

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR DESOTO, MANATEE AND SARASOTA COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER: 2020-02.5

**IN RE: DO-NOT-RESUSCITATE ORDERS
 FOR THE WARD IN GUARDIANSHIP CASES**

WHEREAS, several Florida statutes govern advance directives and end of life decisions for incapacitated individuals; however, in order to protect a ward's interests, the court finds it necessary to provide additional guidance and oversight to guardians regarding advance directives, end of life decisions and Do Not Resuscitate Orders; and

WHEREAS, section 744.3215(3)(f), Florida Statutes, provides that there are rights which may be removed from a person by an order determining incapacity which may be delegated to a guardian, including the right to consent to medical and mental health treatment; and

WHEREAS, section 401.45(3)(a), F.S., provides that resuscitation may be withheld or withdrawn from a patient on an order not to resuscitate by the patient's physician signed by the patient's physician and the proxy as provided in Section 765.401(a), the judicially appointed guardian of the patient; and

WHEREAS, section 765.401(1)(a), F.S., provides that if an incapacitated person has not executed an advanced directive, a judicially appointed guardian of a patient who has been authorized to consent to medical treatment may make health care decisions for a patient; and

WHEREAS, section 765.401(2), F.S., requires that health care decisions 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best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn; and

WHEREAS, section 765.401(3), F.S., clearly states that before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the provisions of sections 765.205 and 765.305, except that 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; and

WHEREAS, Rule 5.900, Fla. Prob. R., provides the formal process to expedite judicial intervention concerning medical treatment procedures requiring petition, evidence, notice and hearing; and

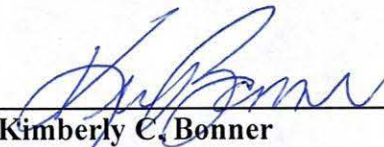
WHEREAS, it is in the interest of fairness and justice that the ward's family and judiciary participate in the process to issue Do-Not-Resuscitate Orders to wards under the protection of a guardianship.

NOW, THEREFORE, pursuant to the power vested in the chief judge under Article V, section 2(d) , Florida Constitution, section 43.26, F.S., and Florida Rule of Judicial Administration 2.215, and to improve the administration of justice within the Twelfth Judicial Circuit, it is, **ORDERED** that the following procedures are established regarding end of life decisions and Do Not Resuscitate Orders for wards under the supervision of guardians:

1. The guardian of the person acting within the powers granted by the letters of guardianship, may consent to the authorization, amendment, or rescission of a Do Not Resuscitate Order for the ward under section 401.45(3), F.S., only after notice to the ward's family and/or next of kin and after obtaining court approval as set forth below.
2. A verified petition to consent to the authorization, amendment, or rescission of a Do Not Resuscitate Order must be filed pursuant to Rule 5.900, Fla. Prob. R. A copy of the petition shall also be sent to the presiding judge. The petition must:
 - a. state that the guardian believes the authorization, amendment, or rescission of a Do Not Resuscitate Order is appropriate pursuant to Section 765.401(2) and (3);
 - b. set forth the facts that support the request; and
 - c. request that the court approve the authorization, amendment or rescission.
3. A hearing shall be held as soon as practicable after filing of the petition. The ward's family and/or next of kin, or persons with knowledge, may appear at the hearing and may testify as deemed appropriate by the presiding judge.
4. Any Do Not Resuscitate Order authorized, amended, or rescinded pursuant to this administrative order, must be filed with the court by the guardian within five days of execution.
5. Any Do Not Resuscitate Order that was entered prior to the effective date of this Administrative Order, of which a guardian becomes aware, must be filed with the court by the guardian within five days of the guardian becoming aware of it.
6. The guardian shall comply with the provisions of paragraphs 1-4 prior to exercising his or her authority under any Do Not Resuscitate Order issued prior to the effective date of this Administrative Order.

7. This Administrative Order is effective immediately.

DONE and **ORDERED** in Sarasota, Sarasota County, Florida on this 19 day of January 2020.



Kimberly C. Bonner
Chief Judge

Original to:

Clerk of Court, Sarasota County

Copies to:

Clerk of Court, Manatee County

Clerk of Court, Desoto County

All 12th Circuit Judges

Local Bar Associations

Cady Huss, Chair of Sarasota Bar Estate Planning & Probate Section

Matt Matechik, Co-Chair of Sarasota Bar Elder Law Section

Neil Lyons, Co-Chair of Sarasota Bar Elder Law Section

Rebecca Proctor, Co-Chair of Manatee Bar Probate Section

Alexandra St. Paul, Co-Chair of Manatee Bar Probate Section

Kimberly Miller, Trial Court Administrator

12th Circuit Probate Coordinators & Guardianship Monitors

IT Department-12th Judicial Circuit