

Florida POLST Update: Ethics and/or Politics

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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

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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 Geriatr 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




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



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



Differences between POLST and advance directives

| CHARACTERISTICS | POLST | 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 | Patient/family responsibility |

POLST = Physician Orders for Life-Sustaining Treatment



Bonus

Changes to FS 765

Line 389

- A principal may stipulate in the document that the authority of the surrogate to receive health information or make health care decisions or both is exercisable immediately without the necessity for a determination of incapacity.


Line 626

- I/We authorize and request all physicians, hospitals, or other providers of medical services to follow the instructions of my/our surrogate or alternate surrogate, as the case may be, at any time and under any circumstances whatsoever, with regard to medical treatment and surgical and diagnostic procedures for a minor.

Line 708

- A health care provider is not liable for relying upon health care decisions made by a surrogate while the principal lacks capacity. At any time when a principal lacks capacity, a health care decision made on the principal's behalf by a surrogate is effective to the same extent as a decision made by the principal. If a principal possesses capacity, health care decisions of the principal take precedence over decisions made by the surrogate that present a material conflict.


The POLST Form



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A National Model for End-of-Life Decision Making



- Endorsed Programs
- Developing Programs
- No Program
- Mature Programs

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Developing a Statewide POLST Program in Florida



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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/quickfacts/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
- POLST improves the % of times patient wishes for care are followed - Journal of Palliative Medicine
2012 <http://online.liebertpub.com/doi/abs/10.1089/jpm.2011.0178>

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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.

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Executive Committee



Dr. Marshall Kapp



Dr. Ken Brummel-Smith



Tracy Christner



Dr. Stuart Bagatell



Florida State University
College of Medicine

CHOICES
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JFK MEDICAL CENTER

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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)

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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 in treatment 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

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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)
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 drafted by us)
 - HB 957 introduced by Rep. Gonzalez
 - 2/1/16 – Both bills passed unanimously Health Policy Com.
 - SB 664 - Died in Appropriations Subcommittee on Health and Human Services
 - SB 662 - Died in Governmental Oversight & Accountability
 - HB 957 - Died in Health Quality Subcommittee



Consequently, no POLST legislation was enacted in 2016.

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

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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

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In summary...

"If Florida truly values the principle of self-determination, 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

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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

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Stay Informed

med.fsu.edu/medlaw/POLST

To be added to the FL POLST Stakeholder list contact:

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Thank you.