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Mr. Sunil Bangali
Financial Analyst
The Ayco Company
8 Campus Drive
Parsippany, New Jersey 07054

Dear Mr. Bangali:

You have requested my advice on the following question: What is the legal status in Maryland of a durable power of attorney for health care, living will, or similar advance directive executed in a foreign country? In my view, if such an advance directive satisfies Maryland's procedural requirements – that is, it signed and dated by the individual and two witnesses – it is legally valid in Maryland and should be honored by Maryland health care facilities.

The Maryland Health Care Decisions Act is quite explicit about the validity in Maryland of advance directives executed in other states: "An advance directive ...executed in another state shall be deemed valid if executed in compliance with the laws of Maryland or the laws of the state where executed. Advance directives ... executed in another state shall be construed to give effect to the patient's wishes to the extent permitted by the laws of Maryland." § 5-617 of the Health-General Article ("HG"), Maryland Code.

Although the term "state" is not defined in this context, it is normally used to refer to territorial entities within the United States, not foreign jurisdictions. (For example, §10-701 of the Courts Article distinguishes "states" from "foreign states.") In my view, however, this provision's limited scope, which simply reflects the Legislature's focus on a common situation, does not imply that advance directives executed outside the United States are invalid. To the contrary, other, more general provisions of the Health Care Decisions Act establish the legality of what I shall term, for brevity's sake, a "foreign advance directive," meaning a properly signed and witnessed document executed outside of the United States that transfers health care decision-making authority to another in the event of the individual's

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incapacity; a document that expresses the individual's preferences about health care, especially life-sustaining medical treatments; or a document combining both.¹

Under HG § 5-602(a), "Any competent individual may, at any time, make a written advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual." This authorization contains no requirement that the advance directive be executed in the United States. Indeed, the phrase "at any time" implies geographical as well as temporal breadth, for at any given time an individual could be anywhere. Furthermore, none of the definitions of other key terms – "advance directive," "competent individual," and "declarant," HG § 5-601(b), (f), and (g) – states or implies a geographical limit on the site of an advance directive's execution. To regard a foreign advance directive as valid, moreover, serves the statutory objective of according priority, in the decision-making process, to "the wishes of the patient." HG § 5-605(c).²

For these reasons, I advise that a foreign advance directive is valid. Maryland health care providers who rely in good faith on a foreign advance directive enjoy the immunity afforded under HG § 5-609.

I hope that this letter of advice, although not to be considered a formal Opinion of the Attorney General, is fully responsive to your inquiry. Please let me know if I may be of further assistance.

Very truly yours,

Jack Schwartz
Assistant Attorney General
Director, Health Policy Development

¹ This letter assumes that such a document meets the execution requirements in HG § 5-602(c) by bearing a date, the individual's signature, and the signatures of two witnesses, neither of whom is named as a health care agent and at least one of whom would not gain financially as a result of the individual's death. I do not address the legal status in Maryland of a document that was validly executed under the laws of a foreign jurisdiction but inconsistently with Maryland's requirements.

² The preamble to the Health Care Decisions Act speaks of "an individual's right to personal health care decision making" and of the people's "constitutional interest in making lawful health care decisions in accordance with their own values."