### IDJI 2.12.9 – Charging instruction – defense of emergency exception

INSTRUCTION NO. \_\_\_

On defendant's affirmative defense that an emergency situation existed, excusing defendant from obtaining a consent before treatment, the defendant has the burden of proof on each of the following propositions:

1. The patient was incapacitated, or was a minor, and was therefore incapable of providing a valid consent; and

2. There was no one else available who could have provided a valid consent; and

3. The circumstances presented a medical emergency or a substantial likelihood that the patient's life or health would be seriously endangered by a delay in treatment.

Comment:

*See* Idaho Code § 39-4301 et seq*.;* Sherwood v. Carter, 119 Idaho 246, 805P.2d 452 (1991); Rook v. Trout, 113 Idaho 652, 747 P.2d 61 (1987).