

DNR: A victim of form over substance

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whether CPR is medically appropriate. Hospitals would do well to realize that any treatment modality (including CPR) ought to be medically appropriate before it is even placed for consideration of an informed consent. Medical appropriateness is the cornerstone in any considered or proffered therapy.

When there is no one to sign on behalf of an un-befriended, incapacitated patient, the patient must be resuscitated and maintained on a ventilator. This is true even when the “treatment” is contrary to the medical judgment of the patient’s physician. Why? Because there was no one to sign the HRS Form 1896 giving informed consent to withhold that treatment. It is absurd that the misapplication of an inappropriate form controls the situation. This would be the stuff of high comedy were it not so tragic. It is not just poor medical care, it is unethical and illegal.

In fact, the law does provide for the withholding or withdrawal of CPR in the absence of an executed DNR should the physician believe that such treatment would not provide any medical benefit. The Florida legislature, recognizing the necessity of allowing a physician to make that medical decision, specifically provided that “the absence of an order (pursuant to Form 1896) not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law” in the following out-of-hospital settings: hospital emergency rooms (FS 395.1041(3)(l)); nursing homes (FS 400.142(3)); assisted living facilities (FS 400.4255(3)); and hospices (FS 400.6095(8)). Although Florida statutes have empowered the physician outside the hospital, many local hospital administrative policies have tied his/her hands inside.

Suggestions for a Medically Reasonable Approach

In determining end-of-life policy, the patient’s best interests, rather than administrative fear of liability, should be controlling.

- 1)** Recognize the difference between a patient-driven DNR based on informed consent in cases where a real medical choice exists, and a physician-driven DNR where no reasonable medical choice is to be made.
- 2)** Maintain or re-invigorate the two-physician DNR order when the patient is incapacitated and no designee is available. This is similar to the requirement for emergency surgery.
- 3)** Include a discussion of the realistic expectations for CPR during the preparation of the advance directive with the patient, and conduct such discussions when the patient is capable. Explain that there may come a time when CPR is no longer medically reasonable.

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Fall on unsafe stairs causes injuries to elderly man

On a beautiful spring day in March 2011, 85-year-old Mr. Abel and a friend decided to share lunch on the outside patio of the Banana Boat Restaurant in Boynton Beach, Florida. The two gentlemen walked through the inside dining room to a stairway leading down to the patio area. At the top of the stairs, Mr. Abel grabbed the handrail and proceeded cautiously down the steps. The handrail, however, did not reach to the bottom of the stairway. Part-way down, Mr. Abel lost his balance and began to fall. When he began to fall, there was nothing for him to grab to regain his balance. He fell hard onto the floor.

Emergency medical service was called and Mr. Abel was quickly transported to Delray Beach Medical Center for treatment. He had fractured his right hip and endured open reduction internal fixation surgery in an effort to repair it. He remained hospitalized for nine days, and was then moved to a physical therapy facility to relearn how to walk. After several weeks, he was discharged and returned home, but he continued to need care around the clock. At present, he cannot walk without the use of a walker, and he suffers pain when laying on his right side due to the rods inserted in his hip. He is no longer able to drive his car and must rely on others to help him. The loss of his personal freedom has had a debilitating effect on his mental and physical health.

Seeking to hold the restaurant responsible for its negligence, Mr. Abel contacted SDSBS attorney **Karen Terry** to ask for representation. Ms. Terry argued on Mr. Abel’s behalf that Banana Boat was negligent because the stairs were unsafe. The condition of the stairs violated safety codes because the handrails did not go all the way to the bottom of the stairs. The defendant argued that the stairs met the code because they were constructed in the 1970’s and had been grandfathered in when the code was changed.

Suit was filed against the restaurant and a trial date was set. Shortly after, the parties engaged in mediation. The case was resolved for \$450,000. ♦