

By: Representatives Carpenter, Boyd, Alday,
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To: Public Health and Human
Services; Judiciary B

HOUSE BILL NO. 1014
(As Sent to Governor)

1 AN ACT TO BE KNOWN AS THE PHYSICIAN ORDER FOR SUSTAINING
2 TREATMENT (POST) ACT; TO CREATE NEW SECTIONS 41-41-301 THROUGH
3 41-41-303, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE EXECUTION OF
4 AND SPECIFY THE CONTENT OF PHYSICIAN ORDERS FOR SUSTAINING
5 TREATMENT; TO DIRECT THE STATE BOARD OF MEDICAL LICENSURE TO
6 PROMULGATE A STANDARDIZED PHYSICIAN ORDER FOR SUSTAINING TREATMENT
7 FORM; TO PROVIDE IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY FOR
8 PHYSICIANS ACTING IN GOOD FAITH UNDER THE PROVISIONS OF THIS ACT;
9 TO PROVIDE FOR CIVIL LIABILITY FOR PERSONS AND ENTITIES THAT
10 VIOLATE THIS ACT; TO AUTHORIZE EQUITABLE RELIEF RELATING TO
11 PHYSICIAN ORDERS FOR SUSTAINING TREATMENT; AND FOR RELATED
12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** The following shall be codified as Section
15 41-41-301, Mississippi Code of 1972:

16 41-41-301. **Short title.** Sections 41-41-301 through
17 41-41-303 shall be known and may be cited as the "Mississippi
18 Physician Order for Sustaining Treatment (POST) Act."

19 **SECTION 2.** The following shall be codified as Section
20 41-41-302, Mississippi Code of 1972:

21 41-41-302. **Physician order for sustaining treatment.** (1) A
22 physician order for sustaining treatment (POST) directing health



23 care in the standardized form provided by this section may be
24 executed by the primary physician of an individual and:

25 (a) The individual, if an adult or emancipated minor
26 with capacity; or

27 (b) The agent, guardian, or surrogate having authority
28 to make health care decisions on behalf of the individual if the
29 individual is:

30 (i) An unemancipated minor; or

31 (ii) An adult or emancipated minor who lacks
32 capacity.

33 (2) The physician order for sustaining treatment shall be
34 executed, implemented, reviewed, and revoked in accordance with
35 the instructions on the form.

36 (3) The State Board of Medical Licensure shall promulgate a
37 standardized physician order for sustaining treatment form in
38 accordance with the provisions in this section, adhering to the
39 sequence in those provisions and using checkboxes to indicate the
40 various alternatives. The board shall consult with appropriate
41 professional and advocacy organizations in developing the
42 physician order for sustaining treatment form, including the
43 Mississippi Hospital Association, the Mississippi State Medical
44 Association, Mississippians for Emergency Medical Services, the
45 Mississippi Health Care Association, the Mississippi Independent
46 Nursing Home Association, the Louisiana-Mississippi Hospice and
47 Palliative Care Organization, Disability Rights Mississippi,



48 Mississippi Right to Life, the Mississippi Bar Association and the
49 Mississippi Section of American Congress of Obstetricians and
50 Gynecologists.

51 The physician order for sustaining treatment form shall begin
52 with an introductory section containing the name "POST, Physician
53 Orders for Sustaining Treatment," the patient's name, patient's
54 date of birth, the effective date of the form followed by the
55 statement "Form must be reviewed at least annually.", and
56 containing the statements "HIPAA permits disclosure of POST to
57 other health care professionals as necessary" and "This document
58 is based on this person's current medical condition and wishes and
59 is to be reviewed for potential replacement in the case of a
60 substantial change in either. Any section not completed indicates
61 preference for full treatment for that section."

62 (a) Section A of the form shall direct provision or
63 withholding of cardiopulmonary resuscitation to the patient when
64 he or she has no pulse and is not breathing by selecting one (1)
65 of the following:

66 (i) Attempt Resuscitation (CPR); or

67 (ii) Do Not Attempt Resuscitation (DNR); and

68 include the statement "When not in cardiopulmonary arrest, follow
69 orders in B, C, and D."

70 (b) Section B of the form shall direct the sustaining
71 treatment when the patient has a pulse or is breathing by
72 selecting one (1) of the following:



73 (i) Full Sustaining Treatment, including the use
74 of intubation, advanced airway interventions, mechanical
75 ventilation, defibrillation or cardio version as indicated,
76 medical treatment, intravenous fluids, and comfort measures. This
77 option shall include the statement "Transfer to a hospital if
78 indicated. Includes intensive care. Treatment Plan: Full
79 treatment including life support measures";

80 (ii) Limited Interventions, including the use of
81 medical treatment, oral and intravenous medications, intravenous
82 fluids, cardiac monitoring as indicated, noninvasive bi-level
83 positive airway pressure, a bag valve mask, and comfort measures.
84 This option excludes the use of intubation or mechanical
85 ventilation. This option shall include the statement "Transfer to
86 a hospital if indicated. Avoid intensive care. Treatment Plan:
87 Provide basic medical treatments"; or

88 (iii) Comfort Measures, including keeping the
89 patient clean, warm, and dry; use of medication by any route;
90 positioning, wound care, and other measures to relieve pain and
91 suffering; and the use of oxygen, suction, and manual treatment of
92 airway obstruction as needed for comfort. This option shall
93 include the statement "Do not transfer to a hospital unless
94 comfort needs cannot be met in the patient's current location
95 (e.g., hip fracture)," and include a space for other instructions.

96 (c) Section C of the form shall direct the use of oral
97 and intravenous antibiotics by selecting one (1) of the following:



98 (i) Antibiotics if life can be sustained;
99 (ii) Determine use or limitation of antibiotics
100 when infection occurs;
101 (iii) Use antibiotics only to relieve pain and
102 discomfort;
103 and include a space for other instructions.
104 (d) Section D of the form, which shall have the heading
105 "Medically Administered Fluids and Nutrition: Administer oral
106 fluids and nutrition if physically possible," shall include the
107 following options:
108 (i) Directing the administration of nutrition into
109 blood vessels if physically feasible as determined in accordance
110 with reasonable medical judgment by selecting one (1) of the
111 following:
112 1. Total parenteral nutrition long-term if
113 indicated;
114 2. Total parenteral nutrition for a defined
115 trial period, which option shall be followed by "Goal:" and a
116 blank line; or
117 3. No parenteral nutrition;
118 (ii) Directing the administration of nutrition by
119 tube if physically feasible as determined in accordance with
120 reasonable medical judgment by selecting one (1) of the following:
121 1. Long-term feeding tube if indicated;



122 2. Feeding tube for a defined trial period,
123 which option shall be followed by "Goal:" and a blank line; or

124 3. No feeding tube;
125 and shall include a space for other instructions; or

126 (iii) Directing the administration of hydration,
127 if physically feasible as determined in accordance with reasonable
128 medical judgment, by selecting one (1) of the following:

129 1. Long-term intravenous fluids if indicated;

130 2. Intravenous fluids for a defined trial
131 period, which option shall be followed by "Goal:" and a blank
132 line; or

133 3. Intravenous fluids only to relieve pain
134 and discomfort.

135 (e) Section E of the form, which shall have the heading
136 "Patient Preferences as a Basis for this POST Form," shall include
137 the following:

138 (i) A direction to indicate whether or not the
139 patient has an advance health-care directive as defined in Section
140 41-41-203 and if so, the date of the advance directive's
141 execution, and, a certification that the physician order for
142 sustaining treatment is in accordance with the advance directive,
143 followed by the printed name, position, and signature of an
144 individual so certifying;



145 (ii) If the patient is an unemancipated minor, an
146 indication of by which one or more of the following directions
147 were given in accordance with Section 41-41-3:

- 148 1. Minor's guardian or custodian;
- 149 2. Minor's parent;
- 150 3. Adult brother or sister of the minor;
- 151 4. Minor's grandparent; or
- 152 5. Adult who has exhibited special care and
153 concern for minor; and

154 (iii) If the patient is an adult or an emancipated
155 minor, by which one or more of the following directions were given
156 in accordance with Section 41-41-205, 41-41-211 or 41-41-213:

- 157 1. Patient;
- 158 2. Agent authorized by patient's power of
159 attorney for health care;
- 160 3. Guardian of the patient;
- 161 4. Surrogate designated by patient;
- 162 5. Spouse of patient (if not legally
163 separated);
- 164 6. Adult child of the patient;
- 165 7. Parent of the patient;
- 166 8. Adult brother or sister of the patient; or
- 167 9. Adult who has exhibited special care and
168 concern for the patient and is familiar with the patient's values.



169 (f) A signature portion of the form, which shall
170 include lines for the printed name, signature, and date of signing
171 for:

172 (i) The patient's primary physician;

173 (ii) The individual or individuals described in
174 paragraph (e)(ii) or (iii) of this subsection; and

175 (iii) The health care professional preparing the
176 form, if other than the patient's primary physician, with contact
177 information.

178 (g) A section entitled "Information for patient or
179 representative of patient named on this form," which shall include
180 the following language:

181 "The POST form is always voluntary and is usually for persons
182 with advanced illness. POST records your wishes for medical
183 treatment in your current state of health. Once initial medical
184 treatment is begun and the risks and benefits of further therapy
185 are clear, your treatment wishes may change. Your medical care
186 and this form can be changed to reflect your new wishes at any
187 time. However, no form can address all the medical treatment
188 decisions that may need to be made. An advance health-care
189 directive is recommended for all capable adults and emancipated
190 minors, regardless of their health status. An advance directive
191 allows you to document in detail your future health care
192 instructions and/or name a health-care agent to speak for you if
193 you are unable to speak for yourself.



194 If this form is for a minor for whom you are authorized to
195 make health-care decisions, you may not direct denial of medical
196 treatment in a manner that would make the minor a "neglected
197 child" under Section 43-21-105, Mississippi Code of 1972, or
198 otherwise violate the child abuse and neglect laws of Mississippi.
199 In particular, you may not direct the withholding of medically
200 indicated treatment from a disabled infant with life-threatening
201 conditions, as those terms are defined in 42 USCS Section 5106g or
202 regulations implementing it and 42 USCS Section 5106a.".

203 (h) A section entitled "Directions for Completing and
204 Implementing Form," which shall include the following four (4)
205 subdivisions:

206 (i) The first subdivision, entitled "Completing
207 POST," shall have the following language:

208 POST must be reviewed and prepared in consultation with the
209 patient or the patient's representative.

210 POST must be reviewed and signed by a physician to be valid.
211 Be sure to document the basis for concluding the patient had or
212 lacked capacity at the time of execution of the form in the
213 patient's medical record. The signature of the patient or the
214 patient's representative is required; however, if the patient's
215 representative is not reasonably available to sign the original
216 form, a copy of the completed form with the signature of the
217 patient's representative must be placed in the medical record as



218 soon as practicable and "on file" must be written on the
219 appropriate signature on this form.

220 Use of original form is required. Be sure to send the
221 original form with the patient.

222 There is no requirement that a patient have a POST.

223 (ii) The second subdivision, entitled
224 "Implementing POST," shall have the following language:

225 If a health care provider or facility is unwilling to comply
226 with the orders due to policy or personal objections, the provider
227 or facility must not impede transfer of the patient to another
228 provider or facility willing to implement the orders and must
229 provide at least requested care in the meantime unless, in
230 reasonable medical judgment, denial of requested care would not
231 result in or hasten the patient's death.

232 If a minor protests a directive to deny the minor
233 life-preserving medical treatment, the denial of treatment may not
234 be implemented pending issuance of a judicial order resolving the
235 conflict.

236 (iii) The third subdivision, entitled "Reviewing
237 POST," shall have the following language:

238 This POST must be reviewed at least annually or earlier if;
239 The patient is admitted or discharged from a health care
240 facility;

241 There is a substantial change in the patient's health status;
242 or



243 The patient's treatment preferences change.

244 If POST is revised or becomes invalid, draw a line through
245 Sections A-E and write "VOID" in large letters.

246 (iv) The fourth subdivision, entitled "Revocation
247 of POST," shall have the following language:

248 This POST may be revoked by the patient or the patient's
249 representative.

250 (i) A section entitled "Review of POST," which shall
251 include the following columns and a number of rows determined by
252 the State Board of Medical Licensure:

- 253 (i) Review Date;
254 (ii) Reviewer and Location of Review;
255 (iii) MD/DO Signature (Required); and
256 (iv) Signature of Patient or Representative
257 (Required).

258 (j) A section entitled "Outcome of Review," which shall
259 include descriptions of the outcome in each row by selecting one
260 (1) of the following:

- 261 (i) No Change;
262 (ii) FORM VOIDED, new form completed; or
263 (iii) FORM VOIDED, no new form.

264 **SECTION 3.** The following shall be codified as Section
265 41-41-303, Mississippi Code of 1972:

266 41-41-303. **Immunity, liability, penalties and equitable**

267 **relief.** (1) A physician or health-care provider acting in good



268 faith and in accordance with generally accepted health-care
269 standards applicable to the physician or health-care provider is
270 not subject to civil or criminal liability or to discipline for
271 unprofessional conduct for:

272 (a) Executing a physician order for sustaining
273 treatment in compliance with a health-care decision of a person
274 apparently having authority to make a health-care decision for a
275 patient, including a decision to provide, withhold or withdraw
276 health care;

277 (b) Declining to execute a physician order for
278 sustaining treatment in compliance with a health-care decision of
279 a person based on a belief that the person then lacked authority;
280 or

281 (c) Complying with an apparently valid physician order
282 for sustaining treatment on the assumption that the order was
283 valid when made and has not been revoked or terminated.

284 (2) A health-care provider or institution that intentionally
285 violates Section 41-41-302 is subject to liability to the
286 aggrieved individual for damages of Five Hundred Dollars (\$500.00)
287 or actual damages resulting from the violation, whichever is
288 greater, plus reasonable attorney's fees.

289 (3) A person who intentionally falsifies, forges, conceals,
290 defaces, or obliterates an individual's physician order for
291 sustaining treatment or a revocation of a physician order for
292 sustaining treatment without the individual's consent, or who



293 coerces or fraudulently induces an individual to give, revoke, or
294 not to give a physician order for sustaining treatment, is subject
295 to liability to that individual for damages of Twenty-five Hundred
296 Dollars (\$2,500.00) or actual damages resulting from the action,
297 whichever is greater, plus reasonable attorney's fees.

298 (4) On petition of a patient, the patient's agent, guardian,
299 or surrogate, a health-care provider or institution involved with
300 the patient's care, or surrogate for the patient as described in
301 Section 41-41-229(2) or (3), any court of competent jurisdiction
302 may enjoin or direct a health-care decision related to a physician
303 order for scope of treatment, or order other equitable relief. A
304 proceeding under this section shall be governed by the Mississippi
305 Rules of Civil Procedure.

306 **SECTION 4.** This act shall take effect and be in force from
307 and after July 1, 2014.

