ECHO MOLST + eMOLST: *Honoring Preferences at End-of-life*

Session 7 Conflict Resolution: Authority of Health Care Agents and Surrogates *What They Can and Cannot Do*

Presenter

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The speaker has no significant financial conflicts of interest to disclose.

Learning Objectives

- Describe how to handle a difficult conversation with skill and empathy
- Apply the approach to a crucial conversation to resolve conflict
- Explain what a health care agent and surrogate *can* and *cannot* do in accordance with NYSPHL

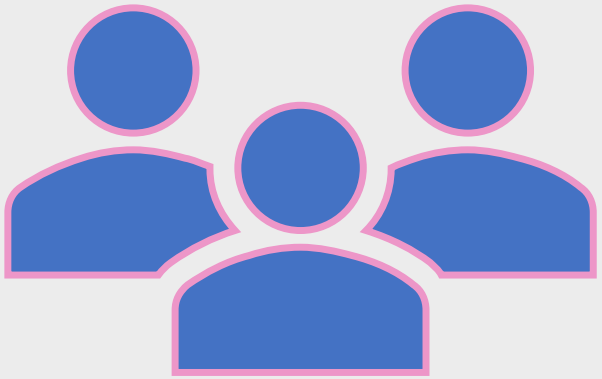
8-Step MOLST Protocol

Developed for NYS MOLST, Bomba, 2005; revised 2011

1. Prepare for discussion
   - Understand patient's health status, prognosis & ability to consent
   - Retrieve completed Advance Directives
   - Determine decision-maker & PHL legal requirements
2. Determine what the patient/family know
3. Explore goals, hopes and expectations
4. Suggest realistic goals
5. Respond empathetically
6. Use MOLST to guide choices & finalize patient wishes
   - Shared, informed medical decision-making and conflict resolution
7. Complete and sign MOLST
   - Follow PHL and document conversation
8. Review and revise periodically

Conflict Resolution

- Manage conflict within the family, within the team and between the patient/family and team with skill and empathy
- Apply the approach to a crucial conversation to resolve conflict



Managing Conflict

General Principles

- Conflict is inescapable
- It’s how you handle it that matters
- Debate shouldn’t be the model
- Avoidance is a short-term fix
- Choose the right time and place to meet
- Be prepared before you meet
- Develop your conflict resolution skills
- Train other physicians/NPs/PAs and members of your team on how to handle and resolve conflict

Be Clear About the Issue

What exactly is the *issue or behavior* that is causing the problem?

What is the *impact* that the issue or behavior is having on the patient, the medical decision maker, the family, the physician/NP/PA and the rest of the team?

Is the issue *with* the patient, the medical decision maker, *within* the family, *or between* the family and the physician/NP/PA/other members of the team *or* the entire team?

Know Your Objective

- What do you want to accomplish with the discussion?
- What is the desired outcome?
- What are the non-negotiables?
  - Outcome must be consistent with patient values, beliefs, goals for care and NYSPHL
- End with clearly expressed action items
  - What is the patient or decision maker agreeing to do?
  - Does the decision support patient values, beliefs & goals?
  - What support can the physician/NP/PA and team provide?
  - Are there any obstacles?
  - What can the team do to overcome obstacles?

Adopt a Mindset of Inquiry

- Before you meet, reflect on your attitude toward the situation & the person(s) involved
- Use active listening skills and empathy
- Know how to begin the conversation
  - Use language that is descriptive and non-judgmental
  - Don't provoke defensiveness
  - "Could we talk about this?"
- Invite the other perspective(s) before you give yours
  - "Tell me your thoughts first, then I'll describe mine."
  - Let the patient, decision maker, family member or loved one tell their story
  - Don't interrupt
  - Take time to recognize their perspective with empathy

Manage the Emotions

- Responsibility of the physician/NP/PA to understand and manage emotions
- Wheel of Emotions* - Emotions follow a path
  - What starts as an annoyance can move to anger and, in extreme cases, escalate to rage
  - Avoid this by being mindful of preserving the person's dignity—and treating them with respect—even if we totally disagree with them
- Use neutral language to reframe emotionally charged issues and defuse conflict
  - "It seems like we are interpreting the data differently."

*Dr. Robert Plutchik, Professor Emeritus, Albert Einstein College of Medicine

Manage the Emotions

- Express empathy towards the situation – not the person
  - “This is a tough situation for everyone involved.”
  - You don’t solve conflicts by focusing on who’s right
  - Try to shift to what’s best for the patient given the situation
- Try to create new options that respond to the patient’s and family’s as well as the physician’s/NP’s/PA’s and team’s concerns
  - Focus on the patient values, beliefs and goals for care

Be Comfortable with Silence

- There will be moments in the conversation where silence occurs
- Don't rush to fill it with words
- Periodic silence allows us to hear what was said and lets the message sink in
- A pause also has a calming effect and can help us connect better
- Periods of silence can lead to a better outcome

Preserve the Relationship

- A physician/NP/PA and clinician who has high emotional intelligence is always mindful to limit any collateral damage to the relationship
- It takes time to build a relationship with a patient and only minutes to blow it up
- Think about how the conversation can fix the situation, without building an irreparable wall between you and the patient and their family

Be Consistent

- Ensure that your objective is fair
- Use a consistent approach
- The team trusts a physician/NP/PA who is consistent

Compliance with Ethics and NYSPHL

MOLST Instructions and Checklists Ethical Framework/Legal Requirements

Checklist #1 - Adult patients with medical decision-making capacity *(any setting)*

Checklist #2 - Adult patients without medical decision-making capacity who have a health care proxy *(any setting)*

Checklist #3 - Adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy, and decision-maker is a Public Health Law Surrogate (surrogate selected from the surrogate list); includes hospice

Checklist #4 - Adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy or a Public Health Law Surrogate (*+/- hospice eligible)*

Checklist #5 - Adult patients without medical decision-making capacity who do not have a health care proxy, and the MOLST form is being completed in the *community*.

Checklist for Minor Patients - (*any setting)*

Checklist for Developmentally Disabled who lack capacity – *(any setting)* **must** travel with the patient's MOLST

http://www.nyhealth.gov/professionals/patients/patient_rights/molst/

Decisions by Adults with Capacity under FHCDA

- Even if the patient lacks capacity, there is **no** surrogate decision-making where the patient has already made a decision about the health care prior to losing capacity:
  - in writing or orally
  - with respect to a decision to withdraw or withhold life-sustaining treatment, such oral consent must be during hospitalization in the presence of two witnesses eighteen years of age or older, at least one of whom is a health or social services practitioner affiliated with the hospital

Jonathan Karmel, Esq., NYSDOH, EMS Briefing, May 2010

Health Care Proxy Law

- Health care agents are required to make decisions according to the patient's wishes, including the patient's religious and moral beliefs. If the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, the health care agent may make decisions according to the patient's best interests, except a decision to withhold or withdraw artificial nutrition or hydration.
- Health care agents are authorized to make a decision to withhold or withdraw artificial nutrition or hydration only if they know the patient's wishes regarding the administration of artificial nutrition and hydration.

Family Health Care Decisions Act

- Surrogate'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 surrogate's assessment is based on the patient's wishes and best interests, **not** the surrogate'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

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- If the patient loses capacity to make MOLST decisions, a decision maker *can* modify decisions the patient made on the MOLST to receive full treatment
- A decision to forego CPR, respiratory support, future hospitalization, a feeding tube or other life-sustaining treatment can be made if it is consistent with “known wishes” or “best interest” of the patient, based on a major change in health status or prognosis.
- Full treatment represents the standard of care.
- MOLST represents CURRENT not FUTURE preferences.

What a Health Care Agent and Surrogate Can Do

- If the patient loses capacity to make MOLST decisions, the decision-maker *cannot* override decisions the patient has made regarding withholding life-sustaining treatment.
- If the patient has already made decisions to withhold certain life-sustaining treatment, e.g. Do Not Resuscitate (DNR) and Do Not Intubate (DNI), the health care agent or surrogate *cannot* undo the patient's decision.

What a Health Care Agent and Surrogate Cannot Do

Key Points

Resolving conflict is a critical skill for physicians, NPs, PAs and all clinicians.

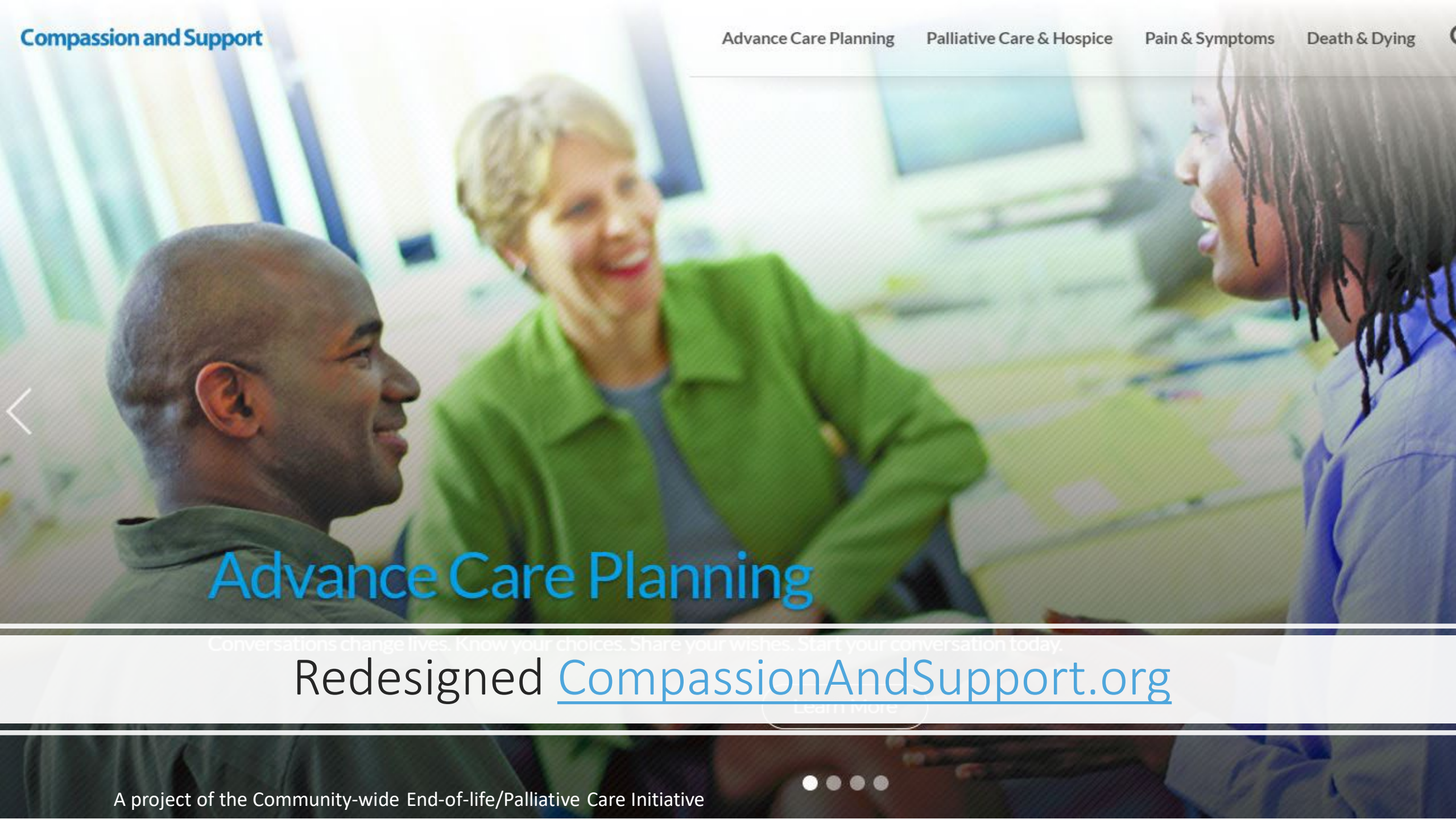
Develop your skills and help your team develop their skills.

MOLST decisions are patient-centered, not health care agent or surrogate- centered.

MOLST must reflect the patient's values and beliefs, as required under NYSPHL & SCPA 1750-b.

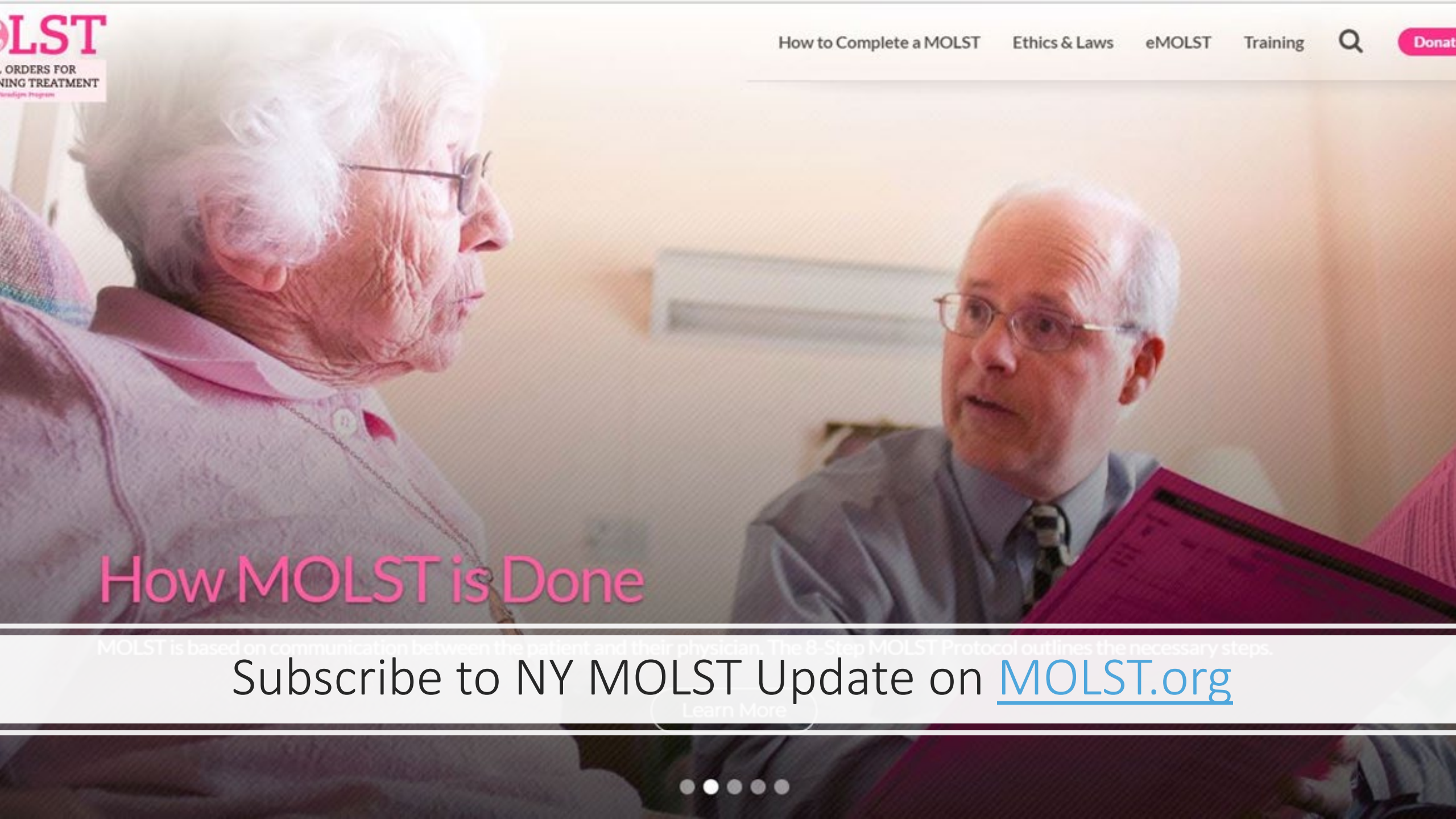
MOLST is based on CURRENT health status, prognosis and goals.

Resources



Redesigned CompassionAndSupport.org

A project of the Community-wide End-of-life/Palliative Care Initiative



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- Authority of a Health Care Agent and Surrogate
- NYSDOH MOLST Checklists
- Ethical and Legal Requirements for EOL Decisions in NY
- Authority of a Health Care Agent & Surrogate
- Bomba, P. A., & Karmel, J. B. (2015). Medical, Ethical and Legal Obligations to Honor Individual Preferences Near the End of Life. Health Law Journal, 20(2), 28-33.
- Crucial Conversations: Tools for Talking When Stakes Are High by Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler, Stephen R. Covey (Foreword)
- Demonstrating Thoughtful MOLST Discussions, Hospital & Hospice Settings
- VitalTalk.org
- More at Resources on MOLST.org