

5. Where the Office has substantiated the allegations of the complaint, and where appropriate, the government agency or agencies having regulatory or licensing authority over either the person accused of the abuse or exploitation or over the facility in which the elderly person is residing.

(e) The name of any person who reports suspected abuse or exploitation pursuant to this subchapter shall not be disclosed, unless:

1. The person who reported the abuse or exploitation specifically authorizes such disclosure; or
2. A judicial proceeding results from such report; or
3. Disclosure is authorized under N.J.A.C. 8:90-1.6(a).

(f) Any person who reports suspected abuse or exploitation pursuant to this subchapter or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.

(g) Pursuant to N.J.S.A. 52:27G-7.1(f), any person required to report suspected abuse or exploitation, as required herein, who fails to make the reports required by this section, may be fined up to \$5,000. Such penalty will be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. Each violation of this section shall constitute a separate offense.

(h) No provision of this section shall be deemed to require the disclosure of, or penalize the failure to disclose, any information which would be privileged pursuant to the provisions of Sections 18 through 23 inclusive of P.L.1960, c.52 (N.J.S.A. 2A:84A-18 through 2A:84A-23).

(i) The Office shall maintain a central registry of all reports of suspected abuse or exploitation and of all investigations, findings and recommended actions. No information received and compiled in such registries shall be construed as a public record.

(j) Where the report alleging elderly abuse or exploitation pertains to the withholding or withdrawal of life-sustaining treatment from an elderly incompetent institutionalized resident, reporting shall be governed by N.J.A.C. 8:90-2.

8:90-1.6 Confidentiality of information; privileged communications

(a) The Office shall maintain confidentiality with respect to all matters in relation to any complaint or investigation, together with the identities of the complainants, witnesses or residents involved, unless such persons authorize, in writing,

the release of such information, except for such disclosures as the Ombudsman deems necessary to enable the Office to perform its duties and to support any opinions or recommendations that may result from a complaint or investigation. The investigatory files of the Office, including all complaints and responses of the Office to complaints, shall be maintained as confidential information. Release of pertinent records shall be at the discretion of the Ombudsman.

(b) Any statement or communication made by the Office relevant to a complaint received by, proceedings before, or investigative activities of, the Office, and any complaint or information made or provided in good faith by any person, shall be absolutely privileged and such privilege shall be a complete defense in any action which shall allege libel or slander.

8:90-1.7 Prohibition of discriminatory, disciplinary or retaliatory action

No discriminatory, disciplinary or retaliatory action shall be taken against any officer or employee of a facility or government agency by such facility or government agency, or against any resident of a facility or guardian or family member thereof, or independent contractor providing care or services to a resident, or volunteer, for any communication by him or her with the Office or for any information given or disclosed by him or her in good faith to aid the Office in carrying out its duties and responsibilities.

8:90-1.8 Hindrance of Office or refusal to comply; penalties

Any person who willfully hinders the lawful actions of the Office or willfully refuses to comply with any of its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a resident thereof, may be fined up to \$5,000. Such penalty shall be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq., upon complaint of the Office or any other person. Each violation of this section shall constitute a separate offense.

8:90-1.9 Volunteer Advocate Program

(a) The Office shall develop programs for use, training and coordination of volunteers and shall also be responsible for the development of policies and procedures for the administration of the Volunteer Advocate Program. These Volunteer Advocates shall serve to promote the well-being and quality of life of residents of long-term care facilities. They shall be required to report to the Regional Volunteer Coordinator.

(b) The Office shall retain responsibility for its volunteer advocates by acquiring the services of a Regional Volunteer Coordinator who shall be responsible to the Ombudsman. The Regional Volunteer Coordinator shall recruit, train and

supervise Volunteer Advocates to advocate on behalf of the institutionalized elderly 60 years of age and over.

(c) The Ombudsman shall coordinate the efforts of the Office concerning volunteers with all relevant government agencies and with the administrators of such private facilities as may be deemed appropriate to ensure coordination and to avoid duplication of effort, so that the Volunteer Program will genuinely serve the interests of the institutionalized elderly without disrupting the legitimate function of any facility.

Amended by R.1995 d.336, effective June 19, 1995.
See: 27 N.J.R. 1348(a), 27 N.J.R. 2388(b).

SUBCHAPTER 2. PROCEDURES REQUIRED PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FROM ELDERLY, INSTITUTIONALIZED RESIDENTS

8:90-2.1 Purpose

(a) The purpose of this subchapter is to clarify the Office's role in circumstances involving proposals to withhold or to withdraw life-sustaining treatment from nursing home patients, pursuant to guidelines set forth by the New Jersey Supreme Court in the cases of *Matter of Farrell*, 108 N.J. 335 (1987), *Matter of Peter*, 108 N.J. 365 (1987) and *Matter of Conroy*, 98 N.J. 321 (1985). The Office views its role as being twofold:

1. To oversee the processes established by the Court in *Peter* and in *Conroy*; and
2. To assist the institutionalized elderly, their families and friends, their healthcare providers and the facilities in which they reside in making life-sustaining treatment decisions that fully express the wishes of the resident.

(b) Where there is no clear "duty to report" as outlined in N.J.A.C. 8:90-2.3, the Office is available to provide technical support, assistance and dispute resolution, should there be disagreement regarding the withholding or withdrawal of life-sustaining treatment, whether or not the resident has the capacity to make a healthcare decision, and whether or not an Advance Directive ("Living Will") or Proxy Directive ("Durable Power of Attorney for Health Care") is involved. The Office's function in any such situation is to promote, advocate and ensure the rights of the institutionalized elderly resident, pursuant to New Jersey Supreme Court guidelines and the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq.

Amended by R.1995 d.336, effective June 19, 1995.
See: 27 N.J.R. 1348(a), 27 N.J.R. 2388(b).
Added (b).

Public Notice: Farrell requirements.
See: 30 N.J.R. 4291(c).

8:90-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Capacity to make a healthcare decision" means the ability to understand and appreciate the nature and consequences of a healthcare decision, including the resident's diagnosis and prognosis, the benefits and risks associated with the decision and alternatives to the decision, and having the ability to voluntarily reason and make judgments about that information.

"Fully informed" means being informed in language understandable to the resident of diagnosis and prognosis, the benefits, burdens and risks of the proposed treatment or non-treatment and its alternatives.

"Life-sustaining treatment" means any medical intervention that is administered to a resident in order to prolong life and delay death.

"Medically indicated treatment" means treatment that will improve the medical condition of the resident or is necessary to provide palliative care to the resident.

"Palliative care" means medical, surgical or other interventions designed to alleviate suffering and discomfort, but not to cure.

"Surrogate decisionmaker" means a guardian, a close and caring family member, or a person designated by the resident, who is willing and able to make a decision to withhold or to withdraw life-sustaining treatment on behalf of the resident.

Case Notes

It was error to substitute competency opinion of only attending physician for required opinions of "two non-attending physicians." *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

8:90-2.3 Duty to report

(a) Any person who believes that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would effectuate the resident's wishes or would be in the resident's best interests shall notify the Office of the contemplated action.

(b) Any caregiver, social worker, physician, registered or licensed practical nurse or other professional who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would be an abuse of that resident shall report such information to the Office.