

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

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Michigan-Do-Not-Resuscitate Procedure Act
(MCL 333.1052 et. seq.)

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The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 4,128.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

Amy N. Morrissey

E-Mail:

amorrissey@westermanpc.com

Regarding:

Michigan Do-Not-Resuscitate Procedure Act (MCL 333.1052 et. seq.)

Date position was adopted:

December 17, 2011

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

20 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

The Probate & Estate Planning Council proposes that the Michigan Do-Not-Resuscitate Procedure Act be amended as in the attachment being sent under separate cover to Elizabeth Lyon.

Explanation of the position, including any recommended amendments:

Michigan Do-Not-Resuscitate Procedure Act (proposed)

333.1052 Definitions. Sec. 2.

As used in this act:

(a) "Attending physician" means the physician(s) who has primary responsibility for the treatment and care of a ~~declarant.~~ patient.

(b) "Declarant" means a person ~~who has executed a do-not-resuscitate order or on whose behalf a do-not-resuscitate order has been executed as provided in section 3 or 5.~~ is an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing and who has requested a do-not-resuscitate order as provided in section 5 and 6 of this Act.

(c) "Do-not-resuscitate order" means a document ~~executed as prescribed in section 3 or 5 directing that, in the event that a patient suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, a nursing home, or a mental health facility owned or operated by the department of community health, resuscitation will not be initiated.~~ that fully complies with this Act and that directs health care providers to withhold or withdraw cardiopulmonary resuscitation from the patient in the event of cardiac and respiratory arrest.

~~(d) "Do-not-resuscitate identification bracelet" or "identification bracelet" means a wrist bracelet that meets the requirements of section 7 and is worn by the declarant while a do-not-resuscitate order is in effect.~~

(e) "Emergency medical technician" means that term as defined in section 20904 of the public health code, MCL 333.20904.

(f) "Emergency medical technician specialist" means that term as defined in section 20904 of the public health code, MCL 333.20904.

(g) "End stage medical condition" means an incurable and irreversible medical condition in an advanced stage caused by injury, disease, or physical illness that will, in the opinion of the attending physician, to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. All persons who are in a terminal condition, as defined by Medicare, have an end-stage medical condition.

(h) "Guardian" means for the purposes of this Act a person appointed to make medical care decisions for another under section 5301 through 5318 of the estates and protected individuals code, MCL 700.5301 through .5318.

(i) "Health facility" means that term as defined in section 20106 of the public health code but for the purposes of this Act the term includes nursing homes, hospices and homes for the aged and all other related health care facilities but does not include hospitals.

(j) "Hospital" means that term as defined in section 20106 of the public health code, MCL 333.20106.

(j) "Medical first responder" means that term as defined in section 20906 of the public health code, MCL 333.20906.

(k) "Nurse" means a licensed practical nurse or a registered professional nurse as defined in section 17201 of the public health code, MCL 333.17201.

(l) "Order" means a do-not-resuscitate order.

(m) "Organization" means a company, corporation, firm, partnership, association, trust, or other business entity or a governmental agency.

(n) "Paramedic" means that term as defined in section 20908 of the public health code, MCL 333.20908.

(o) "Patient" means a person for whom an attending physician has issued a do-not-resuscitate order.

(p) "Patient advocate" means an individual designated to make medical treatment decisions for a patient under sections 5506 to 5515 of the estates and protected individuals code, so long as the patient advocate has been authorized in the patient advocate designation to make a decision to withhold or withdraw treatment that would allow a patient to die and the patient acknowledged in the patient advocate designation that such a decision could or would allow the patient's death.

(q) "Permanently unconscious" means a diagnosis made in accordance with accepted medical standards in effect at that time and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

~~(m)~~ (r) "Physician" means an individual licensed to engage in the practice of medicine or the practice of osteopathic medicine and surgery pursuant to article 15 of the public health code, MCL 333.16101 to 333.18838.

(r)(s) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211. (s) "Vital sign" means a pulse or evidence of respiration.

333.1053 Execution of order; authorized persons; form; printed or typed names; signatures; witness; identification bracelet; possession; access. Sec. 3.

(1) Subject to section 5, an individual who is 18 years of age or older and of sound mind may execute a do-not-resuscitate order on his or her own behalf. A patient advocate or guardian of an individual who is 18 years of age or older may execute a do-not-resuscitate order on behalf of that individual in accordance with Michigan law only.

(2) An order executed under this section shall be on a form described in section 4. The order shall be dated and executed voluntarily and signed by each of the following persons:

~~(a) The declarant or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant.~~ The patient, patient advocate or guardian;

(b) The declarant's patient's attending physician,

(c) A second physician, and

~~(e)~~ (d) Two witnesses 18 years of age or older, at least 1 of whom is not the ~~declarant's~~ patient's spouse, parent, child, grandchild, sibling, or presumptive heir.

(3) The names of ~~the declarant, the attending physician, and each witness~~ all signatories shall be printed or typed below the corresponding signatures on the order. A witness shall not sign an order that was signed by a patient unless the ~~declarant~~ patient appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

~~(4) At any time after an order is signed and witnessed, the declarant or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.~~

~~(5) (4) A declarant who executes an order under this section shall maintain possession of the order and shall have the order accessible within his or her place of residence or other setting outside of a hospital, a nursing home, or a mental health facility owned or operated by the department of community health. An order issued under this section shall be made accessible within the patient's residence and in the patient's medical chart at any health facility where the patient is located.~~

333.1054 Execution of order; form.

Sec. 4. A do-not-resuscitate order executed under section 3 shall include, but is not limited to, **all of** the following language, and shall be in substantially the following form:

"DO NOT RESUSCITATE ORDER

I have discussed my health status with my physician _____. I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me. This order is effective until it is revoked by me. Being of sound mind, I voluntarily execute this order, and I understand its full import.

~~(Declarant's signature) (Date)~~

~~(Type or print declarant's full name)~~

~~(Signature of person who signed for declarant, if applicable)~~

~~(Type or print full name)~~

~~(Physician's signature) (Date)~~

~~(Type or print physician's full name)~~

ATTESTATION OF WITNESSES

~~The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) received an identification brace-let.~~

~~(Witness signature)(Date)~~

~~(Witness signature) (Date)~~

~~(Type or print witness's name) (Type or print witness's name)~~

"THIS FORM WAS PREPARED PURSUANT TO, AND IS IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT."

PATIENT'S NAME: _____

This order is not valid unless both Section A and B are signed.

Section A. Attending Physician's Statement:

I, the undersigned, state that I am the attending physician of the above-named patient. I direct, commencing on the

date of my signature below, that any and all medical personnel withhold or withdraw cardio- pulmonary resuscitation from the patient in the event of the patient’s respiratory and cardiac arrest.

Physician’s signature: _____ Date: _____

Printed name: _____ Physician’s license number: _____

Section B. Second Physician’s Statement:

I, the undersigned, state that I am a physician who has examined the above-named patient. I concur in the attending physician’s direction that medical personnel withhold or withdraw cardiopulmonary resuscitation from the patient in the event of the patient’s respiratory and cardiac arrest.

Second physician’s signature: _____ Date: _____

Printed name: _____ Second physician’s license number: _____

This order is not valid unless either Section C or Section D are signed.

Section C Patient’s Statement

I have discussed this matter with my physician and I do not want to be resuscitated if my heart and breathing stop. I am consenting to my physician’s order that directs medical personnel to not resuscitate me if my heart and breathing stop which will allow me to die. This order is effective immediately, but I can revoke this order at any time and in any manner that communicates my wishes.

Signature of Patient _____ Date: _____

Patient’s printed name: _____

Section D Patient Advocate or Guardian’s Statement

I, the undersigned, hereby certify that I am legally authorized to consent to this order on _____ (patient’s name) behalf. The attending physician notified me that the patient is permanently unconscious or is in an end stage medical condition. I understand and hereby agree that if the patient’s heart and breathing stop, medical personnel will not resuscitate the patient.

Sign either (1) or (2).

1. Patient Advocate’s Signature _____ Date: _____ Printed name: _____
_____ Date patient declared to be unable to
make own medical decisions: _____

2. Guardian’s Signature _____ Date: _____ Printed
name: _____ Date that probate court appointed
this guardian: _____

This order is not valid unless Section E is signed.

Section E.

We, the witnesses, are 18 years of age or older and at least one of us is not the patient’s spouse, parent, child, grandchild, sibling, or presumptive heir. The patient, patient advocate, or guardian signed or acknowledged their signature in our presence on this date in _____ County, Michigan. If the patient signed this order, we also certify that the patient appeared to us to be of sound mind and under no duress, fraud, or undue influence.

Witness signature: _____ Date: _____

Printed name: _____

Witness signature: _____ Date: _____

Printed name: _____

333.1055 Persons depending on spiritual means through prayer for healing; execution of order.

Sec. 5.

(1) An individual who is 18 years of age or older, of sound mind, and an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing may execute a do-not-resuscitate order on his or her own behalf. A patient advocate of an individual who is 18 years of age or older and an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section shall be on a form described in section 6. The order shall be dated and executed voluntarily and signed by each of the following persons:

(a) The declarant or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant.

(b) Two witnesses 18 years of age or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.

(3) The name of the declarant and of each witness shall be printed or typed below the corresponding signatures. A witness shall not sign an order unless the declarant appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

~~(4) At any time after an order is signed and witnessed, the declarant or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.~~

~~(5) A declarant who executes an order under this section shall maintain possession of the order and shall have the order accessible within his or her place of residence or other setting outside of a hospital, a nursing home, or a mental health facility owned or operated by the department of community health~~

(4) An order issued under this section shall be made accessible within the declarant’s residence and in the declarant’s medical chart at any health facility where the declarant is located.

333.1056 Execution of order under MCL 333.1055; form.

Sec. 6. A do-not-resuscitate order executed under section 5 shall include, but is not limited to, all of the following language, and shall be in ~~substantially~~ the following form:

"DO-NOT-RESUSCITATE ORDER

Declarant's name: _____

I am an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing. If my heart and breathing stop, I do not want anyone to resuscitate me. If medical personnel are called to help me because my heart and breathing have stopped, then I direct the medical personnel to withhold or withdraw cardiopulmonary resuscitation. This order is effective immediately, but I can revoke it at any time and in any manner that communicates my wishes.

~~I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me. This order is effective until it is revoked by me. Being of sound mind, I voluntarily execute this order, and I understand its full import.~~

(Declarant's or patient advocate's signature) (Date)

(Type or print signatory's full name)

ATTESTATION OF WITNESSES

We, the witnesses, are 18 years of age or older and at least one of us is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir. The declarant or their patient advocate signed or acknowledged their signature on this date in our presence in _____ County, Michigan. If the declarant signed this order, then we also certify that the declarant appeared to us to be The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) ~~received an identification bracelet.~~

(Witness signature) (Date) (Witness signature) (Date)

(Type or print witness's name) (Type or print witness's name)

~~THIS FORM WAS PREPARED PURSUANT TO, AND IS IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT."~~

~~333.1057 Identification bracelet. Sec. 7.~~

~~(1) A do-not-resuscitate identification bracelet shall possess features that make it clearly recognizable as a do-not-resuscitate identification bracelet including, but not limited to, all of the following:~~

~~(a) The identification bracelet shall be imprinted with the words "DO NOT RESUSCITATE ORDER", the name and address of the declarant, and the name and telephone number of the declarant's attending physician, if any.~~

~~(b) The words required under subdivision (a) shall be printed in a type size and style that is as easily read as practicable, given the size of the identification bracelet.~~

~~(2) An individual shall not apply a do-not-resuscitate identification bracelet to another individual unless he or she knows that the other individual is a declarant. An individual who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.~~

333.1058 Copy of order as permanent medical record

Sec. 8.

An attending physician who signs a **patient's or** declarant's do-not-resuscitate order under section 3 shall immediately make a copy or obtain from the **patient or** declarant a duplicate of the executed order and make that copy or duplicate part of the **patient's or** declarant's permanent medical record.

333.1059 Petition for review of order.

Sec. 9.

If a person interested in the welfare of the **patient or** declarant has reason to believe that an order has been executed contrary to the wishes of the **patient or** declarant, the person may petition the probate court to have the order and the conditions of its execution reviewed.

333.1060 Revocation of order.

Sec. 10.

(1) A **patient, patient advocate, guardian, or** declarant ~~or a patient advocate who executes an order on behalf of a declarant~~ may revoke an order at any time and in any manner by which he or she is able to communicate an intent to revoke the order. If the revocation is not in writing, a person who observes the revocation shall describe the circumstances of the revocation in writing and sign the writing. Upon revocation, the **patient, patient advocate, guardian,** the declarant, ~~patient advocate,~~ or attending physician or a delegatee of the attending physician who has actual notice of the revocation shall **destroy the write VOID across all pages of the do-not-resuscitate order then sign and date the do-not-resuscitate order to note it was voided.** ~~order and remove the declarant's do-not-resuscitate identification bracelet, if the declarant is wearing a do-not-resuscitate identification bracelet.~~

(2) A physician or physician's delegatee who receives actual notice of a revocation of an order shall immediately make the revocation, including, if available, the written description of the circumstances of the revocation required by subsection (1), part of the revoking **patient or** declarant's permanent medical record.

(3) A **patient's, patient advocate's, guardian's or** declarant's ~~or patient advocate's~~ revocation of an order is binding upon another person at the time that other person receives actual notice of the revocation.

(4) For purposes of subsections (1) and (2), a "delegatee" is an individual to whom a physician has delegated the authority to perform 1 or more selected acts, tasks, or functions under section 16215 of the public health code, being section 333.16215 of the Michigan Compiled Laws.

(5) For purposes of of this section a physician or physician's delegatee has actual notice of a revocation when either a writing described in subsection (1) is provided to the physician or the physician's delegatee, or when the physician or the physician's delegatee observes the revocation as described in subsection (1).

333.1061 Determination by health professional.

Sec. 11.

(1) One or more of the following health professionals who arrive at a **PATIENT'S OR** declarant's location outside of a hospital, a nursing home, or a mental health facility owned or operated by the department of community health **or inside of a health facility as defined in section 333.1052(g) of this Act** shall determine if the **PATIENT OR** declarant has 1 or more vital signs, whether or not the health professional views or is provided with an order described in section 3 or 5 that is alleged to have been signed by the **PATIENT**, declarant or other person authorized to execute an order:

- (a) A paramedic.
- (b) An emergency medical technician.
- (c) An emergency medical technician specialist.
- (d) A physician.
- (e) A nurse.
- (f) A medical first responder.
- (g) A respiratory therapist.

(2) If the health professional determines under subsection (1) that the **PATIENT OR** declarant has no vital signs, ~~and if the health professional determines that the declarant is wearing a do-not-resuscitate identification bracelet or~~ **AND THE HEALTH PROFESSIONAL** is provided with a do-not-resuscitate order for the **PATIENT OR** declarant, **THEN** he or she shall not attempt to resuscitate the **PATIENT OR** declarant.

333.1062 Immunity from civil or criminal liability.

Sec. 12.

A person or organization is not subject to civil or criminal liability for withholding resuscitative procedures from a **patient or** declarant in accordance with this act.

333.1063 Immunity from civil or criminal liability; conditions.

Sec. 13.

A person or organization is not subject to civil or criminal liability for either of the following:

- (a) Attempting to resuscitate an individual who has executed a do-not-resuscitate order or on whose behalf an order has been executed, if the person or organization has no actual notice of the order. **A person or organization has actual notice of an order when a copy or original of a do-not-resuscitate order is provided to them.**
- (b) Failing to resuscitate an individual who has revoked a do-not-resuscitate order or on whose behalf a do-not-resuscitate order has been revoked, if the person or organization does not receive actual notice of the revocation. **A person or organization has actual notice of a revocation when a copy or original of the revoked order is provided to them.**

333.1064 Requirement to execute order; prohibited

Sec. 14

A person or organization shall not require the execution of an order described in section 3 or 5 as a condition for insurance coverage, admittance to a health care facility, receiving health care benefits or service, or any other reason.

333.1065 Life insurer; prohibited acts.

Sec. 15.

A life insurer shall not do any of the following because of the execution or implementation of an order:

- (a) Refuse to provide or continue coverage to the **patient or** declarant.
- (b) Charge the **patient or** declarant a higher premium.
- (c) Offer a **patient or** declarant different policy terms because the patient or declarant has executed an order.
- (d) Consider the terms of an existing policy of life insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the **patient or** declarant.

333.1066 Legal rights not impaired or superseded; presumptions.

Sec. 16.

- (1) The provisions of this act are cumulative and do not impair or supersede a right that an individual may have to consent to or refuse medical treatment for himself or herself or that a parent, guardian, **patient advocate** or other individual may have to consent to or refuse medical treatment on behalf of another.
- (2) This act does not create a presumption concerning the intent of a person executing an order to consent to or refuse medical treatment in circumstances other than the cessation of both spontaneous circulation and respiration.
- (3) This act does not create a presumption concerning the intent of an individual who has not executed an order to consent to or refuse any type of medical treatment.