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Dear Mr. Baumohl:

Attorney General Curran has asked me to respond to your letter of January 5, 2006, in which you asked us to review a document called the "Jewish Medical Directives for Health Care" and advise about its conformance to Maryland law. This document, issued by the Rabbinical Assembly, an association of Conservative rabbis, consists of extensive introductory matter and two directives: a "Proxy Directive [or] Durable Power of Attorney for Health Care" and "An Instruction Directive to Guide Health Care Decisions."¹ For the reasons stated below, an individual who has executed what I will call, for brevity's sake, the Medical Directive has a legally effective advance directive.²

General Considerations

Under the Health Care Decisions Act, "any competent individual may, at any time, make a written advance directive." An advance directive can address one or both of two domains: "the provision of health care to that individual, or the withholding of health care from that individual"; and the appointment of "an agent to make health care decisions for the

¹ The latter directive includes provisions related not only to health care during the individual's life but also to organ donation and autopsy.

² Although we are happy to provide this legal advice, and have done so on an ad hoc basis for other forms, we do not, as your letter suggested, maintain "an approved list of forms."

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individual under the circumstances stated in the advance directive.” § 5-602(a) and (b) of the Health-General Article.³

While the Act, in § 5-603, sets out a form for these purposes, it is entirely optional. Maryland law does not limit the prerogative of individuals to use any form or individually crafted document that best captures their preferences and values. Hence, the fact that the Medical Directive contains a good deal of material not appearing in the optional statutory form does not impair its validity. Indeed, because the document sets forth a doctrinal explanation of some of its contents, it may be the more useful as a means of expressing the preferences of those who adhere to the tenets of Conservative Judaism. In short, the Act accommodates this and other religiously oriented advance directives, as well as a myriad of ones written in purely secular terms.

Health Care Agent

The portion of the Medical Directive relating to appointment of a health care agent suggests that the agent is to make decisions on the basis of the patient’s wishes, if they can be discerned, or, if not, on the basis of the patient’s best interest. This conforms to the Act’s decision-making criteria. §§ 5-602(h) and 5-605(c). Insofar as the individual expresses wishes in the form of treatment-related instructions, the Medical Directive invites a statement whether the instructions are to be binding on the agent. This approach is consistent with the Act’s authorization to specify “the circumstances” under which the agent is to make decisions.

Health Care Instructions

An advance directive may address any aspect of “the provision of health care.” Although the latter term is not defined in the Act, the Attorney General has construed the term broadly, to encompass “the full range of medical and related services aimed at the prevention, diagnosis, or treatment of disease or injury.” 91 *Opinions of the Attorney General* 3, 7 (2006).

Hence, although an instructional advance directive of the “living will” variety is commonly used to state decisions about medical interventions near the end of life, it need not

³ All statutory references in this letter are to the Health-General Article of the Maryland Code. Beyond health care, an individual may also use an advance directive as a means of organ donation or other anatomical gift, as the Medical Directive does. § 5-604.1.

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be so limited. For example, the Medical Directive's alternative provisions on whether the individual wants to be told bad news (item A2) are a valid element of an advance directive.

With respect to end-of-life decision making by means of an instructional advance directive alone, the Act limits the scope of decisions against treatment. That is, a health care provider is not to carry out instructions to forgo a life-sustaining procedure unless the patient has been certified to be in a terminal condition, to have an end-stage condition, or to be in a persistent vegetative state. § 5-606(b). The portions of the Medical Directive that address the forgoing of life-sustaining procedures are well within these limits.

Formalities

To comply with the Act's execution requirements, a form should provide space for the declarant's signature, the signature of two witnesses, and the date. § 5-602(c)(1). The Medical Directive does so. Moreover, the instructions summarize witnessing limitations applicable in Maryland. *See* § 5-602(c)(2).

Conclusion

For these reasons, I conclude that the "Jewish Medical Directives for Health Care" are legally valid as an advance directive under the Maryland Health Care Decisions Act. I hope that this letter of advice, although not to be cited as an 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

cc: James A. List, Esquire