# Florida POLST Update: Ethics and/or Politics

Tracy L. Christner, Executive Director Empath Choices for Care Member, Florida POLST Executive Committee

#### **Disclosures**

- I have no personal or financial interests to declare.
- I am an employee of Empath Choices for Care, a member of Empath Health.

#### **POLST**

Physician Orders for Life Sustaining Treatment

PALST

#### What is POLST?

- Converts patient medical goals & preferences into actionable physician orders
- Addresses a range of life-sustaining interventions as well as the patient's preferred intensity
- Portable across treatment settings
- Voluntary use, but provides a consistent, easily recognized document
- Form is outcome neutral, options range from full treatment to comfort care only
- Complements, but does not replace advance directives

## **Purpose of POLST**

- To ensure that patient preferences are followed (J Am Geriair Soc 62:1246-1251,2014, et al.)
- To provide a mechanism to communicate patient preferences for end of life treatment across treatment settings

Home ← Hospital ← Nursing home

PALST

#### Who should have?

- Seriously ill with life-limiting/terminal illness
- "Would I be surprised if this person died in the next year?"
- Not appropriate for persons with stable medical or functionally disabling problems who have many years of life expectancy

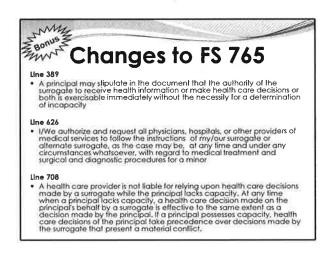
PALST

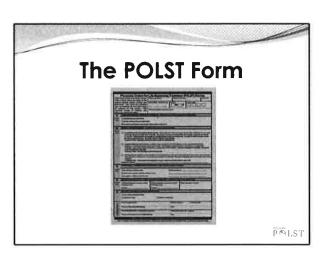
## **POLST** is not:

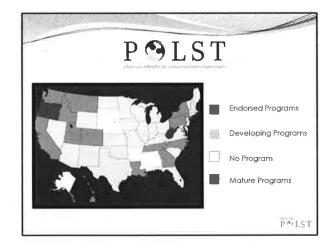
- New (1991 OR, 2006 FL)
- A form of P.A.D. or P.A.S.
- A form to authorize a health care professional to prescribe medication that would intentionally shorten life
- Part of the Death With Dignity Legislation
- An advance directive

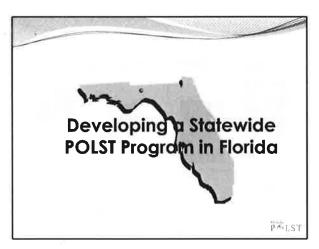
PALST

CHARACTERISTICS	LST and advance directive	ADVANCE DIRECTIVES
Population	For the seriously ill	All adults
Time frame	Current care	Future care
Who completes the form	Health care professionals	Patients
Resulting form	Medical orders (POLST)	Advance directive
Health care agent or surrogate role	Can engage in discussion if patient lacks capacity	Cannot complete
Portability	Provider responsibility	Patient/family responsibility
Periodic review	Provider responsibility	Patlent/family responsibility









## Why Florida?

- FL has the highest % of people 65+ in U.S. (19% as of July 2014) Est. increase to 26% by 2025 - U.S. Census http://www.census.gov/qulckfacts/table/AGE775214/12,00
- Clear need for tools that will help address medical issues of increasingly elderly population
- Increased medical technology & increased length of life have increased awareness of QOL concerns for the dying

#### **Home of Florida POLST**



- FSU Center for Innovative Collaboration in Medicine and Law
  - Mission-to identify opportunities for members of the medical and legal professions to work together to promote public health in FL, the US, and globally.

POLST



## **Getting things started**

- 1st FL POLST Planning & Strategy mtg. 9/20/10
- 1st POLST Form Draft 12/16/11
- 1st statewide stakeholders mtg. in Tallahassee 4/2/12
- Countless statewide presentations, conferences, community discussions, grand rounds, & seminars



## **Existing Florida Law**

- Fla. Stat. ch. 765—Advance directives, surrogate and proxy decision making
- Fla. Stat. ch. 709—Durable power of attorney
- Fla. Stat. ch. 744—Guardianship
- Florida Stat. 401.45 (3)—Do Not Resuscitate orders, implemented by Fla. Admin. Code r. 64B8-9.016 (DOH Yellow Form)

PALST

## **Initiative Approaches**

- Legislative Approach (WV, TN, HI)
- Clinical Consensus Approach (OR, UT, WA, PA)
  - Grass-roots movements to establish the use of POLST as the standard of care intreatment near the end of life
- Hybrid Approach (NY)
  - progressed from a grassroots effort, to administrative promulgation and support of a form, to express legislative approval

PALST

#### Why the legislative approach?



- FL physicians & other healthcare providers were unlikely to write the order without legislation authorizing & granting immunity from liability
- ER & long-term care providers fearful of legal risk, reluctant to comply with a POLST that declines treatment
- DOH will not issue regulation without explicit legislative authority

## Florida Legislation Path

• Attached to SB 1052 (Right to Try) 3/15



- Sen. Jeff Brandes
- Term ill pts. / experimental drugs
- Adopted in 7 states, considered in 20
- Statewide Clearinghouse in bill
- Brandes → Kapp inquiry → opportunity
- POLST became part of SB 1052



#### For successful passing of the bill:

- 1. Senate Health Policy Committee (fav. 3/16/15)
- 2. Appropriations Subcommittee on Health and Human Services (fav. 4/2/15)
- 3. Com. on Fiscal Policy (4/15/15 removed)
- 4. Full Senate
- 5. Additional House bill
- 6. Governor signs (Right to Try passed without POLST)

PALST

7. DOH would need to adopt language

## What went wrong?

- Issue: organizations could not support entire bill (Right to Try & POLST)
- FCCB felt obligated to oppose the bill because concerns were unresolved
- RPPTL Section of Florida Bar wrote a white paper in opposition



## Florida Legislation Path

- Sen. Brandes agrees to champion POLST in 2016
  - · July 2015, new POLST bill is drafted
  - SB 662 Public Records/ClearInghouse for Compassionate and Palliative Care Plans/AHCA
  - SB 664 Physician Orders for Life-sustaining Treatment
  - 1/4/16 Revised bill received by FL POLST Exec. Com (not
  - HB 957 introduced by Rep. Gonzalez
  - 2/1/16 Both bills passed unanimously Health Policy Com.
    SB 664 Dled In Appropriations Subcommittee on Health and Human Services
    SB 662 Died in Governmental Oversight & Account dealth.
    - Accountability
    - HB 957 Died in Health Quality Subcommittee



## What went wrong this time?

- Vocal opponents with limited understanding of POLST program and supporting data
- Failed to properly educate FL legislators
- Still no consensus between FL POLST Exec. Com & FCCB regarding the bill language
- Lack of vocal support and engagement from key stakeholders & organizations



## Challenges to Overcome

- Develop lobbying strategy
- Better engage stakeholders & organizations
- Consensus with the Florida Conference of Catholic Bishops
- Consensus with both RPTTL & Elder Law Sections of the Florida Bar
- Seek out administrative partner
- Identify potential funding sources

PALST

#### So what happens next in Florida?

A statewide summit is being planned.

- To be held in Orlando this summer
- All parties interested in POLST (pro & con) will be invited to participate
- Participants will be asked for input on the future of POLST, and if in support, to develop a plan for the next legislative session in 2017

PALST

#### In summary...

"If Florida truly values the principle of selfdetermination, especially for its most vulnerable medical populations like older, frail people nearing the end of their lives, it needs to join the ranks of states enabling POLSTs to be written and respected."

-Marshall B. Kapp, Director, FSU Center for Innovative Collaboration In Medicine and Law

PALST

#### And finally...

- The Patient Self-Determination Act is a federal law, and compliance is mandatory.
- Are states rights taking away your rights?
- We have only one time to get the dying experience right. POLST is the best way we have available to make that happen.

Support Florida POLST

PÄLST

## **Stay Informed**

med.fsu.edu/medlaw/POLST

To be added to the FL POLST Stakeholder list contact:

Kelly Gallavan - 850-645-9451 kelly.gallavan@med.fsu.edu

**Nicholas Breeding - 850-645-9473** nicholas.breeding@med.fsu.edu

PALST

