STATE OF MARYLAND
ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE

September 30, 2005

The Honorable Elizabeth Bobo
5561 Suffield Court
Columbia, Maryland 21044

Dear Delegate Bobo:

You asked the State Advisory Council on Quality Care at the End of Life to review and comment on language in a written informed consent document used by an endoscopy center in Howard County. The language in question, which you found disturbing in its apparent disregard of the right of Marylanders concerning advance directives, is as follows: "I understand that Advanced Directives are not honored at this facility."

This language, we assume, is premised on the view that patients at an endoscopy center usually are there for relatively routine diagnostic or therapeutic procedures. If a patient who is in the center for a routine procedure were to suffer a cardiac arrest or other life-threatening event, the center's staff presumably is trained to follow an emergency protocol that includes calling 911 and performing CPR. Moreover, the language reflects the absence of any procedure to ask whether a patient has an advance directive, and, if so, how the document might apply.[1]

In the Advisory Council's view, although customary emergency care, including attempted CPR, is an appropriate response in most circumstances, the absolute wording of this provision does not adequately take account of the context in which some patients seek endoscopic services. The provision rigidly speaks to all patients as if they were in the same situation. But in fact not all patients are in the same situation, and an absolute disregard of advance directives is inconsistent with patient-centered care.

A patient with a life-limiting illness – for example, metastatic cancer – might need an endoscopic procedure for palliative purposes. Suppose the patient, certified to be in a terminal condition, has an advance directive declining life-sustaining treatment, including attempted CPR in the event of cardiac arrest. Then, the patient's advance directive becomes highly pertinent to care at the center and ought not simply be disregarded by means of a blanket disclaimer in the consent document.

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[1] Outpatient surgical centers are not subject to a federal or State requirement that information about advance directives be provided or that patients be asked whether they have an advance directive.

In other situations, the language in the consent document, if taken literally, makes no sense. Many advance directives are used to designate a health care agent (the durable power of attorney type), rather than to address treatment contingencies. Surely, if a health care agent consented to an endoscopic procedure on behalf of an incapacitated patient, the center would not refuse to recognize the agent's authority, albeit derived from an advance directive.

Consequently, we shall suggest to the center that the language be changed to the following: "I understand that, in the event of a life-threatening emergency, this center will normally provide medically appropriate emergency care until I can be transferred to an acute care hospital. If I have an advance directive that would affect care in an emergency, I will bring it to the center's attention and discuss how it should apply." This, in our view, is a clearer statement of a reasonable position.[2] In addition, the Advisory Council will provide this suggestion to other ambulatory surgical centers in Maryland, in case others have similar language in their consent documents.

Thank you for bringing this matter to our attention.

Very truly yours,

Cynda Hylton Rushton, DNSc, RN, FAAN
Chair

[2] We do not think it is our role to address the legality of the center's informed consent document. In a letter of advice in 2002, the Attorney General's Office pointed out that an ambulatory surgical center, like other health care facilities, has a right under the Health Care Decisions Act to decline to follow instructions about health care that conflicted with facility policy, including care-limiting instructions in an advance directive. Such a policy and its consequences, however, must be communicated in a timely and effective way to prospective patients *before* they seek care at the facility. Letter of advice to Delegate J. Anita Stup from Assistant Attorney General Jack Schwartz (May 28, 2002), available at: http://www.oag.state.md.us/Healthpol/noncompliance.PDF