

## Assembly Bill No. 3000

### CHAPTER 266

An act to amend Sections 4780, 4782, 4783, 4784, and 4785 of, to amend the heading of Part 4 (commencing with Section 4780) of Division 4.7 of, and to add Sections 4781.2, 4781.4, and 4781.5 to, the Probate Code, relating to health care decisions.

[Approved by Governor August 4, 2008. Filed with  
Secretary of State August 4, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3000, Wolk. Health care decisions: life-sustaining treatment.

Existing law defines a "request to forgo resuscitative measures" as a written document, signed by an individual, or a legally recognized surrogate health care decisionmaker, and a physician, that directs a health care provider to forgo resuscitative measures for the individual. Existing law provides that a health care provider who honors a request to forgo resuscitative measures is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance on the request, provided that he or she meets certain requirements.

This bill would make findings and declarations regarding health care planning. The bill would redefine a request to forgo resuscitative measures as a "request regarding resuscitative measures," which would be a written document, signed by an individual with capacity, or a legally recognized health care decisionmaker, and that individual's physician, that directs a health care provider regarding resuscitative measures. The bill would include within this definition a Physician Orders for Life Sustaining Treatment (POLST) form, as specified. The bill would authorize a legally recognized health care decisionmaker to execute the POLST form only if the individual lacks capacity, or the individual has designated that the decisionmaker's authority is effective, and would require a health care provider to explain the form, as specified. The bill would allow an individual having capacity to revoke a POLST form, as specified. The bill would require a health care provider to treat an individual in accordance with a POLST form, except as specified, and would permit a physician to conduct an evaluation of the individual and issue a new order consistent with the most current information available about the individual's health status and goals of care. The bill would require the legally recognized health care decisionmaker of an individual without capacity to consult with the individual's treating physician prior to making a request to modify that individual's POLST form, and would provide that an individual with capacity may at any time request alternative treatment to that treatment that was ordered on the form. The

bill would provide that if the orders in an individual's request regarding resuscitative measures directly conflict with his or her individual health care instruction, the most recent order or instruction is effective. The bill would also make conforming changes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) It is important for people to make health care decisions before it is necessary.

(b) Health care planning is a process, rather than a single decision, that helps individuals think about the kind of care they would want if they become seriously ill or incapacitated, and encourages them to talk with their loved ones and physicians.

(c) Advance directives give individuals the ability to put their wishes in writing and to identify the person who would speak for them should they become unable to speak for themselves.

(d) The Physician Orders for Life Sustaining Treatment (POLST) form complements an advance directive by taking the individual's wishes regarding life-sustaining treatment, such as those set forth in the advance directive, and converting those wishes into a medical order.

(e) The hallmarks of a POLST form are (1) immediately actionable, signed medical orders on a standardized form, (2) orders that address a range of life-sustaining interventions as well as the patient's preferred intensity of treatment for each intervention, (3) a brightly colored, clearly identifiable form, and (4) a form that is recognized, adopted, and honored across treatment settings.

(f) A POLST is particularly useful for individuals who are frail and elderly or who have a compromised medical condition, a prognosis of one year of life, or a terminal illness.

SEC. 2. The heading of Part 4 (commencing with Section 4780) of Division 4.7 of the Probate Code is amended to read:

#### PART 4. REQUEST REGARDING RESUSCITATIVE MEASURES

SEC. 3. Section 4780 of the Probate Code is amended to read:

4780. (a) As used in this part:

(1) "Request regarding resuscitative measures" means a written document, signed by (A) an individual with capacity, or a legally recognized health care decisionmaker, and (B) the individual's physician, that directs a health care provider regarding resuscitative measures. A request regarding resuscitative measures is not an advance health care directive.

(2) "Request regarding resuscitative measures" includes one, or both of, the following:

(A) A prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form.

(B) A Physician Orders for Life Sustaining Treatment form, as approved by the Emergency Medical Services Authority.

(3) “Physician Orders for Life Sustaining Treatment form” means a request regarding resuscitative measures that directs a health care provider regarding resuscitative and life-sustaining measures.

(b) A legally recognized health care decisionmaker may execute the Physician Orders for Life Sustaining Treatment form only if the individual lacks capacity, or the individual has designated that the decisionmaker’s authority is effective pursuant to Section 4682.

(c) The Physician Orders for Life Sustaining Treatment form and medical intervention and procedures offered by the form shall be explained by a health care provider, as defined in Section 4621. The form shall be completed by a health care provider based on patient preferences and medical indications, and signed by a physician and the patient or his or her legally recognized health care decisionmaker. The health care provider, during the process of completing the Physician Orders for Life Sustaining Treatment form, should inform the patient about the difference between an advance health care directive and the Physician Orders for Life Sustaining Treatment form.

(d) An individual having capacity may revoke a Physician Orders for Life Sustaining Treatment form at any time and in any manner that communicates an intent to revoke, consistent with Section 4695.

(e) A request regarding resuscitative measures may also be evidenced by a medallion engraved with the words “do not resuscitate” or the letters “DNR,” a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

SEC. 4. Section 4781.2 is added to the Probate Code, to read:

4781.2. (a) A health care provider shall treat an individual in accordance with a Physician Orders for Life Sustaining Treatment form.

(b) Subdivision (a) does not apply if the Physician Orders for Life Sustaining Treatment form requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(c) A physician may conduct an evaluation of the individual and, if possible, in consultation with the individual, or the individual’s legally recognized health care decisionmaker, issue a new order consistent with the most current information available about the individual’s health status and goals of care.

(d) The legally recognized health care decisionmaker of an individual without capacity shall consult with the physician who is, at that time, the individual’s treating physician prior to making a request to modify that individual’s Physician Orders for Life Sustaining Treatment form.

(e) An individual with capacity may, at any time, request alternative treatment to that treatment that was ordered on the form.

SEC. 5. Section 4781.4 is added to the Probate Code, to read:

4781.4. If the orders in an individual's request regarding resuscitative measures directly conflict with his or her individual health care instruction, as defined in Section 4623, then, to the extent of the conflict, the most recent order or instruction is effective.

SEC. 6. Section 4781.5 is added to the Probate Code, to read:

4781.5. The legally recognized health care decisionmaker shall make health care decisions pursuant to this part in accordance with Sections 4684 and 4714.

SEC. 7. Section 4782 of the Probate Code is amended to read:

4782. A health care provider who honors a request regarding resuscitative measures is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance on the request, if the health care provider (a) believes in good faith that the action or decision is consistent with this part, and (b) has no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the request would have made on his or her own behalf under like circumstances.

SEC. 8. Section 4783 of the Probate Code is amended to read:

4783. (a) Forms for requests regarding resuscitative measures printed after January 1, 1995, shall contain the following:

"By signing this form, the legally recognized health care decisionmaker acknowledges that this request regarding resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form."

(b) A printed form substantially similar to that described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 4780 is valid and enforceable if all of the following conditions are met:

(1) The form is signed by the individual, or the individual's legally recognized health care decisionmaker, and a physician.

(2) The form directs health care providers regarding resuscitative measures.

(3) The form contains all other information required by this section.

SEC. 9. Section 4784 of the Probate Code is amended to read:

4784. In the absence of knowledge to the contrary, a health care provider may presume that a request regarding resuscitative measures is valid and unrevoked.

SEC. 10. Section 4785 of the Probate Code is amended to read:

4785. This part applies regardless of whether the individual executing a request regarding resuscitative measures is within or outside a hospital or other health care institution.