S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. GOTTFRIED, CLARK, EDDINGTON, FIELDS, GUNTHER, HOYT, PAULIN, SCHIMMINGER -- Multi-Sponsored by -- M. of A. CAHILL, GALEF, GLICK, JOHN, KELLNER, LAVINE, McENENY, PHEFFER, N. RIVERA, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to authorizing nurse practitioners to execute orders not to resuscitate; and to repeal subdivision 4 of section 2977 of such law relating to consent to nonhospital orders not to resuscitate

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

Section 1. Section 2960 of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

S 2960. Legislative findings and purpose. The legislature finds that, although cardiopulmonary resuscitation has proved invaluable in the prevention of sudden, unexpected death, it is appropriate for an attending physician OR ATTENDING NURSE PRACTITIONER, in certain circumstances, to issue an order not to attempt cardiopulmonary resuscitation of a patient where appropriate consent has been obtained. The legislature further finds that there is a need to clarify and establish the rights and obligations of patients, their families, and health care providers regarding cardiopulmonary resuscitation and the issuance of orders not to resuscitate.

S 2. Subdivisions 2, 5 and 20 of section 2961 of the public health law, subdivision 2 as amended by chapter 370 of the laws of 1991, subdivisions 5 and 20 as added by chapter 818 of the laws of 1987, subdivision 20 as renumbered by chapter 370 of the laws of 1991, are amended and two new subdivisions 2-a and 16-a are added to read as follows:

2. "Attending physician" means the physician selected by or assigned to a patient in a hospital or, for the purpose of provisions herein governing nonhospital orders not to resuscitate, a patient not in a hospital, who has primary responsibility for the treatment and care of

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

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the patient. Where more than one physician AND/OR NURSE PRACTITIONER shares such responsibility, any such physician OR NURSE PRACTITIONER may act as the attending physician OR ATTENDING NURSE PRACTITIONER pursuant to this article.

2-A. "ATTENDING NURSE PRACTITIONER" MEANS THE NURSE PRACTITIONER SELECTED BY OR ASSIGNED TO A PATIENT IN A HOSPITAL OR, FOR THE PURPOSE OF PROVISIONS HEREIN GOVERNING NONHOSPITAL ORDERS NOT TO RESUSCITATE, A PATIENT NOT IN A HOSPITAL, WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND CARE OF THE PATIENT. WHERE MORE THAN ONE PHYSICIAN AND/OR NURSE PRACTITIONER SHARES SUCH RESPONSIBILITY, ANY SUCH PHYSICIAN OR NURSE PRACTITIONER MAY ACT AS THE ATTENDING PHYSICIAN OR ATTENDING NURSE PRACTITIONER PURSUANT TO THIS ARTICLE.

5. "Close friend" means any person, eighteen years of age or older, who presents an affidavit to an attending physician OR ATTENDING NURSE PRACTITIONER stating that he OR SHE is a close friend of the patient and that he OR SHE has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious or moral beliefs and stating the facts and circumstances that demonstrate such familiarity.

16-A. "NURSE PRACTITIONER" MEANS A NURSE PRACTITIONER CERTIFIED PURSUANT TO SECTION SIXTY-NINE HUNDRED TEN OF THE EDUCATION LAW, AND WHO IS PRACTICING PURSUANT TO A WRITTEN PRACTICE AGREEMENT AND WRITTEN PRACTICE PROTOCOLS ENTERED INTO WITH HIS OR HER COLLABORATING PHYSICIAN, IN ACCORDANCE WITH SUBDIVISION THREE OF SECTION SIXTY-NINE HUNDRED TWO OF THE EDUCATION LAW.

20. "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending physician, ATTENDING NURSE PRACTITIONER or another person acting on behalf of the attending physician, THE ATTENDING NURSE PRACTITIONER or the hospital.

S 3. Subdivisions 2 and 3 of section 2962 of the public health law, as added by chapter 818 of the laws of 1987, are amended to read as follows:

2. It shall be lawful for the attending physician OR ATTENDING NURSE PRACTITIONER to issue an order not to resuscitate a patient, provided that the order has been issued pursuant to the requirements of this article. The order shall be included in writing in the patient's chart. An order not to resuscitate shall be effective upon issuance.

3. Before obtaining, pursuant to this article, the consent of the patient, or of the surrogate of the patient, or parent or legal guardian of the minor patient, to an order not to resuscitate, the attending physician OR ATTENDING NURSE PRACTITIONER shall provide to the person giving consent information about the patient's diagnosis and prognosis, the reasonably foreseeable risks and benefits of cardiopulmonary resuscitation for the patient, and the consequences of an order not to resuscitate.

S 4. Paragraphs (a) and (d) of subdivision 2 of section 2964 of the public health law, as added by chapter 818 of the laws of 1987, are amended to read as follows:

(a) During hospitalization, an adult with capacity may express a decision consenting to an order not to resuscitate orally in the presence of at least two witnesses eighteen years of age or older, one of whom is a physician OR ATTENDING NURSE PRACTITIONER affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(d) Prior to issuing an order not to resuscitate a patient who has expressed a decision consenting to an order not to resuscitate under

specified medical conditions, the attending physician OR ATTENDING NURSE PRACTITIONER must make a determination, to a reasonable degree of medical certainty, that such conditions exist, and include the determination in the patient's medical chart.

S 5. The opening paragraph of paragraph (c) of subdivision 2 of section 2964 of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

An attending physician OR ATTENDING NURSE PRACTITIONER who is provided with or informed of a decision pursuant to this subdivision shall record or include the decision in the patient's medical chart if the decision has not been recorded or included, and either:

S 6. The opening paragraph of paragraph (a) and paragraph (b) of subdivision 3 of section 2964 of the public health law, as added by chapter 818 of the laws of 1987, are amended to read as follows:

In the event that the attending physician OR ATTENDING NURSE PRACTITIONER determines, in writing, that, to a reasonable degree of medical certainty, an adult patient who has capacity would suffer immediate and severe injury from a discussion of cardiopulmonary resuscitation, the attending physician OR ATTENDING NURSE PRACTITIONER may issue an order not to resuscitate without obtaining the patient's consent, but only after:

(b) Where the provisions of this subdivision have been invoked, the attending physician OR ATTENDING NURSE PRACTITIONER shall reassess the patient's risk of injury from a discussion of cardiopulmonary resuscitation on a regular basis and shall consult the patient regarding resuscitation as soon as the medical basis for not consulting the patient no longer exists.

S 7. The opening paragraph of paragraph (c) of subdivision 3 of section 2965 of the public health law, as added by chapter 818 of the laws of 1987, such subdivision as renumbered by chapter 370 of the laws of 1991, is amended to read as follows:

A surrogate may consent to an order not to resuscitate on behalf of an adult patient only if there has been a determination by an attending physician OR ATTENDING NURSE PRACTITIONER with the concurrence of another physician selected by a person authorized by the hospital to make such selection, given after personal examination of the patient that, to a reasonable degree of medical certainty:

S 8. Paragraphs (a) and (b) of subdivision 4 of section 2965 of the public health law, paragraph (a) as amended by chapter 370 of the laws of 1991 and paragraph (b) as added by chapter 818 of the laws of 1987, such subdivision as renumbered by chapter 370 of the laws of 1991, are amended to read as follows:

(a) A surrogate shall express a decision consenting to an order not to resuscitate either (i) in writing, dated, and signed in the presence of one witness eighteen years of age or older who shall sign the decision, or (ii) orally, to two persons eighteen years of age or older, one of whom is a physician OR NURSE PRACTITIONER affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(b) The attending physician OR ATTENDING NURSE PRACTITIONER who is provided with the decision of a surrogate shall include the decision in the patient's medical chart and, if the surrogate has consented to the issuance of an order not to resuscitate, shall either:

(i) promptly issue an order not to resuscitate the patient and inform the hospital staff responsible for the patient's care of the order; or

(ii) promptly make the attending physician's OR ATTENDING NURSE PRACTITIONER'S objection to the issuance of such an order known to the surrogate and either make all reasonable efforts to arrange for the transfer of the patient to another physician, if necessary, or promptly refer the matter to the dispute mediation system.

S 9. Subdivision 1 of section 2966 of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

1. If no surrogate is reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate on behalf of an adult patient who lacks capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation, an attending physician OR ATTENDING NURSE PRACTITIONER (a) may issue an order not to resuscitate the patient, provided that the attending physician OR ATTENDING NURSE PRACTITIONER determines, in writing, that, to a reasonable degree of medical certainty, resuscitation would be medically futile, and another physician selected by a person authorized by the hospital to make such selection, after personal examination of the patient, reviews and concurs in writing with such determination, or, (b) shall issue an order not to resuscitate the patient, provided that, pursuant to subdivision one of section twenty-nine hundred seventy-six of this article, a court has granted a judgment directing the issuance of such an order.

S 10. Subdivisions 1, 3 and 4 of section 2967 of the public health law, subdivisions 1 and 4 as added by chapter 818 of the laws of 1987, and subdivision 3 and paragraphs (a) and (b) of subdivision 4 as amended by chapter 370 of the laws of 1991, are amended to read as follows:

1. An attending physician OR ATTENDING NURSE PRACTITIONER, in consultation with a minor's parent or legal guardian, shall determine whether a minor has the capacity to make a decision regarding resuscitation.

3. A parent or legal guardian may consent to an order not to resuscitate on behalf of a minor only if there has been a written determination by the attending physician OR ATTENDING NURSE PRACTITIONER, with the written concurrence of another physician selected by a person authorized by the hospital to make such selections given after personal examination of the patient, that, to a reasonable degree of medical certainty, the minor suffers from one of the medical conditions set forth in paragraph (c) of subdivision three of section twenty-nine hundred sixty-five of this article. Each determination shall be included in the patient's medical chart.

4. (a) A parent or legal guardian of a minor, in making a decision regarding cardiopulmonary resuscitation, shall consider the minor patient's wishes, including a consideration of the minor patient's religious and moral beliefs, and shall express a decision consenting to issuance of an order not to resuscitate either (i) in writing, dated and signed in the presence of one witness eighteen years of age or older who shall sign the decision, or (ii) orally, to two persons eighteen years of age or older, one of whom is a physician OR NURSE PRACTITIONER affiliated with the hospital in which the patient is being treated. Any such decision shall be recorded in the patient's medical chart.

(b) The attending physician OR ATTENDING NURSE PRACTITIONER who is provided with the decision of a minor's parent or legal guardian, expressed pursuant to this subdivision, and of the minor if the minor has capacity, shall include such decision or decisions in the minor's medical chart and shall comply with the provisions of paragraph (b) of

subdivision four of section twenty-nine hundred sixty-five of this article.

(c) If the attending physician OR ATTENDING NURSE PRACTITIONER has actual notice of the opposition of a parent or non-custodial parent to consent by another parent to an order not to resuscitate a minor, the physician OR NURSE PRACTITIONER shall submit the matter to the dispute mediation system and such order shall not be issued or shall be revoked in accordance with the provisions of subdivision three of section twenty-nine hundred seventy-two of this article.

S 11. Paragraph (b) of subdivision 2 of section 2967 of the public health law, as amended by chapter 370 of the laws of 1991, is amended to read as follows:

(b) Where the attending physician OR ATTENDING NURSE PRACTITIONER has reason to believe that there is another parent or a non-custodial parent who has not been informed of a decision to issue an order not to resuscitate the minor, the attending physician OR ATTENDING NURSE PRACTITIONER, or someone acting on behalf of the attending physician OR ATTENDING NURSE PRACTITIONER, shall make reasonable efforts to determine if the uninformed parent or non-custodial parent has maintained substantial and continuous contact with the minor and, if so, shall make diligent efforts to notify that parent or non-custodial parent of the decision prior to issuing the order.

S 12. Subdivisions 2 and 3 of section 2969 of the public health law, subdivision 2 as amended by chapter 370 of the laws of 1991 and subdivision 3 as added by chapter 818 of the laws of 1987, are amended to read as follows:

2. Any surrogate, parent, or legal guardian may at any time revoke his or her consent to an order not to resuscitate a patient by (a) notifying a physician or member of the nursing staff of the revocation of consent in writing, dated and signed, or (b) orally notifying the attending physician OR ATTENDING NURSE PRACTITIONER in the presence of a witness eighteen years of age or older.

3. Any physician OR NURSE PRACTITIONER who is informed of or provided with a revocation of consent pursuant to this section shall immediately include the revocation in the patient's chart, cancel the order, and notify the hospital staff responsible for the patient's care of the revocation and cancellation. Any member of the nursing staff, OTHER THAN A NURSE PRACTITIONER, who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify a physician OR NURSE PRACTITIONER of such revocation.

S 13. Section 2970 of the public health law, as added by chapter 818 of the laws of 1987, subdivision 1 and paragraph (b) of subdivision 2 as amended by chapter 370 of the laws of 1991, is amended to read as follows:

S 2970. Physician AND NURSE PRACTITIONER review of the order not to resuscitate. 1. For each patient for whom an order not to resuscitate has been issued, the attending physician OR ATTENDING NURSE PRACTITIONER shall review the patient's chart to determine if the order is still appropriate in light of the patient's condition and shall indicate on the patient's chart that the order has been reviewed:

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

(b) for an outpatient whose order not to resuscitate is effective while the patient receives care in a hospital, each time the attending

physician OR ATTENDING NURSE PRACTITIONER examines the patient, whether in the hospital or elsewhere, provided that the review need not occur more than once every seven days; and

(c) for a patient in a residential health care facility or an alternate level of care patient in a hospital, each time the patient is required to be seen by a physician OR NURSE PRACTITIONER but at least every sixty days.

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

2. (a) If the attending physician OR ATTENDING NURSE PRACTITIONER determines at any time that an order not to resuscitate is no longer appropriate because the patient's medical condition has improved, the physician OR NURSE PRACTITIONER shall immediately notify the person who consented to the order. Except as provided in paragraph (b) of this subdivision, if such person declines to revoke consent to the order, the physician OR NURSE PRACTITIONER shall promptly (i) make reasonable efforts to arrange for the transfer of the patient to another physician or (ii) submit the matter to the dispute mediation system.

(b) If the order not to resuscitate was entered upon the consent of a surrogate, parent, or legal guardian and the attending physician OR ATTENDING NURSE PRACTITIONER who issued the order, or, if unavailable, another attending physician OR ATTENDING NURSE PRACTITIONER at any time determines that the patient does not suffer from one of the medical conditions set forth in paragraph (c) of subdivision three of section twenty-nine hundred sixty-five of this article, the attending physician OR ATTENDING NURSE PRACTITIONER shall immediately include such determination in the patient's chart, cancel the order, and notify the person who consented to the order and all hospital staff responsible for the patient's care of the cancellation.

(c) If an order not to resuscitate was entered upon the consent of a surrogate and the patient at any time gains or regains capacity, the attending physician OR ATTENDING NURSE PRACTITIONER who issued the order, or, if unavailable, another attending physician OR ATTENDING NURSE PRACTITIONER shall immediately cancel the order and notify the person who consented to the order and all hospital staff directly responsible for the patient's care of the cancellation.

S 14. The opening paragraph and subdivision 2 of section 2971 of the public health law, as amended by chapter 370 of the laws of 1991, are amended to read as follows:

If a patient for whom an order not to resuscitate has been issued is transferred from a hospital to a different hospital the order shall remain effective, unless revoked pursuant to this article, until the attending physician OR ATTENDING NURSE PRACTITIONER first examines the transferred patient, whereupon the attending physician OR ATTENDING NURSE PRACTITIONER must either:

2. Cancel the order not to resuscitate, provided the attending physician OR ATTENDING NURSE PRACTITIONER immediately notifies the person who consented to the order and the hospital staff directly responsible for the patient's care of the cancellation. Such cancellation does not preclude the entry of a new order pursuant to this article.

S 15. Subdivisions 2 and 4 of section 2972 of the public health law, subdivision 2 as amended by chapter 370 of the laws of 1991 and subdivision 4 as added by chapter 818 of the laws of 1987, are amended to read as follows:

2. The dispute mediation system shall be authorized to mediate any dispute, including disputes regarding the determination of the patient's

capacity, arising under this article between the patient and an attending physician, ATTENDING NURSE PRACTITIONER or the hospital that is caring for the patient and, if the patient is a minor, the patient's parent, or among an attending physician, AN ATTENDING NURSE PRACTITIONER, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and, where the dispute involves a patient who is in or is transferred from a mental hygiene facility, the facility director.

4. If a dispute between a patient who expressed a decision rejecting cardiopulmonary resuscitation and an attending physician, ATTENDING NURSE PRACTITIONER or the hospital that is caring for the patient is submitted to the dispute mediation system, and either:

(a) the dispute mediation system has concluded its efforts to resolve the dispute, or

(b) seventy-two hours have elapsed from the time of submission without resolution of the dispute, whichever shall occur first, the attending physician OR ATTENDING NURSE PRACTITIONER shall either: (i) promptly issue an order not to resuscitate the patient or issue the order at such time as the conditions, if any, specified in the decision are met, and inform the hospital staff responsible for the patient's care of the order; or (ii) promptly arrange for the transfer of the patient to another physician or hospital.

S 16. Subdivision 1 of section 2973 of the public health law, as amended by chapter 577 of the laws of 1993, is amended to read as follows:

1. The patient, an attending physician, AN ATTENDING NURSE PRACTITIONER, a parent, non-custodial parent, or legal guardian of a minor patient, any person on the surrogate list, the hospital that is caring for the patient and, in disputes involving a patient who is in or is transferred from a mental hygiene or correctional facility, the facility director, may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction, with respect to any dispute arising under this article, except that the decision of a patient not to consent to issuance of an order not to resuscitate may not be subjected to judicial review. In any proceeding brought pursuant to this subdivision challenging a decision regarding issuance of an order not to resuscitate on the ground that the decision is contrary to the patient's wishes or best interests, the person or entity challenging the decision must show, by clear and convincing evidence, that the decision is contrary to the patient's wishes including consideration of the patient's religious and moral beliefs, or, in the absence of evidence of the patient's wishes, that the decision is contrary to the patient's best interests. In any other proceeding brought pursuant to this subdivision, the court shall make its determination based upon the applicable substantive standards and procedures set forth in this article.

S 17. Subdivision 1 of section 2976 of the public health law, as added by chapter 818 of the laws of 1987, is amended to read as follows:

1. If no surrogate is reasonably available, willing to make a decision regarding issuance of an order not to resuscitate, and competent to make a decision regarding issuance of an order not to resuscitate on behalf of an adult patient who lacks capacity and who had not previously expressed a decision regarding cardiopulmonary resuscitation pursuant to this article, an attending physician, ATTENDING NURSE PRACTITIONER or hospital may commence a special proceeding pursuant to article four of the civil practice law and rules, in a court of competent jurisdiction,

for a judgment directing the physician OR NURSE PRACTITIONER to issue an order not to resuscitate where the patient has a terminal condition, is permanently unconscious, or resuscitation would impose an extraordinary burden on the patient in light of the patient's medical condition and the expected outcome of resuscitation for the patient, and issuance of an order not to resuscitate is consistent with the patient's wishes including a consideration of the patient's religious and moral beliefs or, in the absence of evidence of the patient's wishes, the patient's best interests.

S 18. Subdivisions 4, 5, 7, 8 and 9 of section 2977 of the public health law, subdivision 4 as amended by chapter 577 of the laws of 1993 and subdivisions 5, 7, 8 and 9 as added by chapter 370 of the laws of 1991, are amended to read as follows:

4. (a) Consent to a nonhospital order not to resuscitate shall be governed by sections twenty-nine hundred sixty-four through twenty-nine hundred sixty-seven of this article, provided, however, that an adult with capacity, whether or not hospitalized or a health care agent, may also consent to a nonhospital order not to resuscitate orally to the attending physician OR ATTENDING NURSE PRACTITIONER.

(b) When the concurrence of a second physician is sought to fulfill the requirements for the issuance of an order not to resuscitate for patients in a correctional facility, such second physician shall be selected by the chief medical officer of the department of corrections or his or her designee.

This paragraph shall not apply to the issuance of an order not to resuscitate pursuant to section [two thousand nine] TWENTY-NINE hundred sixty-six of this article.

(C) WHEN THE CONCURRENCE OF A SECOND PHYSICIAN IS SOUGHT TO FULFILL THE REQUIREMENTS FOR THE ISSUANCE OF AN ORDER NOT TO RESUSCITATE FOR HOSPICE AND HOME CARE PATIENTS, SUCH SECOND PHYSICIAN SHALL BE SELECTED BY THE HOSPICE MEDICAL DIRECTOR OR HOSPICE NURSE COORDINATOR DESIGNATED BY THE MEDICAL DIRECTOR OR BY THE HOME CARE SERVICES AGENCY DIRECTOR OF PATIENT CARE SERVICES, AS APPROPRIATE TO THE PATIENT.

5. The attending physician OR ATTENDING NURSE PRACTITIONER shall record the issuance of a nonhospital order not to resuscitate in the patient's medical chart.

7. An attending physician OR ATTENDING NURSE PRACTITIONER who has issued a nonhospital order not to resuscitate, and who transfers care of the patient to another physician, shall inform the physician of the order.

8. For each patient for whom a nonhospital order not to resuscitate has been issued, the attending physician OR ATTENDING NURSE PRACTITIONER shall review whether the order is still appropriate in light of the patient's condition each time he or she examines the patient, whether in the hospital or elsewhere, but at least every ninety days, provided that the review need not occur more than once every seven days. The attending physician OR ATTENDING NURSE PRACTITIONER shall record the review in the patient's medical chart record provided, however, that a registered nurse who provides direct care to the patient may record the review in the chart record at the direction of the physician. In such case, the attending physician shall include a confirmation of the review in the patient's medical chart within fourteen days of such review. Failure to comply with this subdivision shall not render a nonhospital order not to resuscitate ineffective.

9. A person who has consented to a nonhospital order not to resuscitate may at any time revoke his or her consent to the order by any act

evidencing a specific intent to revoke such consent. Any health care professional informed of a revocation of consent to a nonhospital order not to resuscitate shall notify the attending physician OR ATTENDING NURSE PRACTITIONER of the revocation. An attending physician OR ATTENDING NURSE PRACTITIONER who is informed that a nonhospital order not to resuscitate has been revoked shall record the revocation in the patient's medical chart, cancel the order and make diligent efforts to retrieve the form issuing the order, and the standard bracelet, if any.

S 19. Subdivision 4 of section 2977 of the public health law, as amended by chapter 308 of the laws of 1993, is REPEALED.

S 20. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that effective immediately any rules and regulations necessary to implement the provisions of this act are authorized and directed to be amended, repealed and/or promulgated on or before such date.