

INFORMED CONSENT AND THE RIGHT TO REFUSE TREATMENT

Valerie Goodwin Larcombe, Esq.

I. CONSTITUTIONAL RIGHTS OF PRIVACY

A. **Fourteenth Amendment of United States Constitution**

Every individual has a right to possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. U.S.C.A. Const. Amends. 5, 14.

B. **Griswold vs. Connecticut**

The United States Supreme Court has long recognized that several of the fundamental guarantees have created a penumbral right to privacy that is no less important than the rights specifically articulated in the Constitution. Griswold v. Connecticut, 381 U.S. 489 (1965).

C. **Florida's Constitution**

In Florida, however, the right of privacy is specifically guaranteed by Article I, Section 23 of the Florida Constitution.

II. PATIENT'S RIGHT TO BE INFORMED AND TO CONSENT TO TREATMENT

A. **(From Battery to Negligent Nondisclosure)**

During the past three (3) decades there has been a one hundred eighty degree (180°) shift in the concept of the patient's right to make his own medical treatment decisions. The current state of the law governing health care providers is that the patient is to be the primary decision maker in all health care decisions affecting the patient. If the patient is to make this decision, he must be fully informed of his medical condition. Canterbury v. Spence, DC 263; 464 F.2d 772 (U.S. App. 1972); cert. denied 409 U.S. 1064, 34 L.Ed.2d 518 (U.S. 1972). True concerns as to what happens to one's self is the informed exercise of a choice, and that entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each.

In an effort to assure adherence to this principle, Florida's Medical Consent Law precludes recovery against a Florida licensed physician if the physician obtained the patient's consent in accordance with accepted standards of medical practice and a reasonable person, and based upon the information provided by the physician, the patient would have a general understanding of the treatment, its risks, benefits and alternatives. (Fla. Stat. §766.103).

B. **Disclosure of Physician-Specific Risk Information**

CONT...



Johnson v. Kokemoor, 199 Wis. 2d 615 (Wis. 1996), holding that physician's lack of experience in performing a particular surgical procedure was material to understanding his duty to obtain patient's informed consent.

C. Disclosure of Life Expectancy Statistics

Areto v. Avedon, 5 Ca. 4th 1172 (Cal. 1993), holding that treating physicians breached their duties to obtain patient's informed consent by failing to disclose patient's statistical life expectancy.

III. COMPETENT PATIENT'S RIGHT TO REFUSE MEDICAL TREATMENT

A. The corollary to the right to consent to treatment is the right to refuse treatment. Many states have long recognized that a competent adult has the right to forego treatment. Satz v. Permuter, 362 So. 2d 160 (Fla. 4th DCA 1978); Public Health Trust v. Wons, 541 So. 2d 96 (Fla. 1989).

B. The seminal case in Florida is In Re: Guardianship of Browning v. Hubert, 568 So. 2d 4 (Fla. 1990). There, the Florida Supreme Court recognized that one has the inherent right to make choices about medical treatment and that right necessarily encompasses "all medical choices." A competent individual has the constitutional right to refuse medical treatment regardless of his medical condition. This right is subject only to the State's compelling and overriding interest to:

1. **Preserve life;**

- In Re: Quinlan, 355 A.2d 647 (N.J. 1976)
- Harrell vs. St. Mary's Hospital, Inc., 678 So. 2d 455 (4th DCA 1996).

2. **Prevent suicide;**

3. **Protect innocent third parties (minors)**

- See In Re: Dubriel, 605 So. 2d 538 (4th DCA 1992).
- Compassion in Dying v. Washington, 79 F.3d 790 (9th Cir. 1996)

4. **Preserve the medical profession's ethical integrity.**

Bouvia v. Superior Court, 179 Cal. App. 2d 301, 1127 (Cal. Ct. App. 1986).

IV. THE INCOMPETENT/INCAPACITATED PATIENT AND PRESERVING THE RIGHT TO CHOOSE/REFUSE TREATMENT UNDER THE COMMON LAW

A. In Re: Quinlan, 355 A.2d 647 (N.J. 1976).

CONT...



Karen Ann Quinlan slipped into a coma at a party and was thereafter diagnosed as being in a persistent vegetative state. She was maintained on a respirator which her doctor refused to remove based upon his medical standards and ethics. Ms. Quinlan's father, as guardian, sought judicial relief based upon:

1. Karen's constitutional legal rights; and
2. Mr. Quinlan's parental rights.

Holding: The court balanced the State's interest in preserving life against Karen's right to privacy and the right to be free of bodily invasion.

"The State's interest weakens and the individual's right to privacy strengthens as the degree of bodily invasion increases and the prognosis dims, eventually reaching a point where the individual's rights overcome the State's interest."

Having determined that a competent person has a constitutionally protected right to choose or reject medical treatment, the Quinlan court determined that this right is not lost or diminished by virtue of physical or mental incapacity or incompetence. The real questions were whether her guardian could exercise her rights for her and under what circumstances.

The court allowed her guardian to assert her right to refuse treatment on her behalf as it was determined that this right is not lost or diminished by virtue of physical or mental incapacity or incompetence.

Specifically, the guardian and family were to render their "best judgment" as to what Karen would have directed upon satisfying the following criteria:

3. Agreement between the guardian and family;
4. No reasonable medical probability that she would recover from the coma; and
5. Concurrence of the hospital ethics committee. (Note the consistency with Florida's Chapter 765).

B. Superintendent vs. Saikewicz, 370 N.E.2d 417 (Mass. 1977), and the Substituted Judgment Doctrine.

In 1976, Joseph Saikewicz, a severely mentally retarded individual with an I.Q. of 10, was diagnosed with leukemia. His life expectancy was a few months. The only alternative was to try to prolong his life through the use of chemotherapy.

CONT...



The "substituted judgment doctrine" was used to allow the court to determine what Mr. Saikewicz's decision would have been under all of the circumstances. This standard presumably allows an incompetent person to retain his right of self-determination.

C. In Re: Conroy, 486 A.2d 1209 (S. Ct. N.J. 1985).

1. "Best interest" standard
 - a. Some evidence of patient's wishes; and
 - b. Burden outweighs benefit.
2. "Objective" standard
 - a. No evidence; and
 - b. Treatment inhumane.

D. "Clear and convincing evidence" and Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990).

In 1990, the United States Supreme Court addressed in the Cruzan case, the Court's first right to die issue. Nancy Cruzan sustained critical injuries in an automobile accident and was deprived of oxygen for 12 to 14 minutes. She was severely brain damaged and would never recover her cognitive abilities. She required artificial nutrition and hydration to sustain her life. After the hospital personnel refused to remove the feeding tubes, Ms. Cruzan's parents petitioned the probate court for an order to withdraw the artificial nutrition and hydration. The probate court found for the Cruzans and issued the order. The State appealed and the Missouri Supreme Court reversed, holding that there was no "clear and convincing" evidence that Nancy would have wanted the feeding tubes removed.

The United States Supreme Court upheld the Missouri Supreme Court, holding that absent substantial proof of the incompetent patient's wishes, the State is not required to accept the substituted judgment of patient's authorized representatives.

Note: Ms. Cruzan had no living will or other advance directive. Even if she had had a living will, it would have only applied to a terminal condition. The State of Missouri took the position that she was not "terminal," as that term was previously defined. Moreover, there was much debate over whether artificial nutrition and hydration was considered life prolonging medical treatment. Most states, including Florida, have clarified that artificial nutrition and hydration is considered life prolonging/sustaining treatment. Florida's statutory scheme has also evolved as it relates to the definition of "terminal."

V. EVOLUTION AND CODIFICATION OF THE INDIVIDUAL'S RIGHT TO REFUSE TREATMENT

CONT...



A. Generally

As a direct result of the difficult situations faced by patients and families in cases such as those described above, most states have codified laws governing a patient's right to direct medical care and treatment through the use of advance medical directives, which include durable powers of attorney, living wills, and surrogacy designations. Florida is no exception. (Discussed in detail below).

B. The Patient Self-determination Act (a/k/a the "Danforth Act") See 42 U.S.C. §1395cc (1994).

In 1994, Congress acknowledged patients' overall rights to refuse medical treatment in certain circumstances, even if such refusal would result in death. In 1994 Congress enacted the Patient Self Determination Act (the "Act") in an effort to encourage patients to exercise their common law rights to refuse treatment. The Act applies to licensed health care facilities which receive Medicare or Medicaid program funds. The Act requires hospitals, nursing homes and hospices to furnish certain information to the patient/resident at the time of admission. This written information concerns an individual's rights under State law and the written policies of the provider regarding implementation of the patient's advance directives. The facility must also document in the individual's medical record whether the individual has an advance medical directive. The provision of an individual's care may not be conditioned upon execution of an advance directive.

C. Florida

Florida's statutory scheme essentially parallels the Patient Self-Determination Act. It provides that a health care facility shall provide to each patient written information concerning the individual's rights concerning advance directives and the health care facility's policies respecting the implementation of such rights and shall document in the patient's medical records whether or not the individual has executed an advance directive. In addition, the health care provider or facility may not require a patient to execute an advance directive or to execute a new directive using the facility or provider's forms. Health care providers or facilities are subject to professional discipline and revocation of license or certification and the fine of not more than \$1,000 per incident if the health care provider or facility as a condition of treatment or admission requires an individual to execute or waive an advance directive. (See Fla. Stat. Chapter 765).

This year the legislature enacted a notice provision whereby the patient or his surrogate/proxy, if he is incapacitated, must be given information concerning pain management and palliative care. This must be done by the attending/treating physician or his/her designee contemporaneously with the informed consent process. (See Fla. Stat. § 765.1103).

VI. PATIENTS WITH FORMER COMPETENCY

CONT...



A. No Bright Line Test

"There is no bright-line test by which to resolve each and every issue concerning the appropriateness of refusing or withdrawing medical treatment." In Re: Guardianship of Browning, 568 So. 2d 4 (Fla. 1990).

While there is no bright line test, Florida has attempted to set forth a statutory process within which an individual may make his/her intent to refuse care in certain circumstances known. These statutory rights are cumulative and do not supersede but supplement constitutional, common law or other statutory rights.

B. Legislative Intent

The Florida Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse treatment. (Fla. Stat. § 765.102(1)).

To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by designating another person, orally or in writing, to direct the course of his or her medical treatment upon his or her incapacity. These procedures should be less expensive and burdensome than the guardianship process. (Fla. Stat. § 765.102(2)).

The Legislature recognizes that for some the administration of life-prolonging medical procedures may result in only a precarious and burdensome existence. In order to ensure that the rights and intentions of a person may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws of this State recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her medical care. (Fla. Stat. § 765.102(3)).

Accordingly, the "right to die" is no longer the issue. Rather, when and how that right is enforced is the issue. Florida maintains a comprehensive statutory process which sets forth the basic procedure for enforcing advance directives. However, as technology advances and individuals become more and more educated regarding patients' rights of informed consent to and refusal of treatment, ethical, bioethical issues and corresponding changes in the law will continue.

C. Advance Directives

CONT...



1. Definition - A witnessed written document or oral statement in which instructions are given by a principal or in which a principal's desires are expressed concerning any aspect of the principal's health care, including but not limited to the following:
2. Types
 - a. Living Will
 - b. Designation of Health Care Surrogate
 - c. Durable Power of Attorney
 - d. Anatomical gifts made in compliance with Florida law

D. Living Wills

1. A "living will" or declaration means:
 - a. A witnessed document in writing, voluntarily executed by the principal in accordance with §765.302 of the Life Prolonging Procedures Act.
 - b. A witnessed oral statement made by the principal expressing the principal's instructions concerning life prolonging procedures.
2. Procedure for making a living will.
 - a. Any competent adult may at any time make a living will or written declaration and direct the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state.
 - b. An "end-stage condition" means a condition that is caused by injury, disease, or illness, which has resulted in severe and permanent deterioration, indicated by incapacity and complete physical dependency, and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.
 - c. "Persistent vegetative state" means a permanent and irreversible condition of unconsciousness in which there is:
 - (1) The absence of voluntary action or cognitive behavior of any kind; or

CONT...



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

d. "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.

See Fla. Stat. § 765.101 - Definitions.

E. Procedural Requirements

1. Written living will:

Must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor blood relative of the principal. If the principal is physically unable to sign a living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction. (Fla. Stat. § 765.304(1)).

2. Notification to health care providers of the existence of the living will:

a. It is the responsibility of the principal to provide for notification to his/her attending or treating physician that the living will has been made. (The attending physician means the primary physician who has responsibility for the treatment and care of the patient). (Fla. Stat. § 765.102(2)).

b. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. An attending or treating physician or health care facility which is notified shall promptly make the living will a part of the patient's medical records. (Fla. Stat. § 765.304(2)). A living will executed pursuant to Florida Statutes establishes a rebuttable presumption of the maker's wishes. (Fla. Stat. § 765.304(3)).

F. Effectiveness - Incapacity

1. A living will is effective when (i) a patient is both mentally and physically incapacitated, has a terminal condition, end-stage condition or is in a persistent vegetative state and (ii) his or her attending or treating physician and another consulting physician determines that there is no reasonable medical probability of recovery from such condition. (Fla. Stat. § 765.303). The findings of each of the attending/treating physician and consulting physicians' examinations must be documented in the patient's medical record and signed by each such examining

CONT...



2. Note that while Florida's suggested living will form uses the word "incapacity," the definitional section of the statute defines "incapacity or incompetent" to mean the patient is physically or mentally unable to communicate a willful and knowing health care decision. (Fla. Stat. § 765.101(8)). In addition, for the purposes of making an anatomical gift, the term also includes a patient who is deceased.

3. Life-Prolonging Procedures

Unlike the earlier cases previously discussed in this section and Florida's former statute, life-prolonging procedures are defined to mean 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 a medication or performance of medical procedures when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain. (Fla. Stat. § 765.101(10)).

G. Revocation Procedure

1. An advance directive or the designation of a surrogate may be amended or revoked at any time by a competent principal:
 - a. By means of a signed, dated writing;
 - b. By physical cancellation or destruction;
 - c. By an oral expression to revoke; or
 - d. By means of subsequently executing an advance directive that is materially different from a previously executed advance directive. (Fla. Stat. § 765.104(1)(a)-(d)).

2. The amendment or revocation is effective when communicated to the surrogate, health care provider or facility. (Fla. Stat. § 765.104(3)).

3. Provider Liability

The Act provides that no civil or criminal liability shall be imposed upon any person for failure to act upon an amendment or revocation unless that person has actual knowledge of such amendment or revocation. (Fla. Stat. § 765.104(3)). In addition, unless otherwise provided in the advance directive, an order of dissolution or annulment of marriage automatically revokes the

CONT...



designation of the principal's former spouse as a surrogate. (Fla. Stat. § 765.104(2)).

VII. HEALTH CARE SURROGATES/PROXIES

A. Distinction Between Surrogates and Proxies

1. Surrogates are expressly designated by the patient, whereas a proxy obtains designation by statute or other legal process.
2. Designation of the health care surrogate.

This may be accomplished by a written document designating the surrogate to make health care decisions for the principal. The document must be signed by the principal in the presence of two subscribing adult witnesses. Again, as with the living will, if the principal is unable to sign the instrument, he may in the presence of witnesses direct that another sign his name as required. A designated surrogate may not act as a witness to the execution of the document designating the health care surrogate. At least one person who acts as a witness may not be the principal's spouse or blood relative. (Fla. Stat. § 765.202).

3. The designation of health care surrogate may name an alternate surrogate who may assume his duties when the original surrogate is unwilling or unable to act. In the event that neither the designated nor alternate surrogate is able to act, Florida Statutes allows the appointment of a proxy pursuant to a specific statutory hierarchy. This hierarchy is discussed below. The designation remains in effect until revoked by the principal, unless the document states otherwise. The principal may designate a separate surrogate as it relates to mental health treatment in the event that the principal is determined by a court to be incompetent to consent to mental health treatment and a guardian advocate is appointed. Unless the document designating the health care surrogate expressly states otherwise, the court assumes that the health care surrogate is the principal's choice to make all health care decisions, even those regarding mental health treatment. (Fla. Stat. § 765.113(1)). Of course, voluntary admission to a mental health care treatment facility must be provided for expressly in the document; otherwise, a court order is needed.

VIII. APPOINTMENT OF A PROXY

A. Statutory Hierarchy

Appointment of a proxy is appropriate when no surrogate is expressly designated. The Act allows appointment of the proxy pursuant to a statutory priority. (Fla. Stat. § 765.401). The priority is as follows:

CONT...



1. A judicially appointed guardian authorized to make medical decisions;
2. The patient's spouse;
3. An adult child of the patient;
4. A majority of adult children reasonably available for consultation if more than one child exists;
5. The parents of the patient;
6. 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;
7. An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, religious or moral beliefs; or
8. A close personal friend.

A "close personal friend" means any person eighteen (18) years of age or older who has exhibited special care and concern for the patient and who presents an affidavit to the health care facility or to the attending or treating physician stating that he/she is a friend of the patient; is willing and able to become involved in the patient's health care; and has remained such regular contact with the patient so as to be familiar with the patient's activities, health and religious or moral beliefs. (Fla. Stat. § 765.101(3)).

9. Note, this hierarchy of persons who can provide consent for incapacitated principals does not apply to minors.

IX. SURROGATE/PROXY DUTIES

A. Surrogate/Proxy Authority

1. Commencement

The surrogate/proxy's authority commences upon a determination by the patient's attending physician that the principal lacks capacity. The authority remains in effect until a determination is made that the principal has regained capacity. (Fla. Stat. § 765.204(3)). Upon commencement of the authority, the surrogate, if he/she is not the principal's spouse, shall notify the patient's spouse and adult children of the designation. (Fla. Stat. § 765.204(3)). The surrogate/proxy shall satisfy himself that the principal lacks capacity to make health care decisions.

CONT...



2. Responsibilities.

If the court appoints a guardian, the surrogate remains as the individual to make health care decisions for the principal, unless the court has modified or revoked the authority of the surrogate.

Note, that in the case of a proxy, if the court appoints a guardian, the guardian assumes all of these responsibilities. The surrogate/proxy:

- a. Consults expeditiously with appropriate health care providers to provide informed consent and make only health care decisions for the principal which he/she believes the principal would have made under the circumstances if the principal were capable of making the decisions.
- b. Provides written consent using an appropriate form whenever consent is required.
- c. Accesses appropriate clinical records of the principal;
- d. Applies for public benefits such as Medicare and Medicaid and has access to information regarding the principal's income and assets and banking and financial records to the extent required to make these applications.
- e. Authorizes the release of information and clinical records to appropriate persons to ensure continuity of care.

X. REMOVAL OF LIFE-PROLONGING PROCEDURES

A. Surrogate

In the event that the principal has designated a surrogate to help enforce the principal's living will and the principal has an end-stage condition, terminal illness, or is in a persistent vegetative state, the surrogate may make the decision to withhold or withdraw life-prolonging procedures from the patient unless the designation limits the surrogate's authority to consent to withholding or withdrawal of life-prolonging procedures. (Fla. Stat. § 765.303).

Before exercising the incompetent patient's right to forego treatment, the surrogate must be satisfied that: (1) the patient does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the patient; (2) the patient is both mentally and physically incapacitated with no reasonable medical probability of recovery; and (3) the patient has an end-stage condition, the patient is in a persistent vegetative state, or the patient's physical condition is terminal. (Fla. Stat. § 765.305(2)).

CONT...



B. Proxy

The proxy's responsibility with respect to withholding life-prolonging procedures parallels that of the surrogate except making a decision to withhold or withdraw life-prolonging procedures. In that case, the principal's decision must be either: (1) supported by a written declaration; or (2) if there is no written declaration the patient must have a terminal condition, have an end-stage condition, or be in a persistent vegetative state and the principal'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 been competent. (Fla. Stat. § 765.401).

XI. RESTRICTIONS ON PROVIDING CONSENT

Unless the designation expressly states or a court order has been obtained, neither the surrogate nor the proxy may provide consent for the following:

- A.** Abortion, sterilization, electroshock therapy, psychosurgery, experimental treatments that have not been approved by federally approved institutional review board in accordance with 45 C.F.R. Part 46 or voluntary admission to a mental health facility; or
- B.** Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined by Florida law. (Fla. Stat. § 765.113).

XII. INDIVIDUALS WHO HAVE NO SURROGATE OR AVAILABLE PROXY.

A. Persistent Vegetative State

Section 765.404 of the Florida Statutes was added to the Act during the 1999 legislative session. It provides that persons who are in a persistent vegetative state as determined by the attending physician 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 reasonable diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures may be withheld or withdrawn under the following two conditions:

1. The person has a judicially appointed guardian representing his or her best interests with authority to consent to medical treatment; and
2. The guardian and the person's attending 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.

CONT...



3. If there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or a community-based ethics committee approved by the Florida Bioethics Network. The ethics committee shall review the case with the guardian in consultation with the person's attending physician to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required by the subsection. (Fla. Stat. § 765.404).

XIII. CHALLENGING THE SURROGATE/PROXY'S DECISION

The decision of a surrogate or proxy may be challenged on various grounds by family members, health care facilities, attending physicians or other interested parties. The statute provides for an expedited judicial review if one of the above files a challenge that the surrogate/proxy's decision is not what the patient would have wanted. (Fla. Stat. § 765.105).

Distinguish the statutory rights of the interested parties above from the cases of In Re: DeBrille and Tina Herald v. St. Mary's Medical Center. In each of those cases, the hospital was attempting to challenge the competent patient's decision to forego treatment, whereas Chapter 765 allows any interested party to challenge the surrogate/proxy's decision being made on behalf of an incompetent/incapacitated person.

XIV. PATIENT TRANSFER RIGHTS

Florida Statutes balances the integrity of the medical profession against the patient's wishes by allowing a health care provider or facility which refuses to comply with the patient's advance directive or treatment decision or the treatment decision of his or her surrogate to make reasonable efforts to transfer the patient to another health care provider or facility which will comply. Florida Statutes § 765.1105 specifically states that it is not intended to require providers or facilities to commit acts contrary to their moral or ethical beliefs if the patient is not in an emergency condition and has received written information upon admission informing the patient of the policies of the provider or facility regarding such moral or ethical beliefs. If the health care provider or facility is unwilling to carry out the wishes of the patients or his surrogate's decision because of moral or ethical beliefs, it must within seven (7) days either:

1. Transfer the patient and pay the cost of such transfer, or
2. If it has not transferred the patient, carry out the wishes of the patient, unless a surrogate or principal is acting contrary to the wishes of the principal or is directly trying to hasten death, as prohibited by (Fla. Stat. § 765.1115).

XV. MERCY KILLING/EUTHANASIA NOT AUTHORIZED

Withdrawal of treatment pursuant to the Life Prolonging Procedures Act does not constitute suicide. (Fla. Stat. § 765.309).

CONT...



Further, the making of an advance directive shall not affect the sale, issuance, procurement of any policy of life insurance or amendment. Also, insurance companies cannot precondition the issuance of a life insurance policy on the execution of an advance directive. (Fla. Stat. § 765.108).

XVI. DO NOT RESUSCITATE ("DNR") ORDERS

A. Emergency Services ("EMS") Personnel

EMS personnel shall honor DNR orders if the patient uses the Department's form and the form is presented upon arrival at the patient's location. (Fla. Stat. § 401.45(3)(a)).

The form must be signed by the patient's physician and the patient or if the patient is incapacitated, the patient's health care surrogate/proxy or other legally authorized representative. (Fla. Stat. § 401.45(3)(a)).

Any licensed physician, medical director or emergency medical technician or paramedic who acts under the direction of the medical directive is not liable if resuscitation is withheld/withdrawn pursuant to the above procedure.

B. Other Facility Personnel

This civil immunity from liability extends to hospital, hospice and nursing home personnel. (See Fla. Stat. §§ 395.1041; 400.4255).

C. Independent Physician Judgment

The absence of an order not to resuscitate executed pursuant to the above process does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.