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DEPARTMENT OF HEALTH REGULATIONS: MEDICAL ORDERS FOR LIFE SUSTAINING TREATMENT

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Medical Orders for Life Sustaining Treatment ("MOLST")[1] provide an important means of converting a patient's wishes regarding end-of-life care and the use of life-sustaining treatment into medical orders within a patient's chart/medical record. MOLSTs should be seen as a complement to, not a substitute for, traditional mechanisms of end-of-life planning, including living wills[2] and durable powers of attorney for health care.[3] This article will briefly discuss the advantages and disadvantages of a MOLST when compared with living wills and durable health-care powers of attorney. In addition, the article briefly reviews the Department of Health regulations and the Rhode Island MOLST form.

Under Rhode Island law there is a presumption that each patient will receive aggressive interventions to prolong life. Recognizing, however, that each individual has a "fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life sustaining procedures withheld or withdrawn in instances of a terminal condition,"[4] the Rhode Island General Assembly has crafted a number of mechanisms to allow a person to express his/her wishes for end-of-life care. There are now three devices for end-of life planning; the two traditional mechanisms, living wills and durable health care powers of at-

[1] Among the approximately 14 different names assigned to Medical Orders for Life Sustaining Treatment throughout the United States, the most common acronyms, other than MOLST, are: POLST (Physician Orders for Life Sustaining Treatment); POST (Physician Orders for Scope of Treatment); and MOST (Medical Orders for Scope of Treatment). For the sake of clarity this article will refer only to Medical Orders for Life Sustaining Treatment or MOLST.

[2] See R.I. Gen Laws § 23-4.11-1 et. seq. *A living will permits a person to express their wishes regarding end-of-life care.

[3] See R.I. Gen Laws § 23-4.10-1 et. seq. *A durable healthcare power of attorney is used to appoint a person to make healthcare decisions in the event of incapacitation.

[4] R.I. Gen. Laws § 23-4.11-1

torney, and the relatively new addition, MOLST forms.

The MOLST form has a number of important features. First, the MOLST form is stored with, and is considered a part of, a patient's medical records; it constitutes a medical order. A MOLST is, therefore, much more likely to be implemented accurately. Indeed, a number of groups have found that living wills and durable health care powers of attorney have not been effective, either because they have not been completed or because they were unavailable when needed. In addition, even when they are available, living wills and the instructions in durable health care powers of attorney must be interpreted before they can be reduced to an order for medical treatment.[5] The process of interpretation can often be difficult and, as such, compliance with a patient's wishes is often diminished. In contrast, a MOLST uses an instantly recognizable standard form,[6] is automatically part of the patient's record, and is transferable between facilities.[7] In fact, beginning on January 1, 2014, nursing facilities, assisted living residences, hospices, kidney dialysis centers and

[5] For example, in 2006 a report by NQF noted that there was a higher rate of compliance with MOLSTs than living wills or durable healthcare powers of attorney.

[6] See http://www.health.ri.gov/forms/medical/OrdersForLifeSustainingTreatment.pdf

[7] See Paragraph 2.2. of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment:

> If a qualified patient with a MOLST order is transferred from a hospital, another health care facility, or the community, the MOLST order or plan shall remain effective until a MOLST qualified health care provider first examines the transferred qualified patient, whereupon a MOLST qualified health care provider shall issue appropriate orders to continue the prior order or plan. Such orders may be issued without obtaining another consent to withhold or withdraw life-sustaining treatment pursuant to the Act and these Regulations.

(emphasis added). A MOLST qualified healthcare provider is defined as a physician, registered nurse practitioner or a physician's assistant. See R.I. Gen. Laws § 23-4.11-2(12).

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home health agencies are required to "accept, update if appropriate, and offer each qualified patient the opportunity to complete a MOLST."[8] Hospitals must do the same.[9] These features should help to ensure that the patient's wishes are properly reflected in his/her medical record and, because the MOLST is signed by a health-care professional, ensure that those wishes are followed.

Another important distinction between MOLST forms and living wills and durable health care powers of attorney, relates to the timing of their creation and the people involved. While living wills and durable health care powers of attorney are often created with the assistance of an attorney in advance of a terminal illness, a MOLST is completed with the assistance of a qualified medical professional at the time of the terminal illness. The Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment provide that a "'qualified patient' means a patient … who has been determined by the attending physician to be in a terminal condition."[10] Usually a patient is considered to be in a terminal condition if he/she is expected to die within a year. The MOLST is therefore not prognostic. Since a MOLST is completed at the time of the terminal illness, the patient will, hopefully, have a clearer understanding of his/her condition, the treatment options available and the likely course of the disease and will, therefore, be in a position to make a better, more educated, decision regarding his/her desires for end-of-life care.

In addition, MOLST forms encourage, and provide a framework for, end-of-life

[8] See Paragraph 2.3 of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment.

[9] See Paragraph 2.4 of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment.

[10] Paragraph 1.20 of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment

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discussions between a patient, his/her healthcare provider and family members. A MOLST form, therefore, has an additional advantage of serving as the launching point for a detailed and informed discussion of a patient's death, and his/her wishes in this regard.

MOLST forms are also written in clear medical language. This has been shown to increase compliance by medical professionals, by reducing the need for interpretation, a problem that often arises in relation to living wills and durable healthcare powers of attorney. In particular, the MOLST form addresses five areas of medical care:

- Cardiopulmonary resuscitation (with two choices: attempt resuscitation or do not attempt resuscitation);
- Medical interventions (including a choice of "comfort measures only", i.e., the use of oxygen, suction and medications such as antibiotics, etc., only to maintain a patient's comfort; "limited additional measures", including the use of antibiotics and IV fluids as indicated, but excluding intubation and intensive care; and "full treatment");
- Transfer to hospital (with a choice of "do not transfer" or "transfer to hospital if comfort measures cannot be met in current location");
- Artificial nutrition (with four choices: none, a defined trial period of artificial nutrition, long-term artificial nutrition, and artificial nutrition until it is no longer of benefit to the patient); and
- Artificial hydration (with four choices: none, a defined trial period of artificial hydration, long-term artificial hydration, and artificial hydration until it is no longer of benefit to the patient).

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Despite the clarity of the MOLST form, it does not address every situation that a terminal patient might face and does not allow for the nuance of living wills and durable healthcare powers of attorney. This is both a strength and a weakness of the MOLST form. Although it helps ensure compliance with a patient's wishes, the MOLST does not permit more detailed elaboration of wishes or specific requests.

MOLST forms should not be used in isolation. The Department of Health Regulations provide that:

> A qualified patient has the right to make decisions regarding use of life sustaining procedures as long as the patient is able to do so. If a qualified patient is not able to make those decisions, the declaration [living will or durable healthcare power of attorney] governs decisions regarding the use of life sustaining procedures.[11]

Further, Paragraph 3.2(d) of the regulations provides:

> a MOLST qualified health care provider shall complete or update a MOLST form in a manner that is consistent with:
>
> (1) The known decisions of:
>
> (i) A competent qualified patient; or
>
> (ii) A recognized health care decision maker; and
>
> (2) Any known advance directive if the qualified patient is incapable

[11] Paragraph 3.1 of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment

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of making an informed decision.[12]

It is therefore essential that a patient have a living will or other advance directive so that their end-of-life wishes can be understood and implemented. As such, while MOLSTs have a number of advantages, they should not be seen as a replacement for living wills or durable powers of attorney. Rather, all three tools should be used in conjunction to ensure that a patient's end-of-life wishes are honored. Overall, the introduction of MOLST forms in Rhode Island should be welcomed as an additional mechanism by which a patient can ensure that his/her wishes regarding end-of-life care are fulfilled.

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[12] Paragraph 3.2 of the Department of Health Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment

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