

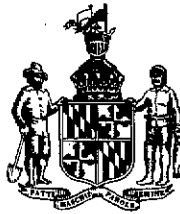
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May 21, 2004

Sigrid C. Haines, Esquire
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3 Bethesda Metro Center
Bethesda, MD 20814-5367

Dear Sigrid:

You have requested my advice on the legal effect of a copy of an advance directive. The Attorney General's Office, lawyers in private practice, and health care practitioners alike have long regarded seemingly unaltered copies of an advance directive as having the same effect as the originally executed document. Yet, as you observe, the Health Care Decisions Act does not contain a provision expressly stating this equivalency. Nevertheless, it is the view of this Office that a copy of an advance directive may be regarded for all purposes as the equivalent of the original.

Our conclusion is based on the necessary implication of two provisions in the Act, understood against the background of customary clinical practice. Under § 5-602(f)(2) of the Health-General (HG) Article, a physician who learns about a patient's written advance directive is to promptly "make the advance directive *or a copy of the advance directive* a part of the [patient's] medical records." The italicized language would be pointless if a copy were not the equivalent of the original. Another provision, HG § 5-604(c), imposes responsibility on the declarant who has revoked an advance directive "to notify any person to whom the declarant has provided a copy of the directive." Again, this legislative requirement presupposes that a copy of an advance directive may be given effect. Finally, because an advance directive becomes part of a patient's medical records, it is subject to the customary clinical practice under which copies of relevant documents are a sufficient basis for treatment or other action. This customary practice is reflected in the Maryland law on the

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confidentiality of medical records. *See, e.g.*, HG § 4-304(a)(2)(iii) (permitting the copying of certain medical records by another treating health care provider).

For these reasons, we conclude that current law amply supports the practice of deeming a seemingly unaltered copy of an advance directive as the equivalent of the originally executed document.

Very truly yours,



Jack Schwartz

Assistant Attorney General

Director, Health Policy Development