

**RESOLUTION AGREEMENT**

**between the**

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK**

**and**

**BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER,**

**FLUSHING HOSPITAL MEDICAL CENTER, and**

**JAMAICA HOSPITAL MEDICAL CENTER**

This Resolution Agreement ("Agreement"), dated August 28, 2006, is entered into by the People of the State of New York, by ELIOT SPITZER, Attorney General of the State of New York ("OAG"), and Brookdale University Hospital and Medical Center, Flushing Hospital Medical Center, and Jamaica Hospital Medical Center (collectively, "MediSys Hospitals"), located in New York City.

WHEREAS MediSys Hospitals are public health facilities licensed by the State of New York, subject to New York Public Health Law §§ 2801-c, 2803, and 10 N.Y.C.R.R. § 405.7, which require, among other things, that all hospitals operating in the State provide skilled interpretation services and translations or transcriptions of significant hospital forms, instructions, and information in order to ensure effective visual, oral, and written communication with all patients regardless of their language;

WHEREAS MediSys Hospitals receive, and at all relevant times have received, Federal financial assistance administered by the United States Department of Health and Human Services ("HHS") and as a recipient of such funds are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. ("Title VI"), and the HHS Title VI regulations at 45 C.F.R. Part 80, which, among other things, prohibit a recipient of HHS funds from engaging in policies or practices that have the effect of discriminating against individuals on the basis of national origin, including policies or practices that preclude or inhibit equal access to a recipient's programs and activities for patients of limited English proficiency;

WHEREAS the OAG received complaints concerning the provision of language interpretation and translation services at the Hospitals, and subsequently commenced an investigation into their policies, procedures, and practices regarding language assistance services;

WHEREAS the parties herein share the common goals of ensuring that all patients of limited English proficiency obtain meaningful access to hospital programs and services; developing comprehensive language assistance policies, procedures, and practices that improve, in a cost effective manner, the language assistance services provided to these patients; and better monitoring the provision of such services to these patients;

WHEREAS MediSys Hospitals had a significant number of policies, procedures, and resources for providing language assistance services prior to the commencement of the OAG's investigation;

WHEREAS MediSys Hospitals expressly deny any wrongdoing or liability in this matter and assert that they are in compliance with all laws;

WHEREAS the parties herein desire to obviate further investigation or litigation, and it is expressly understood that this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and litigation, and advancing the availability of language assistance services to patients; and

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, the OAG and MediSys Hospitals agree as follows:

## **I.** **DEFINITIONS**

- 1.1. "Effective Date" means the date this Agreement is executed by the parties hereto.
- 1.2. "Hospital Employee" means any employee, staff member, agent, consultant, or representative of the MediSys Hospitals.
- 1.3. "Hospital Primary Languages" for each MediSys Hospital means Spanish and any other language in which interpretation is required in one percent or more of the Patient Visits at that hospital during the most recent calendar year. As of the Effective Date, the Hospital Primary Language for Brookdale University Hospital and Medical Center and Jamaica Hospital Medical Center is Spanish, and the Hospital Primary Languages for Flushing Hospital Medical Center are Spanish, Korean, and Chinese.
- 1.4. "Language Bank" means the document maintained by each MediSys Hospital identifying bilingual Hospital Employees who may provide interpretation and/or translation services for LEP patients.
- 1.5. "Language Identification Card" means the document used to ascertain a Patient's Primary Language, and contains this statement or a similar statement in multiple languages: "Point to Your Language We Will Call An Interpreter."
- 1.6. "LEP patient" means a patient whose primary language is not English and who cannot speak, read, write, or understand English at a level sufficient to permit such patient to interact effectively with health care providers.
- 1.7. "Medical Information" means any communication about a patient's medical condition, medical ailments, medical history, or any course of medical treatment proposed, followed, or discussed with a patient that must be conveyed by a health care provider and documented in the patient's medical records. Medical Information shall not include (a) brief communications in which both the questions asked of the patient and the answers the patient

may provide can be easily and adequately conveyed through visual means or non-verbal communication tools, such as discussions of Activities of Daily Living, and (b) communications that a health care provider would reasonably view as unrelated to the provision of medical care to the patient.

- 1.8. "MediSys Hospitals" means Brookdale University Hospital and Medical Center, Flushing Hospital Medical Center, and Jamaica Hospital Medical Center, collectively; and all departments of these three hospitals, including but not limited to all inpatient units, clinical programs, and outpatient treatment centers that are identified on the Hospitals' licenses or operating certificates.
- 1.9. "Native Speaker" means a Hospital Employee who is fluent in a non-English language and (a) has, after the age of ten, lived for at least five consecutive years in a region, state, or country where that non-English language is the primary spoken language, or (b) has a high school, undergraduate, or graduate degree from an institution whose primary instructional language is that non-English language.
- 1.10. "LEP Patient's Language" means the language primarily spoken by the LEP patient or any other language that the LEP patient speaks and understands at a level sufficient to permit such patient to interact effectively with health care providers in that language.
- 1.11. "Patient Visit" means an admission or a visit for medical services to any MediSys Hospital, and "LEP Patient Visit" means a Patient Visit by an LEP patient.
- 1.12. "Certified Medical Interpreter" means a Hospital Employee who has successfully completed an accredited medical interpreting certification program, such as, and similar to, the introduction to medical interpreting training program offered by the New York University School of Medicine Center for Immigrant Health, which teaches ethics, the role of the interpreter, medical terminology, cultural competence, and interpreting techniques, and tests students on basic principles of medical interpretation and their ability to interpret accurately.

## **II.** **COMPLIANCE WITH LAW**

- 2.1. MediSys Hospitals shall comply fully with the obligations, terms, and conditions set forth in Title VI and the regulations promulgated thereunder, N.Y. Public Health Law §§ 2801-c, 2803 and the regulations promulgated thereunder, and 10 N.Y.C.R.R. § 405.7.

## **III.** **REVISIONS TO LANGUAGE ASSISTANCE POLICIES AND PROCEDURES**

MediSys Hospitals shall revise their existing language assistance policies, procedures, and practices to incorporate the requirements of this Article, and shall provide and secure language assistance services in a manner consistent with these requirements and revised policies, procedures, and practices:

**A. Assessment of Interpreters and Language Banks.**

- 3.1. Within six months after the Effective Date, MediSys Hospitals shall assess the foreign language abilities of all Hospital Employees who interpret Medical Information, other than Native Speakers and Certified Medical Interpreters. The assessment's purpose shall be to determine whether the Hospital Employee's language skills are sufficient to interpret Medical Information effectively to and from the relevant foreign language(s) and English.
- 3.2. Within seven months after the Effective Date, each MediSys Hospital's Language Bank shall be revised to clearly designate which Hospital Employees are qualified to interpret Medical Information, which shall include only Native Speakers, Certified Medical Interpreters, and other Hospital Employees who volunteer to be included in the Language Bank and whose foreign language abilities have been assessed and determined to be sufficient to interpret Medical Information effectively to and from the relevant foreign language(s) and English (collectively, "Qualified Interpreters"). The Language Banks shall be regularly updated to ensure their accuracy, and shall be available at each patient admission or registration desk, information desk, nurse's station, financial services and billing office, outpatient pharmacy, and other appropriate locations.
- 3.3. Bilingual staff who are not Qualified Interpreters may not interpret Medical Information to or from an LEP patient, except in urgent or emergency circumstances in which immediate action is necessary in order to protect the health, safety, or welfare of the patient.
- 3.4. MediSys Hospitals shall maintain records of the tool(s) used to assess Hospital Employees' foreign language abilities and the results of such assessments.
- 3.5. MediSys Hospitals shall make reasonable efforts to: (a) arrange duty schedules to take into account the goal of maximizing the availability of Qualified Interpreters available in each department; (b) develop and implement methods to ensure that Qualified Interpreters receive appropriate recognition for providing interpretation services; and (c) develop and implement incentives to encourage Hospital Employees to volunteer to become Qualified Interpreters.

**B. Identification of Language Assistance Needs.**

- 3.6. MediSys Hospitals shall ensure that Hospital Employees defer to a patient's own assessment of his or her need for interpretation services. If an LEP patient expresses a need for an interpreter, interpretation services shall be provided. Hospital Employees having difficulty identifying the LEP Patient's Language first shall use the Language Identification Card to ascertain the language, and then, if necessary, shall contact the Administrator on Duty or Nursing Supervisor or utilize the telephonic interpretation service for further assistance.

**C. Providing and Securing Language Assistance Services.**

MediSys Hospitals shall ensure that Hospital Employees inform LEP patients of their right to receive free interpretation services, and provide or secure language assistance services consistently with the following provisions:

3.7. *Procedures for Communication of Medical Information.*

- (a) If the Hospital Employee is fluent in the LEP Patient's Language, he or she may communicate Medical Information to the LEP patient in that language subject to the restrictions of paragraph 3.3.
- (b) If the Hospital Employee does not speak the LEP Patient's Language and is not a Qualified Interpreter for the LEP Patient's Language, the Hospital Employee shall secure an appropriate Qualified Interpreter or access the telephonic interpretation service to communicate Medical Information. Hospital Employees shall seek to provide face-to-face interpretation services where reasonably possible and shall seek to locate a Qualified Interpreter who is on duty within the particular department. If no Qualified Interpreter is available within the department, the Hospital Employee shall contact the Administrator on Duty or Nursing Supervisor, who will be responsible for attempting to secure the appropriate service. If no Qualified Interpreter is available to provide the necessary language assistance within a reasonable time period, the Hospital Employee shall access the telephonic interpretation service to assist the LEP patient.
- (c) The Administrator on Duty or Nursing Supervisor shall maintain records reflecting requests for interpreters and how such requests are handled.

3.8. *Refusal of Language Assistance Services.* Hospital Employees shall continue to document in the patient's medical records an LEP patient's declination of language assistance services. Such documentation shall include, at a minimum:

- (a) A record, signed by the Hospital Employee, that free language assistance services were offered to the LEP patient and that he or she knowingly declined those services;
- (b) the name of the interpreter who explained, in the LEP Patient's Language, the patient's right to free language assistance services, unless such explanation was provided in writing; and
- (c) the LEP patient's reasons for refusing language assistance services, and the name, approximate age, and relationship to the patient of any interpreter the patient decided to use in place of services offered by the Hospital, unless the LEP patient declines to provide this information, in which case this declination shall be documented.

3.9. *Scheduling of Interpreters for Patient Appointments.* Hospital Employees responsible for scheduling appointments for LEP patients shall make reasonable efforts to arrange for appropriate language assistance services to be available at the time of the scheduled appointment, unless the patient has repeatedly failed to show up for prior scheduled appointments.

3.10. *Telephone Contact with LEP Patients.*

- (a) When a Hospital Employee receives a telephone call from an LEP patient and does not speak the LEP Patient's Language, such employee shall use the telephonic interpretation service or enlist the assistance of bilingual staff to communicate with the LEP patient.
- (b) Within six months after the Effective Date, Flushing Hospital Medical Center shall take steps to ensure that LEP Patients who call its general information line are provided with the opportunity to receive information in the LEP Patient's Language.

3.11. *Consent Forms.*

- (a) Within 30 days after the Effective Date, MediSys Hospitals shall begin to use the abbreviated consent form ("Short LEP Consent Form"), attached as Exhibit A to this Agreement, for LEP patients who receive medical procedures or treatments requiring informed consent. The Short LEP Consent Form shall be translated into the Hospital Primary Languages. MediSys Hospitals shall maintain signed Short LEP Consent Forms in the LEP patient's medical record.
- (b) The use of the Short LEP Consent Form shall not in any way alter MediSys Hospitals' legal obligation to use a Qualified Interpreter, or the telephonic interpretation service, to discuss the patient's medical condition and the risks and benefits of the proposed treatment or procedure with the patient, and answer the patient's questions in the LEP Patient's Language, unless the patient declines such services.

**D. Monitoring.**

3.12. *Reporting Periods.* MediSys Hospitals shall collect and report data over three Reporting Periods. The first Reporting Period shall begin on September 1, 2006 and end on August 31, 2007. The second Reporting Period shall begin on September 1, 2007 and end on August 31, 2008. The third Reporting Period shall begin on September 1, 2008 and end on August 31, 2009.

3.13. *Review of Sample of LEP Patient Visits.*

- (a) At the end of each Reporting Period, the Performance Improvement Committee ("PIC") shall generate for each MediSys Hospital a random sample of no fewer than 100 LEP Patient Visits during the Reporting Period by LEP patients who were identified as needing language assistance services upon registration ("Sample LEP Visits"). The sample shall reflect a representative sample of LEP Patient Visits, and shall be drawn from various departments. The PIC shall review the medical records from the Sample LEP Visits to assess the extent to which the LEP patients' language assistance needs were met in an adequate and appropriate manner. Based on a review of the sample, the PIC shall calculate:

- (1) The percentage of the Sample LEP Visits in which there is a record that the LEP patient declined language assistance services, as well as a breakdown of such visits in percentage terms by LEP Patient's Language and principal reasons offered for the refusal;
  - (2) The percentage of the Sample LEP Visits in which there is a record that the LEP patient received language assistance services, as well as a breakdown of such visits in percentage terms by LEP Patient's Language and type of language assistance resource used;
  - (3) The percentage of Sample LEP Visits in which there is no record that the LEP patient either declined or received language assistance services, as well as a breakdown of such visits in percentage terms by LEP Patient's Language;
  - (4) The number of LEP Patient Visits in which the use of the Short LEP Consent Form was required, and the percentage of those visits in which there is no signed Short Consent Form in the record; and
  - (5) The number of instances in which patients who actually spoke English were misclassified as LEP patients.
- (b) The PIC shall develop clear written protocols and methodologies for conducting these record reviews. The reviews may be conducted as part of the general PIC record review process.
- 3.14. *Patient Satisfaction Surveys.* Within 30 days after the Effective Date, each MediSys Hospital shall amend its existing patient satisfaction surveys to include question(s) related to the adequacy, availability, and timeliness of language assistance services. The PIC shall continue to offer these surveys in each of the Hospital Primary Languages and distribute them to a significant number of LEP patients who speak these languages.
- 3.15. *Provider Satisfaction Surveys.* At least once during each Reporting Period, the PIC shall conduct surveys of a significant number of health care providers regarding language assistance services. The providers surveyed shall cover a range of departments, positions, and shifts at each MediSys Hospital. The surveys shall question providers about, among other things: (a) their awareness of language assistance policies, procedures, and resources; (b) the availability and quality of Qualified Interpreters and the telephonic interpretation service; (c) the frequency with which different language assistance resources are used; and (d) suggestions for improving language assistance services.
- 3.16. *Spot Checks.* MediSys Hospitals periodically shall conduct spot checks of various departments to observe the extent to which Hospital Employees are complying with language assistance policies and procedures, including the requirements set forth in this Agreement.
- 3.17. *Telephone Tests.* At least twice during each Reporting Period, the PIC shall conduct test telephone calls at each MediSys Hospital to assess the adequacy of staff responses to

telephone inquires from LEP persons. Calls shall be made in non-English languages to the general information line and a sample of clinical departments.

- 3.18. *Language Assistance Monitoring Reports.* Within three months after the end of each Reporting Period, a report shall be prepared for each MediSys Hospital (the “Language Assistance Monitoring Report”) summarizing the following information:
- (a) The information and results collected through record reviews, patient satisfaction surveys, provider satisfaction surveys, spot checks, telephone tests, and any other mechanisms employed to monitor the provision of language assistance services during the Reporting Period;
  - (b) A review of all complaints related to language assistance services made during the Reporting Period, including a summary of each such complaint and its resolution;
  - (c) The number of LEP patients who visited the MediSys Hospital during the Reporting Period, broken down in percentage terms by LEP Patient’s Language; and
  - (d) The total number of Patient Visits to the MediSys Hospital during the Reporting Period, and the percentage of Patient Visits by LEP patients.
- 3.19. *Internal Needs Assessment.* MediSys Hospitals shall use the Language Assistance Monitoring Reports to evaluate the efficacy and timeliness of language assistance services, the extent to which Hospital Employees are complying with language assistance policies and procedures, including the requirements set forth in this Agreement, and the need for corrective measures or modifications in the amount or allocation of language assistance resources (“Internal Needs Assessment”).
- (a) Addressing Service Deficiencies. Each MediSys Hospital shall devise and implement appropriate corrective measures. If the percentage in either subparagraph 3.13(a)(3) or (4) exceeds ten percent for any MediSys Hospital, the Hospital shall develop and implement an appropriate remedial strategy, including additional monitoring, retraining, increases in language assistance resources if resources are available, and appropriate disciplinary measures.
  - (b) Report. Within three months after the end of each Reporting Period, MediSys Hospitals shall prepare a single report summarizing the findings of the Internal Needs Assessment, the changes MediSys Hospitals have made or plan to make within a specified time frame in response to the Internal Needs Assessment, and the reasons for these changes (“Internal Needs Assessment Report”). The Report shall include, at a minimum: (1) a section identifying any observed service deficiencies and summarizing the remedial steps MediSys Hospitals have taken, or plan to take, to address these deficiencies; and (2) for the second and third Internal Needs Assessment Reports, a section summarizing any changes made pursuant to the prior Internal Needs Assessment.

- 3.20. MediSys Hospital executive staff shall review the Language Assistance Monitoring Reports and the Internal Needs Assessment Report.

**IV.**  
**TRAINING**

- 4.1. MediSys Hospitals shall update their policies concerning language assistance services to the extent necessary to ensure consistency with the requirements of this Agreement and applicable law. These revised language assistance policies shall be provided to the OAG within 30 days of the Effective Date, and shall be subject to the approval of the OAG, whose approval shall not be unreasonably withheld. Upon OAG approval, the revised language assistance policies shall be adopted, implemented, and distributed to all Hospital Employees with patient contact responsibilities. All other written training materials used by MediSys Hospitals shall be amended to be consistent with the revised language assistance policies.
- 4.2. Within 90 days after the Effective Date, MediSys Hospitals shall train all Hospital Employees with patient contact responsibilities regarding any changes in language assistance policies and procedures required by this Agreement. Thereafter, on at least an annual basis, MediSys Hospitals shall continue to provide in-service training to update Hospital Employees with patient contact responsibilities on all language assistance policies and procedures and the legal obligation to provide language assistance services to LEP patients. MediSys Hospitals shall continue to maintain attendance records for such training sessions.
- 4.3. All new Hospital Employees shall receive training on the revised language assistance policies and procedures within 30 days of their start date as part of their regular new employee orientation.
- 4.4. MediSys Hospitals shall update their protocols instructing telephone operators, receptionists, and other Hospital Employees who regularly answer telephones on how to handle calls from LEP patients to the extent necessary to ensure consistency with the requirements of this Agreement and applicable law. These written protocols shall be provided to the OAG within 30 days of the Effective Date, and shall be subject to the approval of the OAG, whose approval shall not be unreasonably withheld. Upon OAG approval, MediSys Hospitals shall implement these protocols and train Hospital Employees who regularly answer telephones on the requirements of these protocols.

**V.**  
**LANGUAGE ASSISTANCE COORDINATORS**

- 5.1. Within 30 days of the Effective Date, each MediSys Hospital shall appoint or designate a specific individual or individuals who will be responsible for implementing, coordinating, and monitoring language assistance services and for ensuring compliance with this Agreement. The appointed or designated individual(s) shall report to the hospital President and CEO or other senior management officials.

**VI.**  
**REPORTING REQUIREMENTS**

- 6.1. Within four months after the end of each Reporting Period, MediSys Hospitals shall provide the OAG with the Language Assistance Monitoring Reports and Internal Needs Assessment Report.
- 6.2. The OAG shall have access to review, subject to patient confidentiality restrictions and attorney client privilege, any MediSys Hospital document relating to language assistance services or the implementation of this Agreement.

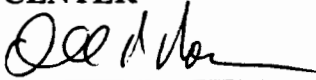
**VII.**  
**JURISDICTION AND OTHER PROVISIONS**

- 7.1. Notwithstanding any provision of this Agreement to the contrary, the OAG may, in its sole discretion, grant written extensions of time for MediSys Hospitals to comply with any provision of this Agreement.
- 7.2. The signatories to this Agreement warrant and represent that they are duly authorized to execute this Agreement and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.
- 7.3. The parties may seek to enforce this Agreement through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Agreement. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.
- 7.4. The failure by the OAG to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Agreement. If any provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding on the parties.
- 7.5. This Agreement constitutes the entire agreement between MediSys Hospitals and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Agreement shall be enforceable.
- 7.6. Nothing in this Agreement is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
- 7.7. Nothing in this Agreement is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Agreement.

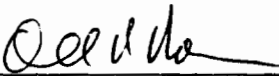
- 7.8. This Agreement may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
- 7.9. This Agreement is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.
- 7.10. MediSys Hospitals shall not retaliate, intimidate, threaten, coerce, or discriminate against any person, including any patient, who has filed a complaint, testified, assisted, or participated in any manner in the investigation of the matter addressed in this Agreement.
- 7.11. This Agreement shall expire on January 31, 2010.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound thereby, have caused this Resolution Agreement to be executed, by their duly authorized attorneys or representatives, on August 28 2006

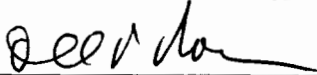
**BROOKDALE UNIVERSITY HOSPITAL AND  
MEDICAL CENTER**

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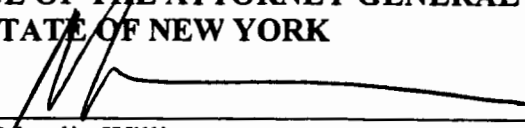
**FLUSHING HOSPITAL MEDICAL CENTER**

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THE STATE OF NEW YORK**

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**EXHIBIT A**

**SHORT LEP CONSENT FORM  
FOR PATIENTS WHO DO NOT SPEAK ENGLISH**

***THIS DOCUMENT MUST BE WRITTEN IN A LANGUAGE  
UNDERSTANDABLE TO THE PATIENT***

**Consent to Undergo a Medical Treatment or Procedure**

You are being asked to consent to \_\_\_\_\_ (*insert description of medical treatment or procedure*) to be provided to you as a patient at \_\_\_\_\_ (*insert name of hospital, clinic or facility*).

Before you provide your consent, a doctor, nurse or other hospital official must tell you about (i) your diagnosis, (ii) the nature and purpose of the proposed treatment or procedure, (iii) the known risks and benefits of the proposed treatment or procedure, (iv) alternative treatments or procedures and associated risks and benefits, and (v) the risks and benefits of not receiving or undergoing a treatment or procedure. You have the right to receive this information, to ask questions, and to have your questions answered in a language that you understand so that you can make an informed decision to consent or refuse the proposed medical treatment or procedure.

If you consent to the proposed medical treatment or procedure, you must be given a signed copy of this consent form and a copy will be included in your medical record.

Your consent to medical treatment is voluntary, you have the right to refuse treatment or to ask that treatment be discontinued at any time.

Signing this document means that the treatment or procedure, including the above information, has been described to you in a language that you understand, and that you voluntarily consent to such treatment or procedure.

\_\_\_\_\_  
Signature of Patient  
Printed Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness  
Printed Name:

\_\_\_\_\_  
Date