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January 17, 2003

Anita J. Tarzian, Ph.D., R.N.
University of Maryland School of Law
500 West Baltimore Street
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Dear Anita:

You have presented a question about the interplay of the “medically ineffective treatment” provision of the Health Care Decisions Act and guardianship. Specifically, you requested my advice regarding the following situation: A “do not attempt resuscitation” (DNR) order has been written for a nursing home resident, based on the certification of her attending and a consulting physician that attempted CPR would be medically ineffective. The resident’s sister is her guardian of the person. The guardian’s attorney sought to inform the court of the DNR order but was told (whether by the clerk’s office or the judge’s chambers is unclear) that the court was not inclined to accept a notification except as part of a petition for some action by the court. The guardian did not oppose or question the DNR order, however, and sought no court action. The question is whether the nursing home may consider documentation of the attorney’s attempt to notify the court as sufficient, or whether it should urge the guardian to pursue the matter further with the court.

In my view, no other action by the guardian is necessary. In *79 Opinions of the Attorney General* 218 (1994), in which Attorney General Curran considered a number of issues relating to DNR orders, the Attorney General specifically addressed the obligations of a guardian when attempted CPR has been certified to be medically ineffective. As the Attorney General pointed out, the guardian is not asked to consent to a DNR order entered on the basis that CPR would be medically ineffective. Consequently, court authorization is not required. The guardian should inform the court, however, of the physicians’ determination, to afford the court the opportunity to look into the situation if the judge deems that step necessary. For example, a judge might want to learn more about the basis for the

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certification that the intervention is medically ineffective. But the need for further inquiry is a matter for the court's discretion. I see no legal difficulty with a court's practice, as in your example, of leaving such matters to be resolved in the clinical setting unless the guardian affirmatively seeks judicial involvement.

Hence, if the guardian acted reasonably to let the court know of the DNR order, and the court indicated that nothing else was necessary, the guardian took the step that the Attorney General's opinion counseled should be done. Appropriate documentation of the guardian's action and the court's response should be retained by the nursing home, but I perceive no other action as legally required or prudent.

I hope that this letter of advice, although not to be considered an opinion of the Attorney General, is fully responsive to your request. Please let me know if I may be of further assistance.

Very truly yours,

Jack Schwartz
Assistant Attorney General
Director, Health Policy Development