

# **PRACTICAL GUIDE TO DO NOT RESUSCITATE (DNR) ORDERS**

**Prepared by Mental Health Legal Advisors Committee**

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## **THE PURPOSE OF DO NOT RESUSCITATE ORDERS**

Do Not Resuscitate (DNR) orders direct doctors and nurses in a hospital setting not to attempt resuscitation in the event of a cardiac or respiratory arrest. Generally, they are used in end of life care or when a patient is suffering from a terminal illness.

### **How does one obtain a DNR Order?**

You must ask your attending physician, authorized nurse practitioner, or authorized physician assistant for a DNR.

### **How does one make sure a DNR order is enforced outside the hospital?**

If you already have a valid DNR Order, ask your attending physician, authorized nurse practitioner, or authorized physician assistant to fill out a *Comfort Care/DNR Order Verification* form. This form prevents Emergency Medical Technicians (EMTs) and first responders from administering cardio-pulmonary resuscitation (CPR). You can download the form at: <http://www.mass.gov/eohhs/docs/dph/emergency-services/comfort-care-form.pdf>. You need to carry the form around with you in order for emergency personnel to honor it.

## **COURT INVOLVEMENT AND THE DNR PROCESS**

Generally, Do Not Resuscitate (DNR) orders may be instituted without any involvement of the Court. However, in some situations, it is necessary to obtain court approval first.

**My family member is in the hospital with a terminal illness, and the doctor has recommended a DNR. I have talked with the rest of the family about it, and we all agree that we should institute a DNR order. Does the court need to approve the DNR?**

The first step is to determine whether your relative is able to give informed consent. If not, then the family members, physician, and hospital ethics committee (if they become involved) can institute a DNR without court approval if they determine, under the substituted judgment standard, that your relative would decide to sign a DNR if (s)he was competent to do so.<sup>1</sup> Where the patient is “irreversibly, terminally ill,” and there is no treatment alternative that could help cure or relieve the illness, the question of whether to administer life sustaining treatment is one for a medical professional to decide with regard to the patient’s history and the wishes of the

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<sup>1</sup> *Matter of Dinnerstein*, 6 Mass.App.Ct. 466, 475 (1978).

family.<sup>2</sup> However, if your family did not agree to the DNR, or if the physicians or ethics panel were divided, you could petition the court to institute a DNR under the substituted judgment determination.<sup>3</sup>

**I was appointed by the Court as a Guardian for a patient in the hospital, and the doctor has recommended signing a DNR Order. Unfortunately, the patient has no close family members I can discuss it with. Does the court need to approve the DNR?**

If there are no family members who can help make the decision, and you believe a DNR is appropriate, you could petition the Probate Court to institute a DNR.<sup>4</sup> Even if the patient is terminally ill and there is no hope of recovery, the Court has ruled that the absence of “loving family members” makes the decision to withhold life-sustaining treatment the province of the Court.<sup>5</sup>

**How does the Court decide whether a DNR is appropriate?**

The Court uses the substituted judgment standard to determine whether the patient, if competent, would decide to sign a DNR. The court uses the following factors in its analysis: the individual’s expressed preference, religious convictions, any impact the family’s feelings would have on his/her decision, side effects and alternatives, and prognosis both with and without treatment.<sup>6</sup> If the Court determines that the patient’s decision would be to sign a DNR and refuse treatment, it then has to balance that interest against important state interests in “(1) the preservation of life; (2) the protection of the interests of innocent third parties; (3) the prevention of suicide; and (4) the maintenance of the ethical integrity of the medical profession.”<sup>7</sup>

## **OTHER MECHANISMS FOR DICTATING LIFE SUSTAINING TREATMENT**

Do Not Resuscitate (DNR) and Comfort Care orders only prevent medical personnel from administering CPR in the event of a cardiac or respiratory arrest. There are other legal documents you can use to dictate whether and to what extent life sustaining or other forms of medical treatment are administered or withheld.<sup>8</sup>

### **Health Care Proxies:**

A health care proxy designates an agent to make medical decisions on a patient’s behalf in the event they are no longer able to make informed medical decisions. Proxies can be broad and give the agent any and all powers, or they can be limited to certain

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<sup>2</sup> *Dinnerstein*, 6 Mass.App.Ct. at 474-5.

<sup>3</sup> *Matter of Spring*, 380 Mass. 629, 639 (1980).

<sup>4</sup> *Custody of a Minor*, 385 Mass. 697, 708-10 (1982).

<sup>5</sup> *Custody of a Minor*, 385 Mass. at 710.

<sup>6</sup> *Guardianship of Roe*, 383 Mass. 415, 444-8 (1981).

<sup>7</sup> *Guardianship of Roe*, 383 Mass. at 448-9.

<sup>8</sup> For more information on end of life care, see the Massachusetts Medical Society’s webpage:

<http://www.massmed.org/Patient-Care/Health-Topics/Health-Care-Proxies-and-End-of-Life-Care/Health-Care-Proxies-and-End-of-Life-Care/#.VJh3PsAA>

circumstances, such as allowing the agent to withdraw or withhold life-sustaining measures if the patient is in a coma or has little to no chance of recovery.<sup>9</sup>

### **Medical Orders for Life Sustaining Treatment (MOLST):**

MOLST are voluntary forms that are signed by the patient and their clinician dictating instructions for health care professionals regarding certain life-sustaining treatments. They can be used by a patient who is in the advanced stage of an illness after consultation with his/her doctors and family. The MOLST program was created in 2008, and went into use at select facilities in Worcester, MA in 2010 for a demonstration program. Statewide expansion was announced on March 20, 2012 and is in the process of being implemented statewide. All physicians are encouraged to accept MOLST forms, but until the program is fully implemented state wide, patients should also execute valid health care proxies, DNRs, or any other end of life care appropriate for their situation.<sup>10</sup>

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<sup>9</sup> For more information on health care proxies, see the Massachusetts Medical Society's pamphlet: <http://www.massmed.org/Patient-Care/Health-Topics/Health-Care-Proxies-and-End-of-Life-Care/Health-Care-Proxy-Information-and-Forms/>

<sup>10</sup> For more information on MOLST see the [Executive Office of Health and Human Services Circular Letter DHCO 12-3-560](#).