



Litigation Documentation Guide

Preservation Binder

Create a binder to document the conditions under which the hospital provided patient care during the pandemic, including a timeline. The timeline should include the start and end dates, as applicable, for items listed in the checklist. The binder will serve as a reference in the event of future litigation.

[Information contained in this document is for reference use only and does not constitute the rendering of legal advice]

Document Checklist / Timeline

- Emergency Operations/Preparedness/Disaster Plan
 - When and why plan was implemented
 - Copy of plan
- Other issues addressed (include details: when and why)
 - Federal and State Orders/Directives
 - Guidance from CDC/WHO or Other Entities
- Hospital Policy Changes
 - Visitation
 - When and why rule changes were made and methods of enforcement
 - Staffing
 - Copies of any staffing policy changes
 - When and why staffing changes were made
 - How staffing changes were implemented
 - How long staffing changes lasted
 - Use of out of state, retired, volunteer or off-specialty personnel (if applicable)
 - When the decisions were made
 - Why the decisions were made
 - What controls for quality were put in place
 - What personnel were utilized
 - How were the personnel utilized
 - What type of orientation was provided
 - What was credentialing process
 - Personal Protective Equipment (PPE)
 - Did you alter or modify rules on PPE?
 - Include decisions and the reasons for them
 - Did you allow personal/nonstandard PPE to be used?
 - Include decisions and the reasons for them

□ Purchasing/Procurement

- Challenges in obtaining PPE, ventilators, medications or any other instrumentalities of care
- Identify specific shortages, methods you used to procure supplies, and results

□ Delivery of Care

- Physical layout changes, including temporary facilities or temporary changes to your patient or visitor flow
 - Photograph and preserve images of any temporary layout changes or facility modifications
 - Photograph and preserve signage or other communication to patients, staff, visitors
 - Consider creating “day in the life” of a healthcare worker videos to preserve context of hospital care delivery in this pandemic
[resource: [videotaping or filming – circumstances when informed consent is required](#)]
- Telemedicine changes
 - Why changes were made
 - How telemedicine was delivered in this situation
- Patient census
 - Preserve overall and COVID-specific patient census
- COVID testing protocol
 - What manufacturer and type of testing was used
 - What labs were used
 - What volumes of testing were conducted and completed
 - What was testing turnaround time
 - What was process for notifying patients, ordering physician and state/local health departments of positive test results
- Procedures
 - What procedures were postponed or cancelled, include reasons for decisions and types and numbers of procedures impacted
- Infection Control
 - What guidance was followed
 - What system was implemented
 - What staff and patient education on infection control measures was completed
 - Who were members of infection prevention team

- Communications with Staff - Preserve:
 - Memos or communications to staff regarding COVID care or changes
 - Communications and directives from outside sources (e.g. DOH, CDC) which impacted or dictated your actions.
 - Staff meeting or other internal committee meeting minutes that touched on or discussed changes for COVID care or protocols
 - News articles or social media posts
 - Preserve any news interviews given by hospital personnel or articles specifically discussing the hospital and COVID
 - Preserve any social media posts by the hospital regarding COVID
- Education
 - What education was provided to staff
 - What education/information was provided to patients/families

Witnesses - Consider What Witnesses Will be Needed to Authenticate All Information

Identify witnesses who can authenticate everything in the checklist and the timeline

- Identify records custodians or other witnesses who can now (and will in three years be able to) authenticate documents, testify about these issues.
- Create and maintain lists of any department heads, officers, ad-hoc or permanent committee members who can testify to the context and the situations which pertained
- Identify potential "Rule 30" witnesses

Patient Notifications

Consider inclusion of language in patient charts, consent forms and admission documents that notifies patients of the current healthcare environment during the pandemic/coronavirus. The notifications are to be acknowledged by the patient where possible.

Examples of Language

Notices for Admission Documents or Patient Records

Please note that this care is given at a time of national public health emergency due to the pandemic caused by COVID-19 (Novel Coronavirus). As a result, it is acknowledged and understood that the spread of COVID-19 within our communities places an incomprehensible strain on our providers, hospital systems and the resources, equipment, beds, treatment options, and services available in support of patient care.

It is further acknowledged and understood that the Hospital and provider, during the COVID-19 pandemic, endeavor to remain operational and provide care to all patients commensurate with the resources available to the Hospital existing at that time. Further, it is acknowledged that the transmittable risks, treatment process and diagnosis are novel and without well-defined guidelines.

This care is provided during an unprecedented national emergency due to the Novel Coronavirus (COVID-19). COVID-19 infections and transmission risks place heavy strains on healthcare resources. As this pandemic evolves, the Hospital and providers strive to respond fluidly, remain operational, and to provide care relative to available resources and information. Outcomes are unpredictable and treatments are without well-defined guidelines. Further, the impact of COVID-19 on all aspects of emergency care, including the impact to patients seeking care for reasons other than COVID-19, is unavoidable during this national emergency.

Notice for Informed Consent

I have agreed to undergo <procedure> in the time of a declared pandemic involving the virus known as COVID-19, and in so doing, know and accept that there are known and unknown risks caused by the virus that may lead to infection, respiratory failure, clotting, bleeding, severe illness, permanent injury, and death, and I willingly accept those known and unknown risks.

I understand that the current method of testing does not allow for absolute confirmation that I have not been infected with the virus despite the fact that I have been recently tested and confirmed to be COVID negative.

I also understand, because of the current state of knowledge about the COVID-19 virus, I may be exposed and contaminated by the virus, before or after the surgery, by contact with other people who are without any symptoms of the illness, and who also have recently tested negative for the virus.

I further understand that because of the current state of knowledge about the COVID-19 virus, I may be exposed and contaminated, before or after the surgery, by a means of transmission not known, or well understood.

Given these known and unknown risks associated with the COVID-19 virus, I understand that the complications ordinarily associated with this procedure are increased, and that I may suffer an increased risk of those complications, including but not limited to, an increased risk of infection, respiratory failure, clotting, bleeding, severe illness, permanent injury and death.

Knowing and accepting the extraordinary risks of having surgery during the COVID-19 pandemic, I have agreed to undergo this procedure.