GRAND ROUNDS: LEGAL ASPECTS OF MEDICAL CARE

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Objectives

1) To understand the legal requirements of the Baker Act and its proper application in a hospital setting (both ER and inpatient) in order to meet the standard of care for physicians and the hospital and to ensure patient safety;

2) To understand the legal requirements of EMTALA, the different types of interhospital transfers, and how to properly transfer a patient without violating EMTALA;

3) To better understand the circumstances and procedure for entering and honoring Do Not Resuscitate (DNR) Orders, the requirements for withdrawal of life support , and the process for challenging surrogate medical decision making.

4) To understand how medical malpractice claims can develop from these issues.

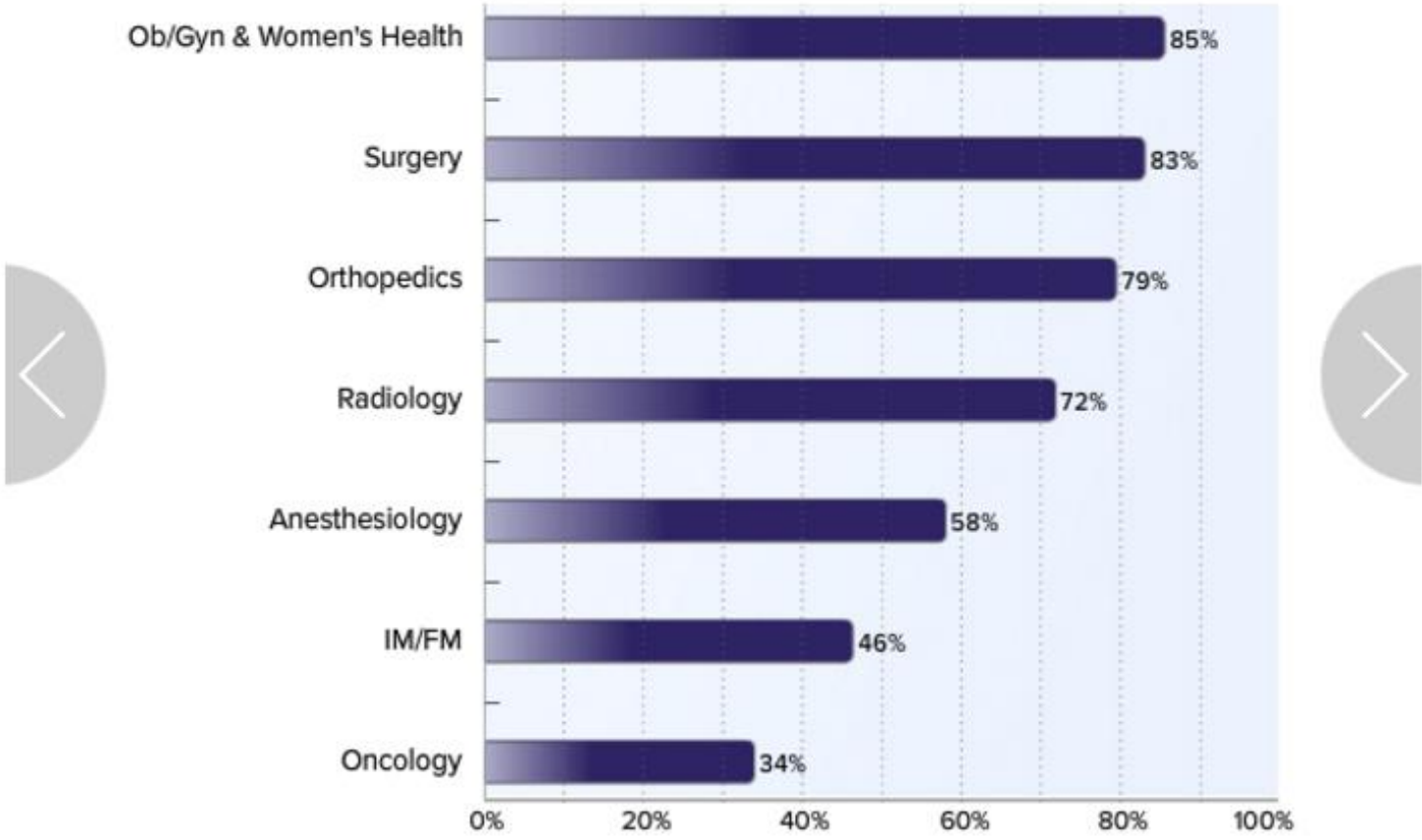
Why are these issues important from a legal perspective?

Medscape surveyed nearly 4000 primary care physicians and selected specialists to find out if and why they were sued; how the lawsuit affected their career and patient care decisions; and what these doctors suggest to reduce the number of lawsuits. The report shows the long-term effects, both emotional and financial, of malpractice suits on vulnerable doctors.

Medscape Malpractice Report 2015: Why Most Doctors Get Sued

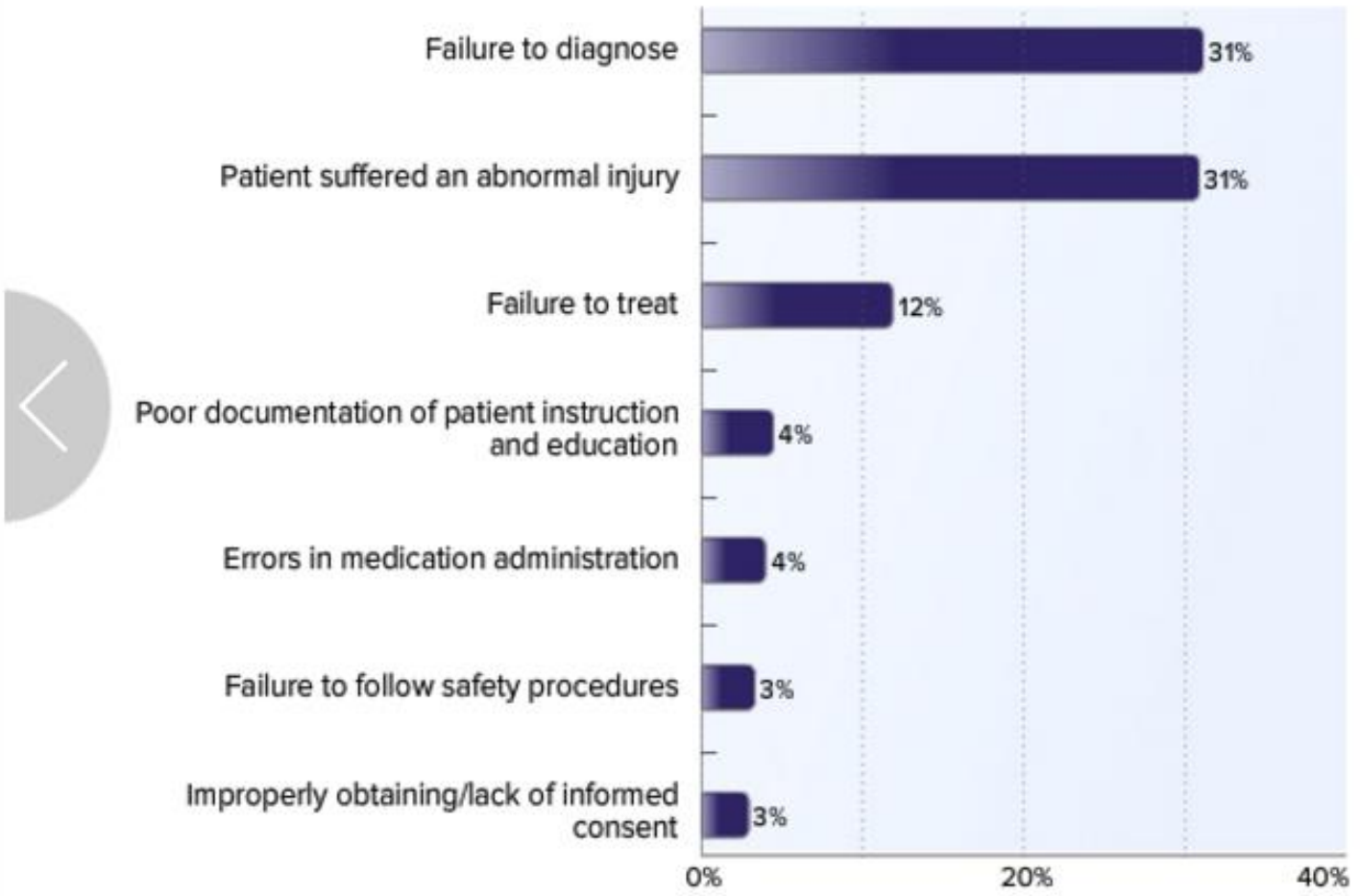
Carol Peckham | *December 9, 2015*

Contributor Information | References

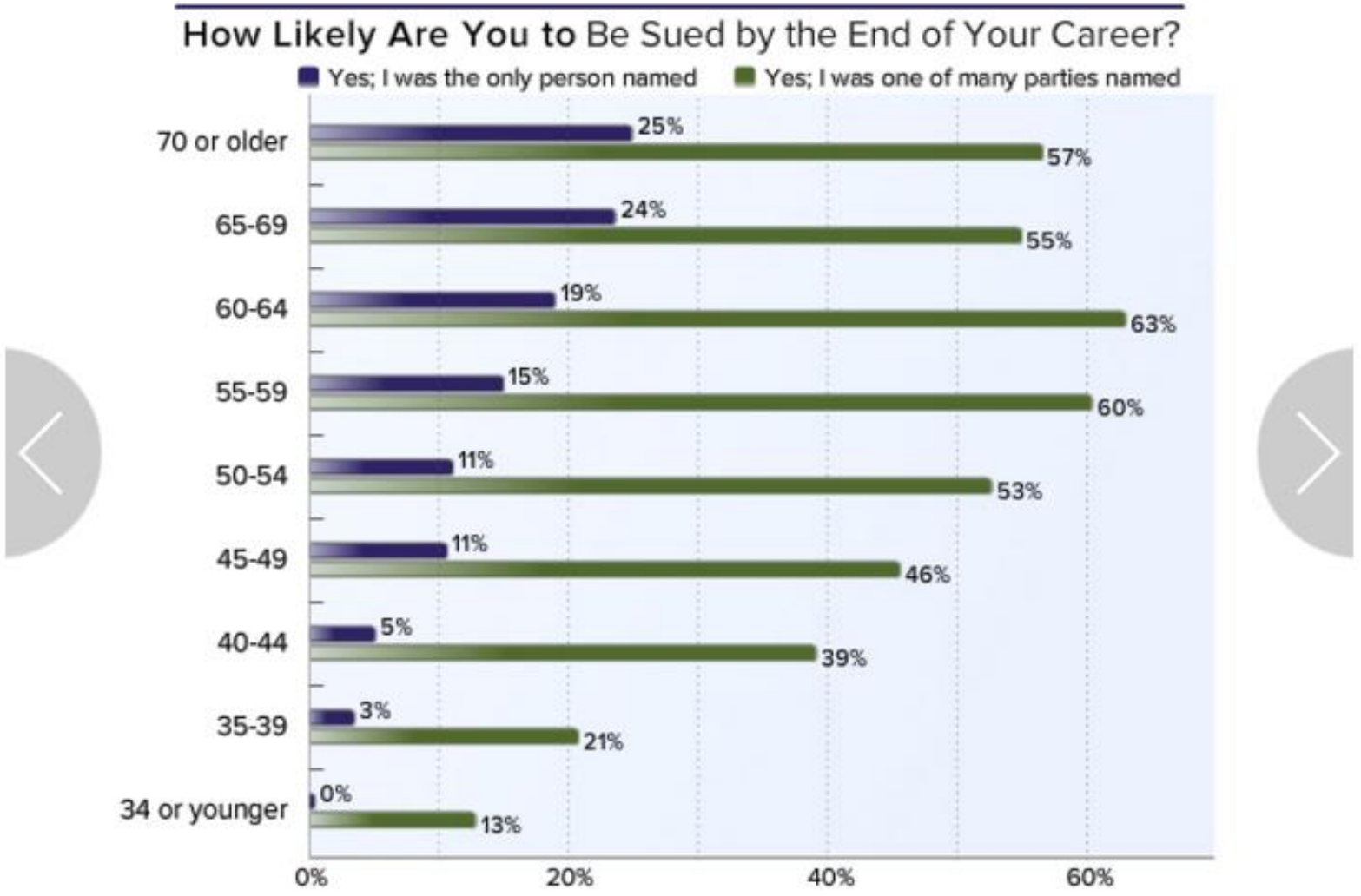


According to recent studies, obstetricians/gynecologists (ob/gyns) and surgeons are most likely to be sued among all physicians.[1,2] In the Medscape survey, 85% of ob/gyns, 83% of general surgeons, and 79% of orthopedists have been sued. In addition, at 23% and 26%, respectively, general surgeons and orthopedists had the highest percentage among specialties surveyed of being the only parties named; ob/gyns came in third at 18%.

Nature of the Lawsuits



When asked about the nature of their lawsuits, respondents could check as many options as were relevant. Tied in first place at 31% were suits related to a failure to diagnose and patient suffering abnormal injuries. Failure to treat at 12% was in third place and far behind the first two. Less than 5% of respondents cited poor documentation or medication errors (both 4%) or failure to follow safety procedures or obtain informed consent (both 3%). Many physicians added verbal comments for this question, which are summarized on slide 26.

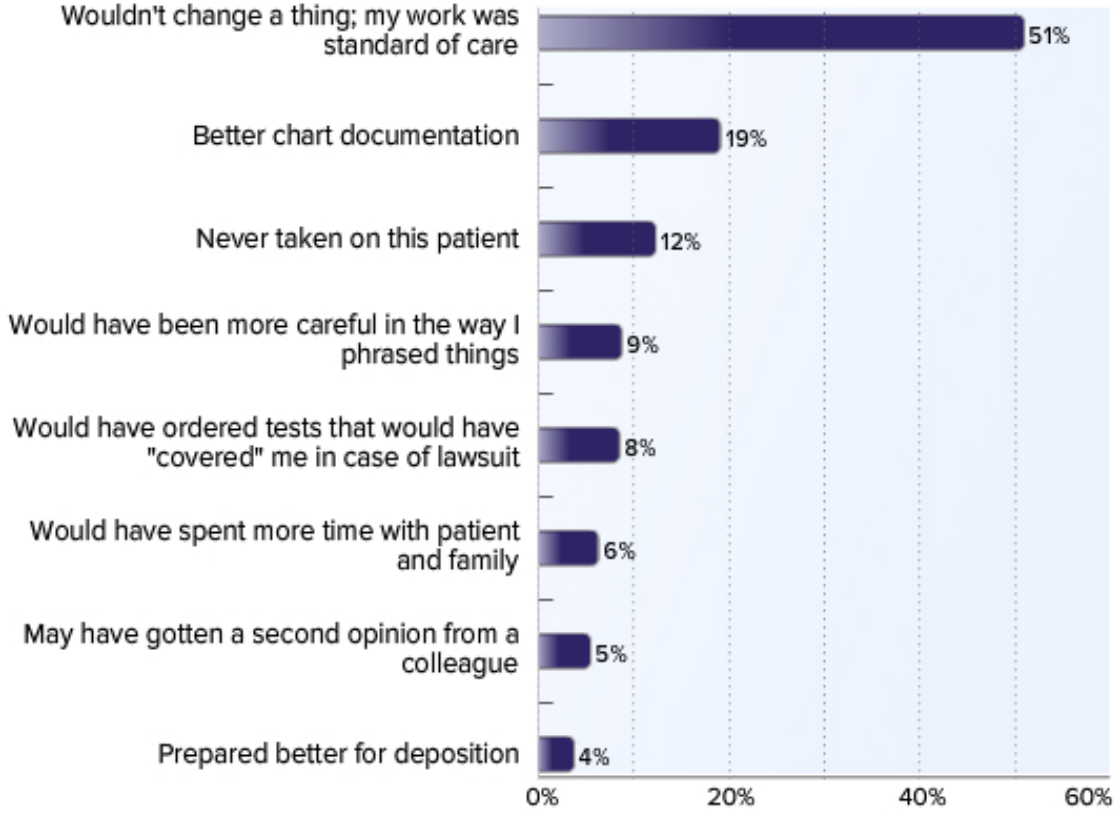


By age 54 years, 64% of the physicians who responded to this survey had experienced at least one malpractice suit over the course of their careers. After age 60 years, the percentage rose to about 80%. Although those who responded tended to be in specialties that had a high likelihood of being sued, an AMA analysis showed similar findings for *all* older physicians, with 60% over age 55 years experiencing a lawsuit.[1] As one respondent in the Medscape survey wrote, "The older you get, the more you have to lose."

Work Setting and Risk for Lawsuit

Of physicians who reported being sued, the great majority faced malpractice suits in office-based solo practices (70%) or single-specialty groups (64%). Of interest, the second lowest percentage (53%) reported were in office-based multispecialty groups. The settings least likely to produce lawsuits (47%) were outpatient clinics. Respondents were able to choose as many options as were relevant. A 2011 study published in *JAMA* reported that 48% of paid claims were for events in inpatient settings, 43% in outpatient setting, and 9% in both. Suits in the outpatient settings were more likely to be due to diagnostic issues and in the inpatient setting from surgical errors.[7]

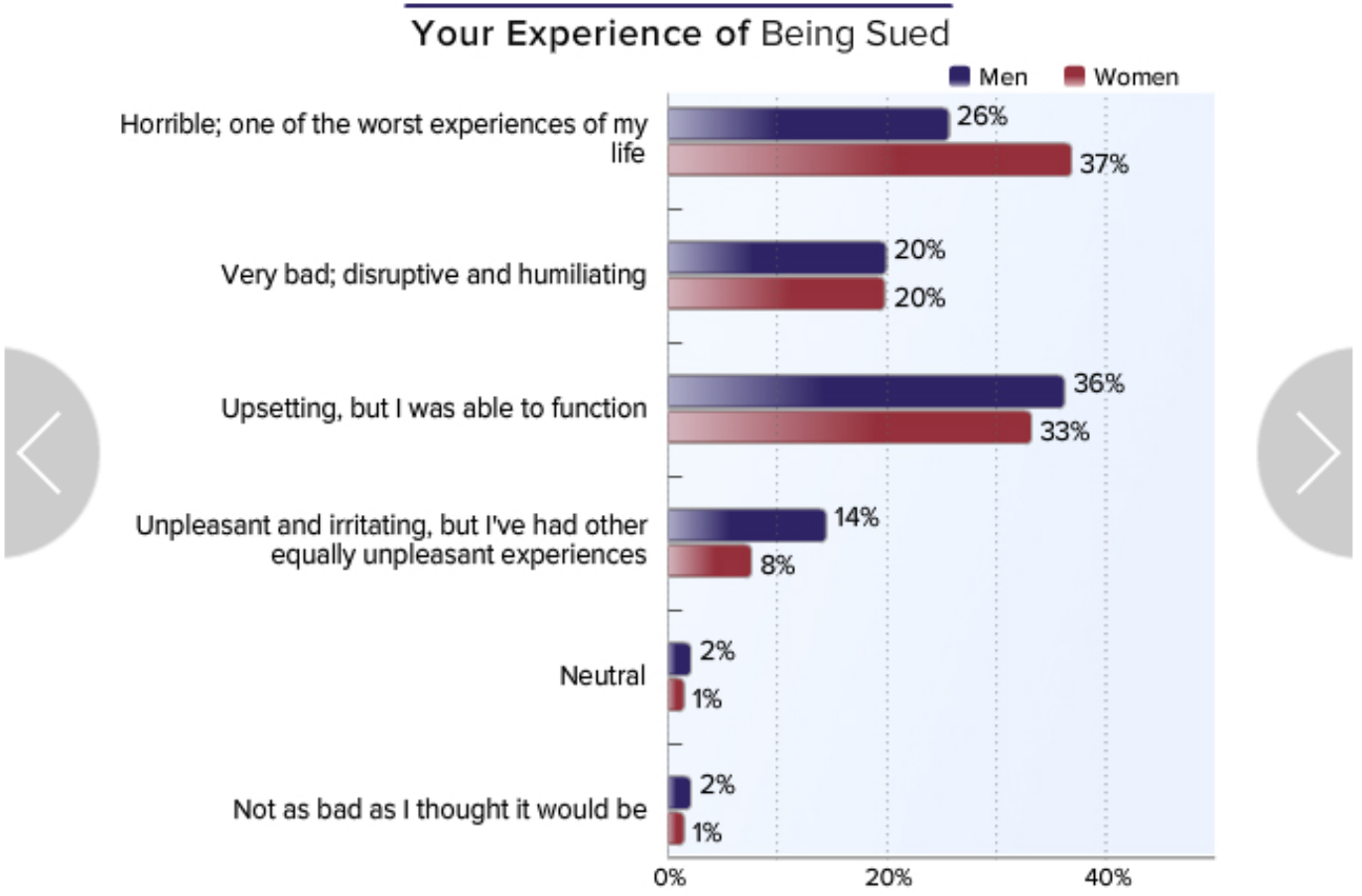
What Would You Have Done Differently?



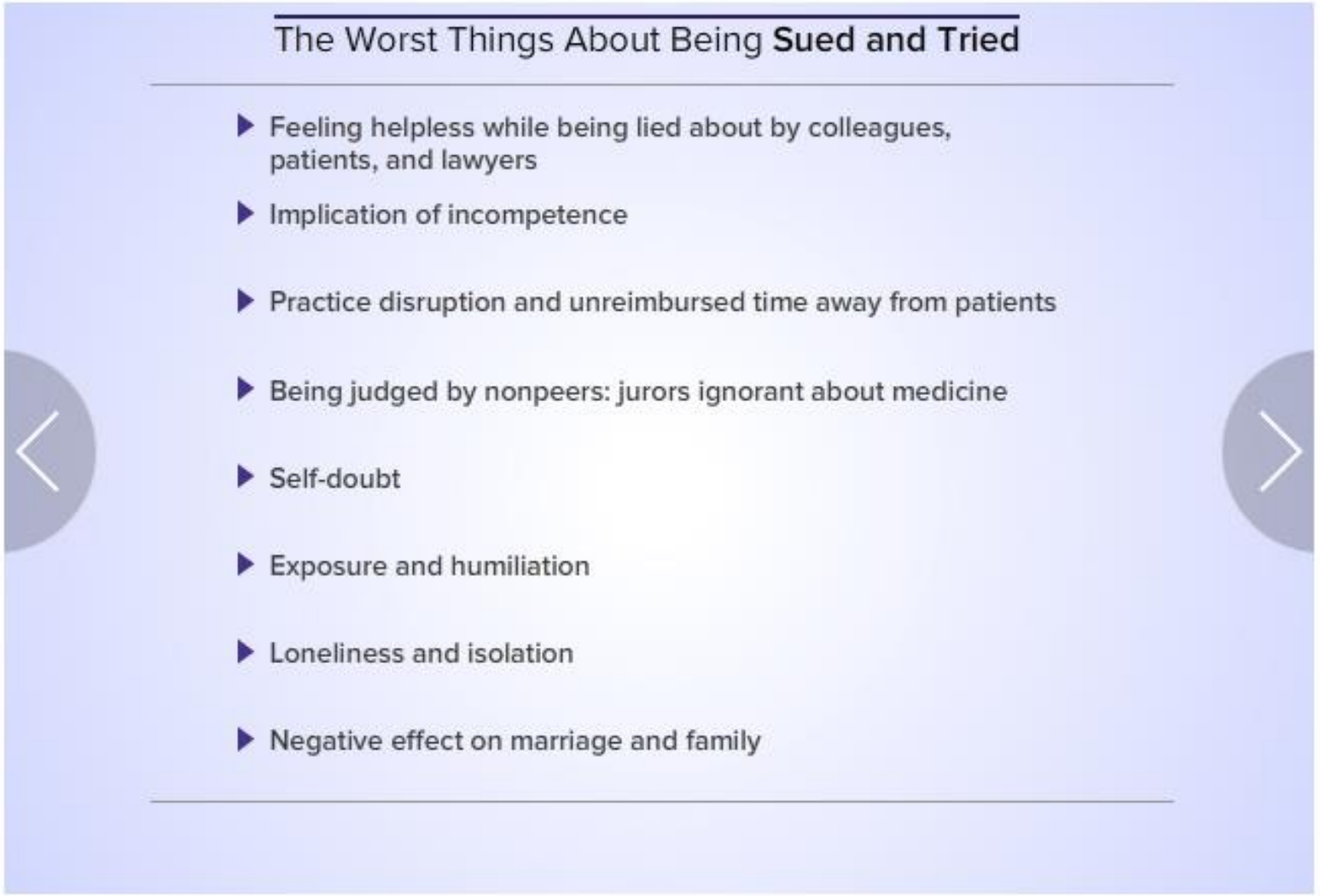
Over half (51%) of physicians who reported being sued said that they used standard of care and would not have changed a thing. Nineteen percent would have used better documentation. Almost a tenth of respondents (9%) believed that they could have communicated more carefully, and 6% would have spent more time with patients or their families. On the flip side, 8% would have tested more aggressively to cover themselves, and 12% wouldn't have taken on such patients. There were no large percentage differences between men and women in these responses. Among verbal responses, a large number of those sued were minimally involved with their cases. Many physicians said they would be more careful. A number of others said they would be more aggressive in caring for their patients themselves and not relying on other staff or colleagues.

Most Often Cited Responses for **Nature of Lawsuits**

- Injuries or death during surgery
- Postoperative infection
- Late or misdiagnosis of cancer
- Misdiagnosed cardiac emergency
- Birth defects or fetal death
- In-hospital infections
- Falls in hospital room
- Medication errors
- "Who knows?"



According to the choices given on the experience of being sued, men and women seemed to differ on the intensity of its negative effect. Fifty-seven percent of women chose the most negative options, very bad (20%) or horrible—the worst experience of their lives (37%). Forty-five percent of men had these extreme responses (20% and 26%, respectively). (Note: values in chart are rounded.) About half of men (51%) said that it was merely unpleasant and irritating or upsetting, but they could function. Fewer women (41%) chose these less extreme options. Four percent of men and 2% of women were either neutral or thought it wasn't as bad as they thought it would be. When asked to verbalize their experiences, physicians typically described feelings of betrayal by patients, humiliation, and disillusionment with the legal system. One physicians said, "The evils of human nature on display: greed, dishonesty, corruption. Clever lawyering trumps truth."



Hundreds of physicians responded to the question on the worst part of being sued, being put on trial, or both. More than a few said that it was the worst experience of their lives, and many said that the effects lasted for years. It has produced widespread disillusionment among physicians concerning care of patients, the legal system, and medicine as a profession. It is obvious at least from this survey that the current approach for dealing with medical errors is not only inefficient but is damaging to the healthcare system as a whole.

Advice From Respondents **for Other Doctors**

- Document, document, document
- Prepare, prepare, prepare
- Get good legal advice early and listen to it
- Be sure that your actions are well thought out and your defense reasoned
- Keep your cool and tell the truth
- Share only what you can remember or document
- You can never win at a deposition; but you can lose the case
- Be patient, be likeable
- Join a support group
- If your only concern is the welfare of your patients, it is unlikely you will be sued, and if you are sued, it is unlikely you will lose

The list above summarizes the key advice that physicians who responded to this survey provided verbally. In addition to good documentation and preparation, many physicians emphasized the importance of telling the truth. One doctor wrote, "It is a very bizarre situation. Each word that you say has to be measured and thought about, and it is a very strange way to have a conversation with someone."

THE BAKER ACT

What is the Baker Act?

The Baker Act, which is also known as The Florida Mental Health Act, is Florida's original civil commitment law. Section 394.455, *Fla. Stat*.

The Baker Act is designed to assure appropriate and responsive care for persons with acute mental illness while protecting the rights of the individual.

The Baker Act and the interrelationship between general medical care and psychiatric care

People with serious medical problems who present to the hospital may display what appear to be significant psychiatric symptoms or exhibit unusual or concerning behavior.

The Baker Act provides the mechanism for determining whether a person satisfies the criteria for an involuntary examination for involuntary inpatient psychiatric treatment and care.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-1).

Patients may be “Baker Acted” in both emergency room and inpatient hospital settings.

However, the Baker Act is more prevalent with patient encounters in the ER.

THE BAKER ACT AND VOLUNTARY ADMISSIONS

The Baker Act encourages the voluntary admission of persons for psychiatric care.

Under the Baker Act, any person 18 years or older who shows signs of mental illness may be voluntarily admitted to a Baker Act receiving facility for psychiatric care if he/she can provide express and informed consent.

The Baker Act and select definitions

- “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse.

- “Express and informed consent” means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

- “Incompetent to consent to treatment” means a state in which a person’s judgment is so affected by a mental illness or a substance abuse impairment that he or she lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical, mental health, or substance abuse treatment.

Sources: Section 394.455, *Fla. Stat*.

VOLUNTARY ADMISSION REQUIRES EXPRESS AND INFORMED CONSENT

In order to be a candidate for voluntary admission, the patient must be competent to provide express and informed consent to treatment, which means that he/she is capable of making well-reasoned, willful and knowing decisions regarding medical or mental health treatment.

If the patient agrees to be voluntarily admitted for psychiatric treatment by way of express and informed consent, then the patient needs to be transferred to a Baker Act receiving facility.

Sources: Section 394.4625, *Fla. Stat*.

THE BAKER ACT: INVOLUNTARY EXAMINATIONS AND SERVICES

When is it appropriate under the "Baker Act" to initiate an involuntary examination?

The Baker Act sets forth specific criteria that must be satisfied in order to initiate an involuntary examination:

1) There is a substantial likelihood the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior, unless he or she gets care and treatment;
2) There is reason to believe that the person has a mental illness, as defined in the Baker Act; and
3) The person has refused voluntary examination or is unable to determine for himself or herself whether examination is necessary.

Sources: Section 394.463 (1), *Fla. Stat*.

There are two components to "mental illness" that must be satisfied

- Clinical component: an impairment of the mental and emotional processes that exercise conscious control of one's actions or the ability to perceive and understand reality.
- Functional component: Substantial interference with a person's ability to meet the ordinary demands of living regardless of etiology.

Sources: http://www.dcf.state.fl.us/programs/samh/mentalhealth/training/medical.shtml (Florida Department of Children and Families: Baker Act On-Line Training – Emergency Medical Conditions and the Baker Act).

Specific exclusions from the Baker Act's definition of "mental illness"

If a person's symptoms or behavior are due to any form of substance abuse, developmental disability, or antisocial behavior, they do not satisfy the definition of having a mental illness and cannot be held on involuntary examination under the Baker Act.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-1).

Patients with co-existing disorders

It is not uncommon for an individual to simultaneously exhibit signs of a thought or mood disorder, which qualifies as “mental illness” under the Baker Act, and signs of intoxication.

In cases where the individual has co-existing disorders, an involuntary examination would still be authorized if the thought or mood disorder is sufficient to warrant it, even though the individual also has a substance abuse condition.

In other words, the substance abuse condition is not a barrier to an involuntary examination if other qualifying disorders are present.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-1, H-2).

Behaviors and/or Characteristics of an individual who may be a harm to himself/herself or others

Individuals with mental illness who may need further evaluation typically exhibit some combination of the following behaviors or characteristics:

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix G-1, G-2).

BEHAVIORS OF CONCERN

- Rapid speech
- Flight of thought
- No eye contact
- Quick movements
- Disconnected speech patterns
- Constant movement
- Inability to concentrate
- Swift and frequent mood changes
- Disorganized thought

BEHAVIORS OF CONCERN

- Disorientation to time and place
- Combative/aggressive behavior
- Inappropriate dress or nudity

Characteristics of Concern

- Hallucinations
- Feelings of low self esteem or hopelessness
- Flat affect
- Access to weapons
- States a history of previous suicide attempts
- Direct comments about suicide or self-harm
- Evidence of prior suicide attempts (i.e. scarring on wrists)

Characteristics of Concern

Self-care issues:

- Insomnia or increased sleep
- Has not eaten for days
- Not taking prescribed medications
- Neglects personal hygiene

Who may initiate an involuntary examination under the Baker Act?

There are only three ways in which an involuntary examination may be initiated:

1) Court order
2) Law enforcement officer
3) Execution of a "Certificate of Professional Initiating Involuntary Examination" form by a "professional," which is defined as a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker.

A physician assistant licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders may also initiate the involuntary examination per the May 28, 2008 opinion of Florida's Attorney General.

Sources: Section 394.463 (2)(a), *Fla. Stat.*;
Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-2).

How is the involuntary examination initiated?

Once the criteria has been satisfied based upon professional judgment, a physician initiates the involuntary examination by filling out and signing a Certificate of Professional Initiating Involuntary Examination (Mandatory Form CF-MH 3052b).

Sources: Section 394.463 (2)(a)(3), *Fla. Stat.*;
Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-2);
http://www.dcf.state.fl.us/programs/samh/mentalhealth/training/medical.shtml (Florida Department of Children and Families: Baker Act On-Line Training – Emergency Medical Conditions and the Baker Act).

Requirements of the Certificate of Professional Initiating Involuntary Examination (Mandatory Form CF-MH 3052b)

The certificate requires the professional to state that he or she has ***personally*** examined the person within the preceding 48 hours and finds the person appears to meet the criteria for involuntary examination.

Section I must include a diagnosis consistent with the definition of mental illness found in the Baker Act.

Section II must include the profressional's own observations about the behaviors seen or statements heard supporting the criteria for involuntary examination.

Section III permits the professional to consider and rely upon other information provided by credible third parties, such as nursing and other hospital staff, to supplement the professional's own observations.

Sources: Section 394.463 (2)(a)(3), *Fla. Stat.*;
Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-2);
http://www.dcf.state.fl.us/programs/samh/mentalhealth/training/medical.shtml (Florida Department of Children and Families: Baker Act On-Line Training – Emergency Medical Conditions and the Baker Act).

Requirements of the Certificate of Professional Initiating Involuntary Examination (Mandatory Form CF-MH 3052b)

All sections of the form must be completed, including

a) whether the patient has refused a voluntary examination;

b) that the person was unable to determine for herself whether an examination was necessary; and

c) whether there was a substantial likelihood that without care or treatment the person will cause serious bodily harm to herself and/or others.

Certificate of Professional Initiating Involuntary Examination

All sections of this form must be completed and legible (please print)

I have personally examined (printed name of person) _____ at time _____ am pm (time must be within the preceding 48 hours) on _____/ _____/ 20 _____ in _____ **County** and that person appears to meet criteria for involuntary examination **OR** I am a physician who has determined that (printed name of person) _____ has failed or has refused to comply with the treatment ordered by the court, and, in my clinical judgment, efforts were made to solicit compliance and the person appears to meet the criteria for involuntary examination. Section IV of this form is completed to document the requirements of the law.

This is to certify that my **professional license number** is: _____ and I am a *(check one box)*

☐ Psychiatrist ☐ Physician (non-psychiatric) ☐ Clinical Psychologist ☐ Psychiatric Nurse ☐ Clinical Social Worker

☐ Mental Health Counselor ☐ Marriage and Family Therapist Each as defined in s.394.455, F.S.

Section I: CRITERIA

There is reason to believe person has a mental illness as defined in Section 394.455(18), Florida Statutes (excludes retardation or developmental disabilities, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment).

Diagnosis of Mental Illness is: List all mental health diagnoses applicable to this person _____ DSM Code(s) (if known) _____

AND BECAUSE OF MENTAL ILLNESS

☐ A. Person has refused voluntary examination after conscientious explanation of disclosure of the purpose of examination

OR

Statute requires that at least one be checked, but both may be checked if both apply

☐ B. Person is unable to determine for himself/herself whether examination is necessary

☐ A. Without care and treatment the person is likely to suffer from neglect or refuse to care for himself/herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services

AND EITHER

(A and/or B)

☐ B. There is substantial likelihood that without care or treatment the person will cause serious bodily harm to (check one or both):

☐ self ☐ others

in the near future, as evidenced by recent behaviors (describe behaviors at top of page 2)

Section II: SUPPORTING EVIDENCE

A. My observations supporting these criteria including the person's behaviors and statements, specifically those related to suicidal ideation, previous suicide attempts, homicidal ideation or self-injury are as follows:

_____

CONTINUED OVER

Certificate of Professional Initiating Involuntary Examination (Page 2)

Section III: OTHER INFORMATION

Other information, including source relied upon to reach this conclusion is as follows. If information is obtained from other persons, describe these sources (e.g., reports of family, friends, other mental health professionals or law enforcement officers, as well as medical or mental health records).

Section IV: NON-COMPLIANCE WITH INVOLUNTARY OUTPATIENT PLACEMENT ORDER

Complete this section if you are a physician who is documenting non-compliance with an involuntary outpatient placement order:
This is to certify that I am a physician, as defined in Florida Statutes 394.455(21), F.S. and in my clinical judgment, the person has failed or has refused to comply with the treatment ordered by the court, and the following efforts have been made to solicit compliance with the treatment plan:

Section V: INFORMATION FOR LAW ENFORCEMENT

Provide identifying information (if known) if needed by law enforcement to find the person so he/she may be taken into custody for examination:

Age: _____ ☐ Male ☐ Female Race/ethnicity: _____

Other details (such as height, weight, hair color, clothing worn when last seen, where last seen):

If relevant, information such as access to weapon, recent violence or pending criminal charges:

This form must be transported with the person to the receiving facility to be retained in the clinical record. Copies may be retained by the initiating professional and by the law enforcement agency transporting the person to the receiving facility.

Section VI: SIGNATURE

Signature of Professional:	Date Signed
Typed or Printed Name of Professional:	Phone ( )
Address of Professional:	

By Authority of s. 394.455(18), 394.463(2)(a)3, 394.4655, Florida Statutes
CF-MH 3052b, Sept 06 (obsoletes previous editions) (Mandatory Form) BAKER ACT

Additional Requirements concerning the Certificate of Professional Initiating Involuntary Examination (Mandatory Form CF-MH 3052b)

The certificate shall be made a part of the patient's clinical record and must accompany the person to the receiving facility.

A copy of the certificate must also be sent to the Department of Children and Families by no later than the next working day.

Sources: Section 394.463 (2)(a)(3), *Fla. Stat*.

Certificate of Professional Initiating Involuntary Examination

All sections of this form must be completed and legible (please print)

I have personally examined (printed name of person) [redacted] at time [redacted] (time must be within the preceding 48 hours) on [redacted] in [redacted] County and that person appears to meet criteria for involuntary examination **OR** I am a physician who has determined that (printed name of person) _____ has failed or has refused to comply with the treatment ordered by the court, and, in my clinical judgment, efforts were made to solicit compliance and the person appears to meet the criteria for involuntary examination. **Section IV of this form is completed to document the requirements of the law.**

This is to certify that my professional license number is: _____ and I am a *(check one box)*

☐ Psychiatrist ☒ Physician (non-psychiatric) ☐ Clinical Psychologist ☐ Psychiatric Nurse ☐ Clinical Social Worker

☐ Mental Health Counselor ☐ Marriage and Family Therapist Each as defined in s.394.455, F.S.

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☐ B. Person is unable to determine for himself/herself whether examination is necessary

☐ A. Without care and treatment the person is likely to suffer from neglect or refuse to care for himself/herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services

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☐ B. There is substantial likelihood that without care or treatment the person will cause serious bodily harm to (check one or both):

☐ self ☐ others

in the near future, as evidenced by recent behaviors (describe behaviors at top of page 2)

Section II: SUPPORTING EVIDENCE

A. My observations supporting these criteria including the person's behaviors and statements, specifically those related to suicidal ideation, previous suicide attempts, homicidal ideation or self-injury are as follows:

suicidal ideation.

CONTINUED OVER

[redacted]

Certificate of Professional Initiating Involuntary Examination (Page 2)

Section III: OTHER INFORMATION

Other information, including source relied upon to reach this conclusion is as follows. If information is obtained from other persons, describe these sources (e.g., reports of family, friends, other mental health professionals or law enforcement officers, as well as medical or mental health records).

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Age: _____ ☐ Male ☐ Female Race/ethnicity: _____

Other details (such as height, weight, hair color, clothing worn when last seen, where last seen):

If relevant, information such as access to weapon, recent violence or pending criminal charges:

This form must be transported with the person to the receiving facility to be retained in the clinical record. Copies may be retained by the initiating professional and by the law enforcement agency transporting the person to the receiving facility.

Section VI: SIGNATURE

Signature of Professional: [redacted] Date Signed [redacted]

Typed or Printed Name of Professional: [redacted] Phone [redacted]

Address of Professional:

By Authority of s. 394.455(18), 394.463(2)(a)3, 394.4655, Florida Statutes
CF-MH 3052b, Sept 06 (obsoletes previous editions) (Mandatory Form)

BAKER ACT

[redacted]

August 2015
Form # PS 968

Who is authorized to perform the involuntary examination?

In a hospital setting (whether ER or inpatient), the Baker Act allows any physician to perform the involuntary examination to determine whether the criteria for involuntary services are met.

Sources: Section 394.463(2)(f), Fla. Stat.;
Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-5, H-6).

When must the initial examination be performed?

According to the Baker Act, the initial examination shall be performed "without unnecessary delay" to determine if the criteria for involuntary services are met.

Sources: Section 394.463(2)(f), Fla. Stat.

What are the requirements of the involuntary examination?

1) A thorough review of any observations of the person's recent behavior;

2) A review of mandatory form CF-MH 3052b, "Certificate of Professional Initiating Involuntary Examination;"

3) A brief psychiatric history; and

4) A face-to-face examination of the person in a timely manner to determine if the person meets criteria for release.

Sources: Rule 65E-5.2801, Fla. Admin. Code

Once a Baker Act involuntary examination is initiated, all components of the initial mandatory examination must be completed.

It may not be “rescinded,” “lifted,” “abrogated,” or “overturned” unless all components of the examination are completed and documented.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-6).

If the physician conducting the initial mandatory involuntary examination determines that the person does not meet the criteria for involuntary inpatient services, the person can be released directly from the hospital.

Elopement from the Hospital

If a patient elopes from the hospital after the involuntary examination has been initiated, then a law enforcement officer should return to the patient to the ED for appropriate transfer under EMTALA.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-9).

What happens once the criteria for Baker Act psychiatric inpatient services is satisfied?

It depends upon the medical stability of the patient and whether the patient has a medical condition that cannot be treated at the receiving facility.

Scenario #1: Patient is medically unstable or has a medical condition that cannot be treated at the receiving facility

Under this scenario, the patient's medical condition precludes a transfer to a receiving facility, so the hospital must provide psychiatric inpatient services. This requires the following:

1) a referral to the psychiatrist must be made;
2) the patient must be kept in the hospital and isolated from other patients;
3) the patient must have a sitter to prevent him/her from leaving the room;
4) the patient must be provided a gown and paper slippers if he/she is wearing street clothing;
5) family members may not have any direct contact or communication with the patient.

The hospital is responsible for ensuring the physical safety of patients who have been Baker Acted under this scenario.

Scenario #1: Patient is medically unstable or has a medical condition that cannot be treated at the receiving facility

The psychiatrist will determine how long the person needs to be Baker Acted and whether the person continues to meet the criteria for involuntary services.

Once Baker Acted, the patient may not be held involuntarily for more than 72 hours. Once the 72-hour time period is up, the patient should be re-examined to determine if the patient still meets criteria for involuntary services.

Once it is determined that the person no longer meets the criteria for involuntary services, the psychiatrist will complete the “Hospital Determination that Person does not meet Involuntary Placement Criteria” form.

Hospital Determination That
Person Does Not Meet Involuntary Placement Criteria

I have personally examined [redacted], a person for whom an involuntary examination has been initiated pursuant to 394.463 who was brought to [redacted] Hospital (**not designated as a Baker Act receiving facility**) for evaluation or treatment of an emergency medical condition.

☐ I have conducted the initial mandatory involuntary examination, including documenting observations of the person's recent behavior, reviewing the form initiating this examination and the transportation form, conducting a brief psychiatric history, and conducting a face-to-face examination of the person.

Check at least one box from each of the two categories below:

I have determined that he/she does **NOT** meet the criteria for involuntary **inpatient** placement pursuant to 394.467 based upon one or more of the following reasons:

- ☐ Does not suffer from a mental illness, as defined in s. 394.455(18)
- ☐ Has not refused placement or is able to determine for himself or herself that placement is necessary
- ☒ Is not likely to suffer from neglect posing a real and present threat of substantial harm nor is there substantial likelihood that in the near future he/she will inflict serious bodily harm on self or others as evidenced by recent behavior causing, attempting, or threatening such harm.
- ☐ There are available less restrictive treatment alternatives offering an opportunity for improvement of his/her condition

AND

I have determined that he/she does **NOT** meet the criteria for involuntary **outpatient** placement pursuant to394.4655 based upon one or more of the following reasons:

- ☐ Person is under age 18;
- ☒ Does not suffer from a mental illness, as defined in s. 394.455(18)
- ☐ Person is likely to survive safely in the community without supervision, based on my clinical determination;
- ☐ Person has no history of lacking compliance with treatment for a mental illness
- ☐ Person has not within the preceding 36 months been involuntarily admitted to a Baker Act receiving or treatment facility, or received mental health services in a forensic correctional facility or engaged in one or more acts of serious violent behavior toward self or other, or attempts at serious bodily harm to self/others;
- ☐ Person has not been found to be unlikely to voluntarily participate in recommended treatment and has not either refused voluntary placement or been found to be unable to determine whether placement is necessary;
- ☐ Person hasn't been found, based on his/her treatment history and current behavior, to need involuntary outpatient placement to prevent a relapse or deterioration that would be likely to result in serious bodily harm to self or others, or a substantial harm to his/her well-being;
- ☐ There has been no finding that it is likely the person will benefit from involuntary outpatient placement; or
- ☐ There are less restrictive treatment alternatives available that offer an opportunity for improvement of his/her condition

This examination was conducted at [redacted] a.m. (p.m.) on [redacted]
Time of Examination — Date of Examination

As a physician or licensed clinical psychologist and recognized by this hospital as eligible to perform the involuntary examination, I have: ☐ Offered voluntary placement of this person OR ☐ Approved the direct release of this person from the hospital.

[redacted]
Signature of ☒ Physician ☐ Clinical Psychologist

[redacted] Date

[redacted] Time (am) (pm)

[redacted]
Typed or Printed Name of Examiner

[redacted]
License Number

If a person is released from a hospital after being evaluated or treated for an emergency medical condition, this completed form or its equivalent must be completed and retained in the person's clinical record and a Notice of Release or Discharge (CF-MH 3038 or equivalent) must be given or sent to the person, the person's guardian, to any person who executed a Certificate, and to any Court which ordered the person's examination.

See s. 394.455(2), (18), (21), 394.463(2)(f), (g), (h), 394.467, Florida Statutes
CF-MH 3101, Feb 05 (obsoletes previous editions) (Recommended Form) BAKER ACT

Scenario #2: Patient is medically stable and does not have any medical condition that precludes his transfer to the receiving facility

Under this scenario, the Baker Act requires the hospital to transfer the patient to a Baker Act receiving facility within twelve (12) hours.

Transfers from a hospital to a receiving facility must be done in accordance with EMTALA (which is explained later).

The sending hospital must arrange safe and appropriate transportation of the person to the receiving facility.

Law enforcement is not responsible for transferring a person from a hospital to the receiving facility.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-6, H-7, H-8); http://www.dcf.state.fl.us/programs/samh/mentalhealth/training/medical.shtml (Florida Department of Children and Families: Baker Act On-Line Training – Emergency Medical Conditions and the Baker Act).

Baker Act Receiving Facilities (as of June 17, 2016)

Name	Address	Phone Number	Distance from BRRH
South County Mental Health Center	16158 S. Military Trail, Bldg. A, Delray Beach, FL 33484	561-737-8400	7.5 miles
Delray Medical Center	5352 Linton Boulevard, Delray Beach, FL 33484	561-495-3100	7.5 miles
Broward Health Imperial Point	6401 N. Federal Highway, Ft. Lauderdale, FL 33308	954-776-8500	13.9 miles
Atlantic Shores Hospital	4545 N. Federal Highway, Ft. Lauderdale, FL 33308	954-771-2711	14.6 miles
Henderson Behavioral Health, Inc.	2677 NW 19th Street, Fort Lauderdale, FL 33311	954-739-8066	17.1 miles
Florida Medical Center	5000 W. Oakland Park Boulevard, Lauderdale Lakes, FL 33313	954-735-6000	18.7 miles
University Hospital and Medical Center	7425 N. University Drive, Tamarac, FL 33321	954-724-6502	19.4 miles
JFK Medical Center	5301 S. Congress Avenue, Atlantis, FL 33462	561-965-7300	20.1 miles
Broward Health Medical Center	1600 S. Andrews Avenue, Ft. Lauderdale, FL 33316	954-355-5610	21.1 miles
JFK Medical Center North Campus	2201 45th Street, West Palm Beach, FL 33407	561-842-6141	30.9 miles
The Jerome Golden Center for Behavioral Health	1041 45th Street, West Palm Beach, FL 33407	561-383-8000	32 miles

Responsibilities of the receiving facility

It is the receiving facility's responsibility to accept transfer of the patient when it has the capacity and appropriate medical treatment available.

If one receiving facility refuses to accept the patient transfer, then another receiving facility should be contacted.

There is no requirement that the patient be transferred to the nearest receiving facility. If the nearest facility does not have capacity (beds) or capability (psychiatric unit), then the patient should be transferred to the next closest facility.

Sources: Mental Health Program Office & Department of Mental Health Law and Policy (2014). *2014 Baker Act Handbook and User Reference Guide* (Appendix H-6, H-7).

TIME-SENSITIVE ACTIVITIES REGARDING TRANSFERS TO A RECEIVING FACILITY UNDER THE BAKER ACT

Within two (2) hours of the determination that a medically stable patient needs involuntary psychiatric services:

1) The receiving facility must be notified of the requested transfer; and
2) The receiving facility must be notified that the mandatory initial examination has not been performed.

Within twelve (12) hours of the determination that a medically stable patient needs involuntary psychiatric services:

The patient must be transferred to a receiving facility.

If it appears that transfer will not be accomplished within the 12 hour period, then the DCF/Mental Health staff should be notified (813-279-1923).

It is important to document each communication with a receiving facility.

HOSPITAL TRANSFERS

When patients need medical services that are not available at the hospital, a hospital transfer is necessary.

What is EMTALA?

EMTALA is an acronym for The Emergency Medical Treatment and Labor Act, which is also known as the federal “anti-dumping” statute.

EMTALA requires hospitals to perform a screening examination of all patients who come to emergency rooms regardless of their ability to pay. If patients are found to have an emergency medical condition, they must be stabilized before discharge or transfer.

EMTALA is codified in section 395.1041 of the Florida Statutes.

Definition of "Emergency Medical Condition"

An emergency medical condition is defined as:

a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. serious jeopardy to patient health, including a pregnant woman or fetus.
2. serious impairment to bodily functions.
3. serious dysfunction of any bodily organ or part.

Sources: Section 395.002(8)(a), Fla. Stat.

When is pregnancy an emergency medical condition?

With respect to a pregnant woman, it is an emergency medical condition if:

1. there is inadequate time to effect safe transfer to another hospital prior to delivery;

2. a transfer may pose a threat to the health and safety of the patient or fetus; or

3. there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

Sources: Section 395.002(8)(b), Fla. Stat.

What does “emergency services and care” mean under EMTALA?

Emergency services and care are defined as:

Medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

Sources: Section 395.002(9), Fla. Stat.

What is a medically necessary transfer?

"Medically necessary transfer" means a transfer made necessary because the patient is in immediate need of treatment for an emergency medical condition for which the facility lacks service capability or is at service capacity.

Sources: Section 395.002(20), Fla. Stat.

MEDICALLY NECESSARY INTER-HOSPITAL TRANSFERS BETWEEN EMERGENCY DEPARTMENTS

These types of transfers are arranged between the emergency room physician of the transferring hospital and the emergency room physician of the receiving hospital.

In order to complete the transfer, there must be an willing E.R. physician and willing hospital to accept the patient.

Sources: Section 395.1041(3)(a), Fla. Stat.

MEDICALLY NECESSARY INTER-HOSPITAL TRANSFERS BETWEEN EMERGENCY DEPARTMENTS

All medically necessary transfers shall be made to the geographically closest hospital with the service capability, unless another prior arrangement is in place or the geographically closest hospital is at service capacity.

When the condition of a medically necessary transferred patient improves so that the service capability of the receiving hospital is no longer required, the receiving hospital may transfer the patient back to the transferring hospital and the transferring hospital shall receive the patient within its service capability.

Sources: Section 395.1041 (3)(e), Fla. Stat.

INTER-HOSPITAL TRANSFERS OF ADMITTED PATIENTS

A patient may be transferred to another hospital which has the requisite service capability or is not at service capacity if:

1. The patient, or a person who is legally responsible for the patient and acting on the patient's behalf, after being informed of the hospital's obligation under this section and of the risk of transfer, requests that the transfer be effected; or

2. A physician has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the individual's medical condition from effecting the transfer.

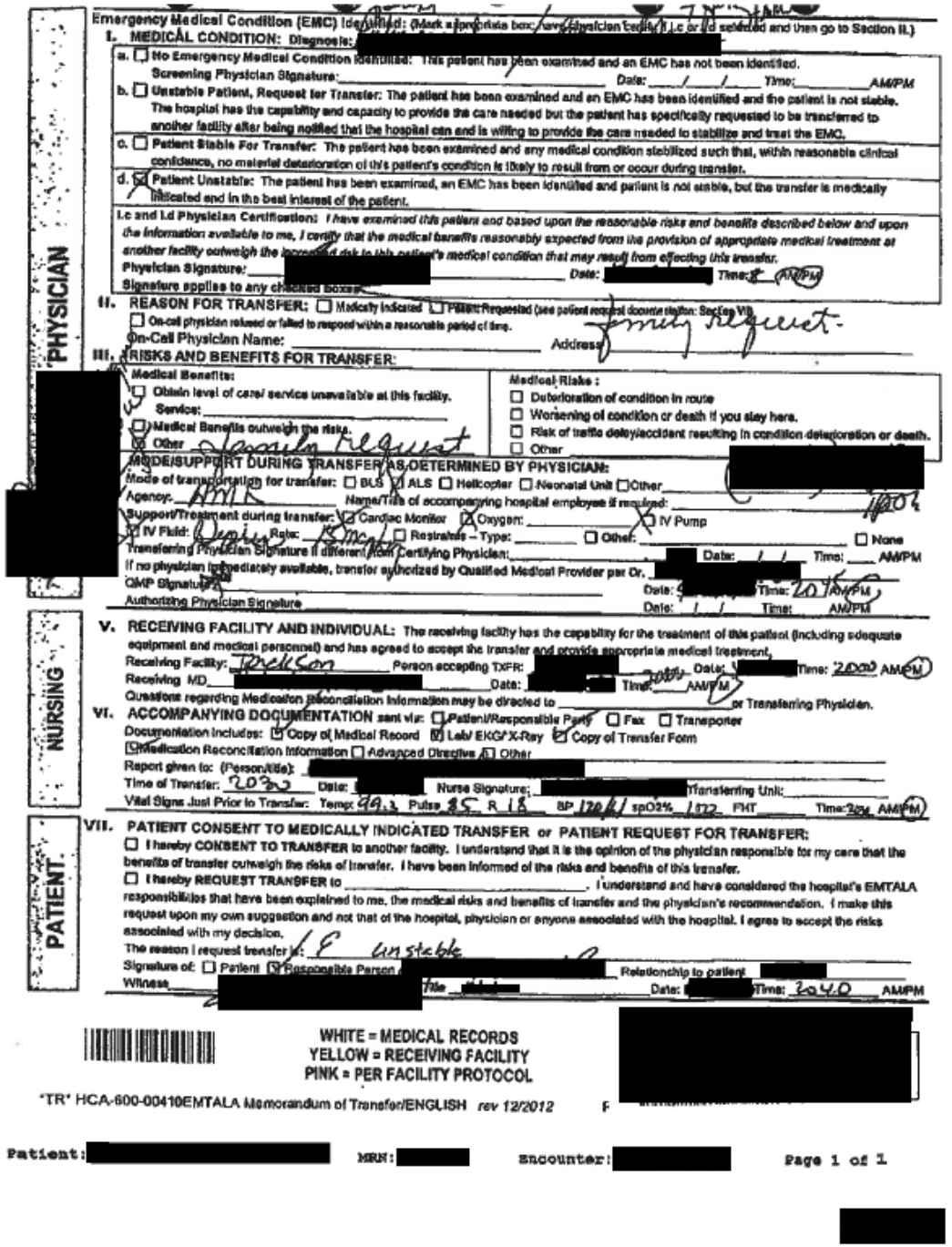
Sources: Section 395.1041 (3)(c), Fla. Stat.

“Stabilized” means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of the patient from a hospital.

Sources: Section 395.002(29), Fla. Stat.

A transfer of an admitted patient requires:

1) A willing specialist who has agreed to treat the patient;
2) A willing physician who has agreed to admit the patient; and
3) A willing hospital that has the capacity to admit the patient.



PHYSICIAN

Emergency Medical Condition (EMC) Identified: (Mark appropriate box, have physician certify I.c or I.d selected and then go to Section II.)

I. MEDICAL CONDITION: Diagnosis: [redacted]

a. ☐ No Emergency Medical Condition Identified: This patient has been examined and an EMC has not been identified.
Screening Physician Signature: _____ Date: __/__/__ Time: _____ AM/PM

b. ☐ Unstable Patient, Request for Transfer: The patient has been examined and an EMC has been identified and the patient is not stable. The hospital has the capability and capacity to provide the care needed but the patient has specifically requested to be transferred to another facility after being notified that the hospital can and is willing to provide the care needed to stabilize and treat the EMC.

c. ☐ Patient Stable For Transfer: The patient has been examined and any medical condition stabilized such that, within reasonable clinical confidence, no material deterioration of this patient's condition is likely to result from or occur during transfer.

d. ☒ Patient Unstable: The patient has been examined, an EMC has been identified and patient is not stable, but the transfer is medically indicated and in the best interest of the patient.

I.c and I.d Physician Certification: *I have examined this patient and based upon the reasonable risks and benefits described below and upon the information available to me, I certify that the medical benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risk to this patient's medical condition that may result from effecting this transfer.*
Physician Signature: [redacted] Date: [redacted] Time: [redacted] AM/PM
Signature applies to any checked boxes

II. REASON FOR TRANSFER: ☐ Medically Indicated ☐ Patient Requested (see patient request document section: Section VII)
☐ On-call physician refused or failed to respond within a reasonable period of time.
On-Call Physician Name: _____ Address: _____

III. RISKS AND BENEFITS FOR TRANSFER:

Medical Benefits:
☐ Obtain level of care/ service unavailable at this facility.
Service: _____
☐ Medical Benefits outweigh the risks.
☒ Other Family Request

Medical Risks:
☐ Deterioration of condition in route
☐ Worsening of condition or death if you stay here.
☐ Risk of traffic delay/accident resulting in condition deterioration or death.
☐ Other [redacted]

IV. MODE/SUPPORT DURING TRANSFER AS DETERMINED BY PHYSICIAN:
Mode of transportation for transfer: ☐ BLS ☒ ALS ☐ Helicopter ☐ Neonatal Unit ☐ Other _____
Agency: AMR Name/Title of accompanying hospital employee if required: _____
Support/Treatment during transfer: ☒ Cardiac Monitor ☒ Oxygen: _____ ☐ IV Pump
☒ IV Fluid: Rate: _____ ☐ Restraints – Type: _____ ☐ Other: _____ ☐ None
Transferring Physician Signature if different from Certifying Physician: [redacted] Date: __/__/__ Time: ____ AM/PM
If no physician immediately available, transfer authorized by Qualified Medical Provider per Dr. [redacted]
QMP Signature: _____ Date: [redacted] Time: 2017 AM/PM
Authorizing Physician Signature Date: __/__/__ Time: ____ AM/PM

NURSING

V. RECEIVING FACILITY AND INDIVIDUAL: The receiving facility has the capability for the treatment of this patient (including adequate equipment and medical personnel) and has agreed to accept the transfer and provide appropriate medical treatment.
Receiving Facility: Doctors Person accepting TXFR: [redacted] Date: [redacted] Time: 2000 AM/PM
Receiving MD: [redacted] Date: [redacted] Time: ____ AM/PM
Questions regarding Medication Reconciliation information may be directed to _____ or Transferring Physician.

VI. ACCOMPANYING DOCUMENTATION sent via: ☐ Patient/Responsible Party ☐ Fax ☐ Transporter
Documentation includes: ☒ Copy of Medical Record ☒ Lab/ EKG/ X-Ray ☒ Copy of Transfer Form
☒ Medication Reconciliation Information ☐ Advanced Directive ☐ Other
Report given to: (Person/title): [redacted]
Time of Transfer: 2032 Date: [redacted] Nurse Signature: [redacted] Transferring Unit: _____
Vital Signs Just Prior to Transfer: Temp 99.3 Pulse 85 R 18 BP 120/61 spO2% 100 FHT _____ Time: 2034 AM/PM

PATIENT

VII. PATIENT CONSENT TO MEDICALLY INDICATED TRANSFER or PATIENT REQUEST FOR TRANSFER:
☐ I hereby CONSENT TO TRANSFER to another facility. I understand that it is the opinion of the physician responsible for my care that the benefits of transfer outweigh the risks of transfer. I have been informed of the risks and benefits of this transfer.
☐ I hereby REQUEST TRANSFER to _____. I understand and have considered the hospital's EMTALA responsibilities that have been explained to me, the medical risks and benefits of transfer and the physician's recommendation. I make this request upon my own suggestion and not that of the hospital, physician or anyone associated with the hospital. I agree to accept the risks associated with my decision.
The reason I request transfer is: E unstable
Signature of: ☐ Patient ☒ Responsible Person [redacted] Relationship to patient [redacted]
Witness [redacted] Title [redacted] Date: [redacted] Time: 2040 AM/PM

WHITE = MEDICAL RECORDS
YELLOW = RECEIVING FACILITY
PINK = PER FACILITY PROTOCOL

[redacted]

'TR' HCA-600-00410EMTALA Memorandum of Transfer/ENGLISH rev 12/2012 F [redacted]

Patient: [redacted] MRN: [redacted] Encounter: [redacted] Page 1 of 1

[redacted]

[redacted]

TRANSFER OUT RECORD

PHYSICIAN

(Check one of the following)

I. **MEDICAL CONDITION: Diagnosis** [redacted]

- ☐ **No Emergency Medical Condition Identified:** This patient has been examined and an EMC has not been identified
- ☑ **Patient Stable** – The patient has been examined, an EMC has been identified and stabilized such that, within reasonable clinical confidence, no material deterioration of this patient's condition is likely to result from or occur during transfer.
- ☐ **Patient Unstable** – The patient has been examined, an EMC has been identified and patient is not stable, but the transfer is medically indicated and in the best interest of the patient.

II. **REASON FOR TRANSFER:** ☑ Medically Indicated ☐ Patient Requested ☐ Other _____

☐ On-Call physician refused or failed to respond within a reasonable period of time

Physician Name: _____ Address: _____

III. **RISK AND BENEFIT FOR TRANSFER:**

Medical Benefits:	**Medical Risks:**
☐ Obtain Level of care/ service NA at this facility Service Service _____ ☐ Benefits outweigh risks of transfer	☐ Deterioration of condition in route _____ ☐ Worsening of condition or death if you stay here. **There is always risk of traffic delay/accident resulting in condition deterioration.**

IV. **Mode/Support/Treatment During Transfer as Determined by Physician – (Complete Applicable Items):**

Mode of transportation for transfer: ☑ BLS ☐ ALS ☐ Helicopter ☐ Neonatal Unit ☐ Private Car ☐ Other _____

Agency: _____ Name/Title accompany hospital employee: _____

Support/Treatment during transfer: ☐ Cardiac Monitor ☐ Oxygen-(Liters): _____ ☐ Pulse Oximeter ☐ IV Pump ☐ IV Fluid: _____ Rate: _____ ☐ Restraints – Type: _____ ☐ Other _____ ☑ None

Radio on-line medical direction control (if necessary): ☐ Transfer Hospital ☐ Destination Hospital ☐ Other _____

V. **Receiving Facility and Individual:** The receiving facility has the capability for the treatment of this patient (including adequate equipment and medical personnel) and has agreed to accept the transfer and provide appropriate medical treatment.

Receiving Facility / Person accepting transfer: _____ Time: _____

Receiving Physician: _____

Transferring Physician Signature: [redacted] Date/Time: [redacted] 4-15 PM

Per Dr. _____ by _____ RN/Qualified Medical Personnel **Date/Time** _____

NURSING

VI. **ACCOMPANYING DOCUMENTATION** - sent via: ☐ Patient/Responsible Party ☐ Fax ☑ Transporter

☑ Copy of Pertinent Medical Record ☐ Lab/EKG/X-Ray ☐ Copy of Transfer Form ☐ Court Order

☐ Advanced Directive ☐ Other _____

Report given (Person/Title): _____

Time of Transfer: 4:35PM Date: [redacted] Nurse Signature: _____ Unit: [redacted]

Vital Signs/Assessment Just Prior to Transfer: T ____ Pulse ____ R ____ BP ____ Time ____ Pain ____

BMH equipment used during transfer: Type: _____ Number: _____

PATIENT

VII. **PATIENT CONSENT TO "MEDICALLY INDICATED" OR "PATIENT REQUEST" TRANSFER:**

☑ I hereby **CONSENT TO TRANSFER** to another facility. I understand that it is the opinion of the physician responsible for my care that the benefits of transfer outweigh the risks of transfer. I have been informed of the risks and benefits upon which this transfer is being made.

☐ I hereby **REQUEST TRANSFER** to _____. I understand and have considered the hospital's responsibilities, the risks and benefits of transfer, and the physician's recommendation. I make this request upon my own suggestion and not that of the hospital, physician, or anyone associated with the hospital. [redacted]

The reason I request transfer is: [redacted]

Signature of ☑ Patient ☐ Responsible Person _____ Relationship Self

Witness [redacted] Witness _____

Completed by: _____

[redacted]

White: Medical Record; **Yellow:** Receiving Facility; **Pink:** QI
Form #: 19821 July 2004

It is necessary to document communications with the receiving specialist/admitting physician and receiving hospital.

[redacted]

DATE	PROGRESS NOTES
1-30-[redacted] 330PM	Med NOte Addendum I received a page from D[redacted] Risk Manager [redacted] that Dr. M[redacted] from U of Miami area pho[redacted] / Pager [redacted] will [redacted] be available plastic surgery. I D/W C him & Explained about case & current situation & he will contact other doctors for Med Mx & For an 1° care doctor over there & they will Contact me back [redacted]
1-31-[redacted]	Addendum I Also received phone call from Dr. I[redacted] plastic Sx from U. of Miami about the Case & I D/W C him over the phone & he will late me later today ([redacted] but late last night got called from Nurse that will be accepted by Dr B[redacted] [redacted]

Form # 1079

[redacted]

[redacted]

DATE PROGRESS NOTES

T: 98.4

BP: 108/61

P: 75

13.6	10.6	11	10.2
38	31	0.6	

C: 7.7

Mg: 1.7

INR 1.6

↓ 8.1 | 9.2↓ | 64.0
32.0

[redacted]

Dr. [redacted]

[redacted] approved

[redacted] and transfuse pc

As Above pt was Accepted at S. Mbarbara Hospital will Await final results / cont supportive care

[redacted]

[redacted]

DATE | PROGRESS NOTES

1/31 [redacted] Surgery for Dr [redacted]

Nursing working on transfer to Miami. Pt wishing to cancel debridement at this time. Tmax 98.6.

8.1 > 9.8/29 < 640.

abd wounds + groins unchanged

Plan - transfer ASAP to miami

[redacted]

1/31 [redacted]

Cubicin

Impen

Amb

A/P ① s/p abdominoplasty wound infxn
(+) VRE
— on abx tx.
— awaiting approval
(? Dr. Baker denied pt)
— watch pt

[redacted]

Patient Label

Initiating a transfer requires a physician's order, not a progress note

[redacted] [redacted]

PHYSICIAN ORDERS

AUTHORIZATION IS GRANTED TO SUPPLY MEDICATION BY NON-PROPRIETARY NAME UNLESS CHECKED HERE

DATE	TIME	PLEASE USE BALL POINT PEN AND PRESS FIRMLY
		[redacted]
		[redacted]
1/27		Social Services Consult for Transfer ASAP Please have Social Service see Pt for Transfer to VMI/SMH Burn center + Plastic Consultants Am CBC/SMA 7
		Notify Inf Disease Re Tetanus Prophylaxis cc if Pt is Burn wound

[redacted]

ADVANCE DIRECTIVES, WITHDRAWAL OF LIFE SUPPORT, DO NOT RESUSCITATE ORDERS, AND SURROGATE/GUARDIANSHIP

Chapter 765 of the Florida Statutes: The Health Care Advance Directives Act

The Health Care Advance Directives Act applies to healthcare decisions that involve the withholding or withdrawing of life-prolonging procedures.

An “advance directive” is a set of instructions from the patient regarding healthcare decisions.

Sources: Section 765.101, Fla. Stat.

What is a living will?

A living will is a document containing specific instructions regarding a person's wishes with respect to life-prolonging procedures.

Sources: Section 765.101, Fla. Stat.

What are “life-prolonging procedures?”

“Life-prolonging procedures” (LPPs) include any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

Sources: Section 765.101, Fla. Stat.

Under what medical circumstances can life-support be withdrawn?

Life support may only be withdrawn if the patient:

1) has a terminal condition;

2) has an end-stage condition;

3) is in a persistent vegetative state;

4) has a medical condition or limitation referred to in an advance directive exists.

Sources: Section 765.304, Fla. Stat.

“Terminal condition” means a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

“End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

“Persistent vegetative state” means a permanent and irreversible condition of unconsciousness in which there is:

(a) The absence of voluntary action or cognitive behavior of any kind.

(b) An inability to communicate or interact purposefully with the environment.

Sources: Section 765.101, Fla. Stat.

Two physicians must examine the patient separately to determine whether medical circumstances exist to permit the withdrawal of life support

Before life-prolonging procedures may be withheld or withdrawn, the patient's primary physician and at least one other consulting physician must separately examine the patient and determine that:

a) the patient has a terminal or end-stage condition or is in a persistent vegetative state; and

b) the patient has no reasonable probability of recovering capacity.

The findings of each such examination must be documented in the patient's medical record and signed by each examining physician.

Sources: Section 765.306, Fla. Stat.

What is a Designation of a Healthcare Surrogate?

"Surrogate" means any competent adult expressly designated by a patient to make health care decisions and to receive health information.

A Designation of a Healthcare Surrogate is a legal document that allows a patient to choose another person to make their healthcare decisions if the patient is incompetent or unable to communicate.

Sources: Section 765.101, Fla. Stat.

Capacity of the patient

A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. While a principal has decisionmaking capacity, the principal's wishes are controlling. Each physician or health care provider must clearly communicate to a principal with decisionmaking capacity the treatment plan and any change to the treatment plan prior to implementation of the plan or the change to the plan. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

Sources: Section 765.204, Fla. Stat.

When does the surrogate have authority to make healthcare decisions?

The surrogate's authority commences either upon a determination that the patient lacks capacity or upon the patient’s request that the surrogate make medical decisions for the patient.

Sources: Section 765.204(3), Fla. Stat.

The Proxy

A proxy makes decisions for incapacitated patients who do not have a healthcare surrogate.

There is a statute that determines (in descending order) who may serve as a proxy.

Sources: Sections 765.101(19) and 765.401, Fla. Stat.

Who may serve as a proxy?

1) The judicially appointed guardian;
2) The patient's spouse;
3) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
4) A parent of the patient;
5) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;
6) An adult relative of the patient; or
7) A close friend of the patient.
8) A licensed clinical social worker licensed who is not employed by the hospital and who is appointed by the Ethics Committee.

Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the hospital's Ethics Committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

Sources: Section 765.401, Fla. Stat.

A proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.

Sources: Section 765.401, Fla. Stat.

Decisions concerning withdrawal or withholding of life support from an individual are made by the patient in consultation with the physician, designated surrogate or proxy, and family members.

BOCA RATON REGIONAL HOSPITAL

ADMINISTRATIVE POLICY MANUAL

POLICY #: 00000520

FUNCTION: Rights & Responsibilities

POLICY TITLE: Implementing Advanced Directives

APPROVED BY	NAME	DATE
Director, Clinical	Dillon, Kim	11/9/2015
Director	Cartage, Jill	11/9/2015
Chief Nursing Officer	Durbin, Melissa	11/10/2015
Chief Medical Officer	Posternack, Charles	11/10/2015

POLICY OWNER: Dillon, Kim - Director, Clinical

EFFECTIVE DATE: 11/6/2015 **LAST REVIEW DATE:**

LAST REVISED DATE: 11/6/2015 **NEXT REVIEW DATE:** 11/6/2016

RESPONSIBLE PARTY: Risk Management Director

REFERENCES/SOURCE DOCUMENT: 42 U.S.C. §1395cc(f); 42 U.S.C. § 14406; F.S. §765; F.A.C. 59A-3.254; F.A.C. 59A-8.0245; TJC

PURPOSE:

To provide guidelines for implementing patients' advance directives in accordance with the Florida Statutes; to provide a mechanism for healthcare decision-making when the patient lacks the capacity to make decisions, but has executed an advance directive; and to provide guidelines for healthcare decision- making when the patient lacks the capacity to make decisions and has not executed an advance directive.

SCOPE:

This policy applies to Boca Raton Regional Hospital and its outpatient locations

POLICY:

Boca Raton Regional Hospital (BRRH) strives, in accordance with statutory law, to comply with the wishes expressed by a patient in an advance directive, if the patient is not able to participate in healthcare decision making. In situations where the patient has not executed an advance directive (or designated a surrogate decision maker), every effort is made to provide a decision-making mechanism in accordance with Florida laws governing the appointment of a proxy.

DEFINITIONS:

Advance Directive: A witnessed written document or oral statement in which instructions are given by an individual or in which an individual's desires are expressed concerning any aspect of the individual's health care or health information

Examples of advance directives include, but are not limited to: Living Will; Designation of a Healthcare Surrogate; the BRRH Advance Directive-Living Will; an Anatomical Gift.

Close Personal Friend: Any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the healthcare facility or to the attending or treating physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient's healthcare; and has maintained such regular contact with the patient so as to be familiar with the patient's activities, health, and religious or moral beliefs.

End-stage Condition: An irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and for which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

Healthcare Decision:

- informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures, and mental health treatment, unless otherwise stated in the advance directive
- The decision to apply for private, public, government, or veteran's benefits to defray the cost of healthcare.
- The right of access to all records of the individual reasonably necessary for a healthcare surrogate to make decisions involving health care and to apply for benefits on behalf of the individual.
- The decision to make an anatomical gift pursuant to the Florida Statutes.

Healthcare Proxy: A competent adult who has not been expressly designated to make healthcare decisions for a particular incapacitated individual, but who is authorized in accordance with the Florida Statutes to make healthcare decisions for such individual.

Healthcare Surrogate: Any competent adult expressly designated by an individual to make health care decisions and receive health information. The individual may indicate in the advance directive whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of incapacity or only upon the individual's incapacity.

Incapacity or Incompetent: The patient is physically or mentally unable to communicate a willful and knowing healthcare decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

Life Prolonging Procedures: Any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

Persistent Vegetative State: A permanent and irreversible condition of unconsciousness in which there is:

a. The absence of voluntary action or cognitive behavior of any kind.
b. An inability to communicate or interact purposefully with the environment.

Terminal Condition: A condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

PROCEDURE:

Evaluate the Patient's Capacity:

If the patient's capacity to make healthcare decisions for him/herself or provide informed consent is in question, the attending physician evaluates the patient's capacity and enters that evaluation in the patient's medical record. If, based on his or her evaluation of the patient's capacity, the attending physician determines that the patient lacks capacity to make health care decisions, or has a question as to whether the patient lacks capacity, a second physician evaluates the patient. If the second physician agrees that the patient lacks capacity to make health care decisions, then both physicians document their evaluation in the patient's medical record and the medical record is signed by each examining physician. If an attending physician determines that the patient lacks capacity, the patient's primary care physician shall be notified of the determination. If a healthcare surrogate has been designated, he/she should be notified in writing that his/her authority under the advance directive has been activated. Refer to one of the following sections according to the circumstances:

A. **Patient Has an Advance Directive with an Appointed Surrogate**
B. **Patient Has an Advance Directive with No Appointed Surrogate**
C. **Patient Does Not Have an Advance Directive, Nor an Appointed Surrogate**
D. **Patient Does Not Have an Advance Directive and Has No One to Serve as Surrogate or Proxy**

A. Patient Has an Advance Directive With an Appointed Surrogate:

1. Physicians document patient lacks capacity to make health care decisions for him/her self.
2. Review the patient's advance directive with surrogate appointment, and confirm that it contains the signatures of the patient, and two witnesses, neither of whom is the individual designated as the healthcare surrogate, and at least one of whom is not the spouse or a blood relative of the patient.
3. Assure that a copy of the advance directive with surrogate appointment is filed in the medical record.
4. Inform the surrogate in writing of the patient's lack of capacity to make medical decisions and the need for him or her to serve as the patient's surrogate.
5. Document in the Progress Notes of the medical record that in accordance with the patient's advance directive, his/her appointed surrogate has been notified and has accepted appointment.
6. Should the appointed surrogate refuse or resign as surrogate for the patient:

- document the refusal in the Progress Notes.
- if the patient appointed an alternate, follow the process outlined above, to notify the alternate of his or her appointment as healthcare surrogate by the patient.
- if no alternate surrogate was appointed, follow the directions in **Section B**

The surrogate makes healthcare decisions in accordance with the patient's advance directive, or which he or she believes the patient would have made under the circumstances if the patient were capable of making such decisions. If there is no indication of what the patient would have chosen (either in the advance directive or otherwise), the surrogate may consider the patient'sbest interest in deciding that proposed treatments are not to be withheld or that treatments currently in effect are to be withdrawn.

B.Patient Has an Advance Directive With No Appointed Surrogate:

1. Physicians document patient lacks capacity to make health care decisions for him/herself.
2. Review the advance directive and confirm it has been signed by the patient and two witnesses, at least one of whom is not the spouse or a blood relative of the patient.
3. Assure a copy of the advance directive is filed in the legal section of the medical record.
4. A healthcare proxy may be designated and may be any one of the following individuals, in the following order of priority:

    1. The judicially appointed guardian of the patient authorize to consent to medical treatment, if such guardian has been previously appointed.
    2. The patient's spouse.
    3. The adult child of the patient or a majority of the patient's adult children reasonably available for consultation.
    4. The parents of the patient.
    5. The adult siblings of the patient or a majority of the patient's adult siblings.
    6. The nearest living relative of the patient.
    7. Close personal friend of the patient.
    8. A clinical social worker licensed pursuant to Florida chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the hospital's Bioethics Committee and must not be employed by the hospital.

1. Inform the proxy of the patient's incapacity and the need for him/her to serve as the patient's proxy.

1. Document in the Progress Notes of the medical record that a proxy has accepted appointment as the patient's proxy and document the proxy's name and relationship to patient.
2. Should the person refuse to serve as proxy, document the refusal and continue down the priority list, following the same directions for documentation and provision of notice to the proxy.
3. The proxy follows the advance directive and/or wishes of the patient. If the advance directive does not address the particular healthcare decision, or the proxy is otherwise unaware of the patient's wishes, then the decision-making process proceeds under Section C, below.

C.Patient Does Not Have an Advance Directive, Nor an Appointed Surrogate:

1. Use the same process as **Section B** for appointment of a proxy.
2. Any healthcare decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in making health care decisions.
3. If the decisions required include withholding or withdrawing life-prolonging procedures, the proxy's decision must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient had the capacity to make his or her own health care decisions, or, if there was no indication of what the patient would have chosen, that the decision is in the patient's best interest. Before the proxy exercises any of the foregoing rights, the proxy must be satisfied that the patient has no reasonable medical probability of recovering capacity so that the right to make decisions could be exercised by the patient, and the patient must have a terminal condition, end-stage

condition, or be in a persistent vegetative state.

4. In the event the patient is in a persistent vegetative state and has a judicially appointed guardian with authority to consent to medical treatment, life-prolonging procedures may only be withheld or withdrawn in accordance with the requirements set forth in **Section D** below.

D.Patient Does Not Have an Advance Directive and Has NO ONE to Serve as Surrogate or Proxy:

1. Contact Risk Management immediately.
2. For patients in a persistent vegetative state, as determined by the attending physician in accordance with currently accepted medical standards, who have no advance directive and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make healthcare decisions for them, life-prolonging procedures may be withheld or withdrawn under the following conditions:

    - The patient has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and
    - The guardian and the person's attending physician, in consultation with the Hospital's Bioethics Committee conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life- prolonging procedures is in the best interest of the patient.

SPECIAL INSTRUCTIONS:

Contact Risk Management if any of the following circumstances occur or if there are any concerns:

1. If there is no one available to serve as a surrogate or proxy;
2. If the surrogate or proxy decision is not consistent with the expressed wishes of the patient;
3. If there is doubt as to the validity or meaning of the advance directive documents;
4. If there is lack of agreement between family members and the surrogate or proxy.

Chapter 765 Immunity

No hospital, provider, surrogate, or proxy will be subject to criminal prosecution or civil liability for honoring a patient's living will or advance healthcare directives.

Sources: Section 765.109, Fla. Stat.

Disputes regarding decisions to withhold or withdraw life support

If there is a dispute between either the physician and the patient's family, the physician and the patient's surrogate/proxy, or between physicians regarding the decision to withhold or withdraw life support, there are different ways to resolve the dispute.

Dispute over physician's decision to withhold or withdraw life support

There is a hospital ethics committee that can resolve the dispute.

Dispute over physician's decision to withhold or withdraw life support

The dispute may be resolved through expedited judicial intervention through the courts. However, the courts have discouraged this type of review, so this should only be considered as a last resort and in cases where there is no living will or advance directive.

In the event that expedited judicial review has been sought, the primary physician shall not withhold or withdraw life-prolonging procedures during the pendency of the expedited judicial review.

If a review of a disputed decision is not sought within 7 days following the primary physician's decision to withhold or withdraw life-prolonging procedures, the primary physician may proceed in accordance with the principal's instructions.

Sources: Section 765.304, Fla. Stat.

Do Not Resuscitate Order (DNRO)

Physician Practice Standard Regarding Do Not Resuscitate (DNR) Orders

Resuscitation may be withheld or withdrawn from a patient by a treating physician licensed pursuant to Chapter 458, F.S., if evidence of an order not to resuscitate by the patient's physician is presented to the treating physician. An order not to resuscitate, to be valid, must be on the form as set forth in Section 401.45, F.S. The form must be signed by the patient's physician and by the patient, or, if the patient is incapacitated, the patient's health care surrogate, or proxy as provided in Chapter 765, F.S.; court appointed guardian as provided in Chapter 744, F.S.; or attorney in fact under a durable power of attorney as provided in Chapter 709, F.S. The court appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Sources: Rule 64B-9.016, Fla. Admin. Code

If a competent adult patient expresses his/her decision not to be resuscitated in the event of cardiac or respiratory arrest, the attending physician shall document the patient's refusal of such treatment and enter a DNR order in the patient's chart.

The DNR order shall continue throughout the patient's hospitalization, even in the event the patient subsequently becomes incapacitated.

State of Florida
DO NOT RESUSCITATE ORDER

(please use ink)

Patient's Full Legal Name:_____ Date:_____
(Print or Type Name)

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.
(If not signed by patient, check applicable box):

- ☐ Surrogate
- ☐ Court appointed guardian
- ☐ Proxy (both as defined in Chapter 765, F.S.)
- ☐ Durable power of attorney (pursuant to Chapter 709, F.S.)

_____
(Applicable Signature) (Print or Type Name)

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

_____ (___)___-____
(Signature of Physician) (Date) Telephone Number (Emergency)

_____
(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004

PHYSICIAN'S STATEMENT

I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from the patient in the event of the patient's cardiac or respiratory arrest.

(___)___-____
(Signature of Physician) (Date) Telephone Number (Emergency)

(Print or Type Name) (Physician's Medical License Number)

DH Form 1896, Revised December 2004

State of Florida
DO NOT RESUSCITATE ORDER

Patient's Full Legal Name (Print or Type) (Date)

PATIENT'S STATEMENT

Based upon informed consent, I, the undersigned, hereby direct that CPR be withheld or withdrawn.
(If not signed by patient, check applicable box):

- ☐ Surrogate
- ☐ Proxy (both as defined in Chapter 765, F.S.)
- ☐ Court appointed guardian
- ☐ Durable power of attorney (pursuant to Chapter 709, F.S.)

(Applicable Signature) (Print or Type Name)

Estado de Florida ORDEN DE NO RESUCITAR (por favor, use tinta)

Este lado del formulario está destinado únicamente a la traducción. Los proveedores de Servicios Médicos de Emergencia y el personal médico sólo deben acatar la versión en inglés del presente formulario. "División de Operaciones Médicas de Emergencia, Oficina de Traumatología"

Nombre legal completo del paciente: ______________________ Fecha: ____________

(Escriba el nombre con letra de imprenta o digítelo)

DECLARACIÓN DEL PACIENTE

Sobre la base del consentimiento informado, yo, quien suscribe, por medio de la presente ordeno que no se me proporcione RCP.

(Si este documento no está firmado por el paciente, marque la casilla pertinente):

- ☐ Responsable del sujeto
- ☐ Tutor designado por el tribunal
- ☐ Apoderado (ambos, según se definen en el Capítulo 765 de los Estatutos de Florida)
- ☐ Poder de duración indeterminada para fines de atención médica (de acuerdo con el Capítulo 709 de los Estatutos de Florida)

(Firma correspondiente) (Escriba el nombre con letra de imprenta o digítelo)

DECLARACIÓN DEL MÉDICO

Yo, quien suscribe, un médico licenciado de acuerdo con el Capítulo 458 ó 459 de los Estatutos de Florida, soy el médico del paciente anteriormente mencionado. Por medio de la presente, ordeno que no se proporcione resucitación cardiopulmonar (ventilación artificial, compresión torácica, intubación endotraqueal y desfibrilación) al paciente en caso de que éste sufra un paro cardíaco o respiratorio.

(_ _ _) _ _ _ - _ _ _ _

(Firma del médico) (Fecha) Número telefónico (Emergencia)

(Escriba el nombre con letra de imprenta o digítelo) FORMULARIO (Número de licencia médica)

1896 DEL DEP. DE SALUD, revisado en diciembre de 2004

DECLARACIÓN DEL MÉDICO

Yo, quien suscribe, un médico licenciado de acuerdo con el Capítulo 458 ó 459 de los Estatutos de Florida, soy el médico del paciente anteriormente mencionado. Por medio de la presente, ordeno que no se proporcione resucitación cardiopulmonar (ventilación artificial, compresión torácica, intubación endotraqueal y desfibrilación) al paciente en caso de que éste sufra un paro cardíaco o respiratorio.

(_ _ _) _ _ _ - _ _ _ _

(Firma del médico) (Fecha) Número telefónico (Emergencia)

(Escriba el nombre con letra de imprenta o digítelo) (Número de licencia médica)

FORMULARIO 1896 DEL DEP. DE SALUD, revisado en diciembre de 2004

Estado de Florida ORDEN DE NO RESUCITAR

Nombre legal completo del paciente (Fecha)

(Escriba con letra de imprenta o digítelo)

DECLARACIÓN DEL PACIENTE

Sobre la base del consentimiento informado, yo, quien suscribe, por medio de la presente ordeno que no se me proporcione RCP. **(Si este documento no está firmado por el paciente, marque la casilla pertinente):**

- ☐ Responsable del sujeto
- ☐ Apoderado (ambos, según se definen en el Capítulo 765 de los Estatutos de Florida)
- ☐ Tutor designado por el tribunal
- ☐ Poder de duración indeterminada para fines de atención médica (de acuerdo con el Capítulo 709 de los Estatutos de Florida)

(Firma correspondiente) (Escriba el nombre con letra de imprenta o digítelo)

Eta Laflorid LÒD PA RESISITE (tanpri itilize lank)

Kote fòm sa a se pou tradiksyon sèlman. Founisè Sèvis Medikal Ijans ak fonksyonè medikal dwe onore vèsyon Anglè fòm sa a. Divizyon Pou Operasyon Medikal Ijans, Biwo Twoma

Non Legal Konplè pasyan an: ______________________ Dat: ____________

(Ekri an Majiskil oswa Tape Non an)

DEKLARASYON PASYAN AN

Baze sou konsantman enfòme an, mwen, ki siyen la, ak prezant sa a deklare pou yo pa fè CPR sou mwen ditou.

(Si pasyan an pat siyen limenm, tcheke kazye ki apwopriye an):

- ☐ Reprezantan Swen Sante
- ☐ Gadyen Tribinal la Chwazi
- ☐ Pwokirè (tou de jan li dekri nan Chapit 765, F.S.)
- ☐ Responsabilite Pwokirasyon Dirab (daprè Chapit 709, F.S.)

(Siyati ki Aplikab) (Ekri an Majiskil oswa Tape Non an)

DEKLARASYON DOKTÈ AN

Mwen, ki siyen la a, yon doktè sètifye daprè Chapit 458 oswa 459, F.S., mwen doktè pasyan an ki nonmen anwo la. Mwen dirije pou yo kenbe ak elimine resisitasyon kadyopilmonè (vantilasyon atifisyèl, konpresyon kadyak, endotrakyal entibasyon akdefibrilasyon) pou pasyan an Si zoka pasyan an ta gen yon epizòd arèdkè oswa respiratwa.

(_ _ _) _ _ _ - _ _ _ _

(Siyati Doktè an) (Dat) Nimewo Telefòn (Ijans)

(Ekri an Non an Majiskil) (Nimewo Lisans Medikal Doktè an)

Fòm 1896 DH, Revize Desanm 2004

DEKLARASYON DOKTÈ AN

Mwen, ki siyen la a, yon doktè sètifye daprè Chapit 458 oswa 459, F.S., mwen doktè pasyan an ki nonmen anwo la. Mwen dirije pou yo kenbe ak elimine resisitasyon kadyopilmonè (vantilasyon atifisyèl, konpresyon kadyak, endotrakyal entibasyon akdefibrilasyon) pou pasyan an sizoka pasyan an ta gen yon epizòd arèdkè oswa respiratwa.

(_ _ _) _ _ _ - _ _ _ _

(Siyati Doktè an) (Dat) Nimewo Telefòn (Ijans)

F.S.) (Ekri an Majiskil oswa Tape Non an)(Nimewo Lisans Medikal Doktè an)

Fòm 1896 DH, Revize Desanm 2004

Eta Laflorid LÒD PA RESISITE

Non Legal Konplè pasyan an (Ekri an Majiskil oswa Tape) (Dat)

DEKLARASYON PASYAN AN

Baze sou enfòmasyon konsanti, mwen, ki siyen la, ak prezant sa a dirije pou yo pa fè CPR oswa elimine. **(Si pasyan an pat siyen limenm, tcheke kazye ki apwopriye an):**

- ☐ Reprezantan Swen Sante
- ☐ Pwokirè (tou de fason ki dekri nan Chapit 765, F.S.)
- ☐ Gadyen Tribinal la Chwazi
- ☐ Responsabilite Pwokirasyon Dirab (daprè Chapit 709,

(Siyati ki Aplikab) (Ekri an Majiskil oswa Tape Non an)

DNRO and the incapacitated patient

There will be situations where either an incapacitated patient has a living will that expresses his/her desire not to be resuscitated in the event of cardiac or respiratory arrest or a healthcare surrogate/proxy requests a DNR order.

Before a DNR order may be written, the patient's attending physician and one other credentialed physician must evaluate the patient's condition and document in the patient's chart that the patient has or is in:

1) a terminal condition or a persistent vegetative state or end-stage condition AND
2) the patient has no reasonable probability of recovering capacity.

A DNRO may be revoked at any time

A DNRO may be revoked at any time by the patient, if signed by the patient, or the patient's health care surrogate, or proxy or court appointed guardian or person acting pursuant to a durable power of attorney established pursuant to Section 709.08, F.S. Pursuant to Section 765.104, F.S., the revocation may be in writing, by physical destruction, by failure to present it, or by orally expressing a contrary intent.

Sources: Rule 64J-2.018, Fla. Admin. Code

The judicially appointed guardian: withdrawal of life support when there are no family or friends available or willing to serve as a proxy

If a patient is in a persistent vegetative state, has no advance directives, and has no willing or available family or friends to serve as a proxy, life support may be withheld or withdrawn if:

(1) the person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

(2) the guardian and the person's primary physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the patient.

Section 765.404, Fla. Stat.

Expedited Judicial Intervention Concerning Medical Treatment Procedures

As a last resort, expedited judicial intervention may be used to review a surrogate's decision concerning medical treatment procedures.

Sources: Section 765.105, Fla. Stat.

Court review of surrogate's decision

The patient's family, the health care facility, or the primary physician, or any other interested person who may reasonably be expected to be directly affected by the surrogate or proxy's decision concerning any health care decision may seek expedited judicial intervention pursuant to rule 5.900 of the Florida Probate Rules, if that person believes:

(a) The surrogate or proxy's decision is not in accord with the patient's known desires or this chapter;

(b) The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;

(c) The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;

(d) The surrogate or proxy has failed to discharge duties, or incapacity or illness renders the surrogate or proxy incapable of discharging duties;

(e) The surrogate or proxy has abused his or her powers; or

(f) The patient has sufficient capacity to make his or her own health care decisions.

Sources: Section 765.105, Fla. Stat.

Petititon for Expedited Judicial Review

The petition for expedited judicial review of a surrogate's decision must state:

- Name and address of petitioner;
- Name and location of the patient;
- Relationship of petitioner to the patient;
- Names, relationship to the patient and addresses (if known) of: (a) the patient's spouse and adult children; (b) the parents if the patient is a minor; (c) if none of the above, the patient's next of kin; (d) the guardian or court-appointed health care decision-maker; (e) any person designated by the patient in a living will or other document to exercise the patient's decisions in case of incapacity of the patient; (f) the administrator of the patient's health care facility; (g) the patient's doctors; and (h) all other persons petitioner believes may have information concerning the expressed wishes of the patient;
- Facts sufficient to establish the need for relief requested (including the principal's incapacity if the authority of the Surrogate is contingent on the principal's incapacity); and
- Supporting documentation such as living wills and health care surrogate designations must be attached to the petition.

Sources: 15 Fla. Prac., Elder Law § 29:18 (2016-2017 ed.)

Notice and Hearing

A preliminary hearing on the petition will be held within 72 hours of the filing of the petition. At that time the court will either (a) rule on the request for relief or (b) conduct an evidentiary hearing not lather than four days after the preliminary hearing and then rule.

Unless waived by the court, notice of the petition and preliminary hearing must be served on all persons so noted in the petition as well as other persons as the court may direct.

Sources: 15 Fla. Prac., Elder Law § 29:19 (2016-2017 ed.);
15 Fla. Prac., Elder Law § 29:20 (2016-2017 ed.)

There are several different types of medical malpractice lawsuits.