



COMMONWEALTH of VIRGINIA

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The Honorable Rosalyn R. Dance
Member, House of Delegates
Post Office Box 2584
Petersburg, Virginia 23804

Dear Delegate Dance:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issues Presented

You ask a number of questions regarding the application of § 54.1-2987.1 (Durable Do Not Resuscitate Orders) and regulatory interpretations of that statute. Specifically, you ask if Virginia law permits a physician, in person or by telephone, to issue a verbal Do Not Resuscitate Order.

Response

It is my opinion that Virginia law does not create a verbal Durable Do Not Resuscitate Order. It is further my opinion that a physician, physically present with a patient in cardiac or respiratory arrest and for whom a Durable Do Not Resuscitate Order has not been issued, has the authority to issue any orders he deems in his professional judgment to be appropriate under the circumstances.

Applicable Law and Discussion

The *Code of Virginia* defines a Durable Do Not Resuscitate Order (“Durable DNR Order”) as “a *written* physician’s order issued pursuant to § 54.1-2987.1 to withhold cardio-pulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest.”¹ Pursuant to § 54.1-2987.1,

A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship ... only with the consent of the patient or, if the patient is a minor or incapable of making an informed decision ... upon the request of and with the consent of the person authorized to consent on the patient’s behalf.²

The *Code of Virginia* does not create nor authorize a verbal Durable DNR Order.

¹ VA. CODE ANN. § 54.1-2982 (Supp. 2012) (emphasis added).

² Section 54.1-2987.1(A) (Supp. 2012).

The *Regulations Governing Durable Do Not Resuscitate Orders*³ require that prior to issuing a Durable DNR Order, the physician shall explain to the patient or the person authorized to give consent on behalf of the patient, the alternatives available for response in the event of cardiac or respiratory arrest and if the option of a Durable DNR is agreed upon, the physician shall complete the Durable DNR Order form.⁴ A Durable DNR Order must be in writing.⁵

Your question is not limited to written Durable DNR Orders, but includes whether there can be a verbal order not to resuscitate a patient. This is a situation not encompassed by § 54.1-2987.1. If there is no written Durable DNR Order in place, this section is not applicable. The applicable regulation for this question provides, in relevant part, that “[n]othing in these regulations shall prohibit qualified health care personnel from following any direct verbal order issued by a licensed physician not to resuscitate a patient in cardiac or respiratory arrest when such physician is physically present.”⁶ This regulation confirms a physician’s ability to give a verbal order not to resuscitate when the patient is in arrest and the physician is in attendance when there is no Durable DNR Order. Additionally, in response to another question in your letter, it is clear that a verbal order by telephone would not suffice, because the physician must be “physically present.”⁷ Moreover, a verbal order when the physician is present but before the patient goes into arrest would not comply with the terms of the regulation, which require the patient to be “in cardiac or respiratory arrest” when the verbal order is made.⁸

Conclusion

Accordingly, it is my opinion that Virginia law does not create a verbal Durable Do Not Resuscitate Order. It is further my opinion that a physician, physically present with a patient in cardiac or respiratory arrest and for whom a Durable Do Not Resuscitate Order has not been issued, has the authority to issue any orders he deems in his professional judgment to be appropriate under the circumstances.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

³ 12 VA. ADMIN. CODE §§ 5-66-10 through 5-66-80.

⁴ 12 VA. ADMIN. CODE § 5-66-70(E).

⁵ VA. CODE ANN. § 54.1-2982; 12 VA. ADMIN. CODE § 5-66-10.

⁶ 12 VA. ADMIN. CODE § 5-66-60(A). *Cf.* VA. CODE ANN. § 54.1-2990(A) (2009) (providing, in relevant part, that “[n]othing in this article shall be construed to require a physician to prescribe or render health care to a patient that the physician determines to be medically or ethically inappropriate.”).

⁷ 12 VA. ADMIN. CODE § 5-66-60(C).

⁸ *Id.*