

Legal Requirements Checklists for Minor Patients and Glossary

The MOLST form is a medical order form that tells others the minor patient's medical orders for life-sustaining treatment. All health care professionals must follow these medical orders as the minor patient moves from one location to another, unless a physician examines the minor patient, reviews the orders, and changes them.

MOLST is generally for patients with serious, life-threatening health conditions. Physicians should consider consulting with the minor patient's parents or legal guardians about completing a MOLST form if:

- Decisions need to be made about avoiding or receiving life-sustaining treatment.
- The minor patient resides in a long-term care facility or requires long-term care services.
- The minor patient might die within the next year.

These instructions and checklists are intended to assist health care professionals in completing the MOLST form with minor patients and the minor patients' parents or other legal guardians with authority to make health care decisions for the minor patients. They are NOT intended for use with patients with developmental disabilities or for patients with mental illness in a mental hygiene facility.

Minors, over the age of 16, who are living independently or have a child of their own, may be considered "emancipated." Special considerations and requirements apply to decisions about life-sustaining treatment made by emancipated minors. **Consult with legal counsel concerning MOLST orders for emancipated minors.**

General Instructions

The MOLST form must be completed based on the minor patient's current medical condition, values, wishes, and these MOLST instructions. The parent of a minor patient has the authority to make decisions on behalf of the minor about life-sustaining treatment, including decisions to withhold or withdraw life-sustaining treatment. The minor patient must also consent if the minor patient has medical decision-making capacity.

Completion of the MOLST begins with a conversation or a series of conversations, between the minor patient and the patient's parents or legal guardians and a qualified, trained health care professional, that defines the minor patient's goals for care, reviews possible treatment options on the entire MOLST form, and ensures shared, informed medical decision-making. The conversation should be documented in the medical record. Consent to the MOLST orders must be obtained from the patient's parent or legal guardian; the minor patient must also consent if the minor patient has medical decision-making capacity.

Although the conversation(s) about goals and treatment options may be initiated by any qualified and trained health care professional, a licensed physician must always, at a minimum: (i) confer with the patient (if appropriate) and the patient's parent or guardian about the patient's diagnosis, prognosis, goals for care, treatment preferences, and consent by the appropriate decision-maker(s), and (ii) sign the orders derived from that discussion. If the physician is licensed in a border state, the physician must insert the abbreviation for the state in which he/she is licensed, along with the license number.

Completion of both the first and second pages of the MOLST form is strongly encouraged. However, the parent, legal guardian, and/or patient may not be physically or emotionally prepared to reach a decision concerning every treatment option on the form in a single meeting. Completion of only page 1 (Sections A through D) of the MOLST form (concerning CPR/DNR) is permissible, and page 2 (Section E) may be completed at a later time. If a parent, legal guardian and/or patient can reach a decision on one or more treatment options, but not others on page 2, the physician may cross out the portion of the form with the treatment option(s) for which there is no decision and write "Decision Deferred" next to those treatment option(s). If the parent, legal guardian and/or patient reach a decision concerning those treatment option(s) at a later time, a new form must be completed and signed by a physician, indicating all of the parent's, legal guardian's and/or patient's decisions.

Printing the form on bright "pulsar" pink, heavy stock paper is strongly encouraged. When EMS personnel respond to an emergency call in the community, they are trained to determine whether the patient has a pink MOLST form before initiating life-sustaining treatment. They might not notice a MOLST form on plain white paper. However, white MOLST forms and photocopies, faxes, or electronic representations of the original, signed MOLST are legal and valid.

MOLST orders completed in accordance with New York law remain valid when the minor patient transitions from one health care setting to another. Non-hospital DNR orders must be reviewed by a physician at least every 90 days. In addition, all MOLST orders must be reviewed consistent with facility policy, and when the minor patient transitions between care settings, when there is a major change in health status, and when the minor patient and/or other medical decision-maker changes his/her mind about treatment.

MOLST Legal Requirements Checklist for Minor Patients

Complete each step and check the appropriate lines as indicated.

Step 1: Assess health status and prognosis. ____

Step 2: Identify the decision-maker.

____ Minor patient's parent or guardian. It has been determined that the parent or guardian has legal authority to make medical decisions for the minor patient. (*Seek legal advice if the decision-maker's authority is unclear.*)

Step 3: Document where the MOLST form is being completed. **Check one:**

- ____ Hospital (see Glossary for definition)
- ____ Nursing Home (see Glossary for definition)
- ____ Community (see Glossary for definition)

Step 4: Discuss goals for care with the parent or guardian who will make the decision. ____

Step 5: Parent or legal guardian has given informed consent to the treatment decision. **Check all:**

- ____ Parent or legal guardian has been fully informed about the patient's medical condition and the risks, benefits and burdens of, and alternatives to, possible life-sustaining treatment.
- ____ Parent or legal guardian has consented to the withholding, withdrawal or delivery of certain life-sustaining treatment, for which medical orders are written.
- ____ Parent's or legal guardian's decision is patient-centered, in accordance with the patient's wishes, including the patient's religious and moral beliefs; or if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests. The parent's or legal guardian's assessment is based on the patient's wishes and best interests, not the parent's or guardian's, and includes consideration of:
 - the dignity and uniqueness of every person;
 - the possibility and extent of preserving the patient's life;
 - the preservation, improvement or restoration of the patient's health or functioning;
 - the relief of the patient's suffering; and
 - any medical condition and such other concerns and values as a reasonable person in the patient's circumstances would wish to consider.

Step 6: If the decision is to withhold or withdraw life sustaining treatment, the parent's or legal guardian's decision complies with the following clinical standards, as determined by the physician, with independent physician concurrence and, where applicable, by an ethics review committee. **Check (i) and/or (ii) and (iii) and any applicable lines underneath:**

- ____ (i) Treatment would be an extraordinary burden to the patient, and an attending physician determines, with the independent concurrence of another physician, that, to a reasonable degree of medical certainty and in accord with accepted medical standards,
 - the patient has an illness or injury which can be expected to cause death within six months, whether or not treatment is provided; or
 - the patient is permanently unconscious.

- (ii) The provision of treatment would involve such pain, suffering or other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances; and the patient has an irreversible or incurable condition, as determined by an attending physician with the independent concurrence of another physician to a reasonable degree of medical certainty and in accord with accepted medical standards.

Note: The following special requirements do not apply to a decision for a patient in hospice or to a decision to withhold or withdraw life-sustaining treatment under clinical standard (i) above (death is expected within 6 months with or without treatment, or patient is permanently unconscious).

— **Special requirements for declining artificial nutrition and hydration in a hospital (other than a hospice) over the attending physician’s objection, based on “irreversible or incurable condition” (clinical standard (ii) above):**

- In a hospital (other than a hospice), when the medical order involves the withdrawal or withholding of nutrition or hydration provided by means of medical treatment, and the attending physician objects to the order, the ethics review committee (including a physician who is not directly responsible for the patient’s care) or an appropriate court has determined that the medical order meets the patient-centered and clinical standards.

— **Special requirements for certain life sustaining treatments in a nursing home or in the community, based on “irreversible or incurable condition” (clinical standard (ii) above):**

- In a nursing home or in the community, for MOLST orders other than a DNR order, an ethics review committee, (including at least one physician who is not directly responsible for the patient's care) or an appropriate court has determined that the orders meet the patient-centered and clinical standards.

- (iii) The concurring physician’s determination is documented in the medical record.

Step 7: Assess minor patient’s capacity and secure minor’s informed consent if he/she has capacity.

Check (i) or (ii)

— (i) Patient has capacity to make medical decisions. **Check both**

- The attending physician, in consultation with the minor patient’s parent or guardian, has determined that the patient has the ability to understand and appreciate the nature and consequences of DNR and life-sustaining treatment orders, including benefits and burdens of, and alternatives to, such orders, and to reach an informed decision regarding the orders.

- The minor patient has been fully informed about his/her medical condition and the risks, benefits, burdens and alternatives of possible life-sustaining treatment. The minor patient has consented to the withholding, withdrawal or delivery of certain life-sustaining treatment, for which medical orders are written.

- (ii) Patient lacks capacity to make medical decisions. The attending physician, in consultation with the minor patient’s parent or guardian, has determined that the patient lacks the ability to understand and appreciate the nature and consequences of *DNR and life-sustaining treatment orders*, including benefits and burdens of, and alternatives to, such orders, and to reach an informed decision regarding the orders.

Step 8: Notify minor patient of capacity determination. **Check one**

- Notice of the determination that the minor patient lacks medical decision-making capacity has been given to the minor patient (the patient may be able to comprehend such notice).

___ Notice of the determination that the minor patient lacks medical decision-making capacity has not been given to the minor patient because there is no indication of the patient's ability to comprehend the information.

Step 9: Notify other parent or guardian besides the one who consented in Step 5. *Check one.*

___ There is a parent or guardian other than the one who consented in Step 5, and that parent or guardian has been informed of the decision.

___ There is no reason to believe that the minor patient has a parent or guardian other than the one who consented in Step 5.

___ There is reason to believe that the minor patient has a parent or guardian other than the one who consented in Step 5, and that parent or guardian (including a non-custodial parent or guardian) has not been informed of the decision. Reasonable efforts have been made to determine if the un-informed parent or guardian has maintained substantial and continuous contact with the minor; and: *Check (i) or (ii)*

___ (i) It has been determined that the un-informed parent or guardian has not maintained substantial and continuous contact with the minor.

___ (ii) It has been determined that the un-informed parent or guardian has maintained substantial and continuous contact with the minor. The other parent or guardian could not be notified after diligent efforts were made to do so.

Step 10: Participation in the Decision by Another Parent or Guardian Besides the One Who Consented in Step 5. (If a parent or guardian objects to a decision, stop filling out the form and refer to the ethics review committee or consult with legal counsel.) *Check one*

___ The parent or guardian other than the one who consented in Step 5 has been informed of the decision, has legal authority to make health care decisions for the patient, has been given the opportunity to object to the decision, and has not objected to the decision.

___ The parent or guardian other than the one who consented in Step 5 has been informed of the decision, but does not have legal authority to make health care decisions for the patient.

___ No parent or guardian other than the one who consented in Step 5 has been notified of the decision. (There is no reason to believe that the minor patient has another parent or guardian, or it has been determined that the un-informed parent or guardian has not maintained substantial and continuous contact with the minor, or another parent or guardian could not be notified after diligent efforts were made to do so.)

Step 11: Witness Requirements. *Check one:*

Two witnesses are always recommended. The physician who signs the orders may be a witness. To document that the attending physician witnessed the consent, the attending physician signs the order and prints his/her name as a witness. Witness signatures are not required – printing the witnesses' names is sufficient.

___ The parent or guardian consented in writing.

___ The parent or guardian consented verbally, and the attending physician witnessed the consent.

Step 12: Physician Signature

___ The attending physician signed the MOLST form.

Review and Renewal of MOLST Orders

The physician must review the MOLST form from time to time as the law requires, and also:

- If the minor patient moves from one location to another to receive care; or
- If the minor patient has a major change in health status (for better or worse); or
- If the minor patient or other decision-maker changes his or her mind about treatment.

The parent or legal guardian of the minor patient may request a change in the MOLST and must be consulted about any changes recommended by the minor patient's health care provider when any of the above circumstances arise.

DNR/Allow Natural Death orders: Public Health Law requires the physician to review non-hospital DNR orders and record the review at least every 90 Days. In hospitals and nursing homes, MOLST orders must be reviewed regularly in accordance with facility policies.

Life-Sustaining Treatment orders: The minor patient's medical condition, prognosis, values, wishes and goals for his/her care may change over time. The physician must review these orders at the same time as DNR/Allow Natural Death orders are reviewed and the review is recorded.

Review all medical orders in Sections A through E of the MOLST form.

Document the outcome of the review in Section F:

- If there is no change in the minor patient's health status, medical decision-making capacity or preferences, sign, date and check the "No Change" box.
- If there is a substantial change in minor patient's health status, medical decision-making capacity, goals for care or preferences that results in a change in MOLST orders, write "VOID" in large letters on pages 1 and 2, and complete a new form, in accordance with NYS Public Health Law decision-making standards and procedures. Check box marked "FORM VOIDED, new form completed." (RETAIN voided MOLST form in chart, medical record, or electronic registry as required by law.)
- If this form is voided and no new form is completed, full treatment and resuscitation will be provided. Write "VOID" in large letters on pages 1 and 2 and check box marked "FORM VOIDED, no new form." (RETAIN voided MOLST form in chart, medical record, or electronic registry as required by law.)

For more information about the MOLST Program, view the Department of Health's website at http://www.nyhealth.gov/professionals/patients/patient_rights/molst/ and the Compassion and Support website, Professionals section and the MOLST Training Center at www.CompassionAndSupport.org.

Glossary

“Community” means not in a hospital or nursing home.

“Hospital” means a general hospital as defined in subdivision ten of section twenty-eight hundred one of the Public Health Law excluding a ward, wing, unit or other part of a general hospital operated for the purpose of providing services for persons with mental illness pursuant to an operating certificate issued by the New York State Office of Mental Health; or a hospice as defined in Public Health Law Article 40, without regard to where the hospice care is provided.

“Life-sustaining treatment” means any medical treatment or procedure without which the minor patient will die within a relatively short time, as determined by an attending physician to a reasonable degree of medical certainty. Cardiopulmonary resuscitation (CPR) is presumed to be life-sustaining treatment without the necessity of a determination by an attending physician.

“Mental hygiene facility” means a facility operated or licensed by the Office of Mental Health (OMH) or the Office for People With Developmental Disabilities (OPWDD) as defined in subdivision six of section 1.03 of the Mental Hygiene Law; i.e., any place in which services for the mentally disabled are provided and includes but is not limited to a psychiatric center, developmental center, institute, clinic, ward, institution or building, except that in the case of a hospital as defined in article 28 of the Public Health Law it shall mean only a ward, wing, unit, or part thereof which is operated for the purpose of providing services for the mentally disabled. A mental hygiene facility also includes a community residence operated by or subject to licensure by OMH or OPWDD (MHL §1.03(28)).

“Minor” means any person younger than 18 years old who is not married.

“Nursing home” means a residential health care facility as defined in subdivision three of section twenty-eight hundred one of the Public Health Law.