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Robert Roby, Jr., M.D.
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Dear Bob:

You have asked whether an emergency medical services “do not resuscitate order” may be honored in the hospital inpatient setting. In my view, an EMS/DNR order may be honored anywhere in a hospital or any other health care facility. Nothing in the law prevents reliance on the order in an inpatient setting.

The relevant provision of Health Care Decisions Act authorizes (but does not require) a health care provider to “provide, withhold, or withdraw treatment in accordance with [an EMS/DNR order] if a health care provider sees either the order or a valid [version of the order] in bracelet form.” § 5-608(a)(3) of the Health-General Article, Maryland Annotated Code. Nothing in this provision limits the site within a facility in which the order may be honored. Hence, a hospital’s policy may provide that, if a patient has an EMS/DNR order, CPR may be withheld in accordance with the order no matter where in the facility the patient happens to be.

Your inquiry reported a perhaps widespread impression that an EMS/DNR order may only be honored in the emergency department, clinic, or similar outpatient areas. I believe I can identify the source of this misimpression. When the EMS/DNR order provision was enacted as part of the Health Care Decisions Act in 1993, it did not include language about

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reliance on an EMS/DNR order by other health care providers. At the time, the provision addressed only the use of EMS/DNR orders by EMS personnel. When the Health Care Decisions Act was printed in a bound volume of the Maryland Code, the publisher correctly wrote the following heading for this section of the law: "Authorization to follow emergency medical services 'do not resuscitate order' in the outpatient setting." This descriptive heading identified the scope of the provision at the time. In 2000, § 5-608 was amended to add the provision about other health care providers. The heading for the section, however, has been left unchanged by the publisher. So, it is understandable that some infer from the section heading's reference to "the outpatient setting" a limitation on where a hospital may honor an EMS/DNR order.

But this inference is wrong, because the publisher's section heading in the Annotated Code is neither part of the law itself nor an expression of legislative intent. Article 1, § 18; *Montgomery County v. Eli*, 20 Md. App. 269, *cert. denied*, 271 Md. 735 (1974). Only the text enacted by the General Assembly is law, and that does *not* restrict the sites within a hospital in which an EMS/DNR order may be honored.

I hope that this letter of advice is helpful in clarifying the legal background.

Very truly yours,

Jack Schwartz

Assistant Attorney General

Director, Health Policy Development