

# DNRs and POSTs

Educational Implications of the Revised DNR Act

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MAASE Winter Meeting

# Introduction

- Another Presentation – Many Years Ago
  - The law was unclear.
  - The subject provoked strong responses.
- This Year
  - The legislature has spoken in the Revised DNR Act.
  - We need to set aside our personal views.
- Caution: This presentation combines Michigan’s existing DNR Act with the Revised DNR Act that takes effect on April 4, 2021.

# Starting Point - DNRs and POSTs

- **DNR – Do-Not-Resuscitate Order.**
  - A DNR is a document created pursuant to Michigan’s DNR Act\* that specifies resuscitation will not be initiated if an individual suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital.
  - Resuscitation is cardiopulmonary resuscitation (CPR) or a component of CPR including, but not limited to, cardiac compression, intubation or other airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medication, or another related procedure.
- **POST – Physician Order for Scope of Treatment**
  - A POST is an order issued by a physician, physician assistant, or nurse practitioner establishing the medical treatment a dying patient will or will not receive.
  - A POST may include a DNR.

# Prohibition for Educators

- A school district employee is prohibited from attempting to resuscitate a student who is wearing a DNR bracelet or, even if the student is not wearing a DNR bracelet, the employee has actual knowledge of the existence of a DNR order.
- Potential Liability\*
  - To what extent am I or the school district liable if I follow a DNR order?
  - To what extent am I or the school district liable if I don't follow a DNR order or the revocation of a DNR order?



# DNR Bracelets and Orders

- DNR Bracelet: A DNR identification bracelet is a bracelet that meets certain requirements *and* is worn while a DNR order is in effect.
- Requirements: A DNR identification bracelet must say “DO-NOT-RESUCITATE ORDER,” the name and address of the declarant (i.e., the student), and the name and telephone number of the student’s physician.
- DNR Order: The Act includes an example, [MCL 333.1054](#).

# Enforceable DNR Order – Competent Adult

- An individual (i.e., declarant) of sound mind 18 years or older, his/her patient advocate, or another person acting at the declarant's direction may execute an enforceable DNR order. The DNR must be on the form described in Section 4, [MCL 333.1054](#), and must:
  - Be voluntarily signed by the declarant, the declarant's patient advocate, or another person acting at declarant's direction;
  - Declarant's attending physician; and,
  - 2 adult witnesses, one of whom is not declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.
- All signatories' names must be typed or printed beneath their signatures.
- Witnesses may not sign unless the declarant or declarant's patient advocate appears of sound mind and not under duress, fraud, or undue influence.

# Enforceable DNR Order – Child

- The parent of a child may execute a DNR order for his or her child. Where parents share legal decision-making authority for the welfare of a child (which is almost every case), both parents must sign.
- A DNR order for a child looks like a DNR order for a competent adult, except it is signed by the parents instead of the declarant.
- A parent who executes a DNR order for a child must provide it to the administrator of the child's school (or the administrator's designee) if the child attends school.

# Enforceable DNR Order – Ward

- A ward is a person for whom a court has appointed a guardian pursuant to Michigan law because the ward is legally incompetent.
- A guardian may execute a DNR order for adult ward if the guardian complies with Section 5314 of EPIC (Michigan's Estates and Protected Individuals Code).
- A guardian may execute a DNR order for a minor child. Query, is there a duty to comply with Section 5314 of EPIC when a guardian executes a DNR order for a minor child?

# DNR Orders for Wards

- A DNR order for a ward looks just like a DNR order for competent adults, except it is signed by the guardian instead of the declarant.
- A guardian who executes a DNR order for a ward must provide it to the administrator of the ward's school (or the administrator's designee) if the ward attends school.

# Revocation of DNR Order

- A declarant may revoke a DNR order, or a DNR order that was executed on his or her behalf, at any time and in any manner by which he or she is able to communicate his or her intent to revoke the order.
- If the revocation is not in writing, the individual who observed it must describe the circumstances of the revocation in writing, sign the writing, and deliver it to the declarant's attending physician and, if the declarant is a student, to the school administrator. A parent or guardian may revoke a DNR in a similar manner.
- A declarant, physician, patient advocate, guardian, or parent who has actual knowledge of such a revocation must write "void" on all the pages of the DNR and remove the declarant's DNR bracelet.

# Educators' New Duties

- Effective April 4, 2021, the Revised School Code requires that a school administrator (or designee) who receives a DNR order or the revocation of a DRN must:
  - Place a copy of DNR order, or revocation, in a special DNR file;
  - The school year after the DRN order is received, check with the parent or guardian to confirm it is still in effect; and,
  - Provide actual notice of the DRN order, or revocation, to each teacher and other person who provides the student with instructional or non-instructional services.
- An administrator (or designee) who receives a DNR revocation, in addition to placing it in the DNR file, must provide actual notice of the revocation to each teacher and other person who provides the student with instructional and non-instructional services.
- What must the Board of Education Do? The Board must ensure that teachers and instructional and non-instruction service providers of a student with a DNR order receive timely training regarding compliance with the DNR order.



# The Prohibition - Reminder

- A school district employee is prohibited from attempting to resuscitate a student who is wearing a DNR bracelet or, even if the student is not wearing a DNR bracelet, the employee has actual knowledge of the existence of a DNR order. Conversely, the prohibition does not apply in cases where the student is not wearing a DNR bracelet and the school district or school employee does not have actual notice of the DNR order.
- Separately, the fact a student has a DNR order does not mean the student is entitled to an IEP. However, as a practical matter, most students with DNR orders will have IEPs. Noting the existence of a DNR order in an IEP is not illegal and is one way to provide actual notice of the DNR order to school personnel.

# Permitted Actions

- We can call 9-1-1 if we believe there is an emergency that threatens a student's life or well-being.
- We can, in good faith and in accordance with our knowledge and ability, attempt to administer a "comfort care measure" to the student.
- A comfort care measure is "a treatment designed by the physician who issued the DNR order to ensure the student's mental and physical comfort in circumstances in which resuscitation is not attempted." Conversely, comfort care measures are not the routine provision of medications, treatments, or procedures.

# Immunity from Liability

- A school district employee who follows a DNR order or provides a comfort care measure is immune from criminal or civil liability, except for an act or omission amounting to gross negligence\* or willful and wanton misconduct.\* The school district is also immune from civil liability. The immunity provided by this law is in addition to whatever other immunity the school district may assert.

# Liability and Potential Liability

- Violating the law may put your job in jeopardy.
- It is a misdemeanor to violate the Revised School Code.
- Other Potential Civil Liability Theories
  - Battery
  - Wrongful Life (Not Yet Recognized in Michigan)
  - Substantive Due Process (Not Yet Explicitly Recognized)

# Doubts about Validity of a DNR

- Self-help is not the solution.
- Michigan's DNR Act permits a party with an interest in the welfare of a declarant to file a civil action if that party is concerned the DNR order is against the wishes or best interests of the declarant.
- Is there a standing question?

# Potential Problem Areas

- Communication Between Parents and School District
- Communication Between Administrators and Front-Line Educators and Service Providers
- Training
- Revocation on Short-Notice



# Questions?



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