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Chapter No. 4710  
14/HR40/R870SG  
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**HOUSE BILL NO. 1014**

Originated in House  Clerk

HOUSE BILL NO. 1014

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

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

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

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

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

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

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

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

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

(i) An unemancipated minor; or

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

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

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

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

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

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

(i) Attempt Resuscitation (CPR); or

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

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

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

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

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

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

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

(i) Antibiotics if life can be sustained;  
(ii) Determine use or limitation of antibiotics when infection occurs;

(iii) Use antibiotics only to relieve pain and discomfort;

and include a space for other instructions.

(d) Section D of the form, which shall have the heading "Medically Administered Fluids and Nutrition: Administer oral fluids and nutrition if physically possible," shall include the following options:

(i) Directing the administration of nutrition into blood vessels if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Total parenteral nutrition long-term if indicated;

2. Total parenteral nutrition for a defined trial period, which option shall be followed by "Goal:" and a blank line; or

3. No parenteral nutrition;

(ii) Directing the administration of nutrition by tube if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Long-term feeding tube if indicated;

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

3. No feeding tube;

and shall include a space for other instructions; or

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

1. Long-term intravenous fluids if indicated;

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

3. Intravenous fluids only to relieve pain and discomfort.

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

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

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

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

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

1. Patient;
2. Agent authorized by patient's power of attorney for health care;
3. Guardian of the patient;
4. Surrogate designated by patient;
5. Spouse of patient (if not legally separated);
6. Adult child of the patient;
7. Parent of the patient;
8. Adult brother or sister of the patient; or
9. Adult who has exhibited special care and concern for the patient and is familiar with the patient's values.

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

- (i) The patient's primary physician;
- (ii) The individual or individuals described in paragraph (e)(ii) or (iii) of this subsection; and
- (iii) The health care professional preparing the form, if other than the patient's primary physician, with contact information.

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

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

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

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

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

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

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

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

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

There is no requirement that a patient have a POST.

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

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

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

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

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

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

The patient's treatment preferences change.

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

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

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

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

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

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

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

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

**41-41-303. Immunity, liability, penalties and equitable relief.** (1) A physician or health-care provider acting in good

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

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

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

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

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

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

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

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

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

PASSED BY THE HOUSE OF REPRESENTATIVES  
February 13, 2014

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 11, 2014

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR

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