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January 3, 2002

Katherine M. Kemper, R.N., C.N.A.
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Dear Ms. Kemper:

Thank you for your letter of October 1, 2001, in which you requested clarification of the recent policy decision by the Maryland Institute for Emergency Medical Services Systems (MIEMSS) that copies of an EMS/DNR order will be deemed to be valid. You particularly sought clarification about the validity of faxed copies of the order. I apologize for the delay in my response, but it was important that this advice reflect not merely my view of the issue but also that of MIEMSS.

Under a recent policy decision announced by Dr. Robert R. Bass, Executive Director of MIEMSS, "effective January 1, 2002, copies of an EMS/DNR order will be deemed valid and will be accepted by EMS personnel." Because a facsimile machine is merely a device for sending a copy of a document from one place to another, unquestionably a facsimile copy of an original order will be valid as of January 1, 2002.

In the ordinary situation, a signed original will exist prior to the creation of a facsimile copy. That is, usually a facsimile copy would be received only after the physician had obtained the signatures of the patient or legally authorized proxy, if necessary,¹ and had executed the original of the order by signing it. Your letter, however, presents two scenarios that depart from the ordinary sequence of events.

In the first, a long-term care facility holds the original of the EMS/DNR order with appropriate patient or proxy signatures and then faxes the order to the attending physician, who signs the faxed copy and in turn faxes it back. Consequently, only a facsimile copy, not an original order form, bears the physician's signature. After consulting with MIEMSS, I conclude that this procedure meets the requirements for a valid EMS/DNR order. So long as the document faxed to the physician is a MIEMSS-issued original form, the physician's signature on the faxed copy is as much evidence of the physician's decision to issue the order as would a signature on the original. Moreover, from the perspective of EMS personnel, a copy bearing the appropriate signatures does not reveal whether the signatures were applied to an original order or to a copy, and EMS personnel should not be expected to inquire about the provenance of the copy.

In your second scenario, a family member's signature is needed on the form, but the family member lives in another state. You ask whether the form may be faxed to that family member, signed, and returned by fax. I conclude that this procedure meets the requirements for a valid EMS/DNR order. Again, as long as the document faxed to and then back from the

¹The EMS/DNR order form in current use requires one of these signatures in most situations. Under a revised form that will be put in use by MIEMSS after necessary training and other practical steps can be accomplished, the form will no longer require any signature other than that of the attending physician.

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family member and, later, faxed to the physician is a copy of the same MIEMSS-issued original form, the order is valid.

I hope this letter of advice, although not 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