

# STATE OF NEW YORK

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3991--B

Cal. No. 304

2017-2018 Regular Sessions

## IN ASSEMBLY

January 30, 2017

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Introduced by M. of A. GOTTFRIED, ABINANTI, SEPULVEDA -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law and the surrogate's court procedure act, in relation to restoring medical futility as a basis for both surrogate consent to a do not resuscitate order and for a do not resuscitate order for a patient without a surrogate

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. Under New York's former do not resus-  
2 citate (hereinafter "DNR") law, article 29-B of the public health law, a  
3 surrogate could consent to a DNR order if the patient met any one of  
4 four clinical criteria, one of which was a finding by two physicians  
5 that resuscitation was "medically futile," which was defined to mean  
6 that resuscitation "will be unsuccessful in restoring cardiac and  
7 respiratory function or that the patient will experience repeated arrest  
8 in a short time period before death occurs." The former DNR law also  
9 allowed a DNR order to be entered for a patient who did not have a  
10 surrogate on that basis. That law applied to all patients, including  
11 developmentally disabled patients.

12 In 2010, the former DNR law was superseded by the Family Health Care  
13 Decisions Act (hereinafter "FHCD") which established standards for the  
14 withdrawal or withholding of a broad range of life-sustaining treat-  
15 ments. Accordingly, the FHCD did not have a standard specifically  
16 relating to medically futile resuscitation. Similarly, Surrogate's Court  
17 Procedure Act (hereinafter "SPCA") §1750-b does not have a standard  
18 specifically relating to medically futile resuscitation for develop-  
19 mentally disabled patients.

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

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1 The legislature finds that the broader FHCDA and SPCA §1750-b stand-  
2 ards are difficult to apply to situations in which resuscitation would  
3 be medically futile. Accordingly, this bill restores the former DNR  
4 law's medical futility standard as an alternative basis for writing a  
5 DNR order under the FHCDA and under SPCA §1750-b.

6 § 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 5 of  
7 section 2994-d of the public health law, as amended by chapter 430 of  
8 the laws of 2017, are amended and a new subparagraph (iii) is added to  
9 read as follows:

10 (i) Treatment would be an extraordinary burden to the patient and an  
11 attending physician or attending nurse practitioner determines, with the  
12 independent concurrence of another physician or nurse practitioner,  
13 that, to a reasonable degree of medical certainty and in accord with  
14 accepted medical standards, (A) the patient has an illness or injury  
15 which can be expected to cause death within six months, whether or not  
16 treatment is provided; or (B) the patient is permanently unconscious;  
17 ~~[ex]~~

18 (ii) The provision of treatment would involve such pain, suffering or  
19 other burden that it would reasonably be deemed inhumane or extraor-  
20 dinarily burdensome under the circumstances and the patient has an irre-  
21 versible or incurable condition, as determined by an attending physician  
22 or attending nurse practitioner with the independent concurrence of  
23 another physician or nurse practitioner to a reasonable degree of  
24 medical certainty and in accord with accepted medical standards~~[-]; or~~

25 (iii) With respect to a decision to enter an order not to resuscitate,  
26 an attending physician determines, with the independent concurrence of a  
27 second physician, to a reasonable degree of medical certainty, that in  
28 the event of a cardiac or respiratory arrest, resuscitation would be  
29 unsuccessful in restoring cardiac and respiratory function or that the  
30 patient will experience repeated arrest in a short time period before  
31 death occurs.

32 § 3. Paragraph (b) of subdivision 5 of section 2994-g of the public  
33 health law, as amended by chapter 430 of the laws of 2017, is amended to  
34 read as follows:

35 (b) If the attending physician or attending nurse practitioner, with  
36 independent concurrence of a second physician or nurse practitioner  
37 designated by the hospital, determines to a reasonable degree of medical  
38 certainty that:

39 (i) (A) life-sustaining treatment offers the patient no medical bene-  
40 fit because the patient will die imminently, even if the treatment is  
41 provided; and

42 ~~[(ii)]~~ (B) the provision of life-sustaining treatment would violate  
43 accepted medical standards, then such treatment may be withdrawn or  
44 withheld from an adult patient who has been determined to lack deci-  
45 sion-making capacity pursuant to section twenty-nine hundred ninety-  
46 four-c of this article, without judicial approval. This ~~[paragraph]~~  
47 subparagraph shall not apply to any treatment necessary to alleviate  
48 pain or discomfort; or

49 (ii) in the event of cardiac or respiratory arrest, resuscitation will  
50 be unsuccessful in restoring cardiac and respiratory function or that  
51 the patient will experience repeated arrest in a short time period  
52 before death occurs, then an order not to resuscitate may be entered for  
53 an adult patient who has been determined to lack decision-making capaci-  
54 ty pursuant to section twenty-nine hundred ninety-four-c of this arti-  
55 cle, without judicial approval.

§ 4. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 4 of section 1750-b of the surrogate's court procedure act, as amended by chapter 198 of the laws of 2016, are amended to read as follows:

(i) the person who is intellectually disabled has a medical condition as follows:

A. a terminal condition[~~, as defined in subdivision twenty-three of section twenty-nine hundred sixty-one of the public health law~~] which shall mean an illness or injury from which there is no recovery, and which can reasonably be expected to cause death within one year; or

B. permanent unconsciousness; or

C. a medical condition other than such person's intellectual disability which requires life-sustaining treatment, is irreversible and which will continue indefinitely; [~~and~~] or

D. in the case of a decision to enter an order not to resuscitate, that in the event of cardiac or respiratory arrest such resuscitation would be unsuccessful in restoring cardiac and respiratory function or that the patient will experience repeated arrest in a short time period before death occurs; and

(ii) except in the case of a decision to enter an order not to resuscitate based on clause D of subparagraph (i) of this paragraph, the life-sustaining treatment would impose an extraordinary burden on such person, in light of:

A. such person's medical condition, other than such person's intellectual disability; and

B. the expected outcome of the life-sustaining treatment, notwithstanding such person's intellectual disability; and

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if chapter 430 of the laws of 2017 shall not have taken effect on or before such date, then sections two and three of this act shall take effect on the same date as chapter 430 of the laws of 2017, takes effect.