7th ANNUAL END OF LIFE CONFERENCE: LEGAL AND PRACTICAL ADVICE FOR ATTORNEYS, CAREGIVERS AND FAMILIES

2023 Seminar Material

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7th ANNUAL END OF LIFE CONFERENCE: LEGAL AND PRACTICAL ADVICE FOR ATTORNEYS, CAREGIVERS AND FAMILIES

Moderator/Speaker

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New Jersey Law and End-of-Life Decision Making

William P. Isele, MA, JD
Archer & Greiner, P.C.

Do You Not Want Aggressive Care at End of Life?

- "Preventing unwanted aggressive care at the end of life requires **active communication** between provider and patient, and **effective strategies** to transfer information regarding preferences seamlessly across care venues."

Garas, N. Pantilat, SZ: "Advance Planning for End-of-Life Care" in *Making Health Care Safer: A Critical Analysis of Patient Safety Practices*. Evidence Report/Technology Assessment Number 43. Agency for Health Care Research and Quality. Publication #01-E058, Rockville, MD, July 2001

Do You Want Aggressive Care at the End of Life?

- Who knows it?
- What do they know?
- Will anyone listen to them?

STATUTES

NJ Advance Directives for Healthcare Act (1991)

- Three kinds:
  - Proxy Directive
  - Instruction Directive
  - Combined Directive

- Technical Requirements:
  - Must be in writing
  - Must be signed by you
  - Signature must be witnessed by two (2) adults (over 18) or by a Notary

NJ Advance Directives for Health Care Act

- Becomes Effective
  - When transmitted to your physician, hospital, or other health care provider
  - When you lack the capacity to make a particular health care decision
- Limitations on withholding or withdrawing:
  - If the treatment is experimental, ineffective, or futile
  - If you are permanently unconscious
  - If you are in a terminal condition; or
  - If you have a serious irreversible condition and the burdens of treatment outweigh the benefits.

Practitioner Orders for Life Sustaining Treatment ["POLST"] (2011)

- Gives more control to seriously ill patients or those who are medically frail, with limited life expectancy, regardless of their age.
- Complements the Advance Directive.
- Is an actual Medical Order.
- Can be completed or amended by a proxy.

Documentation on the POLST form includes:

- Goals of Care;
- Preferences regarding CPR attempts;
- Preferences regarding use of intubation and mechanical ventilation;
- Preferences for artificially administered nutrition and hydration;
- Other specific preferences regarding medical interventions desired or declined.

Do Not Resuscitate Orders

- N.J.S.A. 26:2H-68
- Attending physician may issue a DNR, consistent with advance directive.
- DNR must be entered in patient's medical record, in writing, prior to implementation.
- MD may issue a DNR if patient has not executed an advance directive.

Healthcare Power of Attorney

- Powers of Attorney: N.J.S.A. 46:2B-8.1, et seq.
- Nothing in the statutory language specifically authorizes grant of a durable power of attorney to make medical decisions.
- Supreme Court: It should be interpreted that way. *Matter of Peter, 108 N.J. 365, 378 (1987)*

Advantages of a HCPOA over a Proxy Directive?

- Decisions need not be limited to end-of-life and the four criteria.
- POA can be operative immediately, without determination of capacity.
- The principal can limit the agent's authority.

Aid in Dying for the Terminally Ill
P.L. 2019, Ch. 59 (4/12/19)

Amendment to N.J.S.A. 26:2H-130

- Allows capable adults diagnosed with a terminal disease and deemed to have only six months to live, to voluntarily obtain medication to terminate life.
- The diagnosis must be made by a treating physician and affirmed by a consulting physician.
- The patient must sign a form stating he/she is making this choice freely.
- Two (2) witnesses attest the patient is capable of making the decision.
- *Please note NJ Board of Medical Examiners checklist (attached).*

Observation

- "Many individuals live for several decades (often with chronic diseases) after the possibility of death becomes more than theoretical."

- Donaldson, M., Field, MJ, "Measuring quality of care at the End of Life." Archives of Internal Medicine 1998; 158:121-28.

New Jersey Case Law

Matter of Quinlan, 70 N.J. 10 (1976)

- A person has a right to privacy, which includes the right to terminate life support.
- A guardian can remove life support if patient would not want to be sustained.
- Physician and ethics cpmmittee must verify the patient's medical condition.

Matter of Conroy, 98 N.J. 321 (1985)

- The right of a terminally ill person to reject medical treatment respects the individual's views re: preferred manner of concluding life.
- It is a matter of self-determination.
- Artificially induced nutrition and hydration are medical treatment.

Matter of Farrell, 108 N.J. 335 (1987)

- Right of competent, terminally ill adult, living at home, outweighed State interests:
- Preserving Life
- Preventing Suicide
- Protecting innocent third parties
- Integrity of the medical profession

Matter of Jobes, 108 N.J. 394 (1987)

- Patient in an irreversible vegetative state.
- Right may be exercised by family or close friend.
- Two independent physicians must confirm patient's condition.
- Nursing home could not refuse to participate.

Matter of Peter, 108 N.J. 365 (1987)

- *Conroy* subjective test applies regardless of medical condition or life-expectancy.
- Designation of a surrogate decision-maker must be respected.

Some Observations Regarding Age

- "Age is an issue of mind over matter. If you don't mind, it doesn't matter." *Mark Twain (a/k/a Samuel Clemens).*
- "There is no pleasure worth foregoing just for an extra three years in the geriatric ward." *John Mortimer (creator of Rumpole of the Bailey).*
- "How old would you be, if you didn't know how old you were?" *Satchel Paige*
- "Old Age is fifteen years older than I am." *Justice Oliver Wendell Holmes.*

Petro v. Platkin

Superior Court of New Jersey, Appellate Division

May 2, 2022, Argued; June 10, 2022, Decided

DOCKET NO. A-3837-19

Reporter
472 N.J. Super. 536 *; 277 A.3d 480 **; 2022 N.J. Super. LEXIS 86 ***; 2022 WL 2080282

ANTHONY PETRO, YOSEF GLASSMAN, M.D., AND MANISH PUJARA, R.PH., PLAINTIFFS-APPELLANTS, v. MATTHEW J. PLATKIN[1], ACTING ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, DEFENDANT-RESPONDENT.

Subsequent History: **[***1]** Approved for Publication June 10, 2022.

Prior History: On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. C-000053-19.

Counsel: Smith & Associates, attorneys for appellants (E. David Smith, on the brief).

Francis X. Baker, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Francis X. Baker, on the brief).

Emily B. Cooper (Perkins Coie LLP) of the New York bar, admitted pro hac vice, argued the cause for amici curiae Compassion & Choices, Lynne Lieberman and Dr. Paul Bryman (Emily B. Cooper, Alan Howard (Perkins & Coie LLP) of the New York bar, Kevin Diaz (Compassion & Choices) of the Oregon bar, and Jessica Pezley (Compassion & Choices) of the Oregon and District of Columbia bars, admitted pro hac vice, and Dennis Hopkins (Perkins Coie LLP), attorneys; Alan Howard, Kevin Diaz, Jessica Pezley and Dennis Hopkins, on the brief).

Margaret Dore, amicus curiae, argued the cause Pro se.

Post Polak, PA, attorneys for Dawn Parkot, join in the brief of amicus curiae Margaret Dore.

Judges: Before Judges Sabatino, Rothstadt and Natali. The opinion of the court was delivered by NATALI, J.A.D.

Opinion by: NATALI

Opinion

[484]** **[*544]** The opinion of the court was delivered **[***2]** by

NATALI, J.A.D.

[485]** After nearly a decade of deliberations among "policy makers, religious organizations, experts in the medical community, advocates for persons with disabilities, and patients," our Legislature passed the *Medical Aid in Dying for the Terminally Ill Act (the Act), N.J.S.A. 26:16-1 to -20*, which Governor Philip D. Murphy later signed into law. *Governor's Statement upon Signing A. 1504* (Apr. 12, 2019). As defendant represented to us at oral argument, since its enactment, ninety-five New Jersey residents have invoked the Act and ended their lives, without, to our knowledge, a single family member or interested party objecting to those unquestionably difficult end of life decisions. Nor has any report surfaced that any person utilized the Act for an improper or illegal purpose.

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[1] The party's name was updated to reflect the current official in office pursuant to R. 4:34-4.

Despite the considered decision of our legislative and executive branches, plaintiffs, Anthony Petro, a terminally ill New Jersey resident, Yosef Glassman, M.D., a licensed New Jersey physician, and Manish Pujara, R.Ph., a pharmacist, filed a complaint that sought to enjoin and invalidate the Act. On April 1, 2020, Judge Robert T. Lougy issued an order and accompanying thirty-seven-page written opinion in which he dismissed **[***3]** plaintiffs' complaint based on their lack of standing and failure to state a cognizable cause of action under New Jersey law. In a May 22, 2020 order, the judge denied amicus curiae Margaret Dore's motion for reconsideration.

In this appeal, plaintiffs challenge both orders contending the judge erred in concluding they did not have standing to challenge **[*545]** the Act. They argue they are sufficiently affected by the Act such that they possess standing to challenge it. As to the merits, plaintiffs and Dore further argue the Act violates the New Jersey Constitution and presents a danger to all New Jersey citizens.

We reject all of these arguments and affirm substantially for the reasons expressed by Judge Lougy in his comprehensive and well-reasoned written opinion. We agree with the judge that plaintiffs lack standing and their constitutional and other challenges are meritless in any event. We provide the following extensive amplification of Judge Lougy's opinion because of the significant issues raised related to the treatment of terminally ill patients as permitted under the Act.

I.

A. *The Act*

We begin our opinion with a discussion of the legislative history of the Act and its operative terms. **[***4]** As to its intent and purpose, the Legislature expressly found and declared that:

> a. Recognizing New Jersey's long-standing commitment to individual dignity, informed consent, and the fundamental right of competent adults to make health care decisions about whether to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn, this State affirms the right of a qualified terminally ill patient, protected by appropriate safeguards, to obtain medication that the patient may choose to self-administer in order to bring about the patient's humane and dignified death.
>
> b. Statistics from other states that have enacted laws to provide compassionate medical aid in dying for terminally ill patients indicate that the great majority of patients who requested medication under the laws of those states, including more than 90 percent of patients in Oregon since 1998 and between 72 percent and 86 percent of patients in Washington **[**486]** in each year since 2009, were enrolled in hospice care at the time of death, suggesting that those patients had availed themselves of available treatment and comfort care options available to them at the time they requested compassionate medical **[***5]** aid in dying.
>
> c. The public welfare requires a defined and safeguarded process in order to effectuate the purposes of this act, which will:
>
> (1) guide health care providers and patient advocates who provide support to dying patients;
>
> (2) assist capable, terminally ill patients who request compassionate medical aid in dying;
>
> **[*546]** (3) protect vulnerable adults from abuse; and
>
> (4) ensure that the process is entirely voluntary on the part of all participants, including patients and those health care providers that are providing care to dying patients.
>
> d. This act is in the public interest and is necessary for the welfare of the State and its residents.
>
> [*N.J.S.A. 26:16-2*.]

When he signed the Act into law, Governor Murphy similarly described it as:

> the product of a near-decade long debate among policy makers, religious organizations, experts in the medical community, advocates for persons with disabilities, and patients, among many others. Without question, reasonable and well-meaning individuals can, and very often do, hold different moral views on this topic. Through years of legislative hearings, countless witnesses, many of whom shared deeply personal and heart-wrenching testimony, offered compelling arguments both **[***6]** in favor of and against this legislation.

He also recognized the difficult personal choices attendant to end of life decisions, stating:

> [a]s a lifelong, practicing Catholic, I acknowledge that I have personally grappled with my position on this issue. My faith has informed and enhanced many of my most deeply held progressive values. Indeed, it has influenced my perspectives on issues involving social justice, social welfare, and even those topics traditionally regarded as strictly economic, such as the minimum wage. On this issue, I am torn between certain principles of my faith and my compassion for those who suffer unnecessary, and often intolerable, pain at the end of their lives.
>
> It is undeniable that there are people with terminal illnesses whose lives are reduced to agony and pain. Some of these individuals may thoughtfully and rationally wish to bring an end to their own suffering but cannot do so because the law prevents it and compels them to suffer, unnecessarily and against their will. I have seen such debilitating suffering firsthand in my own family, and I deeply empathize with all individuals and their families who have struggled with end-of-life medical decisions. As things **[***7]** now stand, it is the law, rather than one's own moral and personal beliefs, that governs such decisions. That is not as it should be. After careful consideration, internal reflection, and prayer, I have concluded that, while my faith may lead me to a particular decision for myself, as a public official I cannot deny this alternative to those who may reach a different conclusion. I believe this choice is a personal one and, therefore, signing this legislation is the decision that best respects the freedom and humanity of all New Jersey residents.
>
> **[**487]** [*Governor's Statement upon Signing A. 1504* (Apr. 12, 2019).]

At its core, the Act permits an adult New Jersey resident with a terminal illness and whose physician has determined that he or she has a life expectancy of six months or less to be considered a **[*547]** "qualified terminally ill patient." *N.J.S.A. 26:16-3*. Once so qualified, a terminally ill patient may request and obtain from his or her physician a prescription for medication that the patient can choose to self-administer to end his or her life in a "humane and dignified manner." *N.J.S.A. 26:16-3*; *N.J.S.A. 26:16-4*. In prescribing the medication, the physician must inform the patient of the patient's medical diagnosis and prognosis and the **[***8]** potential risks associated with taking the medication. *N.J.S.A. 26:16-6*.

The physician is obligated to explain to the patient the probable result of taking the medication and discuss feasible alternatives, including, "additional treatment opportunities, palliative care, comfort care, hospice care, and pain control." *N.J.S.A. 26:16-6*. In order to request the medication, a terminally ill patient must have capacity "to make health care decisions and to communicate them to a health care provider, including communication through persons familiar with the patient's manner of communicating if those persons are available." *N.J.S.A. 26:16-3*.

The Act provides multiple safeguards for patients requesting end of life medication (EOLM).[2] As a threshold matter, a terminally ill patient must be an adult resident of New Jersey who is capable and has been determined by his or her physician to be terminally ill and has voluntarily expressed a wish to receive EOLM. *N.J.S.A. 26:16-4*.

In addition, a patient must make two oral requests and one written request to his or her attending physician for EOLM and 1) at least fifteen days must elapse between the two oral requests; 2) when the patient makes the second oral request, the physician must offer the patient an opportunity **[***9]** to rescind the request; 3) the patient may submit the written request when the patient makes the initial oral request or at any time thereafter; 4) the written request must be made on a specific form; 5) fifteen days **[*548]** must elapse between the patient's initial oral request and the writing of the prescription; and 6) forty-eight hours must elapse between the patient's submission of the written request and the physician's writing of a prescription. *N.J.S.A. 26:16-10(a)*. A patient may rescind the request at any time and in any manner without regard to his or her mental state. *N.J.S.A. 26:16-10(b)*.

A terminally ill patient's written request for EOLM must be witnessed by at least two individuals who attest that the patient is capable and is acting voluntarily. *N.J.S.A. 26:16-5*. At least one witness must be a person not related to

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[2] It is also a criminal offense under the Act to alter or forge a request for EOLM, to conceal or destroy a rescission of that request, or to coerce or exert undue influence on a patient to request EOLM. *N.J.S.A. 26:16-18*.

the terminally ill patient nor entitled to any portion of his or her estate and cannot be "an owner, operator, or employee of a health care facility, other than a long term care facility, where the patient is receiving medical treatment or is a resident." N.J.S.A. 26:16-5. The patient's physician shall not serve as a witness. N.J.S.A. 26:16-5(c).

After the terminally ill patient has made the requests for EOLM, the attending physician must refer the patient **[***10]** to a consulting physician for medical confirmation of the diagnosis, prognosis and for a determination that the patient is capable and **[**488]** acting voluntarily. N.J.S.A. 26:16-6(a)(4). If either the consulting or attending physician raises a concern about the terminally ill patient's capacity, the terminally ill patient must be evaluated by a mental health care professional and EOLM cannot be prescribed until the mental health professional determines that the terminally ill patient has the requisite capacity. N.J.S.A. 26:16-8. Capable is defined by the Act as "having the capacity to make health care decisions and to communicate them to a health care provider." N.J.S.A. 26:16-3.

Pursuant to N.J.S.A. 26:16-6, before writing any prescription, a physician must ensure that all "appropriate steps are carried out." For example, the physician must:

> (1) make the initial determination of whether a patient is terminally ill, is capable, and has voluntarily made the request for medication pursuant to [the Act];
> (2) require that the patient demonstrate New Jersey residency pursuant to [the Act];
>
> **[*549]** (3) inform the patient of: the patient's medical diagnosis and prognosis; the potential risks associated with taking the medication to be prescribed; the probable result of taking **[***11]** the medication to be prescribed; and the feasible alternatives to taking the medication, including, but not limited to, concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control;
> (4) refer the patient to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the patient is capable and acting voluntarily;
> (5) refer the patient to a mental health care professional, if appropriate, pursuant to [the Act];
> (6) recommend that the patient participate in a consultation concerning concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options for the patient, and provide the patient with a referral to a health care professional qualified to discuss these options with the patient;
> (7) advise the patient about the importance of having another person present if and when the patient chooses to self-administer medication prescribed under [the Act] and of not taking the medication in a public place;
>
> (8) inform the patient of the patient's opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity **[***12]** to rescind the request at the time the patient makes a second oral request as provided in [the Act]; and
> (9) fulfill the medical record documentation requirements of [the Act].
>
> [N.J.S.A. 26:16-6(a).]

N.J.S.A. 26:16-6(b) further requires the attending physician to:

> (1) dispense medication directly, including ancillary medication intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under law to dispense and has a current federal Drug Enforcement Administration certificate of registration; or
> (2) contact a pharmacist to inform the latter of the prescription, and transmit the written prescription personally, by mail, or by permissible electronic communication to the pharmacist, who shall dispense the medication directly to either the patient, the attending physician, or an expressly identified agent of the patient.

[489]** Nothing in the Act authorizes a physician or any other person to end a patient's life by lethal injection, active euthanasia, mercy killing, or assisted suicide. N.J.S.A. 26:16-15. Further, a guardian, conservator, or health care representative may not take any action on behalf of a patient pursuant to the Act with the exception of "communicating the patient's health **[***13]** care decisions to a health care provider if the patient so requests." N.J.S.A. 26:16-16.

The aforementioned provisions in the Act are intended to be entirely voluntary on the part of health care professionals. **[*550]** N.J.S.A. 26:16-17(c). If a health care professional is unable or unwilling to carry out the patient's request, the patient may transfer his or her care to a new health care professional. Ibid. Upon request, the prior health care professional shall transfer the patient's records to the new health care professional. Ibid.

B. *The First Litigation*

On August 9, 2019, Dr. Glassman filed an eleven-count complaint and order to show cause (OTSC) seeking to enjoin defendant from enforcing the Act. On August 14, 2019, a motion judge found Dr. Glassman had no standing to bring a cause of action on behalf of others and that the majority of his legal arguments were premised on constitutional violations that did not affect him. Nevertheless, the judge found Dr. Glassman had standing to challenge the Act because as a physician he would be "controlled by any duties imposed by the statute." He specifically found merit in Dr. Glassman's eighth cause of action, which alleged the Act violated the Administrative Procedure Act by failing **[***14]** to promulgate rulemaking and thereby leaving the process unregulated and the statutory language ambiguous and contradictory, given that State agencies had not yet enacted regulations, despite the Legislature's instruction to the Division of Consumer Affairs, and the boards of medical examiners, pharmacy, psychological examiners and social work examiners to do so. Because of the significant change in the law regarding treatment of the terminally ill, the judge believed Dr. Glassman could suffer "immediate and irreparable injury" if forced to act pursuant to the new legislation without the benefit of those regulations. On that basis, the judge issued a preliminary injunction.

On August 20, 2019, the Attorney General sought emergent relief from both our court and the Supreme Court seeking to dissolve the trial court's injunction. The Supreme Court declined to rule on the matter, pending the outcome of our expedited hearing. During this period, Dr. Glassman amended his complaint to add Pujara as a plaintiff.

[*551] In an August 27, 2019 order and supplemental written decision, we found the trial court abused its discretion by granting injunctive relief because plaintiff had not met the criteria **[***15]** set forth in Crowe v. De Gioia, 90 N.J. 126, 132-34, 447 A.2d 173 (1982). *Glassman v. Grewal*, No. AM-0707-18 (App. Div. Aug. 27, 2019). In our decision, we discussed the safeguards in the Act and found Dr. Glassman failed to show the likelihood of irreparable harm because regulations had not been enacted. *Id.* at 2, 4. We found no provision of the Act lacked clarity such that Dr. Glassman would not know his responsibilities. *Id.* at 4-5. Also, we deemed significant that the Act was entirely voluntary for a physician and the agencies charged with rulemaking were permitted, but not required, to promulgate applicable rules. *Id.* at 5-6. Moreover, we determined the Act's requirement that a physician should transfer a patient's records if the physician declined to participate in the Act was an obligation that already existed pursuant to *N.J.A.C. 13:35-6.5*. *Id.* at 5. **[**490]** The Supreme Court declined plaintiff's application for emergent relief.

Plaintiffs filed a second amended complaint adding Petro as a plaintiff. Defendant moved to dismiss the second amended complaint and on November 18, 2019, the parties appeared again before the same motion judge that granted the OTSC. On December 20, 2019, plaintiffs filed a third amended complaint adding an additional cause of action **[***16]** for violations of the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 to -81 (Advance Directives Act), and later a fourth amended complaint restating eleven causes of action, that the Act violated: 1) the New Jersey constitutional right to defend life; 2) equal protection; 3) the rights of health care providers under the Advance Directives Act; 4) the Free Exercise Clause of the United States Constitution; 5) the common law; 6) federal statutes regulating disposal of controlled substances; 7) the physicians' right to practice medicine; 8) the duty to warn pursuant to N.J.S.A. 2A:62A-16; 9) the Administrative Procedures Act because of a total lack of agency regulation; 10) the Contracts Clause of the United States Constitution; and 11) the requirement to not falsify vital records.

[*552] C. Judge Lougy's Decision

After Judge Lougy granted Dore's application to appear as amicus curiae, the judge considered the parties' written submissions and oral arguments, and granted defendant's motion to dismiss plaintiffs' fourth amended complaint in the aforementioned April 1, 2020 order and accompanying written decision. In his decision, Judge Lougy first concluded plaintiffs lacked standing because enforcement of the Act did not harm them in any "cognizable way" given that participation was entirely voluntary. Even considering **[***17]** New Jersey's liberal standard for establishing standing, Judge Lougy found plaintiffs had no standing, despite their "deeply felt religious, ethical, or professional objections to the Act."

As to plaintiffs' substantive claims, Judge Lougy found them to lack merit. He rejected their argument that the Act violated their constitutional right to enjoy and defend life, explaining that the Constitution did not give citizens the right to enjoy and defend the lives of others. Judge Lougy next addressed and rejected plaintiffs' equal protection and due process arguments. He found that a rational basis test applied, stressing again that plaintiffs had no fundamental right to defend the lives of others and noting they were not members of a protected class. The judge concluded the Legislature had a legitimate interest in establishing a safe and effective procedure for a terminally ill patient to experience a humane and dignified death.

Judge Lougy also rejected plaintiffs' Advance Directives Act claim, finding no private right of action existed under that legislation. Plaintiffs' free exercise of religion claim failed, according to the judge, as the Act's requirement that a physician transfer medical **[***18]** records to another health care provider if he or she opted not to participate in the Act placed only an incidental burden on the physician's free exercise of religion.

Judge Lougy also found no merit in plaintiffs' argument that the Act violated the common law, which sought to prevent suicide and mercy killing, relying on *Farmers Mutual Fire Insurance Co. of **[*553]** Salem v. New Jersey Property-Liability Insurance Guaranty Ass'n, 215 N.J. 522, 545, 74 A.3d 860 (2013)* for the proposition that "[l]egislation has primacy over areas formerly within the domain of the common law." The judge next rejected plaintiffs' claim that the Act violated federal law pertaining to the disposal of medication **[**491]** reasoning that the Act explicitly requires the disposal of EOLM to conform to federal guidelines.

Judge Lougy also rejected plaintiffs' argument that the Act impinged on Dr. Glassman's and Pujara's right to practice medicine and pharmacy. He reiterated that plaintiffs were not obligated to participate in the Act and reasoned that their ability to practice is not a fundamental right and is subject to regulation including the Act.

Judge Lougy found plaintiffs' argument that the Act abrogated the statutory duty to warn lacking in merit because the plain language of the Act provides that the duty to warn is not incurred when a qualified terminally **[***19]** ill patient requests EOLM. The judge explained that "the Legislature does not violate the Constitution by enacting legislation that modifies, qualifies, or nullifies another statutory enactment."

Judge Lougy next rejected plaintiffs' argument that the lack of administrative rulemaking violated the *Administrative Procedure Act* and Constitution concluding the Act permitted, rather than required, agency rulemaking and that such regulation was not necessary prior to the Act's implementation. The judge also found plaintiffs' arguments regarding the *United States Constitution's Contract Clause* failed as a matter of law because they failed to establish that the Act lacked a legitimate public purpose or that its conditions were unreasonable. Next, Judge Lougy found no merit in plaintiffs' argument that the Act required falsification of records because their contention related to Department of Health guidance rather than the Act itself.

Finally, Judge Lougy determined plaintiffs failed to satisfy the *Crowe* standard for granting injunctive relief because: there was no danger that plaintiffs would suffer irreparable harm if an **[*554]** injunction was denied; plaintiffs did not establish a settled legal right; they did not **[***20]** have a reasonable probability of success on the merits; and the balancing of the relative hardships weighed in favor of the public interest. He also found no merit in Dore's argument that the Act violated the single object requirement of the New Jersey Constitution, concluding that the Act's title is sufficiently related to its components.

D. *The Appeal*

After Judge Lougy denied Dore's motion for reconsideration, this appeal followed. We permitted Compassion & Choices, Lynne Lieberman, and Paul Bryman, M.D. (collectively Compassion) to submit an amicus curiae brief. Compassion & Choices is a nonprofit organization dedicated to expanding end of life choices. Lieberman, aged seventy-six, was a New Jersey resident with a terminal illness who passed away during the course of this litigation, and Bryman is a New Jersey physician who cares for approximately two hundred terminally ill patients.

On appeal, plaintiffs argue that Judge Lougy erred in concluding they lacked standing to challenge the Act, because they "are personally subject to and at risk of either killing or being killed pursuant to the Act." In support, they claim it "violates the very fundaments of [their] religious beliefs to **[***21]** be even remotely and tangentially involved with this murder/suicide regime."

Plaintiffs also raise two arguments claiming the Act is unconstitutional. First, they assert that the word "dying" in the Act's title is misleading and fails the "object in title rule." Second, they argue the Act violates their constitutional rights to enjoy and defend life. Finally, plaintiffs raise several policy-based arguments, including that the Act "permits the non-voluntary **[**492]** murder of [New Jersey] residents" and its "safeguards are illusory."

Similar to plaintiffs, Dore argues that the Act violates the "object in title rule" and that all plaintiffs have standing. She also raises several policy-based arguments regarding the structure and operation of the Act.

[*555] Defendant argues Judge Lougy properly concluded plaintiffs lack standing based on the voluntary nature of the Act, and their failure to demonstrate "a sufficient stake or sufficient adverseness with respect to the subject matter of the litigation." Defendant also argues that many of plaintiffs' arguments are policy-based contentions rather than legal arguments, which are insufficient to invalidate the Act.

Defendant further opposes plaintiffs' constitutional **[***22]** challenges. First, it argues that there is no constitutional right to defend the life of a third party, and that even if there was, the Act would not infringe on that right because it is voluntary. Second, it asserts that the Act "does not impose a constitutionally significant burden on their rights under the *Free Exercise Clause of the [United States] Constitution*." Finally, defendant argues that plaintiffs' arguments regarding the Act's title are procedurally deficient and, in any event, the "title is not deceptive or misleading."

Compassion initially argues that plaintiffs' contentions are entirely policy-based, which "must be made through the legislative process, not through the courts." Second, Compassion argues that "[t]o the extent examination of policy is appropriate on this appeal, it favors affirming the trial court's judgement," based on the Act's voluntary nature and procedural safeguards, as well as "New Jersey courts' long-established recognition of an individual's right to make their own end-of-life choices."

II.

We address first plaintiffs' contention that Judge Lougy erred in determining they lack standing to challenge the Act. They argue that "the Act allows physicians, and at times coerces physicians and/or pharmacists to **[***23]** impose a non-voluntary death upon [New Jersey] residents such that all the [plaintiffs] are personally subject to and at risk of either killing or being killed pursuant to the Act," which they claim satisfies "New Jersey's broad definition of standing."

[*556] In support, they assert participation in the Act is not truly voluntary. As to physicians, plaintiffs contend *N.J.A.C. 13:35-6.22* may operate in conjunction with the Act to require participation against their will. Specifically, they claim *N.J.A.C. 13:35-6.22(c)(1)* could compel participation because it requires physicians to provide thirty-days' notice before terminating a relationship with a patient, whereas the Act requires they process a patient's request for EOLM within fifteen days. They also claim that "should participation in the Act be deemed emergent," *N.J.A.C. 13:35-6.22(c)(2)* could obligate participation in the Act because that regulation requires physicians to provide "all necessary emergency care or services[ ] including the provision of necessary prescriptions" during the thirty-day notice period.

Next, plaintiffs argue that even if a patient terminates the relationship, physicians still may be required to participate under N.J.A.C. 13:35-6.22(f), which, upon a patient's request, mandates that a physician **[***24]** "make reasonable efforts to assist the patient in obtaining medical services from another licensee qualified to meet the patient's medical needs" including "providing referrals to the patient." Finally, they maintain the Act itself mandates physicians' participation by requiring they transfer the patient's medical records in **[**493]** the event they choose not to prescribe EOLM.

Plaintiffs and Dore also claim participation in the Act is not voluntary for pharmacists. They argue N.J.S.A. 45:14-67.1 requires that if pharmacists do not carry a prescribed drug, they must either obtain it or locate a pharmacy that does.

As to qualified terminally ill patients, plaintiffs claim the Act may result in "non-voluntary death." Their argument in support of that claim, however, is not entirely clear from their brief and, as best as we can discern, is premised solely on the proposition that once EOLM is dispensed to the patient "the Act affords no oversight as to how it is administered - potentially anyone can administer it to anyone, even by coercion."

Further, plaintiffs claim "the Act violates their religious beliefs" and they contend that Judge Lougy improperly "minimize[ed] the **[*557]** significance of the burden the Act places on **[***25]** [them]" in determining they lacked standing. Dore also argues "all of the [plaintiffs] . . . have standing . . . because as residents of New Jersey, the Act, which allows involuntary death, applies to them." Finally, plaintiffs claim under Judge Lougy's interpretation, "no one has standing to challenge" the Act.

Defendant disagrees arguing, as it did before Judge Lougy, that plaintiffs lack standing because "participation in the Act is entirely voluntary" and they "fail to demonstrate that they have a sufficient stake or sufficient adverseness with respect to the subject matter of the litigation" or that "there is a sufficient likelihood that any harm will be visited upon them in the event of an unfavorable decision."

Specifically, defendant claims Petro lacks standing because plaintiffs failed to "plead factual allegations sufficient to establish that Petro is [or is likely to become] a qualified terminally-ill patient . . . under the Act." Further, defendant stresses because "there is no allegation that Petro has . . . requested or intends to request medication under the Act" he lacks "a sufficient stake in the outcome of this litigation or a real adverseness with respect to the subject **[***26]** matter" and has not established that he "will suffer any harm if the Act remains in effect."

Dr. Glassman and Pujara also do not possess standing according to defendant because the Act "does not require that they participate." Rather, defendant asserts that the Act requires non-participating physicians only to transfer a patient's medical records, which "they are already required to do under separate authority." Further, defendant argues that the Act does not require a pharmacist to "assist an attending physician in locating a pharmacy able to participate in the Act." Having considered these arguments against the record and applicable legal principles we conclude Judge Lougy appropriately dismissed plaintiffs' complaint for lack of standing.

[*558] A court's decision regarding standing is a question of law subject to de novo review. Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414-15, 191 A.3d 597 (2018). "The concept of standing in a legal proceeding refers to a litigant's 'ability or entitlement to maintain an action before the court.' " N.J. Dep't of Env't Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 291, 181 A.3d 257 (App. Div. 2018) (quoting People for Open Gov't v. Roberts, 397 N.J. Super. 502, 508-09, 938 A.2d 158 (App. Div. 2008)). "Whether a party has standing is 'a threshold justiciability determination.' " *Ibid.* (quoting In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 85, 855 A.2d 582 (App. Div. 2004)). The **[**494]** standing requirement cannot be waived, nor may standing be conferred by consent. *Ibid.*

> [S]tanding refers to a party's **[***27]** "ability or entitlement to maintain an action before the court." [N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409, 686 A.2d 1265 (App. Div. 1997)]. To be entitled to sue, a party must have "a sufficient stake and real adverseness with respect to the subject matter of the litigation." In re Adoption of Baby T., [160 N.J. 332, 340, 734 A.2d 304 (1999)]. Additionally, "[a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed for the purposes of

standing." *Ibid.* Standing has been broadly construed in New Jersey as "our courts have considered the threshold for standing to be fairly low." *Reaves v. Egg Harbor [Twp.], 277 N.J. Super. 360, 366, 649 A.2d 904 (Ch. Div. 1994)*.

[*Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80-81, 777 A.2d 993 (App. Div. 2001)*.]

In light of the voluntary nature of the Act as established by its express terms and operation, we find plaintiffs' standing arguments without merit. As to Dr. Glassman, we perceive no conflict between the Act's voluntary nature and the duties imposed on a physician by *N.J.A.C. 13:35-6.22*.

First, "[s]tatutes, when they deal with a specific issue or matter, are the controlling authority as to the proper disposition of that issue or matter. Thus, any regulation or rule which contravenes a statute is of no force, and the statute will control." *Parsons ex rel. Parsons v. Mullica Twp. Bd. of Educ., 226 N.J. 297, 314, 142 A.3d 715 (2016)* (quoting *Terry v. Harris, 175 N.J. Super. 482, 496, 420 A.2d 353 (Law. Div. 1980)*); *see also Flinn v. Amboy Nat. Bank, 436 N.J. Super. 274, 293, 93 A.3d 422 (App. Div. 2014)* **[*559]** ("It is well settled that 'when the provisions of the statute are clear and unambiguous, a regulation cannot amend, alter, enlarge or limit the **[***28]** terms of the legislative enactment.' " (quoting *L. Feriozzi Concrete Co. v. Casino Reinvestment Dev. Auth., 342 N.J. Super. 237, 250-51, 776 A.2d 254 (App. Div. 2001)*)). As such, the operation of *N.J.A.C. 13:35-6.22* cannot overcome the express terms of the Act specifying that "[a]ny action taken by a health care professional to participate in [the Act] shall be voluntary on the part of that individual." *N.J.S.A. 26:16-17(c)*.

Further, even if that were not the case, the Act provides that when a physician chooses not to participate, the patient should request that his or her records be transferred to a health care provider that is willing to participate. *N.J.S.A. 26:16-17(c)*. Thus, pursuant to the Act, a physician is not required to initiate the termination of the physician-patient relationship. Rather, it is the patient's prerogative to do so. Under those circumstances, there is no conflict with *N.J.A.C. 13:35-6.22*.

Finally, that the Act requires non-participating physicians to transfer a patient's records upon request does not confer standing because physicians are already required to transfer patient records under separate authority. See *N.J.A.C. 13:35-6.5(c)*; *N.J.A.C. 8:43G-15.3(d)*. In addition, we note that plaintiffs do not argue before us that Dr. Glassman has standing based on a duty to advise patients regarding any provision of the Act, including the availability of EOLM.

We also conclude Pujara lacked standing. **[***29]** First, as noted, the Act expressly provides that participation by health care professionals, which includes pharmacists, "shall be voluntary." *N.J.S.A. 26:16-17*; *see N.J.S.A. 26:16-3*; *N.J.S.A. 45:1-28*.

[495]** Further, no conflict exists between *N.J.S.A. 45:14-67.1* and the Act's voluntary nature. Indeed *N.J.S.A. 45:14-67.1(b)*'s requirement that "pharmacy practice site[s]" obtain an out-of-stock drug or locate a pharmacy that has the drug in stock is triggered only when "a patient presents a prescription for that drug." The Act, **[*560]** on the other hand, requires that the "attending physician . . . transmit the written prescription . . . to the pharmacist." *N.J.S.A. 26:16-6(b)*. Because the Act requires a physician to transmit the prescription to the pharmacist and has no provision under which "a patient [would] present a prescription" for EOLM to a pharmacist, *N.J.S.A. 26:16-6(b)* does not operate to compel a pharmacist's participation in the Act.

With respect to Petro, he is a terminally ill patient who has chosen not to request EOLM. Nothing in the Act compels Petro to request or ingest the medication. Thus, no judicial decision regarding the Act will affect him.

As far as the Act's effect on all New Jersey residents, only those individuals who voluntarily elect to participate in the Act are bound by its terms. Other states **[***30]** that have addressed this issue have found no standing for health professionals to challenge similar types of legislation. *See, e.g., People ex rel. Becerra v. Superior Ct., 29 Cal. App. 5th 486, 499, 240 Cal. Rptr. 3d 250 (Cal. Ct. App. 2018)*; *Lee v. Oregon, 107 F.3d 1382, 1388 (9th Cir.*

1997). In sum, plaintiffs failed to establish "a sufficient stake and real adverseness with respect to the subject matter of the litigation" to challenge the Act. *In re Baby T., 160 N.J. at 340, 734 A.2d 304*.

We also reject plaintiff's claim that under Judge Lougy's analysis, no one would possess standing to challenge the Act. Such a proposition has no support in the law or the facts. Further, even if it were true that no one has standing to challenge the Act, that fact would be insufficient to establish plaintiffs' standing.

This issue was addressed in *Becerra, 29 Cal. App. 5th at 493, 240 Cal. Rptr. 3d 250*, where the plaintiffs were individual physicians and a medical organization challenging California's "End of Life Option Act," *Cal. Health & Safety Code 443-443.22* (Deering 2022), a statutory scheme similar to the Act. The *Becerra* court found that notwithstanding great public interest in an issue, an action cannot proceed if the plaintiff does not possess standing. **[*561]** *Becerra, 29 Cal. App. 5th at 497-98, 240 Cal. Rptr. 3d 250*. As the court explained:

> At oral argument, counsel for [the plaintiffs] argued that his clients must be deemed to have standing, because otherwise no one would have standing to seek a remedy for the asserted constitutional **[***31]** violation. They have not shown that this is so. While we need not exhaustively specify who would have standing to challenge the constitutionality of the Act, it would seem that a district attorney who believes the Act is unconstitutional and who wants to prosecute persons who participate in assisted suicide would have standing. Similarly, a hospital or professional association that seeks to penalize health care providers under its jurisdiction who participate in assisted suicide would seem to have standing.
>
> [*Id. at 504, 240 Cal. Rptr. 3d 250*.]

In *Lee, 107 F.3d at 1388-89*, the United States Court of Appeals for the Ninth Circuit addressed a similar question under *Oregon's "Death with Dignity Act*." There, the Circuit Court cited *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 489, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)* (quoting *Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 227, **[**496]** 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974)*) for the proposition that "[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." *Lee, 107 F.3d at 1389-90*. Similarly, in *Schlesinger*, the United States Supreme Court noted that "[o]ur system of government leaves many crucial decisions to the political processes," and therefore, it is not necessary for courts to find standing where none has been established. *Schlesinger, 418 U.S. at 227, 94 S. Ct. 2925*. Here, it is apparent that none of the plaintiffs possess standing and we are not obligated to create such status **[***32]** for plaintiffs when it clearly does not exist.

Clearly, there are numerous individuals or entities, who under the proper circumstances, would have standing to challenge the Act. By way of example only, and as noted in *Becerra, 29 Cal. App. 5th at 504*, state or county prosecutors would conceivably have standing to bring an action against health professionals who fail to comply with their responsibilities and who provide EOLM without ensuring compliance with the Act. Further, individuals accused by family members or a special medical **[*562]** guardian of unduly influencing or coercing an individual to obtain EOLM would also have the right to challenge the Act in court as would a guardian or family member who seeks to challenge by way of declaratory judgment action or otherwise, a finding that a patient has the capacity to request EOLM.

III.

As we have determined plaintiffs lacked standing to challenge the Act, we could conclude our appellate review is completed. *See In re Baby T., 160 N.J. at 342, 734 A.2d 304* (declining to address substantive issues due to lack of standing). We elect not to proceed in that fashion in order to provide a thorough discussion of the issues in the event of further proceedings, and because plaintiffs' arguments are of a constitutional dimension **[***33]** that effectively challenge the care of terminally ill patients. *See e.g., Loigman v. Twp. Comm., 297 N.J. Super. 287, 300, 687 A.2d 1091 (App. Div. 1997)* ("Although our disposition of the standing issue is in a sense determinative, because of the nature and course of the proceedings below some additional comment is warranted."). Under such circumstances, we deem it appropriate to address plaintiffs' remaining challenges on the merits, beginning with their constitutional challenges to the Act, which we find unpersuasive.

We review a trial court's order to grant or deny a motion to dismiss pursuant to Rule 4:6-2(e) de novo. *See* Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108, 203 A.3d 133 (2019). Our review "is limited to examining the legal sufficiency of the facts alleged on the face of the complaint," and we do not consider plaintiffs' ability to prove their allegations. Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124-125, 92 A.3d 681 (App. Div. 2014) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746, 563 A.2d 31 (1989)).

We afford plaintiffs "every reasonable inference of fact" and "search[ ] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned **[*563]** even from an obscure statement of claim." Major v. Maguire, 224 N.J. 1, 26, 128 A.3d 675 (2016) (quoting Printing Mart-Morristown, 116 N.J. at 746, 563 A.2d 31). If we are able to do so, "the complaint should survive this preliminary stage." Wreden, 436 N.J. Super. at 125, 92 A.3d 681.

[497]** "[W]henever a challenge is raised to the constitutionality of a statute, there is a strong presumption that the statute is constitutional." State v. Muhammad, 145 N.J. 23, 41, 678 A.2d 164 (1996). **[***34]** "Even where a statute's constitutionality is 'fairly debatable, courts will uphold' the law." State v. Lenihan, 219 N.J. 251, 266, 98 A.3d 533 (2014) (quoting Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 227, 486 A.2d 305 (1985)).

A. *Single Object Rule*

Plaintiffs contend that the Act is unconstitutional because its title is "deceptive and misleading." Specifically, they argue that the Act's title "fails the object in title test" because an "ordinary reader" would not understand the term "dying" as used in the Act's title to refer to "people with a life expectancy of 'six months or less.' " Further, they claim "the Act contradicts itself" because it states it "shall not be construed to authorize . . . any act that constitutes assisted suicide" while "re-defining assisted suicide to not include the provision of poison."

Dore elaborates on the argument. She claims that the term "medical aid in dying" is misleading because it does not indicate to the "ordinary reader" that "euthanasia . . . is allowed." She also argues that the Act's title is deceptive because it "gives no hint as to the Act's required falsification of death certificates," in apparent reference to a section of the Department of Health website recommending that when a terminally ill patient dies after ingesting EOLM, health care providers should **[***35]** record the underlying terminal disease as the cause of death and mark the manner of **[*564]** death as natural.[3]

Defendant argues that plaintiffs' contentions regarding the Act's title are procedurally and substantively without merit. Procedurally, defendant claims plaintiffs' arguments regarding the "single object rule" are improper because they never raised them in their complaints. Instead, defendant asserts that the point was raised below only by Dore, and that "[n]ormally an amicus is precluded from raising new issues."

Substantively, defendant argues the Act satisfies the "single object rule" because the Act's title "accurately recites the intended purpose for which [it] was passed" and the Act "embraces a single purpose." Further, defendant asserts the "Act does not contradict itself" arguing "the Legislature reasonably distinguished requests for medical aid in dying from the criminal offense of aiding a suicide."

As an initial matter, we agree with defendant that plaintiffs' arguments pertaining to the single object rule are procedurally deficient. Indeed, plaintiffs never presented to the trial court any **[***36]** argument regarding the single object rule, as that issue was raised by Dore only. *See* Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n, 91 N.J. 38, 48-49, 449 A.2d 1254 (1982) ("[A]s a general rule an amicus curiae . . . cannot raise issues not raised by the parties."). As such, we could decline to address it. *See ibid.* Again, in the interest of completeness and because of the significance of the issues raised by the parties, we address the argument on the merits.

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[3] *New Jersey Medical Aid in Dying for the Terminally Ill Act Frequently Asked Questions*, N.J. Dep't of Health, https://www.nj.gov/health/advancedirective/documents/maid/MAID_FAQ.pdf

The New Jersey Constitution, Article 4, Section 7, Paragraph 4, sets forth the "single object rule" as follows:

> **[**498]** To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph **[*565]** shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

"[T]he purpose of the single object rule is to ensure relatedness among the components of legislative acts." Cambria v. Soaries, 169 N.J. 1, 11, 776 A.2d 754 (2001). It is intended to prevent " ' "the intermixing in one and the same act [of] such things as have no proper relation to each other;" or matters which are "uncertain, misleading or deceptive." ' " *Ibid.* (alteration in original) (quoting N.J. Ass'n on Corr. v. Lan, 80 N.J. 199, 212, 403 A.2d 437 (1979)).

> All that is required [by the single object **[***37]** rule] is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The subject may be as comprehensive as the [L]egislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several.
>
> [*Ibid.* (quoting N.J. Ass'n on Corr., 80 N.J. at 215, 403 A.2d 437).]

Nevertheless, "[t]he mere fact that the object of the legislation might have been expressed more specifically in its title affords no ground for declaring it void, so long as that title fairly points out the general purpose sought to be accomplished thereby." State v. Guida, 119 N.J.L. 464, 465-66, 196 A. 711 (1938) (quoting Pub. Serv. Elec. & Gas Co. v. City of Camden, 118 N.J.L. 245, 192 A. 222 (1937)). The title of the legislation should not be "deceptive," but rather, should be "intelligible to the ordinary reader." *Ibid.*

A court "must infer the Legislature's intent from the statute's plain meaning" and cannot "rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." O'Connell v. State, 171 N.J. 484, 488, 795 A.2d 857 (2002). It is not necessary to delve "deeper than the act's literal terms to divine the Legislature's intent." *Ibid.*

Here, nothing about the Act's title or structure violates the single object rule. It serves a single **[***38]** purpose to which each of its components are sufficiently related and the Act's title clearly expresses its purpose.

[*566] Plaintiffs' and Dore's arguments to the contrary are without merit. First, the Legislature's use of the word "dying" in the Act's title is not misleading and certainly does not render the Act unconstitutional. The Merriam-Webster definition of dying, is "approaching death; gradually ceasing to be; having reached an advanced or ultimate stage of decay or disuse; or occurring at the time of death." *Dying*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/dying (last visited Mar. 8, 2022). Thus, approaching death, even if it is within six months, is a reasonable interpretation of the term "dying."

Second, we disagree that the Act's terms are in any way contradictory. Although N.J.S.A. 2C:11-6 makes it a criminal offense to purposely aid another to commit suicide, the Legislature specifically carved out an exception in that statute for actions taken pursuant to the Act. Thus, the Legislature has made a clear determination that while assisting in a suicide is a crime, the provision of EOLM shall not be considered as such a criminal offense.

[499]** Finally, that the Act's title does not **[***39]** reference the Department of Health's recommendation that the manner of death of patients who ingest EOLM should be marked as "natural" on death certificates does not violate the single object rule. First, that provision is not contained in the Act. As such, the single object rule, which pertains to the title and content of legislation, clearly does not support Dore's contention. Further, Dore cites to no authority, nor have we identified any, requiring that an Act's title reference each of its components. *See* Guida, 119 N.J.L. at 465-66, 196 A. 711. Such a rule would be logistically implausible and serve no meaningful purpose.

B. *The Right to Enjoy and Defend Life*

Plaintiffs also argue that the Act violates their right to "enjoy[ ] and defend[ ] life" established by the New Jersey Constitution based on the possibility that patients may be coerced to obtain and ingest EOLM and physicians and pharmacists may be **[*567]** required to participate in the Act. Defendant disagrees, asserting the Constitution protects the right of each individual to enjoy and defend his or her own life, rather than the lives of other people. Further, defendant claims even if the Constitution does confer such a right, the Act would not violate it due to the Act's **[***40]** voluntary nature.

The New Jersey Constitution provides:

> All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.
>
> [*N.J. Const.* art. I, ¶ 1.]

Here, the Act does not violate the constitutional right to enjoy and defend life. Participation in the Act, as noted, is fully voluntary for terminally ill patients as well as health care providers. The Act, therefore, does not interfere with patients' right to enjoy and defend their lives, nor does it interfere with health care providers' ability to defend the lives of their patients.

C. *Free Exercise Clause*

In various sections of their brief, plaintiffs reference that the Act violates their religious beliefs. Specifically, they contend that Judge Lougy found the Act to have an "insignificant impact" on their "religious rights" in concluding they lacked standing. Further, they claim the Act's requirements that physicians transfer a patient's records upon request and pharmacists refer patients to a pharmacy that will provide EOLM, "violates the very fundaments of [their] **[***41]** religious beliefs."

We first note that plaintiffs did not expressly argue that the Act violates their rights under the *Free Exercise Clause of the United States Constitution* or mention their religious rights in their point headings. As such, we could decline to address their arguments. *See* *N.J. Dep't of Envtl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2, 105 A.3d 1145 (App. Div. 2015)* ("An issue that is not briefed is deemed waived upon appeal."); *Almog v. Israel Travel Advisory Serv., Inc., 298 N.J. Super. 145, 689 A.2d 158 (App. Div. **[*568]** 1997)* (addressing on appeal only "arguments properly made under appropriate point headings"). Again, due to the constitutional import of plaintiffs' contentions, and in the interest of completeness, we address and reject plaintiffs' arguments on the merits.

The *Free Exercise Clause* contained in the *First Amendment of the United States Constitution* secures "religious liberty in the individual by prohibiting any invasions thereof by civil authority." **[**500]** *S. Jersey Catholic Sch. Teachers' Org. v. St. Teresa of the Infant Jesus Church Elementary Sch., 150 N.J. 575, 593, 696 A.2d 709 (1997)* (quoting *School Dist. v. Schempp, 374 U.S. 203, 223, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963)*). It protects both the "freedom to believe," which "is absolute," and the "freedom to act," which is "subject to regulation for the protection of society." *Id. 150 N.J. at 594, 696 A.2d 709* (quoting *Cantwell v. Connecticut, 310 U.S. 296, 303-04, 60 S. Ct. 900, 84 L. Ed. 1213 (1940)*).

Thus, the Supreme Court has held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).' " *Emp. Div., Dep't of Hum. Res. v. Smith, 494 U.S. 872, 879, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990)* (quoting *United States v. Lee, 455 U.S. 252, 263 n.3, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982)* (Stevens, J., concurring)). Therefore, the **[***42]** *Free Exercise Clause* does not require a law that is generally applicable, "not intended to regulate religious conduct or belief," and which "incidentally burdens the free exercise of religion" to satisfy a strict scrutiny analysis. *S. Jersey Catholic Sch. Teachers Org., 150 N.J. at 597, 696 A.2d 709*. Instead, under such circumstances rational basis analysis applies, which is satisfied when legislation is "rationally related to a legitimate government objective." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly, 309 F.3d 144, 165 n.24 (3d Cir. 2002)*.

Here, the Act represents a neutral law of general applicability which imposes, at worst, an incidental burden on plaintiffs. Under such circumstances, the Act must only satisfy a rational basis **[*569]** analysis. We conclude the Act meets that standard as it is clearly rationally related to the legitimate purpose of promoting the safe and legal means for a terminally ill patient to choose to end his or her life.

Further, plaintiffs have not established that the Act burdens their religious beliefs. As noted, the only action required of a physician who decides to not voluntarily participate in the Act is the relatively administrative task of transferring the patient's records to another health care professional who is willing to comply with the Act. Dr. Glassman has not cited any religious tenet impacted by that requirement. **[***43]** Further, and as noted, nothing in the Act compels pharmacists to participate in any manner.

IV.

In the balance of their briefs, plaintiffs and Dore raise a series of policy-based arguments. They contend the Act's safeguards are illusory and plaintiffs claim "it actually permits the non-voluntary murder of [New Jersey] residents." In support, plaintiffs assert that once EOLM is provided to a patient "the Act affords no oversight as to how it is administered" and "anyone can administer it to anyone, even by coercion," which they claim allows for elder abuse by opportunistic individuals.

Plaintiffs and Dore argue further that the Act's requirement that "the attending physician shall ensure that all appropriate steps are carried out" before prescribing EOLM leaves patients "subject to whatever safeguards the attending physician personally feels are appropriate." Plaintiffs also claim the Act allows for the " 'white-coating' of murder/suicide," by allowing physicians to declare a patient terminally-ill and "assist in the suicide of the victim." Dore argues that *N.J.S.A. 26:16-18*, which criminalizes coercing a patient to request EOLM, is "too vague to be enforced."

Plaintiffs and Dore also contend that the Act **[***44]** permits euthanasia. Plaintiffs maintain **[**501]** the Act serves the "long sought objective of the euthanasia and eugenics movement in America" to "eliminat[e] **[*570]** . . . the unproductive, ill[,] and elderly" in much the same fashion used by Adolf Hitler in Nazi Germany. Dore further advances the argument that the Act permits euthanasia by asserting it does not require self-administration of EOLM and that the *Americans with Disabilities Act*, *42 U.S.C. §§ 12101 to 12213*, could require health care providers to administer it under certain circumstances.

Plaintiffs also maintain that the Department of Health's recommendation that the death certificates of patients who ingest EOLM indicate a natural manner of death "makes it nearly impossible for a medical examiner or law enforcement to investigate" the circumstances surrounding a patient's death. Dore claims the handling of patients' death certificates "legally enable[s]" "[d]octors and other persons . . . to kill under mandatory legal cover" and would allow one who killed a terminally ill patient to inherit, contrary to the Slayer Statute, *N.J.S.A. 3B:7-1.1*. Finally, Dore asserts the Act prohibits legal guardians from protecting their wards from ingesting EOLM, and would subject those who do to civil or criminal penalties. **[***45]** We find plaintiffs' and Dore's arguments to be without legal merit.

Statutes are generally presumed valid. *State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 526, 734 A.2d 1160 (1999)*. The Legislature, and not the court, is the proper place for policy arguments given that courts are not charged with passing judgment "on the wisdom of the legislative enactment, but only on its meaning." *Cnty. of Bergen Emp. Benefit Plan v. Horizon Blue Cross Blue Shield of N.J., 412 N.J. Super. 126, 138-39, 988 A.2d 1230 (App. Div. 2010)*. "[I]mprovident decisions will eventually be rectified by the democratic process" and "judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance v. Bradley, 440 U.S. 93, 96-97, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979)*.

We conclude that none of plaintiffs' and Dore's policy-based contentions provided a legal basis sufficient to overcome defendant's motion to dismiss or to invalidate the Act. Such arguments **[*571]** are properly directed to the political branches of our government, rather than the courts.

We also disagree with the merits of plaintiffs' and Dore's claims. As noted, the Act contains multiple safeguards to ensure that EOLM is provided only to patients who voluntarily choose to participate in the Act. Further, interfering with the lawful operation of the Act would constitute a serious criminal offense. Indeed, as noted, the Act provides that altering or forging a request for EOLM or concealing **[***46]** or destroying a rescission of such a request constitutes a second-degree crime. *N.J.S.A. 26:16-18(a)*. It also provides that coercing or exerting undue influence over a patient to request EOLM or destroy a request for EOLM constitutes a third-degree crime. *N.J.S.A. 26:16-18(b)*. Further, the Act specifies that it does not preclude the imposition of additional penalties under our Code of Criminal Justice nor civil liability resulting from "negligence or intentional misconduct." *N.J.S.A. 26:16-18(d)*, *(e)*.

We also reject plaintiffs' reference and analogy to the inhumane acts of Hitler and Nazi Germany as improper and insensitive. It is not worthy of being addressed at any level.

In sum, we conclude that Judge Lougy did not err in dismissing plaintiffs' amended complaint. To the extent we have not addressed any of the parties' remaining **[**502]** arguments it is because we conclude they are without sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(1)(E)*.

Affirmed.

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RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY

RULE 4:86. ACTION FOR GUARDIANSHIP OF AN INCAPACITATED PERSON OR FOR THE APPOINTMENT OF A CONSERVATOR

4:86-1. Action; Records; Guardianship Monitoring Program

(a) Every action for the determination of incapacity of a person and for the appointment of a guardian of that person or of the person's estate or both, other than an action with respect to a veteran under N.J.S.A. 3B:13-1 et seq., or with respect to a kinship legal guardianship under N.J.S.A. 3B:12A-1 et seq., shall be brought pursuant to R. 4:86-1 through R. 4:86-8 for appointment of a general, limited or pendente lite temporary guardian.

(b) Judiciary records of all actions set forth in R. 4:86-1(a) shall be maintained by the Surrogate and shall be accessible pursuant to R. 1:38-3(e).

(c) Each vicinage shall operate a Guardianship Monitoring Program through the collaboration of the Superior Court, Chancery Division, Probate Part; the County Surrogates; and the Administrative Office of the Courts, Civil Practice Division.

(1) The functions of guardianship support and monitoring shall be established by the Administrative Director of the Courts. Such functions shall include guardianship training and review of inventories and periodic reports of financial accounting filed by guardians as required by R. 4:86-6(e).

(2) Post-adjudicated case issues identified through monitoring may be forwarded for further action by the Superior Court, Chancery Division, Probate Part and/or the Administrative Office of the Courts.

(3) Case monitoring issues referred to the attention of the Superior Court, Chancery Division, Probate Part shall be promptly reviewed and such further action taken as deemed appropriate in the discretion of the court.

(4) Quasi-judicial immunity shall be extended to Judiciary staff, County Surrogates, County Surrogate staff, and volunteers performing monitoring responsibilities in the Guardianship Monitoring Program.

Note: Source — R.R. 4:102-1. Amended July 22, 1983 to be effective September 12, 1983; former R. 4:83-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; R. 4:86 caption amended, and text of R. 4:86-1 amended July 12, 2002 to be effective September 3, 2002; caption to Rule 4:86 amended, and text of Rule 4:86-1 amended July 9, 2008 to be effective September 1, 2008; caption amended, former text amended and designated as paragraph (a), and new paragraphs (b) and (c) added August 1, 2016 to be effective September 1, 2016.

4:86-2. Complaint; Accompanying Documents; Alternative Affidavits or Certifications

(a) Complaint. The allegations of the complaint shall be verified as prescribed by R. 1:4-7. The complaint shall state:

(1) the name, age, domicile and address of the plaintiff, of the alleged incapacitated person and of the alleged incapacitated person's spouse, if any;

(2) the plaintiff's relationship to the alleged incapacitated person;

(3) the plaintiff's interest in the action;

(4) the names, addresses and ages of the alleged incapacitated person's children, if any, and the names and addresses of the alleged incapacitated person's parents and nearest of kin, meaning at a minimum all persons of the same degree of relationship to the alleged incapacitated person as the plaintiff;

(5) the name and address of the person or institution having the care and custody of the alleged incapacitated person;

(6) if the alleged incapacitated person has lived in an institution, the period or periods of time the alleged incapacitated person has lived therein, the date of the commitment or confinement, and by what authority committed or confined; and

(7) the name and address of any person named as attorney-in-fact in any power of attorney executed by the alleged incapacitated person, any person named as health care representative in any health care directive executed by the alleged incapacitated person, and any person acting as trustee under a trust for the benefit of the alleged incapacitated person.

(b) Accompanying Documents. The complaint shall have annexed thereto:

(1) An affidavit or certification stating the nature, description, and fair market value of the following, in such form as promulgated by the Administrative Director of the Courts:

(A) all real estate in which the alleged incapacitated person has or may have a present or future interest, stating the interest, describing the real estate fully and stating the assessed valuation thereof;

(B) all the personal estate which he or she is, will or may in all probability become entitled to, including stocks, bonds, mutual funds, securities and investment accounts; money on hand, annuities, checking and savings accounts and certificates of deposit in banks and notes or other indebtedness due the alleged incapacitated person; pensions and retirement accounts, including annuities and profit

sharing plans; miscellaneous personal property; and the nature and total monthly amount of any income which may be payable to the alleged incapacitated person; and

(C) the encumbrance amount of any debt including any secured associated debt related to the real estate or personal estate of the alleged incapacitated person;

(2) Affidavits or certifications of two physicians having qualifications set forth in N.J.S.A. 30:4-27.2t, or the affidavit or certification of one such physician and one licensed practicing psychologist as defined in N.J.S.A. 45:14B-2, in such form as promulgated by the Administrative Director of the Courts. Pursuant to N.J.S.A. 3B:12-24.1(d), the affidavits or certifications may make disclosures about the alleged incapacitated person. If an alleged incapacitated person has been committed to a public institution and is confined therein, one of the affidavits or certifications shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged incapacitated person is domiciled within this State but resident elsewhere, the affidavits or certifications required by this rule may be those of persons who are residents of the state or jurisdiction of the alleged incapacitated person's residence. Each affiant shall have made a personal examination of the alleged incapacitated person not more than 30 days prior to the filing of the complaint, but said time period may be relaxed by the court on an ex parte showing of good cause. To support the complaint, each affiant shall state:

(A) the date and place of the examination;

(B) whether the affiant has treated or merely examined the alleged incapacitated individual;

(C) whether the affiant is disqualified under R. 4:86-3;

(D) the diagnosis and prognosis and factual basis therefor;

(E) for purposes of ensuring that the alleged incapacitated person is the same individual who was examined, a physical description of the person examined, including but not limited to sex, age and weight;

(F) the affiant's opinion of the extent to which the alleged incapacitated person is unfit and unable to govern himself or herself and to manage his or her affairs and shall set forth with particularity the circumstances and conduct of the alleged incapacitated person upon which this opinion is based, including a history of the alleged incapacitated person's condition;

(G) if applicable, the extent to which the alleged incapacitated person retains sufficient capacity to retain the right to manage specific areas, such as residential, educational, medical, legal, vocational or financial decisions; and

(H) an opinion on whether the alleged incapacitated person is capable of attending or otherwise participating in the hearing and, if not, the reasons for the individual's inability; and

(3) A Case Information Statement in such form as promulgated by the Administrative Director of the Courts. Said Case Information Statement shall include the date of birth and Social Security number of the alleged incapacitated person.

(c) Alternative Affidavits or Certifications.

(1) If the plaintiff cannot secure the information required in paragraph (b)(1), the complaint shall so state and give the reasons therefor, and the affidavit or certification submitted shall in that case contain as much information as can be secured in the exercise of reasonable diligence.

(2) In lieu of the affidavits or certifications provided for in paragraph (b)(2), an affidavit or certification of one affiant having the qualifications as required therein shall be submitted, stating that he or she has endeavored to make a personal examination of the alleged incapacitated person not more than 30 days prior to the filing of the complaint but that the alleged incapacitated person or those in charge of him or her have refused or are unwilling to have the affiant make such an examination. The time period herein prescribed may be relaxed by the court on an ex parte showing of good cause.

Note: Source — R.R. 4:102-2; former R. 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 9, 2008 to be effective September 1, 2008; caption amended, and paragraphs (a), (b) and (c) amended and captions added August 1, 2016 to be effective September 1, 2016.

4:86-3. Disqualification of Affiant

No affidavit or certification shall be submitted by a physician or psychologist who is related, either through blood or marriage, to the alleged incapacitated person or to a proprietor, director or chief executive officer of any institution (except state, county or federal institutions) for the care and treatment of the ill in which the alleged incapacitated person is living, or in which it is proposed to place him or her, or who is professionally employed by the management thereof as a resident physician or psychologist, or who is financially interested therein.

Note: Source — R.R. 4:102-3; former R. 4:83-3 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 28, 2004 to be effective September 1, 2004; amended July 9, 2008 to be effective September 1, 2008; amended August 1, 2016 to be effective September 1, 2016.

4:86-3A. Action on Complaint

(a) Review of Complaint Prior to Docketing. Prior to docketing, the Surrogate shall review the complaint to ensure that proper venue is laid and that it contains all information required by R. 4:86-2.

(b) Docketing.

(1) Upon the filing of a complaint for the determination of incapacity of a person and for the appointment of a guardian, if it appears that there is jurisdiction and that the complaint is substantially complete in all respects, the complaint shall be docketed.

(2) If, after docketing, there is a lack of jurisdiction, the court shall dismiss the complaint forthwith. If a complaint is not substantially complete in all respects, the Surrogate shall process the complaint in accordance with R. 1:5-6.

(c) Availability of Guardianship File. The Surrogate shall make the complete guardianship file available to the court upon request.

Note: Adopted August 1, 2016 to be effective September 1, 2016.

4:86-4. Order for Hearing

(a) Contents of Order.

(1) If the court is satisfied with the sufficiency of the complaint and supporting affidavits and that further proceedings should be taken thereon, it shall enter an order fixing a date for hearing.

(2) The order shall require that at least 20 days' notice thereof be given to the alleged incapacitated person, any person named as attorney-in-fact in any power of attorney executed by the alleged incapacitated person, any person named as health care representative in any health care directive executed by the alleged incapacitated person, and any person acting as trustee under a trust for the benefit of the alleged incapacitated person, the alleged incapacitated person's spouse, children 18 years of age or over, parents, the person having custody of the alleged incapacitated person, the attorney appointed pursuant to R. 4:86-4(b), and such other persons as the court directs. Notice shall be effected by service of a copy of the order, complaint and

supporting affidavits upon the alleged incapacitated person personally and upon each of the other persons in such manner as the court directs.

(3) The order for hearing shall expressly provide that appointed counsel for the alleged incapacitated person is authorized to seek and obtain medical and psychiatric information from all health care providers.

(4) The court may allow shorter notice or waive notice upon a showing of good cause. In such case, the order shall recite the basis for shortening or waiving notice, and proof shall be submitted at the hearing that such basis continues to exist.

(5) A separate notice shall be personally served on the alleged incapacitated person stating that if he or she desires to oppose the action, he or she may appear either in person or by attorney, and may demand a trial by jury.

(6) The order for hearing shall require that any proposed guardian complete guardianship training as promulgated by the Administrative Director of the Courts; however, agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this requirement.

(7) If the alleged incapacitated person is not represented by counsel, the order shall include the appointment by the court of counsel for the alleged incapacitated person.

(b) Duties of Counsel.

(1) Counsel shall (i) personally interview the alleged incapacitated person; (ii) make inquiry of persons having knowledge of the alleged incapacitated person's circumstances, his or her physical and mental state and his or her property; (iii) make reasonable inquiry to locate any will, powers of attorney, or health care directives previously executed by the alleged incapacitated person or to discover any interests the alleged incapacitated person may have as beneficiary of a will or trust.

(2) At least ten days prior to the hearing date, counsel shall file a report with the court and serve a copy thereof on plaintiff's attorney and other parties who have formally appeared in the matter. The report shall include the following: (i) the information developed by counsel's inquiry; (ii) recommendations concerning the court's determination on the issue of incapacity; (iii) any recommendations concerning the suitability of less restrictive alternatives such as a conservatorship or a delineation of those areas of decision making that the alleged incapacitated person may be capable of exercising; (iv) whether a case plan for the incapacitated person should thereafter be submitted to the court; (v) whether the alleged incapacitated person has expressed dispositional preferences and, if so, counsel shall argue for their inclusion in the

judgment of the court; and (vi) recommendations concerning whether good cause exists for the court to order that any power of attorney, health care directive, or revocable trust created by the alleged incapacitated person be revoked or the authority of the person or persons acting thereunder be modified or restricted.

(3) If the alleged incapacitated person obtains other counsel, such counsel shall notify the court and appointed counsel at least ten days prior to the hearing date.

(c) Examination. If the affidavit or certification supporting the complaint is made pursuant to R. 4:86-2(c), the court may, on motion and upon notice to all persons entitled to notice of the hearing under paragraph (a), order the alleged incapacitated person to submit to an examination. The motion shall set forth the names and addresses of the physicians who will conduct the examination, and the order shall specify the time, place and conditions of the examination. Upon request, the report thereof shall be furnished to either the examined party or his or her attorney.

(d) Guardian Ad Litem. At any time prior to entry of judgment, where special circumstances come to the attention of the court by formal motion or otherwise, a guardian ad litem may, in addition to counsel, be appointed to evaluate the best interests of the alleged incapacitated person and to present that evaluation to the court.

(e) Compensation. The compensation of the attorney for the party seeking guardianship, appointed counsel, and of the guardian ad litem, if any, may be fixed by the court to be paid out of the estate of the alleged incapacitated person or in such other manner as the court shall direct.

Note: Source — R.R. 4:102-4(a) (b). Paragraph (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; caption of former R. 4:83-4 amended, caption and text of paragraph (a) amended and in part redesignated as paragraph (b) and former paragraph (b) redesignated as paragraph (c) and amended, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended and paragraphs (d) and (e) added June 28, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), (d), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a), (b),(c),(d) and (e) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended, subparagraphs enumerated and paragraphs (a)(6) and (a)(7) adopted, paragraph (b) amended and subparagraphs enumerated, and paragraph (c) amended August 1, 2016 to be effective September 1, 2016.

4:86-5. Proof of Service; Appearance of Alleged Incapacitated Person at Hearing; Answer

(a) Not later than ten days prior to the hearing, the plaintiff shall file proof of service of the notice, order for hearing, complaint and affidavits or certifications and proof by affidavit that the alleged incapacitated person has been afforded the opportunity to appear personally or by attorney, and that he or she has been given or offered assistance to communicate with friends, relatives or attorneys.

(b) Prior to the hearing, unless good cause shown, but no later than prior to qualification, any proposed guardian must complete guardianship training as promulgated by the Administrative Director of the Courts. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S. 30:1-7 shall be exempt from this requirement.

(c) The plaintiff or appointed counsel shall produce the alleged incapacitated person at the hearing, unless the plaintiff and the court-appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

(d) If the alleged incapacitated person or any person receiving notice of the hearing intends to appear by an attorney, such person shall, not later than ten days before the hearing, serve and file an answer, affidavit, or motion in response to the complaint.

Note: Source — R.R. 4:102-5; caption and text of former R. 4:83-5 amended and rule redesignated June 29, 1990 to be effective September 4. 1990; amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; text amended and designated as paragraph (a) and new paragraphs (b), (c), and (d) added August 1, 2016 to be effective September 1, 2016.

4:86-6. Hearing; Judgment

(a) Trial. Unless a trial by jury is demanded by or on behalf of the alleged incapacitated person, or is ordered by the court, the court shall, after taking testimony in open court, determine the issue of incapacity. The court, with the consent of counsel for the alleged incapacitated person, may take the testimony of a person who has filed an affidavit or certification pursuant to R. 4:86-2(b) by telephone or may dispense with oral testimony and rely on the affidavits or certifications submitted. Telephone testimony shall be recorded verbatim.

(b) Motion for New Trial. A motion for a new trial shall be served not later than 30 days after the entry of the judgment.

(c) Appointment of General or Limited Guardian. If a general or limited guardian of the person or of the estate or of both the person and estate is to be appointed, the court shall appoint and letters shall be granted to any of the following:

(1) the incapacitated person’s spouse, if the spouse was living with the incapacitated person as husband or wife at the time the incapacity arose;

(2) the incapacitated person's next of kin; or

(3) the Office of the Public Guardian for Elderly Adults within the statutory mandate of that office. If none of them will accept the appointment, or if the court is satisfied that no appointment from among them will be in the best interests of the incapacitated person or estate, then the court shall appoint and letters shall be granted to such other person who will accept appointment as the court determines is in the best interests of the incapacitated person. Such persons may include registered professional guardians or surrogate decision-makers chosen by the incapacitated person before incapacity by way of a durable power of attorney, health care proxy, or advance directive.

(d) Judgment.

(1) The judgment of legal incapacity and appointment of guardian shall be in such form and include all such provisions as promulgated by the Administrative Director of the Courts, except to the extent that the court explicitly directs otherwise.

(2) Unless expressly waived therein, the judgment appointing the guardian shall fix the amount of the bond. If there are extraordinary reasons justifying the waiver of a bond, that determination shall be set forth in a decision supported by appropriate factual findings.

(3) A proposed judgment of legal incapacity and appointment of guardian shall be filed with the Surrogate not later than ten days prior to the hearing.

(e) Duties of Guardian.

(1) Not later than 30 days after entry of the judgment of legal incapacity and appointment of guardian, the guardian shall qualify and accept the appointment in accordance with R. 4:96-1. The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training as promulgated by the Administrative Director of the Courts in accordance with R. 4:86-5(b).

(2) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate, and serve on all interested parties, within 90 days of appointment an inventory in such form as promulgated by the Administrative Director of the Courts specifying all property and income of the incapacitated person's estate.

(3) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate reports of the financial accounting of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(4) Unless expressly waived in the judgment, the guardian of the person shall file with the Surrogate reports of the well-being of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(5) The judgment shall also require the guardian to keep the Surrogate reasonably advised of the whereabouts and telephone number of the guardian and of the incapacitated person, and to advise the Surrogate within 30 days of the incapacitated person's death or of any major change in his or her status or health. As to the incapacitated person's death, the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

(6) A guardian shall cooperate fully with any Court or Surrogate staff or volunteers until the guardianship is terminated by the death or return to capacity of the incapacitated person, or the guardian's death, removal or discharge.

(7) The guardian shall monitor the capacity of the incapacitated person over time and take such steps as are necessary to protect the interests of the incapacitated person, including but not limited to initiating an action for return to capacity as provided in N.J.S.A. 3B:12-28.

(f) Duties of Surrogate.

(1) The Surrogate shall provide the entire complete guardianship file to the court for review no later than seven days before the hearing.

(2) At the time of qualification and issuance of letters of guardianship, the Surrogate shall review the acceptance of appointment and letters of guardianship with the guardian in such form as promulgated by the Administrative Director of the Courts.

(3) The Surrogate shall issue letters of guardianship following the guardian's qualification. The Surrogate shall record issuance of all letters of guardianship. Letters of guardianship shall accurately reflect the provisions of the judgment.

(4) The Surrogate shall record receipt of all inventories, reports of financial accounting, and reports of well-being filed pursuant to paragraphs (e)(3) thru (e)(5) above.

(5) The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that:

(A) the guardian fails to qualify and accept the appointment within 30 days after entry of the judgment of legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above; or

(B) the guardian fails to timely file inventories, reports of financial accounting, and/or reports of well-being filed in accordance with paragraphs (e)(3) thru (e)(5) above.

(6) The Surrogate shall immediately notify the court if they are informed through oral or written communication, or become aware by other means, of emergent allegations of substantial harm to the physical or mental health, safety and well-being, and/or the property or business affairs, of an alleged or adjudicated incapacitated person. However, the Surrogate shall have no obligation to review inventories, periodic reports of well-being, informal accountings, or other documents filed by guardians, except for formal accountings subject to audit by the Surrogate.

(7) The Surrogate shall record the death of the incapacitated person.

Note: Source — R.R. 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former R. 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017.

4:86-7. Rights of an Incapacitated Person; Proceedings for Review of Guardianship

(a) An individual subject to a general or limited guardianship shall retain:

(1) The right to be treated with dignity and respect;

(2) The right to privacy;

(3) The right to equal treatment under the law;

(4) The right to have personal information kept confidential;

(5) The right to communicate privately with an attorney or other advocate;

(6) The right to petition the court to modify or terminate the guardianship, including the right to meet privately with an attorney or other advocate to assist with this

legal procedure, as well as the right to petition for access to funds to cover legal fees and costs; and

(7) The right to request the court to review the guardian's actions, request removal and replacement of the guardian, and/or request that the court restore rights as provided in N.J.S.A. 3B:12-28.

(b) An incapacitated person, or an interested person on his or her behalf, may seek a return to full or partial capacity by commencing a separate summary action by verified complaint. The complaint shall be supported by affidavits or certifications as described in Rule 4:86-2(b)(2), and shall set forth facts evidencing that the previously incapacitated person no longer is incapacitated or has returned to partial capacity. The court shall, on notice to the persons who would be set forth in a complaint filed pursuant to Rule 4:86-1, set a date for hearing and take oral testimony in open court with or without a jury. The court may render judgment that the person no longer is fully or partially incapacitated, that his or her guardianship be modified or discharged subject to the duty to account, and that his or her person and estate be restored to his or her control, or may render judgment that the guardianship be modified but not terminated.

(c) An incapacitated person, or an interested person on his or her behalf, may seek review of a guardian's conduct and/or review of a guardianship by filing a motion setting forth the basis for the relief requested.

Note: Source — R.R. 4:102-7; former R. 4:83-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; caption and text of former rule deleted, new caption adopted, new paragraphs (a), (b) and (c) adopted August 1, 2016 to be effective September 1, 2016.

4:86-7A. Application for Financial Maintenance for Incapacitated Adults Subject to Prior Chancery Division, Family Part Order

As to a person alleged or adjudicated to be incapacitated as defined in N.J.S.A. 3B:1-2 and who has reached the age of 23, an application for conversion of a child support obligation to another form of financial maintenance pursuant to N.J.S.A. 2A:17-56.67 et seq. may be made as follows:

(a) Prior to Adjudication of Incapacity. A plaintiff filing a complaint for adjudication of incapacity and appointment of guardian pursuant to R. 4:86-2 may request such conversion in a separate count of the complaint.

(b) After Adjudication of Incapacity. A guardian or custodial parent of an adjudicated incapacitated person may request such conversion by filing a motion on notice to the parent responsible for paying child support and any interested parties setting forth the basis for the relief requested pursuant to R. 4:86-7.

(c) Required Materials for Submission. Any action brought pursuant to either paragraph (a) or paragraph (b) shall set forth the exceptional circumstances pursuant to which such conversion to another form of financial maintenance is requested and shall have the following annexed thereto:

(1) Copies of any prior Chancery Division, Family Part orders related to the child support obligation; and

(2) A financial maintenance statement in such form as promulgated by the Administrative Director of the Courts.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:86-8. Appointment of Guardian for Nonresident Incapacitated Person

An action for the appointment of a guardian for a nonresident who has been or shall be found to be an incapacitated person under the laws of the state or jurisdiction in which the incapacitated person resides shall be brought in the Superior Court pursuant to R. 4:67. The plaintiff shall exhibit and file with the court an exemplified copy of the proceedings or other evidence establishing the finding. If the plaintiff is the duly appointed guardian, trustee or committee of the incapacitated person in the state or jurisdiction in which the finding was made, and applies to be appointed guardian in this State, the court may forthwith appoint that person without issuing an order to show cause.

Note: Source -- R.R. 4:102-8. Amended July 26, 1984 to be effective September 10, 1984; former R. 4:83-8 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008.

4:86-9. Guardians for Incapacitated Persons Under Uniform Veterans Guardianship Law

(a) Complaint for Appointment. An action for the appointment of a guardian under N.J.S.A. 3B:13-1 et seq. for an alleged incapacitated person shall be brought in the Superior Court by any person entitled to priority of appointment. If there is no person so entitled or if the person so entitled fails or refuses to commence the action within 30 days after the mailing of notice by a federal agency to the last known address of such person entitled to priority of appointment, indicating the necessity for the appointment, the action may be brought by any person residing in this State, acting on the alleged incapacitated person’s behalf.

(b) Complaint. The complaint shall state (1) the name, age and place of residence of the alleged incapacitated person; (2) the name and place of residence of the nearest relative, if known; (3) the name and address of the person or institution, if

any, having custody of the alleged incapacitated person; (4) that such alleged incapacitated person is entitled to receive money payable by or through a federal agency; (5) the amount of money due and the amount of probable future payments; and (6) that the alleged incapacitated person has been rated an incapacitated person on examination by a federal agency in accordance with the laws regulating the same.

(c) Proof of Necessity for Guardian of Incapacitated Person. A certificate by the chief officer, or his or her representative, stating the fact that the alleged incapacitated person has been rated an incapacitated person by a federal agency on examination in accordance with the laws and regulations governing such agency and that appointment is a condition precedent to the payment of money due the alleged incapacitated person by such agency shall be prima facie evidence of the necessity for making an appointment under this rule.

(d) Determination of Incapacity. Incapacity may be determined on the certificates, without other evidence, of two medical officers of the military service, or of a federal agency, certifying that by reason of incapacity the alleged incapacitated person is incapable of managing his or her property, or certifying to such other facts as shall satisfy the court as to such incapacity.

(e) Appointment of Guardian; Bond. Upon proof of notice duly given and a determination of incapacity, the court may appoint a proper person to be the guardian and fix the amount of the bond. The bond shall be in an amount not less than that which will be due or become payable to the incapacitated person in the ensuing year. The court may from time to time require additional security. Before letters of guardianship shall issue, the guardian shall accept the appointment in accordance with R. 4:96-1.

(f) Termination of Guardianship When Incapacitated Person Regains Capacity. If the court has appointed a guardian for the estate of an incapacitated person, it may subsequently, on due notice, declare the incapacitated person to have regained capacity on proof of a finding and determination to that effect by the medical authorities of the military service or federal agency or based on such other facts as shall satisfy the court as to the capacity of the incapacitated person. The court may thereupon discharge the guardian without further proceedings, subject to the settlement of his or her account.

(g) Complaint in Action to Have Guardian Receive Additional Personalty. The complaint in an action to authorize the guardian, pursuant to law, to receive personal property from any source other than the United States Government shall set forth the amount of such property and the name and address of the person or institution having actual custody of the incapacitated person.

(h) Definitions. Definitions contained in N.J.S. 3B:13-2 shall apply to the terms of this rule.

Note: Source — R.R. 4:102-9(a) (b) (c) (d) (e) (f) (g) (h), 4:103-3 (second sentence). Paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a) through (f) and (h) of former R. 4:83-9 amended and rule

redesignated June 29, 1990 to be effective September 4, 1990; caption amended, paragraphs (a) and (b) amended, paragraphs (c) and (d) captions and text amended, paragraph (e) amended, and paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (e), and (g) amended, and paragraphs (c), (d), and (f) caption and text amended August 1, 2016 to be effective September 1, 2016.

4:86-10. Appointment of Guardian for Persons Eligible for and/or Receiving Services from the Division of Developmental Disabilities

An action pursuant to N.J.S.A. 30:4-165.7 et seq. for the appointment of a guardian for a person over the age of 18 who is eligible for and/or receiving services from the Division of Developmental Disabilities shall be brought pursuant to these rules insofar as applicable, except that:

(a) The complaint may be brought by the Commissioner of Human Services or a parent, spouse, relative or other party interested in the welfare of such person.

(b) In lieu of the affidavits or certifications prescribed by R. 4:86-2, the verified complaint shall have annexed thereto two documents. One document shall be an affidavit or certification submitted by a practicing physician or a psychologist licensed pursuant to P.L. 1966, c.282 (N.J.S.A. 45:14B-1 et seq.) who has made a personal examination of the alleged incapacitated person not more than six months prior to the filing of the verified complaint. The other document shall be one of the following: (1) an affidavit or certification from the chief executive officer, medical director or other officer having administrative control over a Division of Developmental Disabilities program from which the individual is receiving functional or other services; (2) an affidavit or certification from a designee of the Division of Developmental Disabilities having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action; (3) a second affidavit or certification from a practicing physician or psychologist licensed pursuant to P.L. 1966, c.282 (N.J.S.A. 45:14B-1 et seq.); (4) a copy of the Individualized Education Program, including any medical or other reports, for the individual who is subject to the guardianship action, which shall have been prepared no more than two years prior to the filing of the verified complaint; or (5) an affidavit or certification from a licensed care professional having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action. The documents shall set forth with particularity the facts supporting the belief that the alleged incapacitated person suffers from a significant chronic functional impairment to such a degree that the person lacks the cognitive capacity either to make decisions or to communicate, in any way, decisions to others.

(c) If the petition seeks guardianship of the person only, the Division of Mental Health Advocacy, in the Office of the Public Defender, if available, shall be appointed as attorney for the alleged incapacitated person, as required by R. 4:86-4. If the Division of Mental Health Advocacy, in the Office of the Public Defender, is unavailable or if the petition seeks guardianship of the person and the estate, the court shall appoint an attorney to represent the alleged incapacitated person. The attorney for the alleged

incapacitated person may where appropriate retain an independent expert to render an opinion respecting the incapacity of the alleged incapacitated person.

(d) The hearing shall be held pursuant to R. 4:86-6 except that a guardian may be summarily appointed if the attorney for the alleged incapacitated person, by affidavit or certification, does not dispute either the need for the guardianship or the fitness of the proposed guardian and if a plenary hearing is not requested either by the alleged incapacitated person or on his or her behalf.

Note: Adopted July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978. Former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended and paragraphs (b), (c) and (d) of former R. 4:83-10 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b), (c) and (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 22, 2014 to be effective September 1, 2014; caption amended, introductory paragraph and paragraphs (b), (c) and (d) amended August 1, 2016 to be effective September 1, 2016.

4:86-11. Appointment of Conservator

(a) Commencement of Action; Complaint. An action pursuant to N.J.S.A.3B:13A-1, et seq. for the appointment of a conservator shall be brought by a conservatee or other person on his or her behalf on notice, as provided by N.J.S.A. 3B:13A-5 and 6. The complaint shall be filed in the Superior Court and shall state (1) the conservatee's age and residence, (2) the names and addresses of the conservatee's heirs and all other persons entitled to notice pursuant to N.J.S.A. 3B:13A-6 and (3) the nature, location and fair market value of all property, real and personal, in accordance with R. 4:86-2(a).

(b) Hearing. The court, without a jury, shall take testimony in open court to determine whether the conservatee, by reason of advanced age, illness or physical infirmity, is unable to care for or manage his or her property or has become unable to provide for himself or herself or others dependent upon him or her for support. The court may appoint counsel for the conservatee if it concludes that counsel is necessary to protect his or her interests. If the conservatee is unable to attend the hearing by reason of physical or other disability, the court shall appoint a guardian ad litem to conduct an investigation to determine whether the conservatee objects to the conservatorship. If counsel for the conservatee has, however, been appointed, such counsel shall conduct the investigation and no separate guardian ad litem shall be appointed. In no case shall a conservator be appointed if the court finds that the conservatee objects thereto.

(c) Acceptance of Appointment. An acceptance of appointment as conservator may be taken before any person authorized by the laws of this State to administer an oath.

(d) Settlement of Conservator's Account. Where the court, for good cause shown, orders a full accounting by the conservator, the account shall be settled in the Superior Court in accordance with R. 4:87, insofar as applicable.

Note: Adopted July 26, 1984 to be effective September 10, 1984; paragraphs (a), (b) and (c) of former R. 4:83-11 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:86-12. Special Medical Guardian in General Equity

(a) Standards. On the application of a hospital, nursing home, treating physician, relative or other appropriate person under the circumstances, the court may appoint a special guardian of the person of a patient to act for the patient respecting medical treatment consistent with the court's order, if it finds that:

(1) the patient is incapacitated, unconscious, underage or otherwise unable to consent to medical treatment;

(2) no general or natural guardian is immediately available who will consent to the rendering of medical treatment;

(3) the prompt rendering of medical treatment is necessary in order to deal with a substantial threat to the patient's life or health; and

(4) the patient has not designated a health care representative or executed a health care instruction directive pursuant to the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 to -78, determining the treatment question in issue.

(b) Venue. The application shall be made to the Superior Court judge assigned to general equity in the vicinage in which the patient is physically located when the application is made and, in the event of that judge's unavailability, to the Assignment Judge of the vicinage or the judge designated as the emergent judge, or if neither is available, any judge in the vicinage.

(c) Procedure. The procedure on the application shall conform as nearly as practicable to the requirements of R. 4:86-1 to R. 4:86-6, but the judge may, if the circumstances require, accept an oral complaint and oral testimony either by telephone, in court, or at any other suitable location. If the circumstances do not permit the making of a verbatim record, the judge shall make detailed notes of the allegations of the complaint and the supporting testimony. Whenever possible an attorney shall be appointed to represent the patient.

(d) Order. The order granting the application, if orally rendered, shall be reduced to writing as promptly as possible and shall recite the findings on which it is based.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraphs (a), (b) and (c) of former R. 4:83-12 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(1) amended July 12, 2002 to be effective September 3, 2002; caption and paragraph (a)(1) amended July 9, 2008 to be effective September 1, 2008.

3B:12-4 Appointment of special guardian.

The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this article who shall have authority conferred by the order and shall serve until discharged by the order after reporting to the court of all matters done pursuant to the order of appointment.

If the court has appointed a special guardian to assist in the accomplishment of a protective arrangement pursuant to this section, the special guardian shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, upon application to the court, payable by the estate of the minor, incapacitated person or alleged incapacitated person.

Amended 2005, c.304, s.4.

3B:12-5 Right of alleged incapacitated person to trial on issue of incapacity.

Where application is made to the court for proceedings to affect the property and affairs of an alleged incapacitated person, and the alleged incapacitated person has not been adjudicated as such, the alleged incapacitated person or someone acting in his behalf may apply for a trial of the issue of incapacity in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of the State of New Jersey.

Amended 2005, c.304, s.5.

3B:12-6 Circumstances under which money may be paid or personal property delivered.

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000.00 per annum, by paying or delivering the money or property to:

a.The minor, if married;

b.A parent or parents of the minor;

c.Any person having the care and custody of the minor with whom the minor resides;

d.A guardian of the person of the minor; or

e.A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving written notice of the deposit to the minor.

Amended 2005, c.304, s.6.

3B:12-7. When payment of money or delivery of property prohibited

The payment of money or delivery of personal property under N.J.S. 3B:12-6 shall not be made if the person making payment or delivery has actual knowledge that a guardian of the estate of

the minor has been appointed or that an action for the appointment of a guardian of the estate of the minor is pending.

L.1981, c. 405, s. 3B:12-7, eff. May 1, 1982.

3B:12-8. Application of money and property; reimbursement for out-of-pocket expenses

The persons, other than the minor or any financial institution under subsection e. of N.J.S. 3B:12-6, receiving money or property for a minor, are obligated to apply so much or all of the money or the income or proceeds of the property for the support, maintenance, education, general use and benefit of the minor in the manner, at the time or times and to the extent that those persons, in an exercise of reasonable discretion, deem suitable and proper, with or without court order, with due regard to the duty and ability of themselves or of any other person to support the minor, and with or without regard to any other funds, income or property which may be available for that purpose. But those persons may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support.

L.1981, c. 405, s. 3B:12-8, eff. May 1, 1982.

3B:12-9. Preservation of excess sums; payment and delivery to minor upon attaining 18 years of age

Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains 18 years of age.

L.1981, c. 405, s. 3B:12-9, eff. May 1, 1982.

3B:12-10. Persons paying money or delivering property not liable for application

Persons who pay or deliver in accordance with provisions of this article are not responsible for the proper application thereof.

L.1981, c. 405, s. 3B:12-10, eff. May 1, 1982.

3B:12-11 Affidavit of receipt; contents; filing.

The persons making payment of money or delivery of personal property as provided in this article shall obtain from the recipient thereof, if other than a financial institution or a married minor, an affidavit signed by the recipient acknowledging receipt of the money or personal property which shall set forth the recipient's status in relation to the minor and the purpose for which the money or personal property will be used. The affidavit shall be filed in the office of the Surrogate of the county in which the minor resides or if the minor resides outside the State, the county which has jurisdiction of the property.

Amended 2005, c.304, s.7.

3B:12-21. Persons entitled to appointment

In an action for the appointment of a guardian of the person, guardian of the estate, or a guardian of the person and estate of a minor, the surrogate's court of the county wherein he resides or, if he is a nonresident, where his real or personal estate may be, or the Superior Court, upon inquiry into the circumstances, may appoint the parents or either of them or the survivor of them as the guardian of the person, guardian of the estate or guardian of the person and estate of the minor. If neither parent or the survivor of them will accept the guardianship, then the heirs, or some of them, may be appointed as guardian. If none of the heirs will accept the guardianship, then some other person shall be appointed as the guardian of the person, guardian of the estate or as guardian of the person and estate of the minor. This section shall not be construed to restrict the power of the court to appoint a substitute guardian on the application of the minor or otherwise.

L.1981, c. 405, s. 3B:12-21, eff. May 1, 1982.

3B:12-22. Appointment when heirs are nonresidents

When it shall appear to the Superior Court, or surrogate's court that the heirs of a minor residing in this State do not reside within this State, the court may take any action in respect to the appointment of a guardian of the person, guardian of the estate or as guardian of the person and estate for the minor as shall be to his advantage.

L.1981, c. 405, s. 3B:12-22, eff. May 1, 1982.

3B:12-23. Guardian for child of absconding or absent parent

If a resident of this State has or shall abscond or absent himself from the State, leaving a child under the age of 18 without sufficient provision for his maintenance and education, the surrogate of the county wherein the child resides, or the Superior Court, may appoint a guardian for his person or estate or both. The Superior Court may revoke the appointment when it shall appear proper.

L.1981, c. 405, s. 3B:12-23, eff. May 1, 1982.

3B:12-24 Issue of incapacity triable without jury unless jury is demanded.

In civil actions or proceedings for the determination of incapacity or for the appointment of a guardian for an alleged incapacitated person, the trial of the issue of incapacity may be had without a jury pursuant to Rules Governing the Courts of the State of New Jersey, unless a trial by jury is demanded by the alleged incapacitated person or someone on his behalf.

Amended 2005, c.304, s.11.

3B:12-24.1 Determination by the court of need for guardianship services, specific services.

12. Determination by the court of need for guardianship services, specific services.

a.General Guardian. If the court finds that an individual is incapacitated as defined in N.J.S.3B:1-2 and is without capacity to govern himself or manage his affairs, the court may appoint a general guardian who shall exercise all rights and powers of the incapacitated person. The general guardian of the estate shall furnish a bond conditioned as required by the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

b.Limited Guardian. If the court finds that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate. A court, when establishing a limited guardianship shall make specific findings regarding the individual's capacity, including, but not limited to which areas, such as residential, educational, medical, legal, vocational and financial decision making, the incapacitated person retains sufficient capacity to manage. A judgment of limited guardianship may specify the limitations upon the authority of the guardian or alternatively the areas of decision making retained by the person. The limited guardian of the estate shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

c.Pendente lite; Temporary Guardian.

(1)Whenever a complaint is filed in the Superior Court to declare a person incapacitated and appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, pendente lite. Notice of a pendente lite temporary guardian application shall be given to the alleged incapacitated person or alleged incapacitated person's attorney or the attorney appointed by the court to represent the alleged incapacitated person.

(2) Pending a hearing for the appointment of a guardian, the court may for good cause shown and upon a finding that there is a critical need or risk of substantial harm, including, but not limited to:

(a)the physical or mental health, safety and well-being of the person may be harmed or jeopardized;

(b)the property or business affairs of the person may be repossessed, wasted, misappropriated, dissipated, lost, damaged or diminished or not appropriately managed;

(c)it is in the best interest of the alleged incapacitated person to have a temporary guardian appointed and such may be dealt with before the hearing to determine incapacity can be held, after any notice as the court shall direct, appoint a temporary guardian pendente lite of the person or estate, or both, of the alleged incapacitated person.

(3)A pendente lite temporary guardian appointed pursuant to this section may be granted authority to arrange interim financial, social, medical or mental health services or temporary accommodations for the alleged incapacitated person determined to be necessary to deal with critical needs of or risk of substantial harm to the alleged incapacitated person or the alleged incapacitated person's property or assets. The pendente lite temporary guardian may be authorized to make arrangements for payment for such services from the estate of the alleged incapacitated person.

(4)A pendente lite temporary guardian appointed hereunder shall be limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person.

(5)The alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person shall be given notice of the appointment of the pendente lite temporary guardian. The pendente lite temporary guardian shall communicate all actions taken on behalf of the alleged incapacitated individual to the alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person who shall have the right to object to such actions.

(6)A pendente lite temporary guardian appointment shall not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

(7)If the court enters an order appointing a pendente lite temporary guardian without notice, the alleged incapacitated person may appear and move for its dissolution or modification on two days' notice to the plaintiff and to the temporary guardian or on such shorter notice as the court prescribes.

(8)Every order appointing a pendente lite temporary guardian granted without notice expires as prescribed by the court, but within a period of not more than 45 days, unless within that time the court extends it for good cause shown for the same period.

(9)The pendente lite temporary guardian, upon application to the court, shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which shall be payable by the estate of the alleged incapacitated person or minor.

(10) The pendente lite temporary guardian shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

d.Disclosure of information. Physicians and psychologists licensed by the State are authorized to disclose medical information, including but not limited to medical, mental health and substance abuse information as permitted by State and federal law, regarding the alleged incapacitated person in affidavits filed pursuant to the Rules Governing the Courts of the State of New Jersey.

e.Court appearance. The alleged incapacitated person shall appear in court unless the plaintiff and the court-appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

f.Communication. When a person who is allegedly in need of guardianship services appears to have a receptive or expressive communication deficit, all reasonable means of communication with the person shall be attempted for the purposes of this section, including written, spoken, sign or non-formal language, which includes translation of the person's spoken or written word when the person is unable to communicate in English, and the use of adaptive equipment.

g.Additional subject areas. At the request of the limited guardian, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties, the court may determine that a person is in need of guardian services regarding additional subject areas and may enlarge the powers of the guardian to protect the

person from significant harm.

h.Limitations of guardian powers. At the request of the guardian, the incapacitated person or another interested person, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties, the court may limit the powers conferred upon a guardian.

L.2005,c.304,s.12.

3B:12-25 Appointment of guardian.

The Superior Court may determine the incapacity of an alleged incapacitated person and appoint a guardian for the person, guardian for the estate or a guardian for the person and estate. Letters of guardianship shall be granted to the spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), if the spouse is living with the incapacitated person as man and wife or as a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) at the time the incapacitation arose, or to the incapacitated person's heirs, or friends, or thereafter first consideration shall be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the incapacitated person or the estate, then to any other proper person as will accept the same, and if applicable, in accordance with the professional guardianship requirements of P.L.2005, c.370 (C.52:27G-32 et al.). Consideration may be given to surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney pursuant to section 4 of P.L.2000, c.109 (C.46:2B-8.4), health care proxy or advance directive.

The Office of the Public Guardian for Elderly Adults shall have the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office.

Amended 2005, c.304, s.13; 2005, c.370, s.13.

3B:12-26 Action against incapacitated person when guardian newly appointed; leave of court required.

No action shall be brought or maintained against an incapacitated person within one month after appointment of a guardian except by leave of the court wherein the action is to be brought or maintained.

Amended 2005, c.304, s.14.

3B:12-27 Distribution of property of an incapacitated person as intestate property.

If an incapacitated person dies intestate or without any will except one which was executed after commencement of proceedings which ultimately resulted in adjudicating a person incapacitated and before a judgment has been entered adjudicating a return to competency, the person's property shall descend and be distributed as in the case of intestacy.

Amended 2005, c.304, s.15.

3B:12-28 Return to competency; restoration of estate.

The Superior Court may, on summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the incapacitated person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency if the court is satisfied that the person has recovered his sound reason and is fit to govern himself and manage his affairs, or, in the case of an incapacitated person determined to be incapacitated by reason of chronic alcoholism, that the person has reformed and become habitually sober and has continued so for one year next preceding the commencement of the action, and in the case of an incapacitated person determined to be incapacitated by reason of chronic use of drugs that the person has reformed and has not been a chronic user of drugs for one year next preceding the commencement of the action.

Amended 2005, c.304, s.16.

3B:12-29. Appointment of guardian of the property for nonresident incapacitated person.

When a nonresident has been or shall be found to be an incapacitated person under the laws of the state or country wherein the nonresident resides, the Superior Court may appoint a guardian for the nonresident's property in this State.

Amended 2005, c.304, s.17.

3B:12-30 Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment.

The parents who have been appointed the guardian of an unmarried incapacitated person or the spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) who has been appointed the guardian of an incapacitated person may, by will, appoint a testamentary guardian of the person, or a guardian of the estate, or of both the person and estate of the incapacitated person. Before the appointment of a testamentary guardian becomes effective, the person designated as the testamentary guardian shall apply to the court in a summary manner, upon notice to the incapacitated person, to any guardian who may have been appointed for the incapacitated person, to the person or institution having the care of the incapacitated person and to such heirs as the court may direct, for a judgment confirming that appointment under the will.

Amended 2005, c.304, s.18.

3B:12-31 Consent by surviving parent to guardian's appointment.

Where an appointment of a testamentary guardian is made by a parent under N.J.S.3B:12-30 and the other parent survives the appointing parent, the appointment shall be effective only when the surviving parent, at or before the issuance of letters, consents to the appointment in

writing and signs and acknowledges the consent in the presence of two witnesses present at the same time who subscribe their names as witnesses thereto in the presence of the surviving parent, unless the surviving parent has been adjudged an incapacitated person.

Amended 2005, c.304, s.19.

3B:12-32 Temporary appointment of guardian if person not adjudicated an incapacitated person.

If the person for whom a testamentary guardian has been appointed under the will of a parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3)has not been adjudicated as an incapacitated person in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of New Jersey, the person named as the testamentary guardian may apply to the court in the manner provided in N.J.S.3B:12-30 for a judgment designating that person as the temporary guardian of the person or of the estate, or of both the person and estate of the alleged incapacitated person until the issue of incapacity has been determined. Upon the determination of the issue of incapacity, the court shall either enter a judgment confirming the appointment of the testamentary guardian or vacating the appointment of the temporary guardian.

Amended 2005, c.304, s.20.

3B:12-33 Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of an incapacitated person shall give bond in accordance with N.J.S.3B:15-1 unless the guardian is relieved from doing so by direction of the will of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) appointing the guardian. However, regardless of any direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) or other than any policy of life insurance upon the life of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), give bond in accordance with that section before exercising any authority or control over that property.

The provisions of this section relieving a testamentary guardian of an incapacitated person from giving bond by direction of the will of the parent, spouse or domestic partner shall not apply to a testamentary guardian of a minor with a developmental disability. Such guardian shall be bonded pursuant to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-1.

Amended 2005, c.304, s.21, 2009, c.140, s.3.

3B:12-34 Determination into fitness of a testamentary guardian of the person of an incapacitated person.

If a will appointing a testamentary guardian of the person of an incapacitated person has been or is to be probated in the Surrogate's Court of any county or the Superior Court, the Superior Court may, in an action brought upon notice to the ward and guardian named in the will, inquire

into the present custody of the incapacitated person, and make any order touching the testamentary guardianship as may be for the best interest and welfare of the incapacitated person.

Amended 2005, c.304, s.22.

3B:12-35 Effect of a testamentary appointment.

The appointment of a testamentary guardian of the person of an incapacitated person or his estate shall be good and effectual against any other person claiming the guardianship over or custody of the incapacitated person or his estate, as the case may be.

Amended 2005, c.304, s.23.

3B:12-36 Authority of court with respect to ward's person and estate.

If a guardian has been appointed as to the person of a minor or an incapacitated person, the court shall have authority over the ward's person and all matters relating thereto; and if a guardian has been appointed to the estate of a minor or an incapacitated person, the court shall have authority over the ward's estate, and all matters relating thereto.

Amended 2005, c.304, s.24.

3B:12-37 Letters of guardianship to state any limitations at the time of appointment or later.

If the court limits any power conferred on the guardian, the limitation shall be so stated in certificates of letters of guardianship thereafter issued.

Amended 2005, c.304, s.25.

3B:12-38 Title to ward's property vested in guardian as trustee.

The appointment of a guardian of the estate of a minor or an incapacitated person vests in him title as trustee to all property of his ward, presently held or thereafter acquired, including title to any property theretofore held for the ward by attorneys in fact. The appointment of a guardian is not a transfer or alienation within the meaning of general provisions of any Federal or State statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the ward of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a guardian.

Amended 2005, c.304, s.26.

3B:12-39 Delegation of parent's or guardian's powers regarding ward's care, custody or property; limitations.

A parent, other than where custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not an incapacitated person or a guardian of the person of a minor or an incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

Amended 2005, c.304, s.27.

3B:12-40. Duty of guardian of ward's person to account to guardian of his estate
If another person has been appointed guardian of the estate, all of the ward's estate received by the guardian of the person in excess of those funds expended to meet current expenses for support, care and education of the ward must be paid to the guardian of the estate, and the guardian of the person must account to the guardian of the estate for funds expended.

L.1981, c. 405, s. 3B:12-40, eff. May 1, 1982.

3B:12-41 Guardian of ward's person entitled to reimbursement for expenses; payments to third persons.

If another person has been appointed guardian of the ward's estate, the guardian of the ward's person is entitled to receive reasonable reimbursement and fees for his services and for room and board furnished to the ward, provided the same has been agreed upon between the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed upon are reasonable under the circumstances. The guardian of the person may request the guardian of the estate to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Amended 2005, c.304, s.28.

3B:12-42 Reporting condition of ward's person and property to court.

A guardian shall report at time intervals as ordered by the court, unless otherwise waived by the court, the condition of the ward and the condition of the ward's estate which has been subject to the guardian's possession or control as ordered by the court.

a.A report by the guardian of the person shall state or contain:

(1)the current mental, physical and social condition of the ward;

(2)the living arrangements for all addresses of the ward during the reporting period;

(3)the medical, educational, vocational and other services provided to the ward and the guardian's opinions as to the adequacy of the ward's care;

(4)a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

(5)if the ward is institutionalized, whether or not the guardian considers the current plan for care, treatment or habilitation to be in the ward's best interest;

(6)plans for future care; and

(7)a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

b.The court may appoint an individual to review a report, interview the ward or guardian and make any other investigation the court directs.

c.Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this section.

Amended 2005, c.304, s.29.

3B:12-43 Expenditures to be made by guardian out of ward's estate.

A guardian of the estate of a minor or incapacitated person may expend or distribute so much or all of the income or principal of his ward for the support, maintenance, education, general use and benefit of the ward and his dependents, in the manner, at the time or times and to the extent that the guardian, in an exercise of a reasonable discretion, deems suitable and proper, taking into account the requirements of the "Prudent Investor Act," P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without court order, with due regard to the duty and ability of any person to support or provide for the ward if the ward is a minor, and without due regard to the duty and ability of any person to support or provide for the ward if the ward is an incapacitated person, and with or without regard to any other funds, income or property which may be available for that purpose.

Amended 2005, c.304, s.30.

3B:12-44 Recommendations to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall consider recommendations relating to the appropriate standard of support, education and benefit for the ward made by a parent or guardian of the person, if any. The guardian of the estate may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the ward pursuant to the recommendations of a parent or guardian of the person unless the guardian knows that the parent or the guardian is deriving personal financial benefit therefrom, or unless the recommendations are clearly not in the best interests of the ward.

Amended 2005, c.304, s.31.

3B:12-45 Other factors to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall expend or distribute sums reasonably necessary for the support, education, care or benefit of the ward with due regard to:

a.The size of the ward's estate;

b.The probable duration of the guardianship and the likelihood that the ward, at some future time, may be fully able to manage his

affairs and the estate which has been conserved for him; and

c.The accustomed standard of living of the ward and members of the ward's household.

Amended 2005, c.304, s.32.

3B:12-46 Persons for whose benefit expenditures may be made by guardian of ward's estate.

The guardian of the estate of a minor or incapacitated person may expend funds of the ward's estate under N.J.S.3B:12-43 for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support.

Amended 2005, c.304, s.33.

3B:12-47 Persons to whom funds may be paid.

Funds expended by the guardian of the estate of a minor or an incapacitated person under N.J.S.3B:12-43 may be paid by the guardian to any person, including the ward, to reimburse for expenditures which the guardian might have made, or in advance for services to be rendered to the ward when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

Amended 2005, c.304, s.34.

3B:12-48 Powers conferred upon a guardian.

A guardian of the estate of a minor or an incapacitated person has all of the powers conferred upon the guardian by law and the provisions of this chapter except as limited by the judgment. These powers shall specifically include the right to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any

grounds authorized by law.

Amended 2005, c.304, s.35.

3B:12-49 Powers conferred upon the court.

The court has, for the benefit of the ward, the ward's dependents and members of his household, all the powers over the ward's estate and affairs which he could exercise, if present and not under a disability, except the power to make a will, and may confer those powers upon a guardian of the estate. These powers include, but are not limited to, the power to convey or release the ward's present and contingent and expectant interests in real and personal property, including dower and curtesy and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release the ward's powers as trustee, personal representative, custodian for minor, guardian, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the ward's disability or life, to exercise the ward's options to purchase securities or other property, to exercise the ward's rights to elect options and change beneficiaries under insurance annuity policies and to surrender the policies for their cash value, to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) to the extent permitted by law and to renounce any interest by testate or intestate succession or by inter vivos transfer and to engage in planning utilizing public assistance programs consistent with current law.

Amended 2005, c.304, s.36.

3B:12-50. Additional powers which may be exercised by the court

The court may exercise, or direct the exercise of, or release the powers of appointment of which the ward is donee, to renounce interests, to make gifts in trust or otherwise, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the ward.

L.1981, c. 405, s. 3B:12-50, eff. May 1, 1982.

3B:12-51. Powers and responsibilities of a guardian of the person of a minor generally

A guardian of the person of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from his own funds.

L.1981, c. 405, s. 3B:12-51, eff. May 1, 1982.

3B:12-55. When authority and responsibility of guardian terminate

The authority and responsibility of a guardian of the person or estate of a minor terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of 18 years of age, but termination does not affect the guardian's liability for prior

acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.

L.1981, c. 405, s. 3B:12-55, eff. May 1, 1982.

3B:12-56 Powers, rights and duties of a guardian of the person of a ward generally.

a.A guardian of the person of a ward is not legally obligated to provide for the ward from his own funds.

b.A guardian of the person of a ward is not liable to a third person for acts of the ward solely by reason of the relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian of the ward failed to exercise reasonable care in choosing the provider.

c.If a ward has previously executed a valid power of attorney for health care or advance directive under P.L.1991, c.201 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of P.L.1991, c.201 (C.26:2H-57), a guardian of the ward shall act consistent with the terms of such document unless revoked or altered by the court.

d.To the extent specifically ordered by the court for good cause shown, the guardian of the person of the ward may initiate the voluntary admission, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric facility. A ward so admitted shall be entitled to all of the rights of a voluntarily admitted patient, which rights shall be exercised on behalf of the ward by the guardian. The guardian of the ward shall exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the wishes of the ward are not ascertainable with reasonable efforts, the guardian of the ward shall exercise the ward's rights in a manner consistent with the best interests of the ward. Notwithstanding the provisions of this section to the contrary, if the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall apply. If the ward objects to any other decision of the guardian of the ward pursuant to this section, this objection shall be brought to the attention of the Superior Court, Chancery Division, Probate Part, which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate in the circumstances.

Amended 2005, c.304, s.38.

3B:12-57 Powers and duties of a guardian of the person of a ward.

a.(Deleted by amendment, P.L.2005, c.304.)

b.(Deleted by amendment, P.L.2005, c.304.)

c.(Deleted by amendment, P.L.2005, c.304.)

d.(Deleted by amendment, P.L.2005, c.304.)

e.(Deleted by amendment, P.L.2005, c.304.)

f.In accordance with Section 12 of P.L.2005, c.304 (C.3B:12-24.1), a guardian of the person of a ward shall exercise authority over matters relating to the rights and best interest of the ward's personal needs, only to the extent adjudicated by a court of competent jurisdiction. In taking or forbearing from any action affecting the personal needs of a ward, a guardian shall give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction, the guardian shall:

(1)take custody of the ward and establish the ward's place of abode in or outside of this State;

(2)personally visit the ward or if a public agency which is authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.) and P.L.1970, c.289 (C.30:4-165.7 et seq.) or the Office of the Public Guardian pursuant to P.L. 1985, c.298 (C.52:27G-20 et seq.) or their representatives which may include a private or public agency, visits the ward not less than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;

(3)provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;

(4)subject to the provisions of subsection c. of N.J.S.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;

(5)take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and, where appropriate, sell or dispose of such effects to meet the current needs of the ward;

(6)institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;

(7)develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;

(8)if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties;

(9)receive money, payable from any source for the current support of the ward, and tangible personal property deliverable to the ward. Any sums so received shall be applied to the ward's current needs for support, health care, education and training in the exercise of the guardian's reasonable discretion, with or without court order, with or without regard to the duty or ability of any person to support or provide for the ward and with or without regard to any other funds, income or property that may be available for that purpose, unless an application is made to the court to establish a supplemental needs trust or other trust arrangement. However, the guardian may not use funds from the ward's estate for room and board, which the guardian, the guardian's spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), parent or child have furnished the ward, unless agreed to by a guardian of the ward's estate

pursuant to N.J.S.3B:12-41, or unless a charge for the service is approved by order of the court made upon notice to at least one of the heirs of the ward, if possible. The guardian shall exercise care to conserve any excess funds for the ward's needs; and

(10) If necessary, institute an action that could be maintained by the ward including but not limited to, actions alleging fraud, abuse, undue influence and exploitation.

g.In the exercise of the foregoing powers, the guardian shall encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the ward to act on his own behalf whenever he is able to do so, and to develop or regain higher capacity to make decisions in those areas in which he is in need of guardianship services, to the maximum extent possible.

Amended 2005, c.304, s.39.

3B:12-58 Gifts to charities and other objects.

If the estate is ample to provide for the purposes implicit in the distributions authorized by this article, a guardian for the estate of an incapacitated person may apply to the court for authority to make gifts to charity and other objects as the ward might have been expected to make.

Amended 2005, c.304, s.40.

3B:12-59 Purchase of real property for use of an incapacitated person and his dependents.

When it shall appear to the court that it would be advantageous to the incapacitated person and to those legally dependent upon him for their support or are members of the incapacitated person's household, or any of them, if a dwelling house and a lot of land were purchased or a lot of land were purchased and a dwelling house built thereon, for the use of the incapacitated person and to those legally dependent upon him for their support or who are members of the incapacitated person's household, or any of them, the court may direct the guardian of his estate to purchase a house and lot or to purchase a lot and build a dwelling house thereon and to enter into contracts therefor as the court shall deem advisable, and to expend all necessary funds from the ward's estate for that purpose.

Amended 2005, c.304, s.41.

3B:12-60 Guardian's duty with respect to will of deceased incapacitated person.

Upon the death of an incapacitated person, the guardian shall deliver to the Surrogate of the county where the incapacitated person resided prior to death for safekeeping any will of the deceased person which may have come into the guardian's possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.

Amended 2005, c.304, s.42.

3B:12-61 Power of guardian to act as personal representative of the estate of a deceased incapacitated person.

If within 40 days after the death of an incapacitated person, no other person has been appointed personal representative and no action for an appointment is pending in the Superior Court or Surrogate's court of the county where the incapacitated person resided at his death, the guardian may apply to the Superior Court for authority to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a guardian, after notice to all persons interested in the incapacitated person's estate either as heirs or devisees and including any person nominated executor in any will of which the applicant is aware, the court may order the conferral of those powers, upon determining that there is no objection, and may enter judgment that the guardian has all of the powers and duties of a personal representative. The making and entry of a judgment under this section shall have the effect of an order of appointment of a personal representative, except that the estate in the name of the guardian, after administration, may be distributed to persons entitled to the decedent's estate under his will or the laws of intestacy without prior retransfer to the guardian as personal representative.

Amended 2005, c.304, s.43.

3B:12-62. Factors to be considered by the court or guardian in exercising certain powers

In investing the estate, and in selecting assets of the estate for distribution under this article, in utilizing powers of revocation or withdrawal available for the support of the ward, and other powers exercisable by the guardian or a court, the guardian or the court should take into account any known estate plan of the ward, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The guardian may examine the will of the ward.

L.1981, c. 405, s. 3B:12-62, eff. May 1, 1982.

3B:12-63 Guardian's final account and delivery of property upon termination of guardianship.

Upon termination of the guardianship, pursuant to N.J.S.3B:12-64 the guardian, after the allowance of his final account, shall pay over and distribute all funds and properties of the former ward or to the estate of the former ward in accordance with the order of the court.

Amended 2005, c.304, s.44.

3B:12-64 When authority and responsibility of guardian terminate.

a.The authority and responsibility of a guardian of the person or estate of an incapacitated person terminate upon:

(1)the death, resignation or removal of the guardian;

(2)upon the death of the incapacitated person; or

(3)upon the entry of a judgment adjudicating the restoration of competency or termination of guardianship for other reasons.

b.However, termination does not affect the guardian's liability for prior acts, nor the guardian's obligation to account for funds and assets of the ward.

c.Notwithstanding the termination of the guardianship, the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for burial and funeral costs, Surrogate fees of administration, probate and bond from the guardianship account. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.

d.Upon the death of an incapacitated person the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

Amended 2005, c.304, s.45.

3B:12-65. Vacancy in guardianship

A vacancy in a guardianship shall be deemed to arise when a sole or sole surviving or remaining guardian dies, resigns or is removed or discharged after entering upon but before completing the duties of his office. The resignation of a guardian shall not be effective unless approved by a judgment of the court.

L.1981, c. 405, s. 3B:12-65, eff. May 1, 1982.

3B:12-66 Filling vacancy in guardianship.

The Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill the vacancy by the appointment of a substituted guardian. The Superior Court may fill the vacancy in case of a guardian of a minor or where letters of guardianship were granted by the Superior Court or when removing or discharging the guardian. The Surrogate's court may fill the vacancy in the case of a guardian of a minor where letters were granted by the Surrogate's Court.

Amended 2005, c.304, s.46.

3B:12-66.1 Removal from New Jersey after appointment of guardian.

a.A guardian appointed in this State desiring to move to another state with his ward who is a minor shall obtain an order from the Superior Court of this State consenting to the minor's removal and if applicable, the guardian's discharge. The Superior Court may transfer the guardianship to another state if the court is satisfied that a transfer will serve the best interest of

the minor.

b.The minor's removal and discharge of the guardian shall be on such terms as the Superior Court deems necessary, including requiring filing and settlement of the guardian's account and filing of an exemplified copy of the order evidencing the other state court's acceptance of jurisdiction over the guardianship and the guardian.

L.2005, c.304, s.48; amended 2012, c.36, s.22.

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About the Panelists…

David Barile, MD is Medical Director and Founder of Goals of Care Coalition of New Jersey in Princeton, New Jersey, and also serves as Medical Director of the Penn Medicine Acute Care for the Elderly Unit and as Director of Inpatient Palliative Medicine Services, University Medical Center, in Princeton, New Jersey. He is Board Certified in Internal Medicine, Geriatrics and Hospice/Palliative Medicine, and has been in clinical practice since 2000.

Licensed to practice medicine in New Jersey, Dr. Barile is a member of the American Academy of Hospice and Palliative Medicine, the American College of Physicians and the American Geriatric Society, and a former member of the New Jersey Governor's Council on End-of-Life Care. He is the author of numerous articles for professional journals, as well as the author and producer of the Dementia Care Video Series and Dementia Support Training Lecture Series. He is a former Assistant Professor at the UMDNJ School of Medicine, Drexel University School of Medicine and New York Medical College, Saint Vincent's Hospital.

Dr. Barile attended the State University of New York at Purchase and received his B.A. from the University of California at Santa Cruz. He graduated from Eastern Virginia Medical School, completed his internship and residency at Beth Israel Medical Center in New York City and his Geriatric Fellowship at Mount Sinai School of Medicine.

Margaret J. Davino is a Partner in Fox Rothschild LLP with offices in Princeton, New Jersey, and New York City. For more than 20 years she has handled a broad spectrum of healthcare matters, including transactional, compliance, contractual, corporate, regulatory, governance, managed care/payer and risk management issues. Her clients include hospitals, physicians and physician groups, start-up companies, FQHCs, home care agencies, ACOs, pharmacies, laboratories, agencies for the developmentally-disabled, care management companies, billing companies, nonprofit companies, healthcare IT vendors and other providers and entities in the healthcare field.

Admitted to practice in New Jersey, New York and Connecticut, Ms. Davino has been Chair of the Providers and In-House Counsel Committee of the New York State Bar Association Health Law Section, is Past Chair of the New Jersey State Bar Association Health and Hospital Law Section and has been a member of the American Health Lawyers Association (AHLA). She has sat on the boards of a number of organizations, including Women in Health Management and Lifespire, and is a former member of the Board of Directors of the New Jersey Hospice & Palliative Care Organization.

Ms. Davino has lectured on multiple healthcare legal topics and has written articles and a book chapter in *Managed Care – Survival Strategies* on the legal issues associated with managed care. Also a registered nurse, she wrote a column on HIPAA issues for two years for the publication *Medical Economics*.

Ms. Davino received her B.S.N., with honors, from the University of Michigan, her J.D. from Vanderbilt University School of Law and her M.B.A. in Finance, *magna cum laude*, from Seton Hall University.

Aline M. Holmes, DNP, MSN, RN is a Clinical Associate Professor of Nursing at Rutgers University School of Nursing in Newark, New Jersey. She was formerly Senior Vice President, Clinical Affairs, for the New Jersey Hospital Association (NJHA). She was also Director of the NJHA Institute for Quality and Patient Safety and Director of the NJHA Hospital Engagement Network (now Hospital Improvement Network), and prior to that worked as a nursing/hospital administrator in hospitals in Washington, D.C., and Chicago before moving to New Jersey.

Licensed as a Registered Nurse in New Jersey, Dr. Holmes has been Co-Chair of New Jersey's Crisis of Care Committee and the New Jersey Commissioner of Health's Quality Improvement Advisory Council, and is a past President and Board Member of the American Organization of Nurse Executives. She has been a member of the American and New Jersey State Nurses Associations, the Emergency Nurses Association, the Society of Critical Care Medicine, the American Health Quality Association, the Healthcare Quality Professionals of New Jersey and several other organizations. Dr. Holmes has served on the Board of Trustees and several committees of the Visiting Nurse Association Health Group as well as the Bioethics Committee of the Medical Society of New Jersey. While at the NJHA, she led the task force to develop the POLST program in New Jersey and over the past years she has worked to develop resources on advanced care planning and to continually monitor changes to the POLST form.

Project Director of *Improving Knowledge and Competencies Around Caring for Patients With Ebola* funded by the Robert Wood Johnson Foundation, Ms. Holmes has been involved with several other research projects and is the author and co-author of articles which have appeared in *Nursing Management* and other professional publications. She has lectured locally and nationally to professional organizations and has been a student mentor and instructor at several colleges and universities. She is the recipient of several honors, including the Living Legend Award bestowed by NJSNA/Institute for Nursing and the Organization of NJ Nurse Executives.

Ms. Holmes received her BSN from the University of Massachusetts and her MSN from Catholic University of America. She did postgraduate work at Northwestern University's J.L. Kellogg School of Management and received her DNP from Rutgers University School of Nursing. She served in the United States Navy Nurse Corps during the Vietnam War.

William P. Isele is Of Counsel to Archer & Greiner, P.C., in the firm's Princeton, New Jersey, office. Concentrating his practice in health care and elder law, he has experience in dealing with matters of bio-medical ethics, including end-of-life decision-making and issues relating to palliative care. He offers advice and counsel to health care providers on licensing and regulatory matters, as well as compliance and business/practice matters.

Mr. Isele served as New Jersey's Ombudsman for the Institutionalized Elderly from October 1999 to October 2007 and was also a member of the Health Law Division in the Office of General Counsel of the American Medical Association in Chicago. As Chair of the Health & Hospital Law Section of the New Jersey State Bar Association, he was instrumental in advocating for the passage of the *New Jersey Advance Directives for Health Care Act* and the *New Jersey Definition of Death Act*. Past Chair of the NJSBA Elder & Disability Law Section, Mr. Isele is also Past President of the Middlesex County Bar Association and Foundation, and has served on the Boards of Central Jersey Legal Services and Leading Age New Jersey. He was a member of the American Health Lawyers Association's Alternative Dispute Resolution Service from 1992 to 2001, and has been a member of the Boards of Trustees of the New Jersey Hospice and Palliative Care Organization and the Princeton Senior Resource Center, where he is a past President.

A former adjunct professor in the evening division of Seton Hall University School of Law, Mr. Isele has been an Adjunct Professor of Law and Ethics at DeVry University and an adjunct lecturer on Health and Aging at the Rutgers University School of Social Work. His articles have appeared in the *New Jersey Law Journal*, *New Jersey Lawyer* and other professional publications, and he is the recipient of several honors, including the NJ Hospice and Palliative Care Organization's Spirit of Hospice Award, the NJSBA Health Law Section's Distinguished Service Award and the New Jersey Commission on Professionalism's Professional Attorney of the Year Award (2019) for Middlesex County.

Mr. Isele received his B.A. and M.A. in Philosophy, with a concentration in Ethics, from the Catholic University of America. He received his J.D. from Georgetown University Law Center and holds a Certificate in Gerontology from Rutgers University School of Social Work.

Edward H. Tetelman is a mediator, arbitrator, and legal consultant in Titusville, New Jersey, the former Assistant Commissioner of the New Jersey Department of Human Services and the former New Jersey Public Guardian for Elderly Adults. He concentrates his practice in health care, elder law and public interest law.

Mt Tetelman is admitted to practice in New Jersey, Ohio, and Washington, D.C. He has been a member of the New Jersey State Bar Association.

Mr. Tetelman received his B.A. from Allegheny College and his J.D. from Case Western Reserve University.

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NJ MEDICAL AID IN DYING LAW

Margaret Davino
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mdavino@foxrothschild.com

June 8, 2022

Advance Directives
importance

Importance –

- Prevent patients from becoming institutionalized, or languishing in a hospital or long term care facility without anyone knowing what to do
- Honors patients wishes and preserves their dignity
- Allows clear direction re organ donation

Department of Health | Advance Directive | Forms & FAQs (state.nj.us)

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Types of Advance directives

- Proxy Directive (durable POA for healthcare)appoints a health care representative who can make decisions for the patient if the patient is not able to do so
- Treatment directive (living will)
- Other:
  - Do-not resuscitate orders
  - Powers of attorney
  - POLST (Physician Orders for Life-Sustaining Treatment)

Advance Directives for Health Care (state.nj.us)

Pursuant to NJ Advance Directives for Healthcare Act 1991 *N.J.S.A.* 26:2H-58(a), - 61, and -63.

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NJ Medical Aid in Dying (MAID) for the Terminally Ill Act

Effective August 1, 2019

Allows an adult NJ resident, who has the capacity to make health care decisions and who has been determined by that patient's attending and consulting physicians to be terminally ill, to obtain medication that the patient may self-administer to end the patient's life

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Qualified terminally ill patient

1. Capable adult
2. Resident of NJ
3. Terminally ill: Terminal stage of an irreversibly fatal illness disease or condition with a prognosis, based upon reasonable medical certainty of a life expectancy with six months or less
4. Has voluntarily expressed a wish to receive a prescription for medication

Request

- Patient must have made request twice orally and once in writing
- Oral request must be separate by at least 15 days
- Written request must be signed and dated and witnessed by two people who attest to patient's capacity and acting voluntarily
- One witness cannot be related to patient, entitled to estate, employed by facility or doctor

Responsibilities of attending physician

Before prescribing meds, attending physician must:

1. Determine that the patient is terminally ill, capable, and has voluntarily made request for medication
2. Patient must demonstrate NJ residency
3. Inform patient of:
   * patient's medical diagnosis and prognosis
   * potential risks with taking medication
   * probable results of med
   * alternatives to taking medication, including treatment, palliative care, comfort care, hospice, and pain control
4. Refer patient to consulting doctor for medical confirmation of the diagnosis and prognosis, and a determination that the patient is capable and acting voluntarily

Responsibilities of consulting physician

Consulting physician must:

- examine patient and medical records,
- confirm attending physician's diagnoses of a terminal disease in writing, and
- verify patient is capable, is acting voluntarily, and has made informed decision

Patient requests required

Patient must make two oral requests and one written request for medication to attending physician, subject to:

1. At least 15 days must elapse between first and second oral requests
2. When patient makes second oral request, attending shall offer opportunity to rescind
3. Patient may submit written request to attending when patient makes first oral request or after
4. Attending can't write prescription for at least 15 days after initial oral request
5. Physician can't write prescription for at least 48 hours after written request

Rescission

Patient may rescind request at any time

- In any manner
- Without regard to the patient's mental state

Notification of next of kin

A qualified terminally ill patient shall not receive a prescription for medication until attending physician has recommended that the patient notify the patient's next of kin of the patient's request for medication

- but a patient who declines or is unable to notify the patient's next of kin shall not have the request for medication denied for that reason

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Interaction with wills, etc.

A patient's decision to make or rescind a request for medication overrides any provision in a contract, will, insurance policy, annuity, or other agreement

Procurement or issuance of a life, health, or accident insurance policy or annuity, or the premium or rate charged for the policy or annuity, shall not be conditioned upon or otherwise take into account the making or rescinding of a request for medication

Only the patient can self-administer the meds

The only role of a guardian, conservator, health care representative, or other person can be to communicate the patient's healthcare decisions to a healthcare provider if the patient so requests

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Immunity

A person shall not be subject to civil or criminal liability or professional disciplinary action, or subject to censure, discipline, suspension, or loss of any licensure, certification, privileges, or membership, for any action taken in compliance with MAID, including:

* being present when patient self-administers medication or

* for refusal to take any action to participate in, a request for medication

Any action taken in accordance with law shall not constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide , or abuse or neglect of an elderly person

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Reporting

A healthcare professional must report to DOH:

(i) within 3 days after dispensing medication, the physician or pharmacist shall file a copy of the dispensing records with the Medical Examiner at DOH

(ii) within 30 days after death, the attending shall notify the Medical Examiner of the death

Facility involvement

A healthcare facility's participation in the medical aid in dying process is voluntary

- if facility wishes to participate, its policies govern the actions of healthcare professionals on its preemies

- if a facility wishes not to participate, it shall ensure appropriate patient notification, referral and transfer

Medical examiner

- Act requires annual report and reference data to be collected by ME
- Forms must be submitted to ME (at time of death , pertinent patient information is conveyed to ME)
- ME may provide guidance to attending to certify death certificate
- On death certificate, cause of death: “natural” (not assisted suicide)

Medical Examiner statistics: number of cases

Patients who participated in MAID program:

- 12 in 2019
- 33 in 2020
- 50 in 2021

- In 2021, in addition to the 50 cases that participated in the MAID program,
  - Paperwork received for 3 individuals who applied and received medication but not reported as deceased
  - 5 persons received meds but died w/o using it

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Statistics re MAID participants 2021

Age	# of cases	Percentage of cases
35-44	1	2%
45-54	4	8%
55-64	12	24%
65-74	9	18%
75-84	14	28%
85+ years	10	20%

Mean: 72 years, median 73.5

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2021 MAID participants

Marital status	# of cases	% of cases
Married	24	48%
Widowed	11	22%
Single	6	12%
Divorced	8	16%
Separated	1	2%

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Underlying illness in MAID participants 2021

Underlying illness	# of cases	% of cases
Malignancy	35	70%
Neuro-degenerative dz	10	20%
Pulmonary disease	1	2%
Cardiovascular dz	2	4%
Other	2	4%

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MAID participants 2021 - race

Race

White: 94%

Asian: 6%

- Questions ?

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End of Life Care in New Jersey:

A Clinicians Perspective

David Barile, MD

Goals of Care Coalition of New Jersey

Objectives

Identify…

barriers to good decision making in EOL care

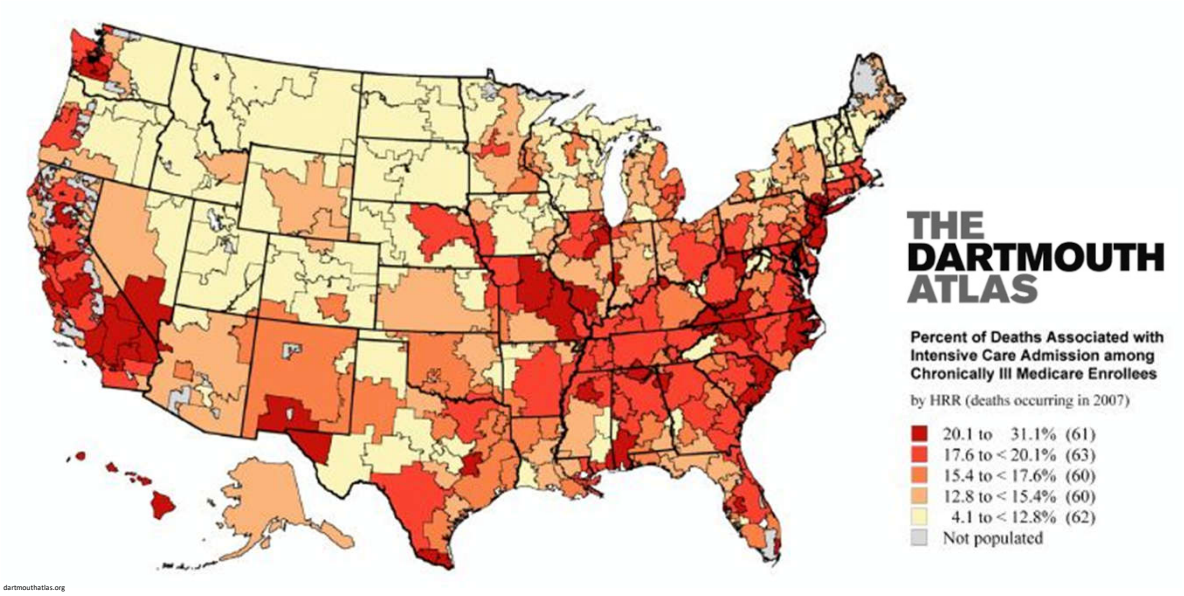
and

those eligible for a NJ POLST form

Understand...

how to apply a four-step model approach to improve decision making

Intro:



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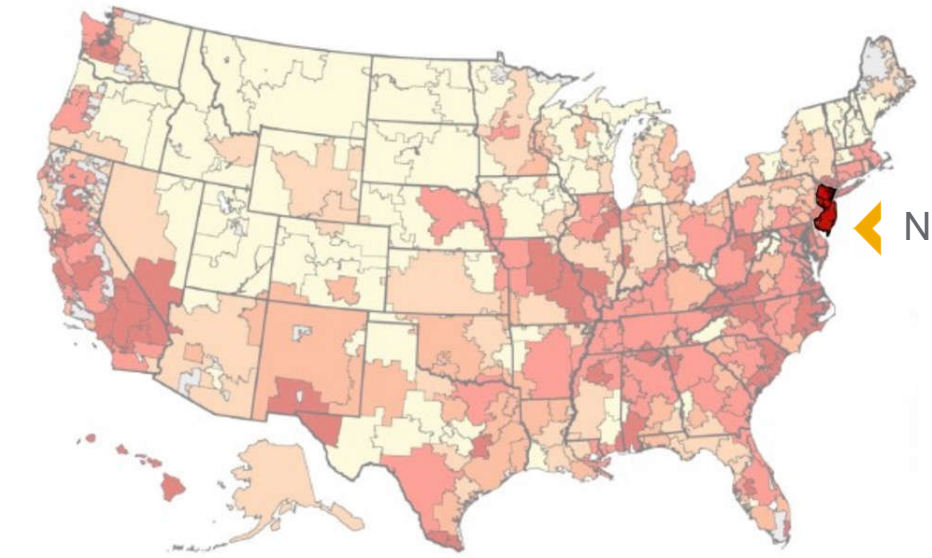
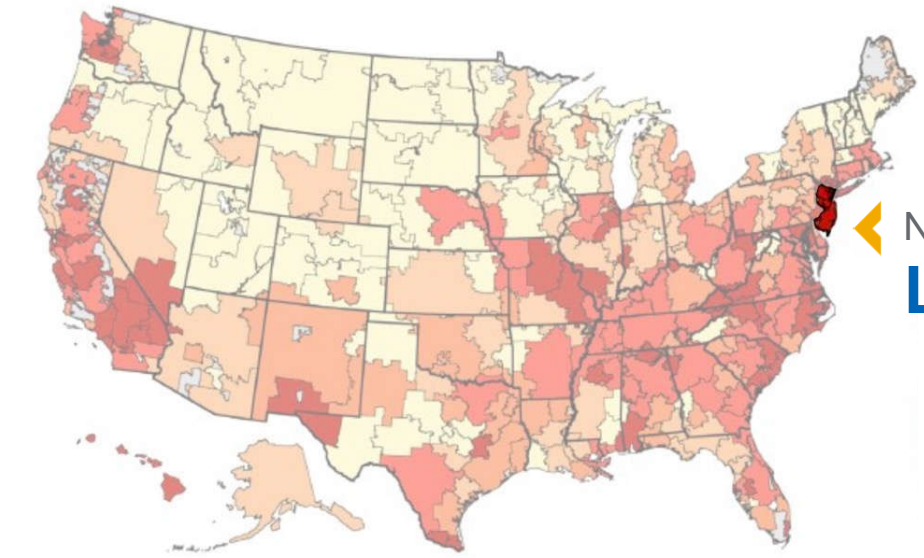


THE DARTMOUTH ATLAS

Intro:



New Jersey

Last

THE DARTMOUTH ATLAS

Goals of Care Coalition of New Jersey

Members

ACP New Jersey Chapter
Churches Improving Communities
CPSP College of Pastoral Supervision and Psychotherapy
CSH
HCANJ
Home Care & Hospice Association of NJ
INELDA
Jewish Sacred Aging
LeadingAge New Jersey & Delaware
MSNJ Medical Society of New Jersey
NASW National Association of Social Workers New Jersey Chapter
njaaw New Jersey Advocates for Aging Well
New Jersey Chapter American College of Emergency Physicians
AHP
NJAMHAA
New Jersey Health Care Quality Institute
NJHA
New Jersey Long-Term Care Leaders Coalition
L.T.C.O. New Jersey Long-Term Care Ombudsman
New Jersey State Society of Physician Assistants
Samaritan
vna HealthGroup

Strategic Alliances

C-TAC
NJ Health New Jersey Department of Health

Academic Collaborative

Cooper Medical School of Rowan University
Rowan University School of Osteopathic Medicine
Rutgers Ernest Mario School of Pharmacy
Rutgers Institute for Health, Health Care Policy and Aging Research
Rutgers New Jersey Medical School
Rutgers Robert Wood Johnson Medical School
Rutgers School of Nursing
Rutgers School of Public Health

Challenges

Challenges

Cultural Diversity

third most culturally diverse state

the most culturally diverse amongst physicians

Challenges

Cultural Diversity

third most culturally diverse state

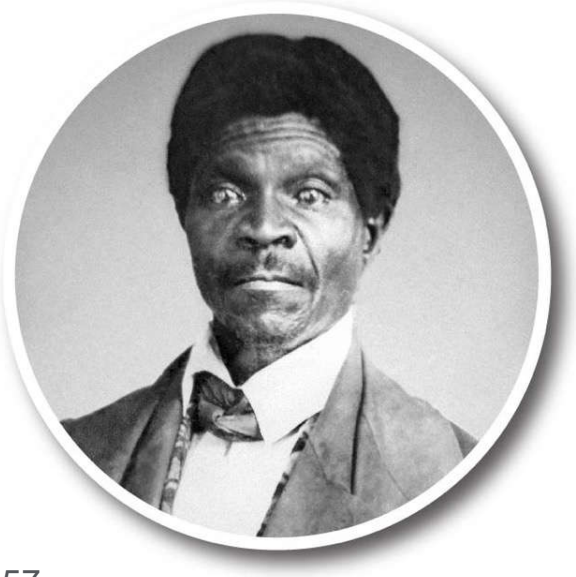
the most culturally diverse amongst physicians

Challenges

Health Disparities

Challenges

Health Disparities



- Dred Scott, circa 1857

Challenges

Health Disparities

3/5

- Dred Scott, circa 1857

Challenges

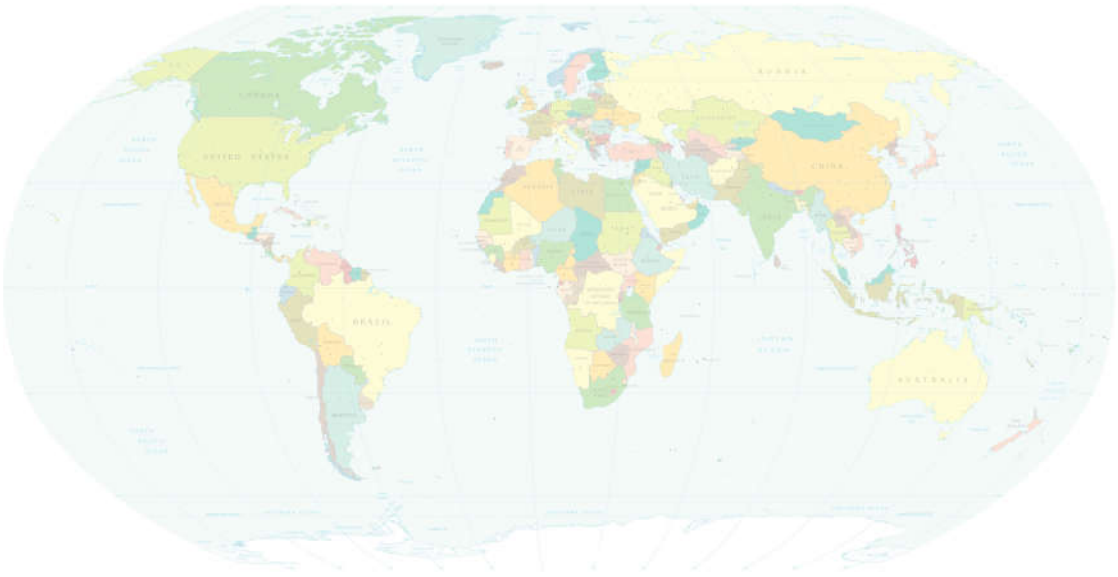
Health Disparities

- *Health Literacy and Education as Mediators of Racial Disparities in Patient Activation Within an Elderly Patient Cohort*. Eneanya, et al J Health Care Poor Underserved 2016

- *Impact of Health Literacy on Socioeconomic and Racial Differences in Health in an Elderly Population*
  Howard et al. J General Int. Med 2006

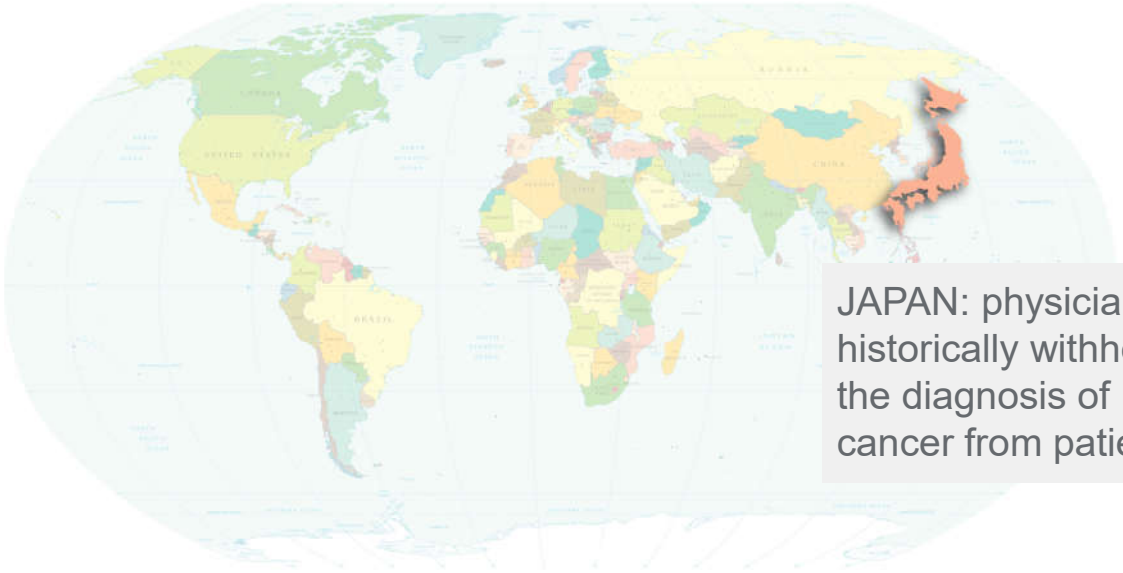
Challenges

Health Disparities



Challenges

Health Disparities



JAPAN: physicians historically withheld the diagnosis of cancer from patients

Challenges

Health Disparities

KOREA: family members are expected to make decisions

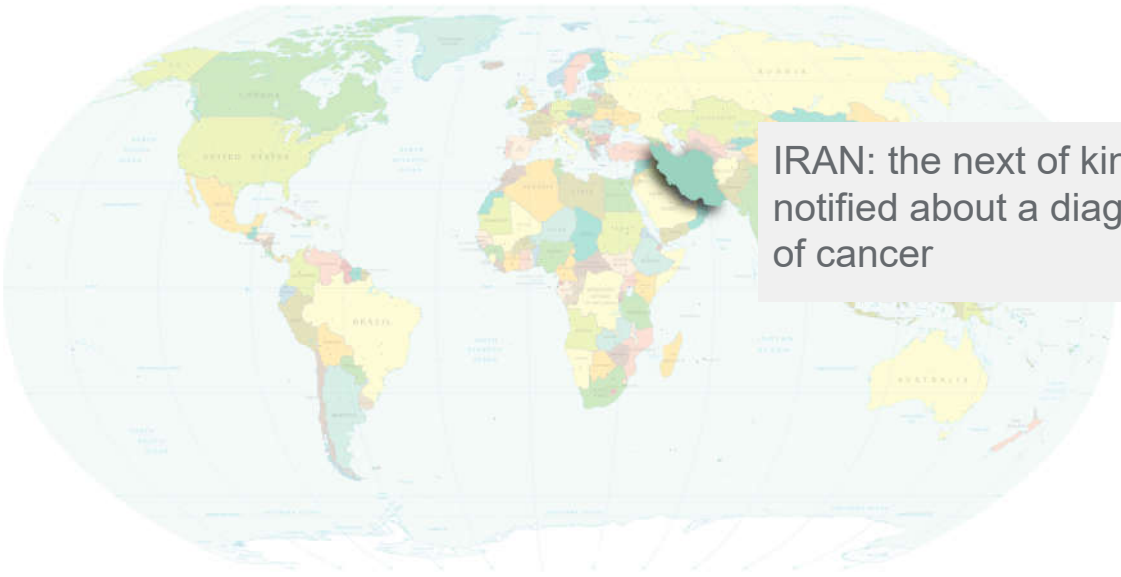
Challenges

Health Disparities

CHINA: discussing ”death” may hasten death

Challenges

Health Disparities



IRAN: the next of kin are notified about a diagnosis of cancer

Challenges

Health Disparities

TURKEY: the next of kin are notified about a diagnosis of cancer

Challenges

Health Disparities

What happens when these people immigrate to America?

Challenges

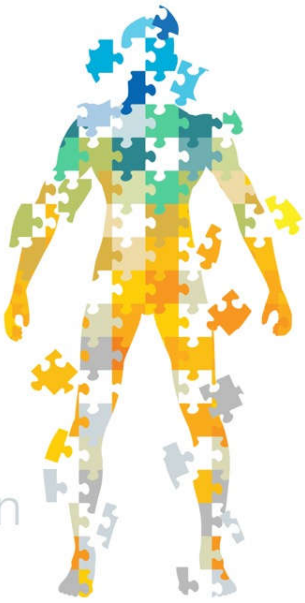
Specialists

Where are the primary care doctors?

Challenges

Specialists

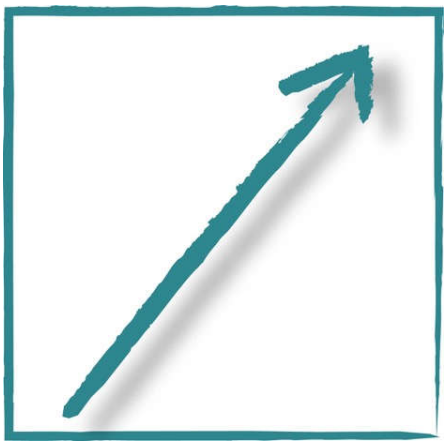
psychiatry
neurology
endocrine
pulmonary
cardiology
gastro
nephrology
surgery
rehabilitation



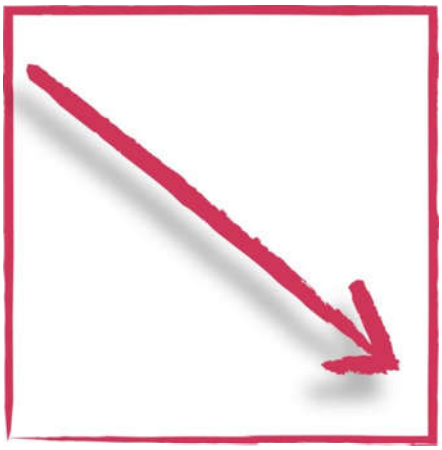
Challenges

Specialists

Hospitalists

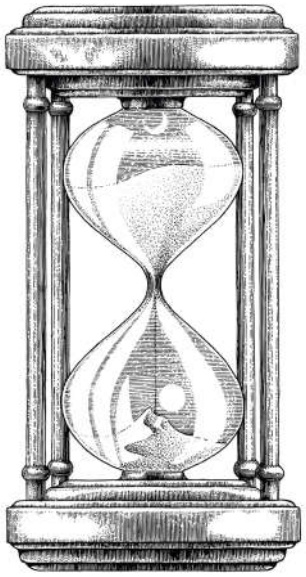


Primary Care



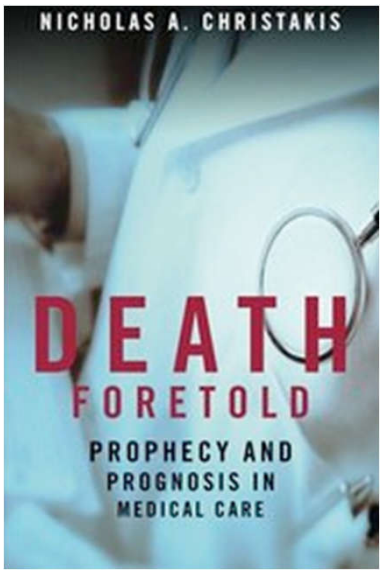
Challenges

Prognosis



Challenges

Prognosis

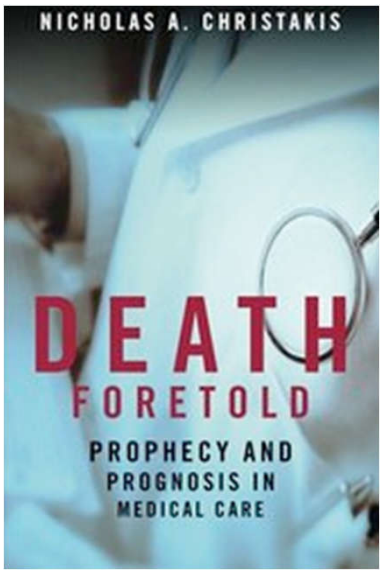


Challenges

Prognosis

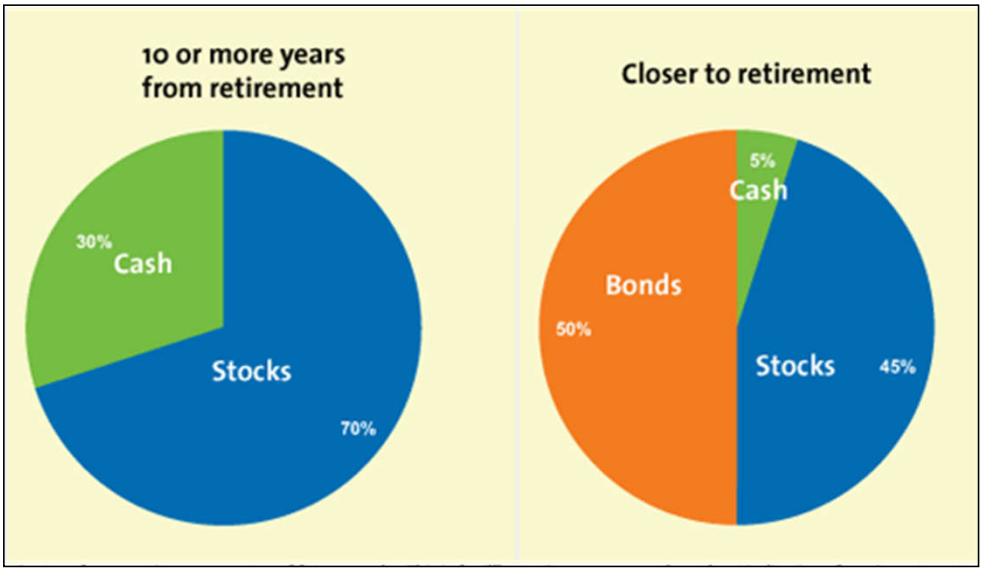
Main message:

The doctrine of **informed consent** obligates clinicians to provide patients with information about **prognosis.**



Challenges

Prognosis



Challenges

Prognosis

birth 2 months 4 months 6 months

Challenges

Prognosis

6 months 4 months 2 months death

Challenges

Prognosis

6 months — 4 months — 2 months — death

hospitalized?

PEG tube?

Hospice?

Statins?

Challenges

Prognosis

6 months 4 months 2 months death

medical planning

Challenges

Prognosis

6 months 4 months 2 months death

medical planning

financial planning

spiritual planning

social planning

travel planning

Challenges

Prognosis

the new frontier
in modern medicine

Challenges

Prognosis

"doctor, would you be surprised if this patient died in the next one year?"

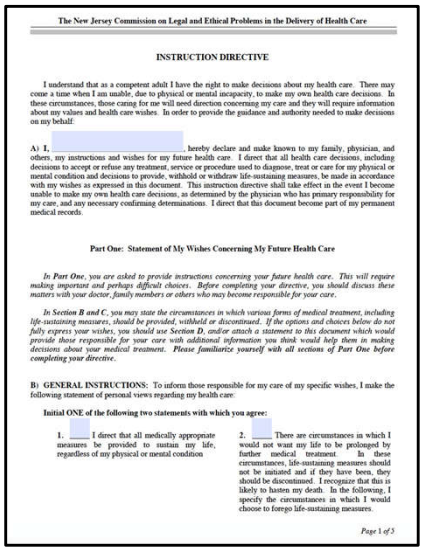
Challenges

Advance Directives in the US

Luis Kutner

Challenges

New Jersey Directive



The New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care

INSTRUCTION DIRECTIVE

I understand that as a competent adult I have the right to make decisions about my health care. There may come a time when I am unable, due to physical or mental incapacity, to make my own health care decisions. In these circumstances, those caring for me will need direction concerning my care and they will require information about my values and health care wishes. In order to provide the guidance and authority needed to make decisions on my behalf:

A) **I,** _____ hereby declare and make known to my family, physician, and others, my instructions and wishes for my future health care. I direct that all health care decisions, including decisions to accept or refuse any treatment, service or procedure used to diagnose, treat or care for my physical or mental condition and decisions to provide, withhold or withdraw life-sustaining measures, be made in accordance with my wishes as expressed in this document. This instruction directive shall take effect in the event I become unable to make my own health care decisions, as determined by the physician who has primary responsibility for my care, and any necessary confirming determinations. I direct that this document become part of my permanent medical records.

Part One: Statement of My Wishes Concerning My Future Health Care

*In **Part One**, you are asked to provide instructions concerning your future health care. This will require making important and perhaps difficult choices. Before completing your directive, you should discuss these matters with your doctor, family members or others who may become responsible for your care.*

*In **Section B and C**, you may state the circumstances in which various forms of medical treatment, including life-sustaining measures, should be provided, withheld or discontinued. If the options and choices below do not fully express your wishes, you should use **Section D**, and/or attach a statement to this document which would provide those responsible for your care with additional information you think would help them in making decisions about your medical treatment. **Please familiarize yourself with all sections of Part One before completing your directive.***

B) GENERAL INSTRUCTIONS: To inform those responsible for my care of my specific wishes, I make the following statement of personal views regarding my health care:

Initial ONE of the following two statements with which you agree:

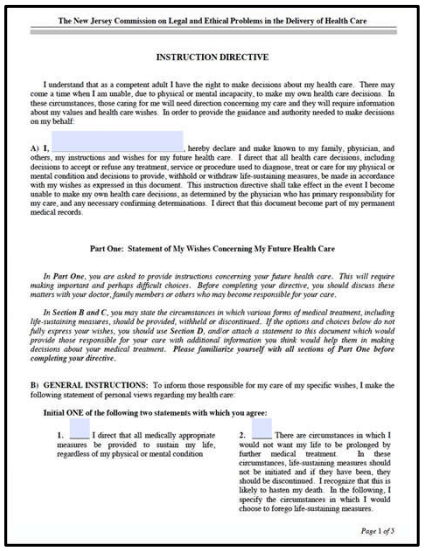
1. ____ I direct that all medically appropriate measures be provided to sustain my life, regardless of my physical or mental condition

2. ____ There are circumstances in which I would not want my life to be prolonged by further medical treatment. In these circumstances, life-sustaining measures should not be initiated and if they have been, they should be discontinued. I recognize that this is likely to hasten my death. In the following, I specify the circumstances in which I would choose to forego life-sustaining measures.

Page 1 of 3

Challenges

5 wishes



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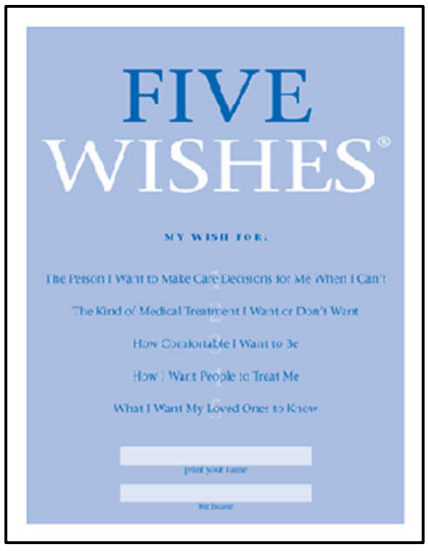
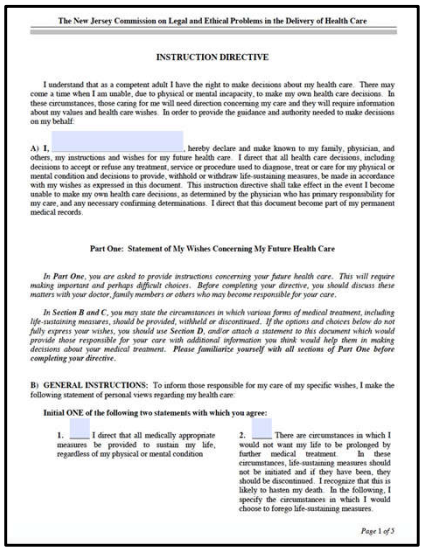
Page 1 of 3



Challenges

5 wishes



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Part One: Statement of My Wishes Concerning My Future Health Care

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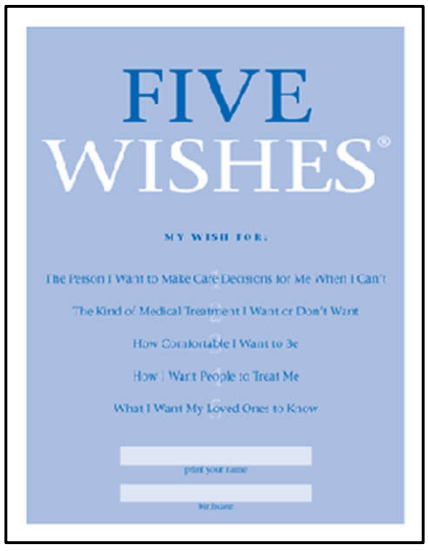
B) GENERAL INSTRUCTIONS: To inform those responsible for my care of my specific wishes, I make the following statement of personal views regarding my health care:

Initial ONE of the following two statements with which you agree:

1. ___ I direct that all medically appropriate measures be provided to sustain my life, regardless of my physical or mental condition

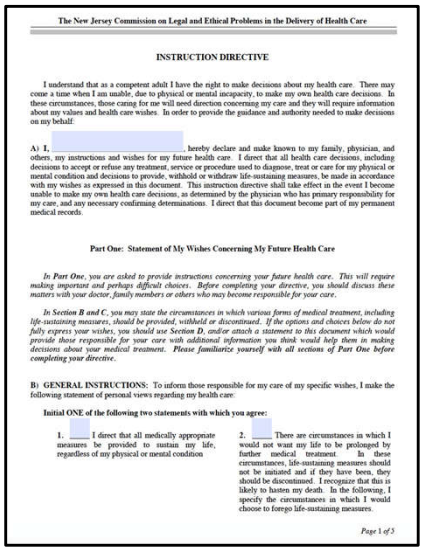
2. ___ There are circumstances in which I would not want my life to be prolonged by further medical treatment. In these circumstances, life-sustaining measures should not be initiated and if they have been, they should be discontinued. I recognize that this is likely to hasten my death. In the following, I specify the circumstances in which I would choose to forego life-sustaining measures.

Page 1 of 5



do they work?

Challenges



The New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care

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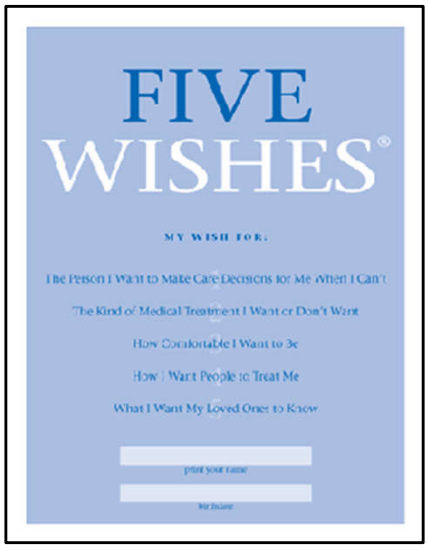
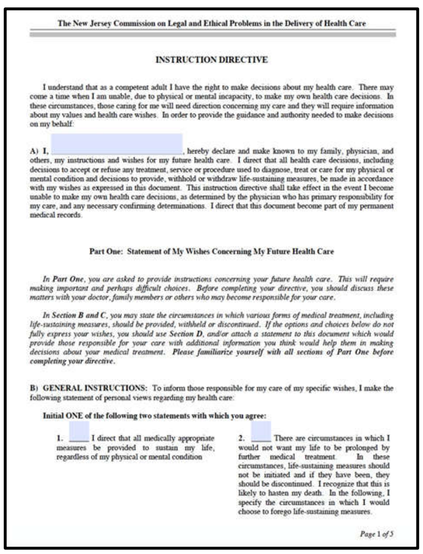


Challenges

POLST



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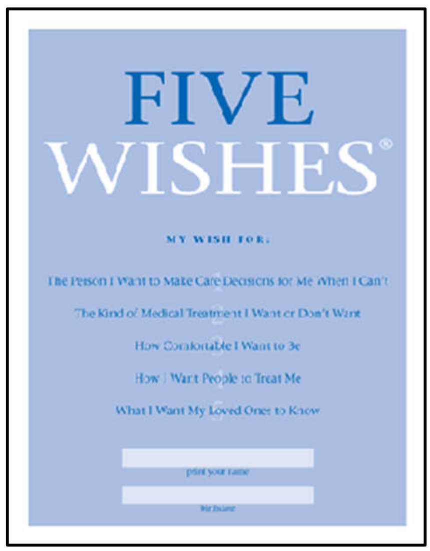

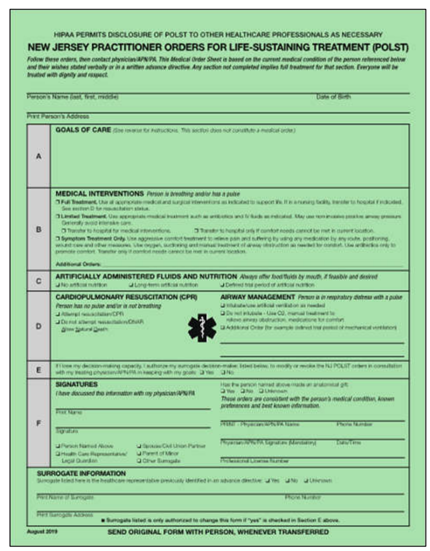

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Person's Name (last, first, middle) — Date of Birth

Print Person's Address

A — **GOALS OF CARE**

B — **MEDICAL INTERVENTIONS** *Person is breathing and/or has a pulse*

- ❒ **Full Treatment.**
- ❒ **Limited Treatment.**
- ❒ **Symptom Treatment Only.**

Additional Orders:

C — **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

D — **CARDIOPULMONARY RESUSCITATION (CPR)** *Person has no pulse and/or is not breathing* — **AIRWAY MANAGEMENT** *Person is in respiratory distress with a pulse*

E

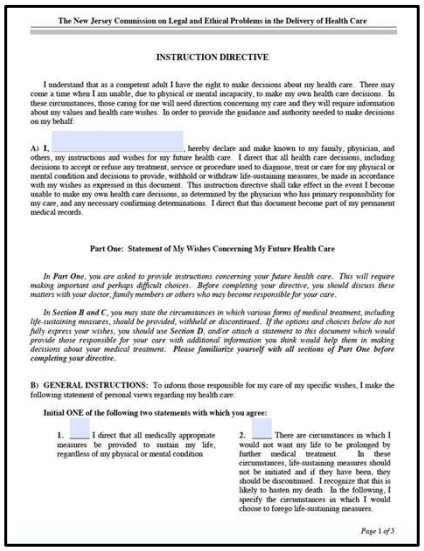
F — **SIGNATURES**

SURROGATE INFORMATION

August 2019 — SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED

Challenges

which one?



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Page 1 of 3

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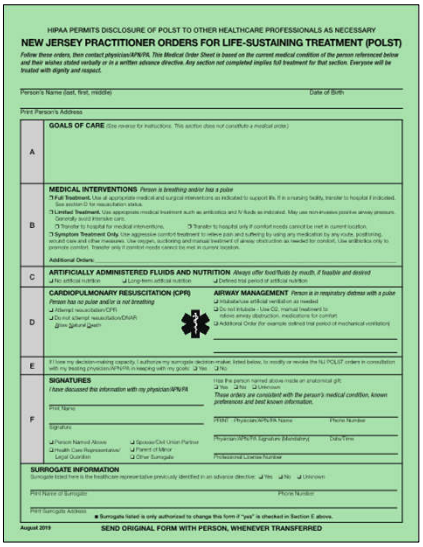

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NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Person's Name (last, first, middle) _____ Date of Birth _____

Print Person's Address _____

A — GOALS OF CARE (See reverse for instructions. This section does not constitute a medical order.)

B — MEDICAL INTERVENTIONS *Person is breathing and/or has a pulse*

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C — ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION *Always offer food/fluids by mouth, if feasible and desired*

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☐ Attempt resuscitation/CPR

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AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

☐ Intubation/use artificial ventilation as needed

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If I lose my decision-making capacity, I authorize my surrogate decision-maker, listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals: ☐ Yes ☐ No

F — SIGNATURES

I have discussed this information with my physician/APN/PA

Print Name _____

Signature _____

☐ Person Named Above ☐ Health Care Representative ☐ Legal Guardian ☐ Spouse/Civil Union Partner ☐ Parent of Minor ☐ Other Surrogate

Has the person named above made an anatomical gift: ☐ Yes ☐ No ☐ Unknown

These orders are consistent with the person's medical condition, known preferences and best known information.

PRINT Physician/APN/PA Name _____ Phone Number _____

Physician/APN/PA Signature (Mandatory) _____ Date/Time _____

Professional License Number _____

SURROGATE INFORMATION

Surrogate listed here is the healthcare representative previously identified in an advance directive: ☐ Yes ☐ No ☐ Unknown

Print Name of Surrogate _____ Phone Number _____

Print Surrogate Address _____

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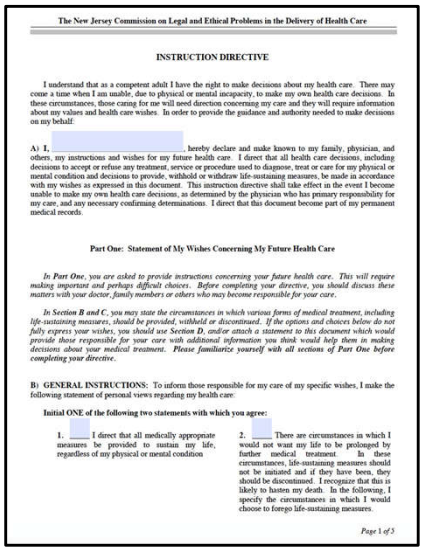
August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

Challenges

which one?



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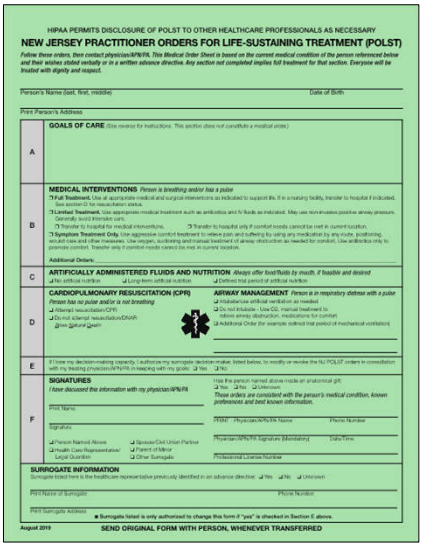

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Person's Name (last, first, middle) _____ Date of Birth _____

Print Person's Address _____

A **GOALS OF CARE** (See reverse for instructions. This section does not constitute a medical order.)

B **MEDICAL INTERVENTIONS** *Person is breathing and/or has a pulse*

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F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name _____

Signature _____

☐ Person Named Above ☐ Health Care Representative ☐ Legal Guardian ☐ Spouse/Civil Union Partner ☐ Parent of Minor ☐ Other Surrogate

Has the person named above made an anatomical gift: ☐ Yes ☐ No ☐ Unknown

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Physician/APN/PA Signature (Mandatory) _____ Date/Time _____

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August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

Challenges

which one?

directives

POLST

Challenges

which one?

directives

POLST

a legal form

Challenges

which one?

directives

a legal form

POLST

a medical order

Challenges

which one?

directives

a legal form

adults over 18

POLST

a medical order

Challenges

which one?

directives

a legal form

adults over 18

POLST

a medical order

prognosis of ~2yrs

Challenges

which one?

directives

a legal form
adults over 18
not actionable

POLST

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Challenges

which one?

directives

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Challenges

which one?

directives

a legal form
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completed by patient

POLST

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which one?

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POLST

a medical order
prognosis of ~2yrs
actionable order
by practitioner

Challenges

which one?

directives

a legal form
adults over 18
not actionable
completed by patient
patient with capacity

POLST

a medical order
prognosis of ~2yrs
actionable order
by practitioner

Challenges

which one?

directives

a legal form
adults over 18
not actionable
completed by patient
patient with capacity

POLST

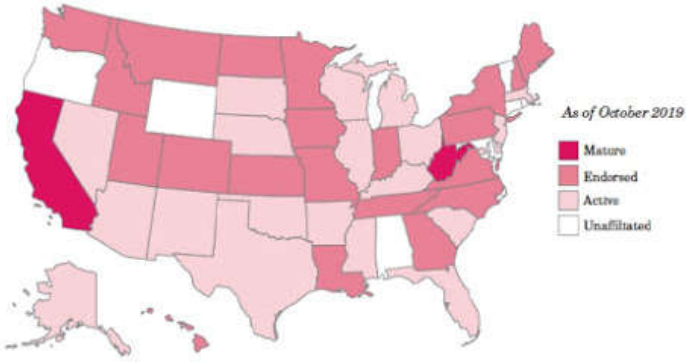
a medical order
prognosis of ~2yrs
actionable order
by practitioner
w/w-out capacity

POLST

www.polst.org

National POLST Paradigm
www.polst.org

National POLST Program Designations
As of October 2019



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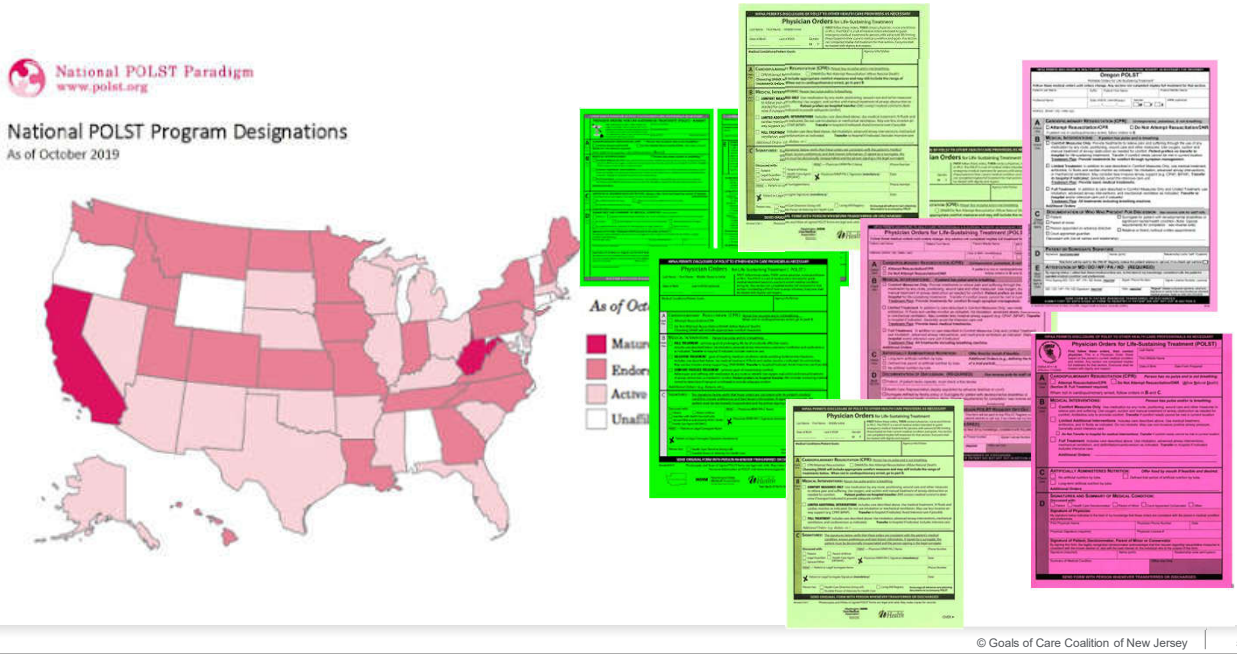
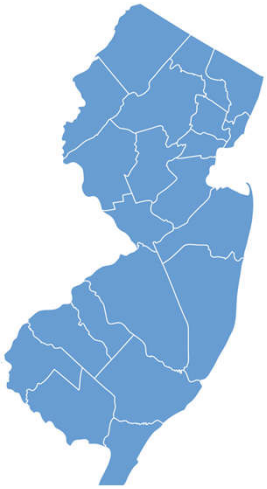
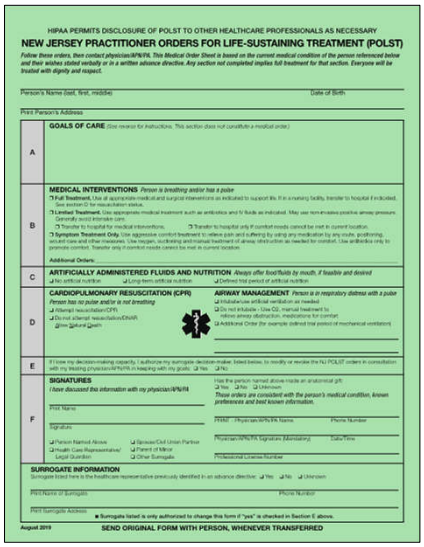


POLST

www.njha/polst.org





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❒ Attempt resuscitation/CPR

❒ Do not attempt resuscitation/DNAR

❒ Pre ❒ Natural ❒ Both

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I have discussed this information with my physician/APN/PA

Print Name

Signature

❒ Person Named Above ❒ Spouse/Civil Union Partner

❒ Health Care Representative/ Legal Guardian ❒ Parent of Minor ❒ Other Surrogate

Has the person named above made an anatomical gift: ❒ Yes ❒ No ❒ Unknown

These orders are consistent with the person's medical condition, known preferences and best known information.

PRINT - Physician/APN/PA Name Phone Number

Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

SURROGATE INFORMATION

Surrogate listed here is the healthcare representative previously identified in an advance directive: ❒ Yes ❒ No ❒ Unknown

Print Name of Surrogate Phone Number

Print Surrogate Address

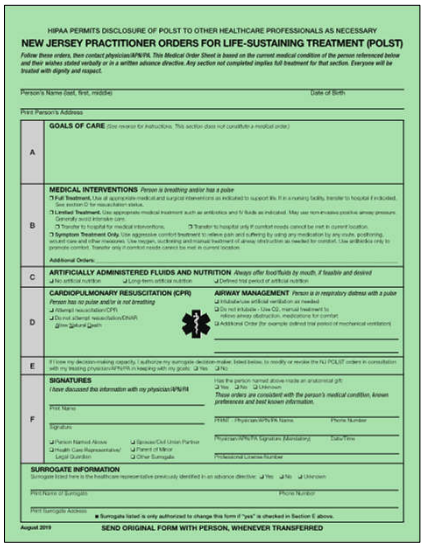
■ Surrogate listed is only authorized to change this form if "yes" is checked in Section E above.

August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

POLST

What is it?

actionable medical orders



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

Follow these orders, then contact physician/APN/PA. This Medical Order Sheet is based on the current medical condition of the person referenced below and their wishes stated verbally or in a written advance directive. Any section not completed implies full treatment for that section. Everyone will be treated with dignity and respect.

Person's Name (last, first, middle) Date of Birth

Print Person's Address

A **GOALS OF CARE** (See reverse for instructions. This section does not constitute a medical order.)

B **MEDICAL INTERVENTIONS** *Person is breathing and/or has a pulse*

- ☐ **Full Treatment.** Use all appropriate medical and surgical interventions as indicated to support life. If in a nursing facility, transfer to hospital if indicated. See section D for resuscitation status.
- ☐ **Limited Treatment.** Use appropriate medical treatment such as antibiotics and IV fluids as indicated. May use non-invasive positive airway pressure. Generally avoid intensive care.
  - ☐ Transfer to hospital for medical interventions. ☐ Transfer to hospital only if comfort needs cannot be met in current location.
- ☐ **Symptom Treatment Only.** Use aggressive comfort treatment to relieve pain and suffering by using any medication by any route, positioning, wound care and other measures. Use oxygen, suctioning and manual treatment of airway obstruction as needed for comfort. Use antibiotics only to promote comfort. Transfer only if comfort needs cannot be met in current location.

Additional Orders:

C **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

☐ No artificial nutrition ☐ Long-term artificial nutrition ☐ Defined trial period of artificial nutrition

D **CARDIOPULMONARY RESUSCITATION (CPR)**

Person has no pulse and/or is not breathing

☐ Attempt resuscitation (CPR)

☐ Do not attempt resuscitation/DNAR

☐ Other (Natural Death)

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

☐ Intubate/use artificial ventilation as needed

☐ Do not intubate - Use O2, manual treatment to relieve airway obstruction, medications for comfort

☐ Additional Order (for example: defined trial period of mechanical ventilation)

E If I lose my decision-making capacity, I authorize my surrogate decision-maker listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals. ☐ Yes ☐ No

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name

Signature

☐ Person Named Above ☐ Spouse/Civil Union Partner
☐ Health Care Representative/ Legal Guardian ☐ Parent of Minor
☐ Other Surrogate

Has the person named above made an anatomical gift: ☐ Yes ☐ No ☐ Unknown

These orders are consistent with the person's medical condition, known preferences and best known information.

PRINT - Physician/APN/PA Name Phone Number

Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

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Print Name of Surrogate Phone Number

Print Surrogate Address ■ Surrogate listed is only authorized to change this form if "yes" is checked in Section E above.

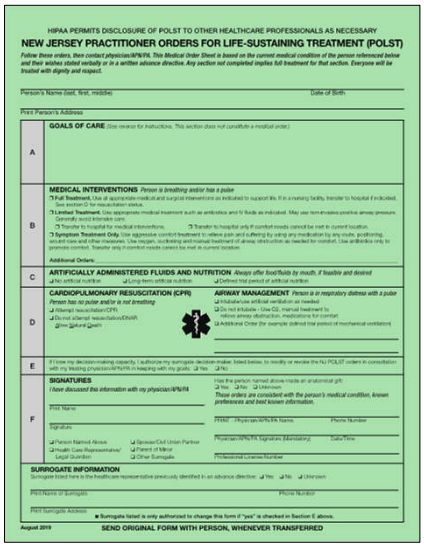
August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

POLST

What is it?

actionable medical orders

represent EOL decisions



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

Follow these orders, then contact physician/APN/PA. This Medical Order Sheet is based on the current medical condition of the person referenced below and their wishes stated verbally or in a written advance directive. Any section not completed implies full treatment for that section. Everyone will be treated with dignity and respect.

Person's Name (last, first, middle) Date of Birth

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B **MEDICAL INTERVENTIONS** *Person is breathing and/or has a pulse*

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❒ **Limited Treatment.** Use appropriate medical treatment such as antibiotics and IV fluids as indicated. May use non-invasive positive airway pressure. Generally avoid intensive care.

❒ Transfer to hospital for medical interventions. ❒ Transfer to hospital only if comfort needs cannot be met in current location.

❒ **Symptom Treatment Only.** Use aggressive comfort treatment to relieve pain and suffering by using any medication by any route, positioning, wound care and other measures. Use oxygen, suctioning and manual treatment of airway obstruction as needed for comfort. Use antibiotics only to promote comfort. Transfer only if comfort needs cannot be met in current location.

Additional Orders:

C **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

❒ No artificial nutrition ❒ Long-term artificial nutrition ❒ Defined trial period of artificial nutrition

D **CARDIOPULMONARY RESUSCITATION (CPR)** *Person has no pulse and/or is not breathing*

❒ Attempt resuscitation/CPR

❒ Do not attempt resuscitation/DNAR

❒ Yes ❒ Natural Death

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

❒ Intubate/use artificial ventilation as needed

❒ Do not intubate - Use O2, manual treatment to relieve airway obstruction, medications for comfort

❒ Additional Order (for example defined trial period of mechanical ventilation)

E If I lose my decision-making capacity, I authorize my surrogate decision-maker listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals. ❒ Yes ❒ No

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name

Signature

❒ Person Named Above ❒ Spouse/Civil Union Partner

❒ Health Care Representative/ Legal Guardian ❒ Parent of Minor

❒ Other Surrogate

Has the person named above made an anatomical gift

❒ Yes ❒ No ❒ Unknown

These orders are consistent with the person's medical condition, known preferences and best known information.

PRINT - Physician/APN/PA Name Phone Number

Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

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August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

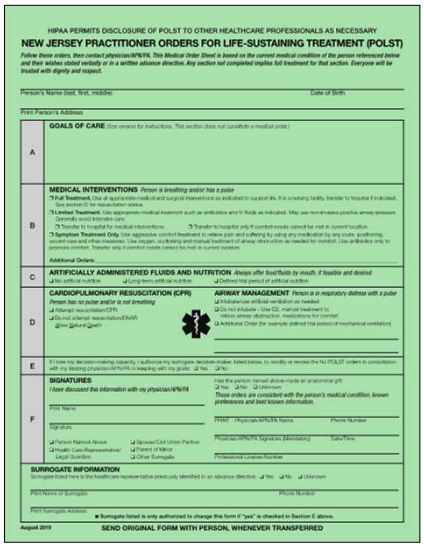
POLST

What is it?

actionable medical orders

represent EOL decisions

complement to advance directives



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Additional Orders:

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D **CARDIOPULMONARY RESUSCITATION (CPR)**

Person has no pulse and/or is not breathing

❒ Attempt resuscitation/CPR

❒ Do not attempt resuscitation/DNAR

❒ Pre-arrest goals

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

❒ Intubate/use artificial ventilation as needed

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❒ Additional Order (for example: defined trial period of mechanical ventilation)

E If I lose my decision-making capacity, I authorize my surrogate decision-maker listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals: ❒ Yes ❒ No

F **SIGNATURES**

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Signature

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Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

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August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

POLST

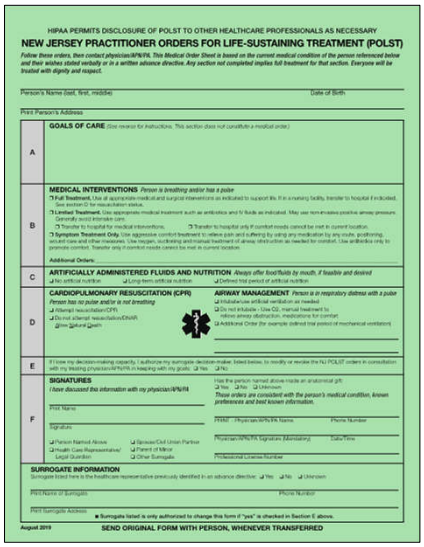
What is it?

actionable medical orders

represent EOL decisions

complement to advance directives

brightly colored format



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Additional Orders:

C **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

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D **CARDIOPULMONARY RESUSCITATION (CPR)**

Person has no pulse and/or is not breathing

- ☐ Attempt resuscitation (CPR)
- ☐ Do not attempt resuscitation/DNAR
  - ☐ Pre- ☐ Natural Death

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

- ☐ Intubate/use artificial ventilation as needed
- ☐ Do not intubate - Use O2, manual treatment to relieve airway obstruction, medications for comfort
- ☐ Additional Order (for example defined trial period of mechanical ventilation)

E If I lose my decision-making capacity, I authorize my surrogate decision-maker listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals: ☐ Yes ☐ No

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name

Signature

- ☐ Person Named Above
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August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

POLST

What is it?

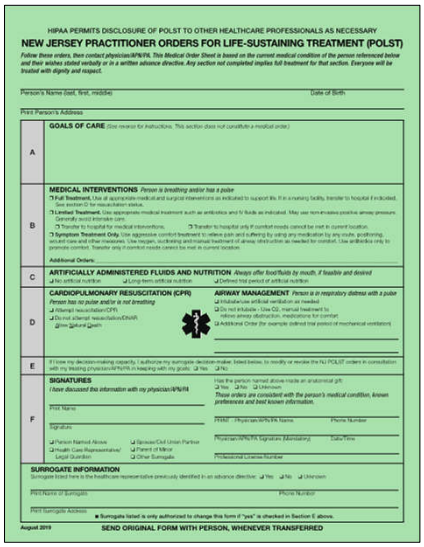
actionable medical orders

represent EOL decisions

complement to advance directives

brightly colored format

portable across settings



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Person has no pulse and/or is not breathing

❒ Attempt resuscitation (CPR)

❒ Do not attempt resuscitation (DNAR)

❒ Pre-Arrest ❒ Arrest

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

❒ Intubate/use artificial ventilation as needed

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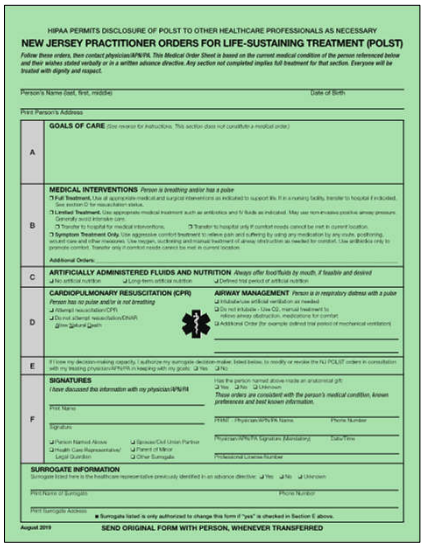
August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

POLST | Who is POLST for?

People entering their final year or two of life



HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Person has no pulse and/or is not breathing

❒ Attempt resuscitation/CPR

❒ Do not attempt resuscitation/DNAR

❒ Pre ❒ Natural Death

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E If I lose my decision-making capacity, I authorize my surrogate decision-maker, listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals: ❒ Yes ❒ No

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name

Signature

❒ Person Named Above ❒ Spouse/Civil Union Partner

❒ Health Care Representative/ Legal Guardian ❒ Parent of Minor

❒ Other Surrogate

Has the person named above made an anatomical gift: ❒ Yes ❒ No ❒ Unknown

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Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

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August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

The Steps

Pit falls in end of life care

1. Diagnosis

2. Treatment

The Steps

Pit falls in end of life care

1. Diagnosis
2. Treatment

1. Pneumonia
2. Antibiotics

The Steps

Pit falls in end of life care

1. Diagnosis

2. Treatment

The Steps

Four-step Model

1. Diagnosis

2. Treatment

1 Diagnosis

2 Prognosis

3 Goals of Care

4 Treatment

The Steps

Four-step Model

1. Diagnosis

2. Treatment

1 Diagnosis

2 Prognosis

3 Goals of Care

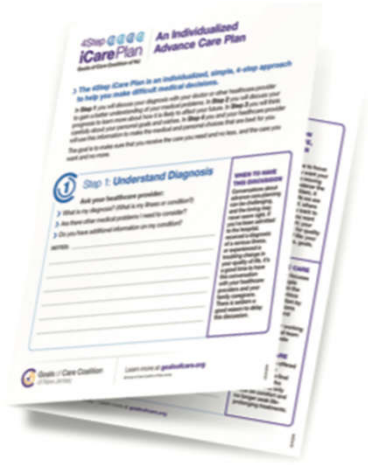
4 Treatment

The Steps

Four-step Model

The Steps

Four-step Model



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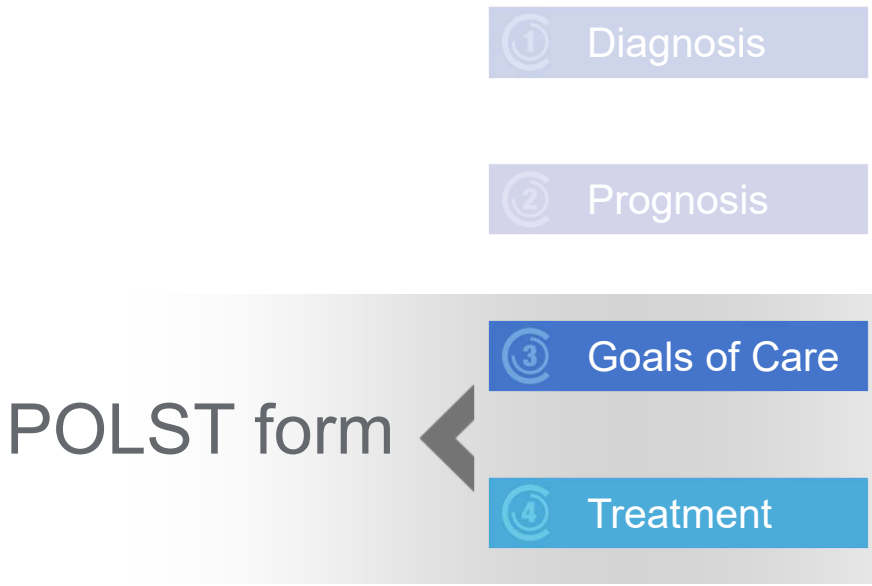
1. Diagnosis
2. Prognosis
3. Goals of Care
4. Treatment

The Steps

Four-step Model



The Steps

Four-step Model

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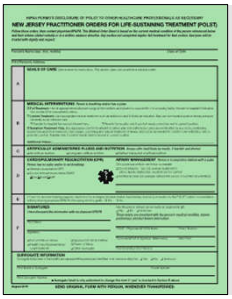

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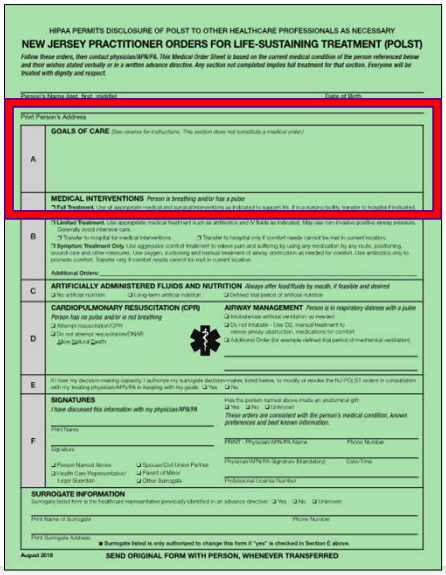

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NEW JERSEY PRACTITIONER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

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Print Person's Address

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MEDICAL INTERVENTIONS *Person is breathing and/or has a pulse*

B

C **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

D **CARDIOPULMONARY RESUSCITATION (CPR)** *Person has no pulse and/or is not breathing*

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

E

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

These orders are consistent with the person's medical condition, known preferences and best known information.

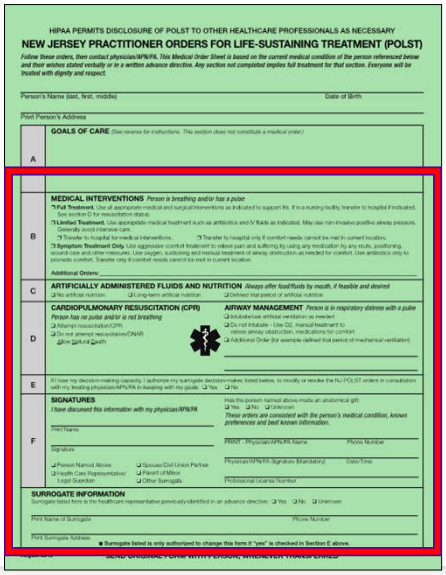
SURROGATE INFORMATION

August 2019 **SEND ORIGINAL FORM WITH PERSON, WHENEVER TRANSFERRED**

Goals of Care

The Steps

Four-step Model



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❒ **Limited Treatment.** Use appropriate medical treatment such as antibiotics and IV fluids as indicated. May use non-invasive positive airway pressure. Generally avoid intensive care.

❒ Transfer to hospital for medical interventions. ❒ Transfer to hospital only if comfort needs cannot be met in current location.

❒ **Symptom Treatment Only.** Use aggressive comfort treatment to relieve pain and suffering by using any medication by any route, positioning, wound care and other measures. Use oxygen, suctioning and manual treatment of airway obstruction as needed for comfort. Use antibiotics only to promote comfort. Transfer only if comfort needs cannot be met in current location.

Additional Orders:

C **ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION** *Always offer food/fluids by mouth, if feasible and desired*

❒ No artificial nutrition ❒ Long-term artificial nutrition ❒ Defined trial period of artificial nutrition

D **CARDIOPULMONARY RESUSCITATION (CPR)** *Person has no pulse and/or is not breathing*

❒ Attempt resuscitation/CPR

❒ Do not attempt resuscitation/DNAR

❒ Pre-Arrival Decision

AIRWAY MANAGEMENT *Person is in respiratory distress with a pulse*

❒ Intubate/use artificial ventilation as needed

❒ Do not intubate - Use O2, manual treatment to relieve airway obstruction, medications for comfort

❒ Additional Order (for example defined trial period of mechanical ventilation)

E If I lose my decision-making capacity, I authorize my surrogate decision-maker, listed below, to modify or revoke the NJ POLST orders in consultation with my treating physician/APN/PA in keeping with my goals: ❒ Yes ❒ No

F **SIGNATURES**

I have discussed this information with my physician/APN/PA

Print Name

Signature

❒ Person Named Above ❒ Spouse/Civil Union Partner

❒ Health Care Representative/ Legal Guardian ❒ Parent of Minor ❒ Other Surrogate

Has the person named above made an anatomical gift: ❒ Yes ❒ No ❒ Unknown

These orders are consistent with the person's medical condition, known preferences and best known information.

PRINT - Physician/APN/PA Name Phone Number

Physician/APN/PA Signature (Mandatory) Date/Time

Professional License Number

SURROGATE INFORMATION

Surrogate listed here is the health care representative previously identified in an advance directive: ❒ Yes ❒ No ❒ Unknown

Print Name of Surrogate Phone Number

Print Surrogate Address

■ **Surrogate listed is only authorized to change this form if "yes" is checked in Section E above.**

SEND ORIGINAL FORM WITH PERSON WHENEVER TRANSFERRED

4 Treatment

The Steps

Thank You

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