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WRITER'S DIRECT DIAL NO.

October 25, 2005

Herbert H. Hubbard, Esquire
General Counsel
Forest Haven Nursing Home
701 Edmondson Avenue
Catonsville, Maryland 21228

Dear Herb:

I am writing in response to your letter of October 19, 2005, in which you state two concerns about the Patient's Plan of Care (PPOC) form.

Your first comment indicates, correctly, that the PPOC form does not expand the legal authority of surrogate decision makers. That is, if a surrogate uses the PPOC form to state a decision against the use of a life-sustaining procedure, the appropriate physician certification of condition (terminal, end-stage, or persistent vegetative state) needs to have been done. You propose to add language to the form that summarizes this point.

The regulations governing use of the PPOC form prohibit altering its contents or format. COMAR 02.06.03.09B. Hence, the information that you wish to convey to surrogates should not be added to the form itself. The nursing home is, of course, free to convey this information by means of a separate document. Or, should it prefer, it can provide surrogates with this Office's *Explanatory Guide for Health Care Proxies*, which makes this point very clearly on pp. 1-2. The Guide is available for downloading from our web site.

Your second comment is that use of the PPOC form to elect a life-sustaining procedure is subject to the limitation that the procedure will not be offered if two physicians certify it to be medically ineffective. Again, I agree with the substance of your comment. The point is made in this Office's *Explanatory Guide for Health Care Professionals*, pp. 1-2. The

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proposal to add a footnote to the form along these lines, however, runs into the same problem noted above: To do so would be a prohibited alteration of the form's contents.

If the nursing home deems it appropriate to notify all who use the PPOC form of this possibility, it can include the information in a separate document. Yet, how would such a written notice really be helpful to patients or their proxies? If a user of the PPOC form requests a treatment that *has already been* certified to be medically ineffective, the patient or proxy needs to be told that personally by the attending physician. Health-General § 5-611(b)(2). In this case, the written notice adds nothing. And, if a user of the PPOC form requests a treatment that has *not* already been certified to be medically ineffective, an abstract notice that it conceivably might be in the future seems unhelpful, because that is a relatively rare event which, if and when it actually happens, would require the attending physician to discuss the situation personally. Hence, I recommend that the legal point about medically ineffective treatment not be presented in writing to every user of the PPOC form.

I hope that this guidance is helpful. Please let me know if I may be of further assistance.

Very truly yours,



Jack Schwartz
Assistant Attorney General
Director, Health Policy Development