IN THE COMMITTEE) OR BE A PERSON NOT AFFILIATED WITH THE FACILITY WHO IS
44 A FAMILY MEMBER OF A CURRENT OR FORMER RESIDENT AT THE SAME OR ANOTHER
45 RESIDENTIAL HEALTH CARE FACILITY OR A PERSON WHO HAS EXPERTISE IN OR A
46 DEMONSTRATED COMMITMENT TO PATIENT RIGHTS OR TO THE CARE AND TREATMENT
47 OF THE ELDERLY OR NURSING HOME RESIDENTS THROUGH PROFESSIONAL OR COMMU-
48 NITY ACTIVITIES, OTHER THAN ACTIVITIES PERFORMED AS A HEALTH CARE
49 PROVIDER.

50 4. PROCEDURES FOR ETHICS REVIEW COMMITTEE. (A) THESE PROCEDURES ARE
51 REQUIRED ONLY WHEN (I) THE ETHICS REVIEW COMMITTEE IS CONVENED TO REVIEW
52 A DECISION BY A SURROGATE TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREAT-
53 MENT FOR (A) A PATIENT IN A RESIDENTIAL HEALTH CARE FACILITY PURSUANT TO
54 PARAGRAPH (B) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED NINE-
55 TY-FOUR-D OF THIS ARTICLE, (B) A PATIENT IN A GENERAL HOSPITAL PURSUANT
56 TO PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION TWENTY-NINE HUNDRED

1 NINETY-FOUR-D OF THIS ARTICLE, OR (C) AN EMANCIPATED MINOR PATIENT
2 PURSUANT TO SUBDIVISION THREE OF SECTION TWENTY-NINE HUNDRED
3 NINETY-FOUR-E OF THIS ARTICLE; OR (II) WHEN A PERSON CONNECTED WITH THE
4 CASE REQUESTS THE ETHICS REVIEW COMMITTEE TO PROVIDE ASSISTANCE IN
5 RESOLVING A DISPUTE ABOUT PROPOSED CARE. NOTHING IN THIS SECTION SHALL
6 BAR HEALTH CARE PROVIDERS FROM FIRST STRIVING TO RESOLVE DISPUTES
7 THROUGH LESS FORMAL MEANS, INCLUDING THE INFORMAL SOLICITATION OF
8 ETHICAL ADVICE FROM ANY SOURCE.

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

11 (II) THE ETHICS REVIEW COMMITTEE SHALL RESPOND PROMPTLY, AS REQUIRED
12 BY THE CIRCUMSTANCES, TO ANY REQUEST FOR ASSISTANCE IN RESOLVING A
13 DISPUTE OR CONSIDERATION OF A DECISION TO WITHHOLD OR WITHDRAW LIFE-SUS-
14 TAINING TREATMENT PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION FIVE
15 OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-D OF THIS ARTICLE MADE BY A
16 PERSON CONNECTED WITH THE CASE. THE COMMITTEE SHALL PERMIT PERSONS
17 CONNECTED WITH THE CASE TO PRESENT THEIR VIEWS TO THE COMMITTEE, AND TO
18 HAVE THE OPTION OF BEING ACCOMPANIED BY AN ADVISOR WHEN PARTICIPATING IN
19 A COMMITTEE MEETING.

20 (III) THE ETHICS REVIEW COMMITTEE SHALL PROMPTLY PROVIDE THE PATIENT,
21 WHERE THERE IS ANY INDICATION OF THE PATIENT'S ABILITY TO COMPREHEND THE
22 INFORMATION, THE SURROGATE, OTHER PERSONS ON THE SURROGATE LIST DIRECTLY
23 INVOLVED IN THE DECISION OR DISPUTE REGARDING THE PATIENT'S CARE, ANY
24 PARENT OR GUARDIAN OF A MINOR PATIENT DIRECTLY INVOLVED IN THE DECISION
25 OR DISPUTE REGARDING THE MINOR PATIENT'S CARE, AN ATTENDING PHYSICIAN,
26 THE HOSPITAL, AND OTHER PERSONS THE COMMITTEE DEEMS APPROPRIATE, WITH
27 THE FOLLOWING:

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

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

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

43 5. ACCESS TO MEDICAL RECORDS AND INFORMATION; PATIENT CONFIDENTIALITY.
44 ETHICS REVIEW COMMITTEE MEMBERS AND CONSULTANTS SHALL HAVE ACCESS TO
45 MEDICAL INFORMATION AND MEDICAL RECORDS NECESSARY TO PERFORM THEIR FUNC-
46 TION UNDER THIS ARTICLE. ANY SUCH INFORMATION OR RECORDS DISCLOSED TO
47 COMMITTEE MEMBERS, CONSULTANTS, OR OTHERS SHALL BE KEPT CONFIDENTIAL
48 EXCEPT TO THE EXTENT NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTI-
49 CLE OR AS OTHERWISE PROVIDED BY LAW.

50 6. ETHICS REVIEW COMMITTEE CONFIDENTIALITY. NOTWITHSTANDING ANY OTHER
51 PROVISIONS OF LAW, THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW
52 COMMITTEE SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE RELEASED BY
53 COMMITTEE MEMBERS, COMMITTEE CONSULTANTS, OR OTHER PERSONS PRIVY TO SUCH
54 PROCEEDINGS AND RECORDS; THE PROCEEDINGS AND RECORDS OF AN ETHICS REVIEW
55 COMMITTEE SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION IN ANY
56 MANNER, INCLUDING UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ARTI-

1 CLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES; AND, NO PERSON SHALL
2 TESTIFY AS TO THE PROCEEDINGS OR RECORDS OF AN ETHICS REVIEW COMMITTEE,
3 NOR SHALL SUCH PROCEEDINGS AND RECORDS OTHERWISE BE ADMISSIBLE AS
4 EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY KIND IN ANY COURT OR BEFORE
5 ANY OTHER TRIBUNAL, BOARD, AGENCY OR PERSON, EXCEPT THAT:

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

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

16 (C) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT THE STATE COMMISSION ON
17 QUALITY OF CARE FOR THE MENTALLY DISABLED FROM REQUIRING ANY INFORMA-
18 TION, REPORT OR RECORD FROM A HOSPITAL IN ACCORDANCE WITH THE PROVISIONS
19 OF SECTION 45.09 OF THE MENTAL HYGIENE LAW.

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

23 (A) THE DECISION IS CONTRARY TO A FORMALLY ADOPTED POLICY OF THE
24 HOSPITAL THAT IS EXPRESSLY BASED ON SINCERELY HELD RELIGIOUS BELIEFS OR
25 SINCERELY HELD MORAL CONVICTIONS CENTRAL TO THE FACILITY'S OPERATING
26 PRINCIPLES;

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

29 (C) THE PATIENT IS TRANSFERRED PROMPTLY TO ANOTHER HOSPITAL THAT IS
30 REASONABLY ACCESSIBLE UNDER THE CIRCUMSTANCES AND WILLING TO HONOR THE
31 DECISION AND PENDING TRANSFER THE HOSPITAL COMPLIES WITH SUBDIVISION
32 THREE OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-F OF THIS ARTICLE. IF
33 THE PATIENT'S FAMILY OR SURROGATE IS UNABLE OR UNWILLING TO ARRANGE SUCH
34 A TRANSFER, THE HOSPITAL MAY INTERVENE TO FACILITATE SUCH A TRANSFER. IF
35 SUCH A TRANSFER IS NOT EFFECTED, THE HOSPITAL SHALL SEEK JUDICIAL RELIEF
36 IN ACCORDANCE WITH SECTION TWENTY-NINE HUNDRED NINETY-FOUR-R OF THIS
37 ARTICLE OR HONOR THE DECISION.

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

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

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

50 S 2994-O. IMMUNITY. 1. ETHICS REVIEW COMMITTEE. NO PERSON SHALL BE
51 SUBJECT TO CRIMINAL OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN
52 UNPROFESSIONAL CONDUCT, FOR ACTS PERFORMED REASONABLY AND IN GOOD FAITH
53 PURSUANT TO THIS ARTICLE AS A MEMBER OF OR AS A CONSULTANT TO AN ETHICS
54 REVIEW COMMITTEE OR AS A PARTICIPANT IN AN ETHICS REVIEW COMMITTEE MEET-
55 ING.

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

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

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

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

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

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

25 4. THIS ARTICLE SHALL NOT AFFECT EXISTING LAW WITH RESPECT TO STERILI-
26 ZATION.

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

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

34 2. COURT ORDERS DESIGNATING SURROGATE. A COURT OF COMPETENT JURISDIC-
35 TION MAY DESIGNATE ANY INDIVIDUAL FROM THE SURROGATE LIST TO ACT AS
36 SURROGATE, REGARDLESS OF THAT INDIVIDUAL'S PRIORITY ON THE LIST, IF THE
37 COURT DETERMINES THAT SUCH APPOINTMENT WOULD BEST ACCORD WITH THE
38 PATIENT'S WISHES OR, IF THE PATIENT'S WISHES ARE NOT REASONABLY KNOWN,
39 WITH THE PATIENT'S BEST INTERESTS. UNLESS OTHERWISE DETERMINED BY A
40 COURT, NO SURROGATE DECISION MADE PRIOR TO AN ORDER DESIGNATING A SURRO-
41 GATE SHALL BE DEEMED TO HAVE BEEN INVALID BECAUSE OF THE ISSUANCE OF A
42 DESIGNATING ORDER.

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

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

54 (B) THE FOLLOWING PERSONS MAY COMMENCE A SPECIAL PROCEEDING IN A COURT
55 OF COMPETENT JURISDICTION TO SEEK APPOINTMENT AS THE HEALTH CARE GUARDI-

1 AN OF A MINOR PATIENT SOLELY FOR THE PURPOSE OF DECIDING ABOUT LIFE-SUS-
2 TAINING TREATMENT PURSUANT TO THIS ARTICLE:

3 (I) THE HOSPITAL ADMINISTRATOR;
4 (II) AN ATTENDING PHYSICIAN;
5 (III) THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR THE LOCAL COMMIS-
6 SIONER OF HEALTH, AUTHORIZED TO MAKE MEDICAL TREATMENT DECISIONS FOR THE
7 MINOR PURSUANT TO SECTION THREE HUNDRED EIGHTY-THREE-B OF THE SOCIAL
8 SERVICES LAW; OR

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

11 (C) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO THE PERSONS IDENTIFIED
12 IN SECTION ONE THOUSAND SEVEN HUNDRED FIVE OF THE SURROGATE'S COURT
13 PROCEDURE ACT.

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

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

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

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

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

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

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

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

45 2. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONERS OF THE
46 OFFICE OF MENTAL HEALTH AND THE OFFICE OF MENTAL RETARDATION AND DEVEL-
47 OPMENTAL DISABILITIES, SHALL PROMULGATE REGULATIONS IDENTIFYING THE
48 CREDENTIALS OF HEALTH CARE PROFESSIONALS QUALIFIED TO PROVIDE AN INDE-
49 PENDENT DETERMINATION, PURSUANT TO SUBDIVISION THREE OF SECTION TWENTY-
50 NINE HUNDRED NINETY-FOUR-C OF THIS ARTICLE, THAT A PATIENT LACKS DECI-
51 SION-MAKING CAPACITY BECAUSE OF MENTAL ILLNESS OR DEVELOPMENTAL
52 DISABILITY.

53 S 2994-U. RIGHTS TO BE PUBLICIZED. THE COMMISSIONER SHALL PREPARE A
54 STATEMENT SUMMARIZING THE RIGHTS, DUTIES, AND REQUIREMENTS OF THIS ARTI-
55 CLE AND SHALL REQUIRE THAT A COPY OF SUCH STATEMENT BE FURNISHED TO
56 PATIENTS OR TO PERSONS ON THE SURROGATE LIST KNOWN TO THE HOSPITAL, OR

1 TO THE PARENTS OR GUARDIANS OF MINOR PATIENTS, AT OR PRIOR TO ADMISSION
 2 TO THE HOSPITAL, OR WITHIN A REASONABLE TIME THEREAFTER, AND TO EACH
 3 MEMBER OF THE HOSPITAL'S STAFF DIRECTLY INVOLVED WITH PATIENT CARE.

4 ARTICLE 29-CCC

5 NONHOSPITAL ORDERS NOT TO RESUSCITATE

6 SECTION 2994-AA. DEFINITIONS.

7 2994-BB. GENERAL PROVISIONS.

8 2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE.

9 2994-DD. MANAGING A NONHOSPITAL ORDER NOT TO RESUSCITATE.

10 2994-EE. OBLIGATION TO HONOR A NONHOSPITAL ORDER NOT TO RESUSCI-
 11 TATE.

12 2994-FF. INTERINSTITUTIONAL TRANSFER.

13 2994-GG. IMMUNITY.

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

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

20 3. "CAPACITY" MEANS THE ABILITY TO UNDERSTAND AND APPRECIATE THE
 21 NATURE AND CONSEQUENCES OF A NONHOSPITAL ORDER NOT TO RESUSCITATE,
 22 INCLUDING THE BENEFITS AND DISADVANTAGES OF SUCH AN ORDER, AND TO REACH
 23 AN INFORMED DECISION REGARDING THE ORDER.

24 4. "CARDIOPULMONARY RESUSCITATION" MEANS MEASURES, AS SPECIFIED IN
 25 REGULATIONS PROMULGATED BY THE COMMISSIONER, TO RESTORE CARDIAC FUNCTION
 26 OR TO SUPPORT VENTILATION IN THE EVENT OF A CARDIAC OR RESPIRATORY
 27 ARREST. SUCH TERM SHALL NOT INCLUDE MEASURES TO IMPROVE VENTILATION AND
 28 CARDIAC FUNCTION IN THE ABSENCE OF AN ARREST.

29 5. "EMERGENCY MEDICAL SERVICES PERSONNEL" MEANS THE PERSONNEL OF A
 30 SERVICE OR AGENCY ENGAGED IN PROVIDING INITIAL EMERGENCY MEDICAL ASSIST-
 31 ANCE, INCLUDING BUT NOT LIMITED TO FIRST RESPONDERS, EMERGENCY MEDICAL
 32 TECHNICIANS, ADVANCED EMERGENCY MEDICAL TECHNICIANS AND PERSONNEL
 33 ENGAGED IN PROVIDING HEALTH CARE AT CORRECTIONAL FACILITIES, AS THAT
 34 TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION
 35 LAW.

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

38 7. "HEALTH OR SOCIAL SERVICES PRACTITIONER" MEANS A REGISTERED PROFES-
 39 SIONAL NURSE, NURSE PRACTITIONER, PHYSICIAN, PHYSICIAN ASSISTANT,
 40 PSYCHOLOGIST OR CERTIFIED SOCIAL WORKER LICENSED OR CERTIFIED PURSUANT
 41 TO THE EDUCATION LAW AND QUALIFIED TO PROVIDE A SECOND OPINION OF CAPAC-
 42 ITY AS SPECIFIED IN REGULATIONS PROMULGATED BY THE COMMISSIONER.

43 8. "HOSPITAL" MEANS A GENERAL HOSPITAL AS DEFINED IN SUBDIVISION TEN
 44 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER AND A RESIDENTIAL
 45 HEALTH CARE FACILITY AS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-
 46 EIGHT HUNDRED ONE OF THIS CHAPTER OR A HOSPITAL AS DEFINED IN SUBDIVI-
 47 SION TEN OF SECTION 1.03 OF THE MENTAL HYGIENE LAW OR A SCHOOL NAMED IN
 48 SECTION 13.17 OF THE MENTAL HYGIENE LAW.

49 9. "HOSPITAL EMERGENCY SERVICES PERSONNEL" MEANS THE PERSONNEL OF THE
 50 EMERGENCY SERVICE OF A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN
 51 OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, INCLUDING BUT NOT
 52 LIMITED TO EMERGENCY SERVICES ATTENDING PHYSICIANS, EMERGENCY SERVICES
 53 REGISTERED PROFESSIONAL NURSES, AND REGISTERED PROFESSIONAL NURSES,
 54 NURSING STAFF AND REGISTERED PHYSICIANS ASSISTANTS ASSIGNED TO THE
 55 GENERAL HOSPITAL'S EMERGENCY SERVICE.

1 10. "MENTAL HYGIENE FACILITY" MEANS A RESIDENTIAL FACILITY OPERATED OR
2 LICENSED BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE OF MENTAL RETARDA-
3 TION AND DEVELOPMENTAL DISABILITIES.

4 11. "NONHOSPITAL ORDER NOT TO RESUSCITATE" MEANS AN ORDER THAT DIRECTS
5 EMERGENCY MEDICAL SERVICES PERSONNEL AND HOSPITAL EMERGENCY SERVICES
6 PERSONNEL NOT TO ATTEMPT CARDIOPULMONARY RESUSCITATION IN THE EVENT A
7 PATIENT SUFFERS CARDIAC OR RESPIRATORY ARREST.

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

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

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

17 (B) A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL NOT CONSTITUTE AN
18 ORDER TO WITHHOLD OR WITHDRAW TREATMENT OTHER THAN CARDIOPULMONARY
19 RESUSCITATION.

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

23 S 2994-CC. CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE. 1. AN
24 ADULT WITH DECISION-MAKING CAPACITY, A HEALTH CARE AGENT, OR A SURROGATE
25 MAY CONSENT TO A NONHOSPITAL ORDER NOT TO RESUSCITATE ORALLY TO THE
26 ATTENDING PHYSICIAN OR IN WRITING. IF A PATIENT CONSENTS TO A NONHOSPI-
27 TAL ORDER NOT TO RESUSCITATE WHILE IN A CORRECTIONAL FACILITY, NOTICE OF
28 THE PATIENT'S CONSENT SHALL BE GIVEN TO THE FACILITY DIRECTOR AND
29 REASONABLE EFFORTS SHALL BE MADE TO NOTIFY AN INDIVIDUAL DESIGNATED BY
30 THE PATIENT TO RECEIVE SUCH NOTICE PRIOR TO THE ISSUANCE OF THE NONHOS-
31 PITAL ORDER NOT TO RESUSCITATE. NOTIFICATION TO THE FACILITY DIRECTOR OR
32 THE INDIVIDUAL DESIGNATED BY THE PATIENT SHALL NOT DELAY ISSUANCE OF A
33 NONHOSPITAL ORDER NOT TO RESUSCITATE.

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

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

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

48 (B) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL
49 THE REQUIREMENTS FOR THE ISSUANCE OF A NONHOSPITAL ORDER NOT TO RESUSCI-
50 TATE FOR HOSPICE AND HOME CARE PATIENTS, SUCH SECOND PHYSICIAN SHALL BE
51 SELECTED BY THE HOSPICE MEDICAL DIRECTOR OR HOSPICE NURSE COORDINATOR
52 DESIGNATED BY THE MEDICAL DIRECTOR OR BY THE HOME CARE SERVICES AGENCY
53 DIRECTOR OF PATIENT CARE SERVICES, AS APPROPRIATE TO THE PATIENT.

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

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

4 2. A NONHOSPITAL ORDER NOT TO RESUSCITATE SHALL BE ISSUED UPON A STAN-
5 DARD FORM PRESCRIBED BY THE COMMISSIONER. THE COMMISSIONER SHALL ALSO
6 DEVELOP A STANDARD BRACELET THAT MAY BE WORN BY A PATIENT WITH A NONHOS-
7 PITAL ORDER NOT TO RESUSCITATE TO IDENTIFY THAT STATUS; PROVIDED, HOWEV-
8 ER, THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AND
9 THAT NO PERSON MAY REQUIRE A PATIENT TO WEAR SUCH A BRACELET AS A CONDI-
10 TION FOR HONORING A NONHOSPITAL ORDER NOT TO RESUSCITATE OR FOR PROVID-
11 ING HEALTH CARE SERVICES.

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

15 4. FOR EACH PATIENT FOR WHOM A NONHOSPITAL ORDER NOT TO RESUSCITATE
16 HAS BEEN ISSUED, THE ATTENDING PHYSICIAN SHALL REVIEW WHETHER THE ORDER
17 IS STILL APPROPRIATE IN LIGHT OF THE PATIENT'S CONDITION EACH TIME HE OR
18 SHE EXAMINES THE PATIENT, WHETHER IN THE HOSPITAL OR ELSEWHERE, BUT AT
19 LEAST EVERY NINETY DAYS, PROVIDED THAT THE REVIEW NEED NOT OCCUR MORE
20 THAN ONCE EVERY SEVEN DAYS. THE ATTENDING PHYSICIAN SHALL RECORD THE
21 REVIEW IN THE PATIENT'S MEDICAL RECORD PROVIDED, HOWEVER, THAT A REGIS-
22 TERED NURSE WHO PROVIDES DIRECT CARE TO THE PATIENT MAY RECORD THE
23 REVIEW IN THE MEDICAL RECORD AT THE DIRECTION OF THE PHYSICIAN. IN SUCH
24 CASE, THE ATTENDING PHYSICIAN SHALL INCLUDE A CONFIRMATION OF THE REVIEW
25 IN THE PATIENT'S MEDICAL RECORD WITHIN FOURTEEN DAYS OF SUCH REVIEW.
26 FAILURE TO COMPLY WITH THIS SUBDIVISION SHALL NOT RENDER A NONHOSPITAL
27 ORDER NOT TO RESUSCITATE INEFFECTIVE.

28 5. A PERSON WHO HAS CONSENTED TO A NONHOSPITAL ORDER NOT TO RESUSCI-
29 TATE MAY AT ANY TIME REVOKE HIS OR HER CONSENT TO THE ORDER BY ANY ACT
30 EVIDENCING A SPECIFIC INTENT TO REVOKE SUCH CONSENT. ANY HEALTH CARE
31 PROFESSIONAL INFORMED OF A REVOCATION OF CONSENT TO A NONHOSPITAL ORDER
32 NOT TO RESUSCITATE SHALL NOTIFY THE ATTENDING PHYSICIAN OF THE REVOCA-
33 TION. AN ATTENDING PHYSICIAN WHO IS INFORMED THAT A NONHOSPITAL ORDER
34 NOT TO RESUSCITATE HAS BEEN REVOKED SHALL RECORD THE REVOCATION IN THE
35 PATIENT'S MEDICAL RECORD, CANCEL THE ORDER AND MAKE DILIGENT EFFORTS TO
36 RETRIEVE THE FORM ISSUING THE ORDER, AND THE STANDARD BRACELET, IF ANY.

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

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

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

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

48 2. HOSPITAL EMERGENCY SERVICES PHYSICIANS MAY DIRECT THAT THE ORDER BE
49 DISREGARDED IF OTHER SIGNIFICANT AND EXCEPTIONAL MEDICAL CIRCUMSTANCES
50 WARRANT DISREGARDING THE ORDER.

51 S 2994-FF. INTERINSTITUTIONAL TRANSFER. IF A PATIENT WITH A NONHOSPI-
52 TAL ORDER NOT TO RESUSCITATE IS ADMITTED TO A HOSPITAL, THE ORDER SHALL
53 BE TREATED AS AN ORDER NOT TO RESUSCITATE FOR A PATIENT TRANSFERRED FROM
54 ANOTHER HOSPITAL, AND SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-CC OF
55 THIS CHAPTER, EXCEPT THAT ANY SUCH ORDER FOR A PATIENT ADMITTED TO A

1 MENTAL HYGIENE FACILITY SHALL BE GOVERNED BY ARTICLE TWENTY-NINE-B OF
2 THIS CHAPTER.

3 S 2994-GG. IMMUNITY. NO PERSON SHALL BE SUBJECTED TO CRIMINAL PROSE-
4 CUTION OR CIVIL LIABILITY, OR BE DEEMED TO HAVE ENGAGED IN UNPROFES-
5 SIONAL CONDUCT, FOR HONORING REASONABLY AND IN GOOD FAITH PURSUANT TO
6 THIS SECTION A NONHOSPITAL ORDER NOT TO RESUSCITATE, FOR DISREGARDING A
7 NONHOSPITAL ORDER PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FOUR-EE
8 OF THIS ARTICLE, OR FOR OTHER ACTIONS TAKEN REASONABLY AND IN GOOD FAITH
9 PURSUANT TO THIS SECTION.

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

12 ORDERS NOT TO RESUSCITATE FOR RESIDENTS OF MENTAL HYGIENE
13 FACILITIES

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

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

21 2. "Attending physician" means the physician selected by or assigned
22 to a patient in a hospital [or, for the purpose of provisions herein
23 governing nonhospital orders not to resuscitate, a patient not in a
24 hospital,] who has primary responsibility for the treatment and care of
25 the patient. Where more than one physician shares such responsibility,
26 any such physician may act as the attending physician pursuant to this
27 article.

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

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

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

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

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

52 6-A. "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER
53 PERSON:

54 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
55 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
56 UNITED STATES OR OF ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGIS-

1 TERED AS THE DOMESTIC PARTNER OF THE OTHER PERSON WITH ANY REGISTRY
2 MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY,
3 OR FOREIGN JURISDICTION; OR

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

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

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

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

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

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

50 4. Notice of a determination that the patient lacks capacity shall
51 promptly be given (a) to the patient, where there is any indication of
52 the patient's ability to comprehend such notice, together with a copy of
53 a statement prepared in accordance with section twenty-nine hundred
54 seventy-eight of this article, AND (b) to the person on the surrogate
55 list highest in order of priority listed, when persons in prior subpara-
56 graphs are not reasonably available[, and (c) if the patient is in or is

1 transferred from a mental hygiene facility, to the facility director].
2 Nothing in this subdivision shall preclude or require notice to more
3 than one person on the surrogate list.

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

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

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

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

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

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

27 (iv) a parent;

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

29 (vi) a close RELATIVE OR CLOSE friend.

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

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

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

44 S 12. Subdivision 2 of section 2966 of the public health law is
45 REPEALED.

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

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

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

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

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

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

13 Failure to comply with this subdivision shall not render an order not
14 to resuscitate ineffective.

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

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

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

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

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

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

1 vision, the court shall make its determination based upon the applicable
2 substantive standards and procedures set forth in this article.

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

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

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

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

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

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

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

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

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

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

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

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

11 9-A. "LIFE-SUSTAINING TREATMENT" MEANS ANY MEDICAL TREATMENT OR PROCE-
12 DURE WITHOUT WHICH THE PATIENT WILL DIE WITHIN A RELATIVELY SHORT TIME,
13 AS DETERMINED BY AN ATTENDING PHYSICIAN TO A REASONABLE DEGREE OF
14 MEDICAL CERTAINTY.

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