

# BIOETHICS BRIEF

A Periodic Update on Bioethical Developments for the Catholic Bishops in California

EDITOR: Johnny Cox

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## **POLST: Promoting and Protecting Human Dignity**

### Physician Orders for Life-Sustaining Treatment – POLST

During the past decade a tool has been refined to support patients and their families in making treatment decisions about life-sustaining treatments at the end of life. POLST (Physician Orders for Life-Sustaining Treatment) is a set of medical orders used for persons with terminal illness, who are frail or chronically critically ill. The Alliance co-sponsored the 2009 legislation that enacted POLST in California. A recently passed law (AB 637) modified POLST to allow physician assistants and nurse practitioners, acting under a physician's supervision and within their scope of practice, to assist patients and surrogates in creating a POLST and to sign the form. So it seems timely to review the ways this tool can promote and protect human dignity.

The early POLST's were developed in the Northwest and Midwest about twenty years ago. Because of ambiguities in language and confusion about their intended usage, some Catholic commentators and bishops opposed them. Fortunately the Alliance avoided these difficulties in its original sponsored version, and the current one in California is in accord with Catholic moral teaching as expressed in the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*. Completing POLST is a process within a plan of care intended to respect and protect the inherent dignity of the patient (ERD 23). POLST facilitates the process of free and informed consent that is required for medical treatments (ERDs 26, 59). POLST is a way to assist each person or the person's surrogate to have access to medical information and counseling so as to be able to form his or her conscience whether to use or to refuse life-sustaining medical treatment (ERD 28). Specifically, POLST provides an opportunity to evaluate whether particular medical treatments offer reasonable hope of benefit without entailing excessive burdens (ERDs 33, 56, 57). California's POLST does not present an option for physician-assisted suicide or euthanasia (ERD 60). The POLST must be signed by the patient or, if the patient lacks decision making capacity, the patient's surrogate and the physician, physician assistant or nurse practitioner.

A POLST is different from an advance directive that provides instructions for *future* medical treatment options. POLST is a medical order that should be honored in hospitals, nursing homes and by emergency medical personnel. The Alliance has prepared a Q & A for health care leaders, clinicians and members of ethics committees (*see following document*). It might also be useful to priests.



1215 K Street  
Suite 2000  
Sacramento, CA 95814

## POLST (Physician Orders for Life Sustaining Treatment)

### How it Affects Patients in California Catholic Health Care Ministries

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POLST (Physician Orders for Life Sustaining Treatment) is a physician's order that reflects a patient's preference for treatment options that are consistent with his or her clinical condition. A POLST travels with the patient to any point of care – at home, as a resident in a long-term care facility or if admitted to an acute care hospital. A POLST is different from an Advance Directive. An Advance Directive provides instructions for *future* medical treatment options. An Advance Directive necessitates the appointment of a legal health care representative and is recommended for all adults, regardless of their health status.

A POLST is a physician order and is used for persons with advanced illness, who are frail or chronically critically ill. It also gives legal standing for emergency medical personnel to follow the patient's wishes – similar to California's "pre-hospital DNR" (Do Not Resuscitate) order. Without a POLST, or pre-hospital DNR order, paramedics and emergency personnel are required to provide every possible medical treatment, regardless of the prospect of benefitting/helping the patient.

In California, the Alliance of Catholic Health Care co-sponsored AB 3000 (Wolk), the bill that enacted POLST into law in 2009. Currently, 90 percent of the states across the U.S. either have an established POLST (or a form of POLST) or are in the process of establishing a POLST. California's POLST is a tool that, when properly completed, aligns with Catholic ethical teaching as expressed in the *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*. Completing POLST is a process intended to respect and protect the inherent human dignity of the patient (*ERD 23*). POLST facilitates the process of free and informed consent that is required for medical treatments and procedures (*ERDs 26, 59*). POLST is a way to assist each person or the person's surrogate to have access to medical information and counseling so as to be able to form his or her conscience (*ERD 28*). POLST provides an opportunity to evaluate whether specific medical treatments offer reasonable hope of benefit without entailing excessive burdens (*ERDs 33, 56, 57*). California's POLST does not present an option for physician-assisted suicide or euthanasia (*ERD 60*).

The Alliance has prepared the following Q & A for health care leaders, clinicians and ethics committee members to clarify essential facts about California's POLST and to address some questions that have been raised on the use of POLST in California's Catholic health care ministries.

#### **If someone has a POLST and an Advance Directive that conflict, which takes precedence?**

If there were a conflict between the documents, the most recent document, or the person's verbal expression of wishes, would be followed. This would be the case even if there were no POLST.

#### **What medical interventions and procedures are included in a POLST?**

The decisions documented on the POLST form include whether to:

- Attempt cardiopulmonary resuscitation
- Use a ventilator to help with breathing
- Administer antibiotics and IV fluids
- Provide medical nutrition by tube

There is also space to add additional orders, e.g., a person with end-stage lung disease may indicate a desire to be treated with medicines but not mechanical devices.

### **Who completes the POLST form?**

The POLST form is for seriously ill patients whose physicians would not be surprised if they died in the next year. Such persons would include those seriously ill adults nearing death, and patients with a serious illness or with advanced frailty. A patient's decision to complete a POLST adheres to similar standards of informed consent used for other medical treatment decisions. A health care provider, such as a physician or nurse, must explain the medical interventions and procedures listed in the form to the patient. After a conversation to understand the patient's diagnosis, prognosis and goals of care, the health care provider either completes a POLST on behalf of the patient or does not, as the patient decides. While a health care provider, such as a registered nurse or social worker, can explain the POLST form to the patient, the physician, physician assistant or nurse practitioner is responsible for obtaining the patient's informed consent and assuring that the patient receives all appropriate and pertinent information.

### **Who must sign the POLST form?**

A physician, physician assistant or nurse practitioner AND the patient, or the patient's legally recognized health care decision maker when the patient lacks decision making capacity, must sign the POLST form in order for it to be valid. As of January 1, 2016, a physician assistant or nurse practitioner, who is acting under the supervision of a physician and acting within his/her scope of practice, may sign a POLST form. The POLST is not valid if signed by any other health care professional or facility administrator. A legally recognized health care decision maker is someone who is recognized under California law as having the authority to speak for the patient – an agent, surrogate, conservator, family member or closest available relative.

### **Can a person change his or her POLST?**

Yes, like other physician orders, a POLST can be changed at any time the patient's medical condition or preferences change. A physician may initiate reconsideration of a POLST order consistent with the most current information available about the person's health status and goals of care.

California Probate Code §4781.2. states that (a) A health care provider shall treat an individual in accordance with a POLST form. (b) This does not apply if the POLST form requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution. (c) A physician may conduct an evaluation of the individual and, if possible, in consultation with the individual, or the individual's legally recognized health care decisionmaker, issue a new [POLST] order consistent with the most current information available about the individual's health status and goals of care.

It is recommended that a review of POLST occur when any of the following takes place:

- There is a change in the overall health of the patient.
- The treatment preferences of the patient change for any reason.
- The patient is transferred from one care setting to another.

### **What if someone can no longer communicate her/his wishes for treatment?**

When a person no longer has decision making capacity and informed consent is no longer possible, a health care professional may initiate consideration of a POLST with the patient's legally recognized health care decision maker. Decisions about POLST must be based on the patient's medical condition and previously expressed treatment preferences or known desires/values. The health care decision maker

can then sign the POLST form on behalf of the patient. Of course, the physician, physician assistant or nurse practitioner must also sign.

### **Does the law mandate the use of a POLST?**

No. A POLST is entirely voluntary.

### **What if a health care provider or institution is unwilling to comply with a patient's treatment decision in a POLST?**

There are conscience protections for individual and institutional health care providers that decline to comply with a specific POLST. The ethical and legal standards that apply to other medical treatment decisions also apply to POLST. There are several areas under California law that address this concern:

The law allows under California Probate Code §4734 that (a) A health care provider may decline to comply with an individual health care instruction or health care decision for reasons of conscience. (b) A health care institution may decline to comply with an individual health care instruction or health care decision if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

Further, California Probate Code §4736 states that a health care provider or health care institution that declines to comply with an individual health care instruction or health care decision shall do all of the following: (a) Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient. (b) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision. (c) Provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care shall be continued.

### **Does a patient need to be terminally ill to have a POLST?**

Many patients with a POLST will be terminally ill and under the care of hospice, but not all. There will be many who due to frailty or chronic critical illness will already know that some interventions like cardiopulmonary resuscitation or mechanical ventilation will not be effective or will entail excessive burdens. As stated in the *Ethical and Religious Directives (ERD 33)*, there needs to be a reasonable hope of benefit to obligate a person to try a medical intervention. In addition, even procedures that might be beneficial but are likely to cause harm or have undesirable side effects can be justified only by a proportionate benefit to the patient. This Catholic teaching applies to all persons, not just those with a terminal illness. So refusing interventions in a POLST that do not offer reasonable hope of benefit or that entail excessive burdens is in accord with Catholic ethical teaching.

### **Isn't it dangerous to rely on a clinical checklist?**

No. In fact, many "order sets" in hospitals use checklists to order certain tests or provide instructions. Similar forms in hospitals for orders for resuscitation attempts and ventilation look similar to POLST forms. Neat, clean, easy to read checklists help reduce medical errors that can occur when orders have to be written out, and ensures consistency in the way the conversation unfolds. That is why they are designed this way.

### **Isn't the POLST form biased against life-sustaining treatments?**

No. The POLST form may appear biased because its use is limited to very ill persons. As a result, the POLST most often reflects orders to forgo interventions, but that is due to the illness of the patient, not a bias of the form. POLST allows this very ill patient population to choose for OR against different interventions that are likely to be considered given their health status.

### **The POLST form includes a check box to forgo medically administered nutrition; is this acceptable in Catholic teaching?**

Yes, in most cases since the patient population for whom POLST is intended have underlying progressive and fatal conditions. The most recent revision of the *Ethical and Religious Directives (ERD 58)* states that, “in principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally.” The Church teaches that no one should die simply because they were not nourished. But just as clearly, *ERD 58* states, “as a patient draws close to inevitable death from an underlying progressive and fatal condition, certain measures to provide nutrition and hydration may become excessively burdensome and therefore not obligatory in light of their very limited ability to prolong life or provide comfort.” In fact, research has shown that providing medically assisted nutrition and hydration in many of these patients actually causes harm.

### **Why is a document that is portable so important?**

A POLST travels with the patient to any point of care, and it is the portability of the document that really makes POSLT unique, not the choices that are made on it – these decisions are made every day in all kinds of care settings. A big reason in developing POLST was so that patients could have the same orders for care at home or a foster care home or assisted living facility as they would in a hospital or nursing facility. POLST enables patients to live in the most appropriate care settings that align with their treatment wishes.

### **Who is supporting the use of POLST in California?**

The effort to implement POLST in California is led by the Coalition for Compassionate Care of California and its statewide POLST Task Force. The Coalition is a statewide partnership of regional and statewide organizations, state agencies, and individuals working together to promote high quality, compassionate care for seriously ill Californians. California's POLST form and additional resources (including model policies for acute care hospitals, skilled nursing facilities and hospice programs) can be found on the Coalition's website at [www.coalitionccc.org](http://www.coalitionccc.org).

The Alliance of Catholic Health Care is a major funder of the Coalition and serves on the statewide POLST Task Force. In addition, many of California's Catholic and community-based affiliated hospitals are integral to the efforts of local community coalitions working to implement POLST throughout the state. You can find other resources that address POLST in the context of Catholic teaching at the Alliance's website at [www.thealliance.net](http://www.thealliance.net) under the “End of Life” link.



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Alliance of Catholic Health Care  
1215 K Street, Suite 2000  
Sacramento, CA 95814  
[www.thealliance.net](http://www.thealliance.net)

Contact:  
Lori Cappello Dangberg  
Vice President  
(916) 552-2630  
[ldangberg@thealliance.net](mailto:ldangberg@thealliance.net)

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