

10-1-1995

HEALTH Cardiopulmonary Resuscitation: Authorize Emergency Medical Technicians to Effectuate a "Do Not Resuscitate" Order for Patients at Home; Provide a "Do Not Resuscitate" Order Form and an Identifying Bracelet, Anklet, or Necklace to be Worn by Patients at Home; Provide for Notification of Revocation or Cancellation of a "Do Not Resuscitate" Order

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Recommended Citation

Susan B. Jacobs, *HEALTH Cardiopulmonary Resuscitation: Authorize Emergency Medical Technicians to Effectuate a "Do Not Resuscitate" Order for Patients at Home; Provide a "Do Not Resuscitate" Order Form and an Identifying Bracelet, Anklet, or Necklace to be Worn by Patients at Home; Provide for Notification of Revocation or Cancellation of a "Do Not Resuscitate" Order*, 12 GA. ST. U. L. REV. (1995). Available at: <https://readingroom.law.gsu.edu/gsulr/vol12/iss1/38>

HEALTH

Cardiopulmonary Resuscitation: Authorize Emergency Medical Technicians to Effectuate a “Do Not Resuscitate” Order for Patients at Home; Provide a “Do Not Resuscitate” Order Form and an Identifying Bracelet, Anklet, or Necklace to be Worn by Patients at Home; Provide for Notification of Revocation or Cancellation of a “Do Not Resuscitate” Order

CODE SECTIONS: O.C.G.A. §§ 31-39-2, -4 to -7 (amended), -6.1 (new)

BILL NUMBER: SB 55

ACT NUMBER: 355

GEORGIA LAWS: 1995 Ga. Laws 722

SUMMARY: The Act authorizes a health care professional or an emergency medical technician (EMT) to effectuate a “do not resuscitate” order for patients who are receiving care from a health care facility or for patients at home. The Act provides that a physician may designate a “do not resuscitate” order, and the patient at home shall wear an identifying bracelet or necklace which alerts medical personnel to the order. An EMT can regard either the order or the identifying bracelet or necklace as a legally sufficient order not to resuscitate. A physician must notify the health care facility staff if the “do not resuscitate” order is cancelled or revoked. The Act also provides that a health care professional or EMT must also notify the physician of a patient’s revocation.

EFFECTIVE DATE: April 18, 1995¹

1. The Act became effective upon approval by the Governor.

History

In 1990, the United States Supreme Court in *Cruzan v. Missouri Department of Health* established that a competent person has a constitutionally protected liberty right to refuse life-sustaining treatment.² In recognition of a patient's right to dignity and privacy, the 1991 Georgia General Assembly amended title 31 of the Code by adding chapter 39, authorizing physicians to issue "do not resuscitate" (DNR) orders for consenting patients.³

Originally, the DNR law applied only to health care facilities, which included hospitals and nursing homes.⁴ In 1994, the law was amended to include hospices in the definition of health care facilities so that DNR orders for patients at hospices could also be issued.⁵ Additionally, this amendment made DNR orders "portable" between hospitals, nursing homes, and hospices.⁶ This enabled the DNR order to travel with the patient instead of having to be reissued whenever the patient moved.⁷ However, under the old law, if a patient returned home, there was no provision in the law for effectuating a DNR order at home.⁸ Usually the patient's family knew about the DNR order and would not call for emergency services if the patient went into cardiac arrest.⁹ But if the patient went into cardiac arrest, and the person with the patient was unaware or confused about the DNR order, this person often called for emergency assistance, resulting in an EMT being dispatched to the patient's home.¹⁰

This situation created two problems for the patient who did not want to be resuscitated. First, the DNR order had been entered in the patient's chart at the hospital, but the patient

2. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990).

3. 1991 Ga. Laws 1853 (formerly found at O.C.G.A. §§ 31-39-1 to -9 (1991)).

4. *Id.* (formerly found at O.C.G.A. § 31-39-2(7) (1991)); Telephone Interview with Sen. Eric Johnson, Senate District No. 1 (Apr. 2, 1995) [hereinafter Johnson Interview].

5. Johnson Interview, *supra* note 4.

6. Johnson Interview, *supra* note 4.

7. Johnson Interview, *supra* note 4.

8. Johnson Interview, *supra* note 4; Telephone Interview with Holly Bates, Director of Government Relations for the Georgia Hospital Association (Apr. 3, 1995) [hereinafter Bates Interview].

9. Johnson Interview, *supra* note 4; Bates Interview, *supra* note 8.

10. Johnson Interview, *supra* note 4; Bates Interview, *supra* note 8.

usually did not have a legal DNR order at home.¹¹ Second, the EMT was not authorized to effectuate a DNR order.¹² Consequently, the EMT was required to resuscitate the patient against the patient's wishes. Senator Eric Johnson introduced SB 55 to authorize an EMT to effectuate a DNR order, thereby respecting the patient's right to die as well as protecting the EMT from liability.¹³

SB 55

The primary purpose of the Act is to authorize an EMT to effectuate a DNR order for a patient at home.¹⁴ The Act requires that the patient at home have a DNR order on a form signed by a physician and wear an orange identifying bracelet or necklace.¹⁵ Although the patient must have both the DNR order and the identifying bracelet or necklace, the Act authorizes an EMT to regard the necklace or bracelet alone as a "legally sufficient order not to resuscitate."¹⁶ This orange bracelet or necklace enables the EMT to quickly identify the person as someone who has a valid DNR order instead of searching for the actual order.¹⁷ By implementing this procedure, Georgia follows the lead of several other states that have instituted similar identification procedures.¹⁸

The Act amends Code section 31-39-2 by adding two new definitions. A new section defines an emergency medical technician as a person certified as an EMT, paramedic, or cardiac technician.¹⁹ A licensed home health care agency is now included under the definition of "health care facility."²⁰ Representative Jimmy Skipper explained that a home health agency includes licensed practical nurses, registered nurses, and

11. Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 2, 1995) [hereinafter Skipper Interview].

12. Johnson Interview, *supra* note 4.

13. Johnson Interview, *supra* note 4.

14. Johnson Interview, *supra* note 4.

15. O.C.G.A. § 31-39-6.1(b) (Supp 1995).

16. *Id.*

17. Telephone Interview with Sen. Clay Land, Senate District No. 16 (Apr. 2, 1995) [hereinafter Land Interview].

18. Bates Interview, *supra* note 8.

19. O.C.G.A. § 31-39-2(6.1) (Supp. 1995).

20. *Id.* § 31-39-2(7).

other health care personnel who provide medical services in a patient's home.²¹

Subsection (a) of Code section 31-39-4, as amended, specifies the terms constituting a legal DNR order entered in the patient's chart at a health care facility.²² Additionally, subsection (a) authorizes physicians, health care professionals, and EMTs to effectuate such orders.²³ Subsection (e), which allows physicians in certain circumstances to issue a DNR order when consent cannot be obtained, was amended to prohibit physicians from issuing a DNR order for a patient being treated by a home health agency without the consent of the patient or the patient's authorized representative.²⁴

Code section 31-39-5, relating to cancellation of DNR orders, was amended to ensure that the staff at health care facilities is notified when a DNR order is cancelled or revoked because hospices and home health agencies are now included under the definition of health care facilities.²⁵ If the patient's DNR order has been cancelled, subsection (b) requires physicians to inform the staff at the health care facility responsible for the patient's care.²⁶ Subsection (c) requires a physician to notify the staff of the health care facility when a previously incompetent patient becomes competent and withdraws consent to the DNR order.²⁷

The heart of the Act is new Code section 31-39-6.1, which authorizes a physician, health care professional, or EMT to effectuate a DNR order for a patient at home.²⁸ This section specifies that it is not applicable to a person who is a patient in a

21. Skipper Interview, *supra* note 11.

22. O.C.G.A. § 31-39-4(a) (Supp. 1995). The Act specifies that "any written order issued by the attending physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'no code,' or substantially similar language in the patient's chart" constitutes a legal order to not resuscitate. *Id.*

23. *Id.*

24. *Id.* § 31-39-4(e)(3). Subsection (e) specifies that a physician can issue a DNR order for a patient in a health care facility (other than a hospice) when consent cannot be obtained from the patient, authorized representative, or parent when a second physician and an ethics committee agree that the patient is a candidate for nonresuscitation. 1994 Ga. Laws 672 (codified at O.C.G.A. § 31-39-4(e) (Supp. 1994)).

25. O.C.G.A. § 31-39-5(b)-(c) (Supp. 1995); *see also id.* § 31-39-2(7).

26. *Id.* § 31-39-5(b).

27. *Id.* § 31-39-5(c).

28. *Id.* § 31-39-6.1(a); Johnson Interview, *supra* note 4.

hospital, nursing home, or hospice.²⁹ This section provides two means for authorizing a DNR order for a patient at home. Subsection (a) provides that a DNR order written on a form containing the patient's name, date of the order, printed name of the attending physician, and the physician's signature authorizes an EMT to effectuate this DNR order for the patient at home.³⁰ This subsection also includes a sample form and states that a substantially similar form will be adequate.³¹ Subsection (b) provides that a patient at home who has a DNR order pursuant to subsection (a) also must wear an identifying bracelet on the wrist or ankle or an identifying necklace.³² This bracelet or necklace must be orange and must include the patient's name, the name and telephone number of the authorized person to give consent if applicable, the physician's printed name and telephone number, and the date the DNR order was issued.³³ A physician, health care professional, or EMT is authorized to regard the necklace or bracelet as a "legally sufficient order not to resuscitate" and is not required to see the written DNR order.³⁴

The Act amends Code section 31-39-6 to provide that a patient or authorized representative may communicate revocation of consent to a DNR order to a health care professional or EMT.³⁵ Previously, the Code section allowed revocation only when communicated to a physician or nurse at a health care facility.³⁶ The amended section also requires a health care professional or EMT who is informed of a revocation to notify a physician immediately.³⁷

29. O.C.G.A. § 31-39-6.1(a) (Supp. 1995).

30. *Id.*

31. *Id.* Sen. Johnson explained that hospitals were hesitant to let non-medical professional legislators determine the exact form, so the sample form was drafted by medical professionals and added for clarity. Johnson Interview, *supra* note 4.

32. O.C.G.A. § 31-39-6.1(b) (Supp. 1995). Ms. Bates explained that in an emergency situation the EMT has only seconds or minutes to act and the identifying bracelet or necklace allows the EMT to quickly identify that the patient has a valid DNR order. Bates Interview, *supra* note 8.

33. O.C.G.A. § 31-39-6.1(b) (Supp. 1995).

34. *Id.*; Land Interview, *supra* note 17.

35. O.C.G.A. § 31-39-6(a)-(b) (Supp. 1995).

36. 1994 Ga. Laws 672 (formerly found at O.C.G.A. § 31-39-6 (Supp. 1994)).

37. O.C.G.A. § 31-39-6(c) (Supp. 1995). Sen. Land stressed that this communication between the EMT and physician is very important because the physician might not know the DNR order had been revoked. Land

The Act amends Code section 31-39-7 to provide EMTs effectuating a DNR order with the same protection from liability as other health care professionals.³⁸ An EMT is not liable for resuscitating a patient with a DNR order when the EMT in good faith was unaware of the DNR order or believed it to be revoked.³⁹ This section also requires a physician who does not want to effectuate DNR orders to inform patients who are conscious.⁴⁰ Previously, the physician had to inform only the family or authorized representative and arrange for transfer of the patient to another physician who would effectuate the order.⁴¹

New subsection (e) requires an EMT who fails or refuses to comply with a DNR order to notify the patient, family, or authorized representative if reasonably available.⁴² This section gives the EMT who objects to effectuating a DNR order the same protection from liability as other health care providers.⁴³

SB 55, as introduced, was intended to enable EMTs to effectuate a DNR order for the patient at home, but was somewhat narrower than the Act.⁴⁴ It included sections providing for the definition of an EMT; the authorization for a physician, EMT, or health care professional to effectuate a DNR order on a patient's chart in a health care facility; and liability protection for the EMT.⁴⁵ It also included a shorter version of Code section 31-39-6.1, which was the heart of the bill.⁴⁶ This section authorized an EMT to effectuate a DNR order for a home patient if the EMT saw either the original DNR order issued by the physician or a certified copy, but did not provide for the special DNR form or the bracelet or necklace, which appear in the Act.⁴⁷

Interview, *supra* note 17.

38. O.C.G.A. § 31-39-7(a) (Supp. 1995).

39. *Id.* § 31-39-7(b).

40. *Id.* § 31-39-7(d).

41. 1991 Ga. Laws 1853 (formerly found at O.C.G.A. § 31-39-7(d) (1991)).

42. O.C.G.A. § 31-39-7(e) (Supp. 1995).

43. Bates Interview, *supra* note 8.

44. SB 55, as introduced, 1995 Ga. Gen. Assem.

45. *Id.*

46. *Id.*; see also Johnson Interview, *supra* note 4.

47. Compare SB 55, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 31-39-6.1 (Supp. 1995).

The Senate Judiciary Committee made a few minor changes in the wording of the bill and included a substantial addition.⁴⁸ The original text of Code section 31-39-6.1, authorizing an EMT to effectuate a DNR order at home if the EMT first saw the original order or a certified copy, became subsection (a) and included the same terms that were added to Code section 39-31-4(a) specifying what terms indicate a DNR order.⁴⁹ The most important addition the Committee made was subsection (b), which provided that a person with a subsection (a) DNR order “may” also wear an identifying bracelet on the wrist or ankle. Thus, an EMT would have legal authorization to effectuate the DNR order without having to see the original or certified copy of the order.⁵⁰ In addition, the new subsection contained a form specifying the information the bracelet should include and required a doctor or EMT who was unwilling to effectuate the DNR order to notify conscious patients.⁵¹

This Senate Judiciary Committee substitute went to the floor of the Senate where further changes were made.⁵² Subsection (a) of Code section 31-39-6.1 was substantially reworded.⁵³ The floor substitute deleted the requirement that the patient have the original DNR order or a certified copy to show the EMT and provided that the home patient only needed a simple form signed by the attending physician verifying that the patient had a valid DNR order.⁵⁴ The floor substitute included a sample form for consistency⁵⁵ and clarity.⁵⁶

Additionally, this Senate floor substitute added a provision to subsection (b) allowing the home patient to wear either an identifying necklace or bracelet.⁵⁷ The necklace provided an option for patients who were paraplegic or who wanted to wear

48. SB 55 (SCS), 1995 Ga. Gen. Assem.

49. *Id.* This provision described in uniform language which DNR orders the EMT could honor. Land Interview, *supra* note 17.

50. SB 55 (SCS), 1995 Ga. Gen. Assem.

51. *Id.*

52. SB 55 (SFS), 1995 Ga. Gen. Assem.

53. *Id.*

54. *Id.* The form was to be “substantially similar” to the sample form in the bill and was to include the patient’s name, signature of the attending physician, and date. *Id.*

55. Bates Interview, *supra* note 8.

56. Johnson Interview, *supra* note 4.

57. SB 55 (SFS), 1995 Ga. Gen. Assem.

the identifying object under their clothes.⁵⁸ The words “may wear” were changed to “shall wear,” thereby requiring the home patient to wear an identifying bracelet or necklace.⁵⁹

A provision was added so that a DNR order made under this subsection could be revoked like any other DNR order.⁶⁰ The Senate made minor changes regarding the required information on the bracelet or necklace, such as the physician’s signature and dates of the order.⁶¹ The Senate floor substitute also added sections allowing the patient or authorized representative to communicate the revocation to an EMT⁶² and requiring an EMT who is informed of a revocation to notify a physician immediately.⁶³ Senator Clay Land explained that this requirement was added to ensure that the EMT communicated the revocation of consent to the next medical care provider.⁶⁴ The Senate passed the amended bill and sent it to the House.⁶⁵

The House made several additions that appear in the Act.⁶⁶ The House added “home health agency” to the definition of “health care facility” to include medical personnel such as registered nurses and licensed practical nurses, who treat patients who have returned home but still need medical attention.⁶⁷ The House substitute amended subsection (e)(3) to prevent a physician from unilaterally issuing a DNR order for a patient receiving care from a home health agency without the consent of that patient or an authorized representative.⁶⁸ The

58. Johnson Interview, *supra* note 4.

59. Johnson Interview, *supra* note 4; see SB 55 (SFS), 1995 Ga. Gen. Assem.

60. SB 55 (SFS), 1995 Ga. Gen. Assem.

61. *Id.*

62. *Id.*

63. *Id.*

64. Land Interview, *supra* note 17.

65. Land Interview, *supra* note 17; Final Composite Status Sheet, Mar. 17, 1995.

66. SB 55 (HCS), 1995 Ga. Gen. Assem.

67. See *supra* notes 20-21 and accompanying text. Rep. Skipper also explained that this addition should have been added during the 1994 legislative session and was not directly pertinent to the main purpose of this Act. Skipper Interview, *supra* note 11.

68. See *supra* note 24 and accompanying text. Rep. Skipper stated that this also emphasizes that to effectuate a DNR order for a patient at home either the patient or the patient’s authorized representative must have consented to the DNR order. Skipper Interview, *supra* note 11.

House substitute required physicians to notify the health care facility staff when a DNR order has been cancelled by the physician or revoked by the patient.⁶⁹ This addition clarified the notification requirement.⁷⁰

The House substitute also required that the form containing the DNR order for the home patient include the patient's name, date of the form, printed name of the attending physician, as well as the physician's signature.⁷¹ This requirement was intended to clarify the necessary contents of a DNR form for a home patient.⁷² The printed name of the physician was added because of concern that an EMT might not be able to read the physician's signature.⁷³ The House added a provision to subsection (b) of Code section 31-39-6.1, which required that the identifying bracelet or necklace not be worn by patients in a hospital, nursing home, or licensed hospice, thus stressing that this special provision applies only to home patients.⁷⁴ Additionally, the House substitute required that the identifying bracelet or necklace contain the printed name of the physician and the physician's telephone number.⁷⁵ This requirement addressed the concern that an EMT might not be able to read the physician's written signature, should the EMT want to call the doctor to verify the DNR order.⁷⁶

The House substitute provided that a patient or authorized representative could communicate revocation of a DNR order to any health care professional or EMT as well as to a doctor or nurse.⁷⁷ The House also added "health care professional" to the provision, which requires a nurse or EMT to immediately notify the physician when a patient revokes a DNR order.⁷⁸ This addressed the concerns of senior citizens by giving more protection to the patient who wants to revoke the DNR order by creating a larger class of persons whom the patient can inform

69. *See supra* notes 25-27 and accompanying text.

70. Skipper Interview, *supra* note 11.

71. SB 55 (HCS), 1995 Ga. Gen. Assem.

72. Skipper Interview, *supra* note 11.

73. Skipper Interview, *supra* note 11.

74. Skipper Interview, *supra* note 11.

75. Skipper Interview, *supra* note 11.

76. Skipper Interview, *supra* note 11.

77. SB 55 (HCS), 1995 Ga. Gen. Assem.

78. *Id.*

and who must then notify the physician.⁷⁹ Senator Johnson, Senator Land, and Representative Skipper all stressed the importance of the EMT communicating a revocation of consent to the physician or next health care facility, thus ensuring that any person who wanted to be resuscitated would receive appropriate care.⁸⁰ This House substitute was adopted on March 8, 1995 and sent to the Senate for approval.⁸¹

Senator Johnson offered an amendment to the House substitute.⁸² The amendment specified that the DNR form for the home patient should designate that it was not to be used for a patient in a hospital, nursing home, or hospice.⁸³ Senator Johnson explained that this clarified that the DNR form and the identifying bracelet or necklace applied only to the patient in the home setting.⁸⁴ The attending physician's phone number was added to the DNR form to enable the EMT to contact the physician if necessary to verify the DNR order or revocation.⁸⁵ The titles of the DNR form and the identifying bracelet and necklace also added the word "order" to make them more "patient friendly."⁸⁶

The House would not agree to the Senate amendments and the bill went to conference committee.⁸⁷ The conference committee substitute retained all of the Senate amendments to the House substitute. Additionally, the committee restored the requirement of the physician's printed name and telephone number on the bracelet or necklace, which had been mistakenly deleted from the Senate floor amendment.⁸⁸ The only other change the conference committee made was to include on the bracelet or necklace the telephone number of the consenting party.⁸⁹ This was added in the event there was some confusion about consent and the EMT

79. Skipper Interview, *supra* note 11.

80. Johnson Interview, *supra* note 4; Skipper Interview, *supra* note 11; Land Interview, *supra* note 17.

81. Final Composite Status Sheet, Mar. 17, 1995.

82. SB 55 (SFA), 1995 Ga. Gen. Assem.

83. *Id.*

84. Johnson Interview, *supra* note 4.

85. Johnson Interview, *supra* note 4.

86. Johnson Interview, *supra* note 4.

87. Johnson Interview, *supra* note 4.

88. SB 55 (CCS), 1995 Ga. Gen. Assem.; Johnson Interview, *supra* note 4.

89. SB 55 (CCS), 1995 Ga. Gen. Assem.

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wanted to verify whether consent had been given.⁹⁰ The conference committee substitute was adopted by the Senate and the House.⁹¹

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90. Bates Interview, *supra* note 8.

91. Final Composite Status Sheet, Mar. 17, 1995.