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E-Mail

October 28, 1999

Ms. Donna M. Dorsey, R.N., M.S.
Executive Director
State Board of Nursing
4140 Patterson Avenue
Baltimore, Maryland 21215-2254

Dear Ms. Dorsey:

You asked us to clarify the law applicable to Aoral DNR orders@ in nursing homes B that is, a physician=s order, given over the telephone to a nurse or other health care professional at the nursing home, that cardiopulmonary resuscitation not be attempted if a patient were to experience a cardiac or respiratory arrest. In brief, oral DNR orders are legally recognized and, if issued pursuant to authority in the Health Care Decisions Act, are encompassed by that Act=s grant of immunity.

A DNR order is the carrying out of a decision to forgo efforts at CPR. This decision can be made in a number of ways recognized under Maryland common law or the Health Care Decisions Act: by a competent patient exercising his or her right of informed consent (and informed refusal), see *Wright v. Johns Hopkins Health Systems Corp.*, 353 Md. 568, 592-93 (1999); by a formerly competent patient through an oral or written decisional advance directive, like a living will, that can be given effect under the Act; by a health care agent pursuant to an oral or written proxy advance directive, like a durable power of attorney for health care; by the patient=s guardian of the person, if there is one, with appropriate court approval; by a surrogate decision maker acting within the Act=s criteria; or by the patient=s

attending physician, if CPR would be Amedically ineffective.@[1] *See generally* 79 *Opinions of the Attorney General* ___ (1994) [Opinion No. 94-023 (May 3, 1994).

Once a legally authorized decision to forgo attempted CPR has been made, a DNR order should be promptly entered. Given the usual policy in health care facilities that, in the absence of a DNR order, CPR is always attempted, any significant delay in the entry of the DNR order puts the patient at risk of being subjected to the very intervention that has been rejected. A facility=s policies and procedures for translating health care decisions into operational orders should honor these decisions, not frustrate them.[2]

In nursing homes, a resident=s attending physician may not be physically present at the facility when he or she issues a DNR order. A DNR order, however, is in this respect no different than other orders about patient care. The regulations governing nursing homes recognize that physician orders will often be communicated orally and expressly validates what the regulation terms Averbal orders,@ as long as they are later countersigned by the physician:

> A physician or authorized prescriber may give a verbal order to a licensed nurse, pharmacist, licensed or registered therapist, licensed dietitian, or licensed nutritionist who shall document the verbal order. the verbal order is valid if signed by the person accepting the verbal order and by the physician or authorized prescriber. the unit manager or individual who received the order shall ensure that the verbal order is countersigned and dated by the physician or authorized prescriber upon the physician=s or authorized prescriber=s next visit to the facility.

COMAR 10.07.02.10I. Therefore, the attending physician=s oral DNR order is valid

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[1] When Aa treatment . . . under generally accepted medical practice is life-sustaining in nature . . .,@ the attending physician ordinarily needs the concurrence of a second physician before certifying the treatment as Amedically ineffective.@ '5-611(b)(2).

[2] In the *Wright* opinion, the Court of Appeals intimated that, under some circumstances, a facility might be held liable for failure to comply with an individual=s advance directive. 353 Md. at 585-86.

and should be given immediate effect by nurses and other staff. Those who forgo CPR in reliance on a DNR order issued pursuant to the Health Care Decisions Act are Anot subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing authority . . . .@ '5-609(a) of the Health-General Article.

We hope that this letter of advice, although not an Opinion of the Attorney General, is fully responsive to your request. Please let us know if we may be of further assistance.[3]

Very truly yours,

Jack Schwartz
Assistant Attorney General
Director, Health Policy Development

Nancy P. Tennis
Assistant Attorney General
Counsel, Board of Nursing

[3] We anticipate supplementing this letter in the near future to address oral DNR orders in other settings.