



## Virginia Law Does Not Permit Physicians to Issue a Verbal Do Not Resuscitate Order By Telephone or If Not Physically at the Patient's Bedside When the Patient Arrests

On June 21, 2013, the Office of the Attorney General issued the attached [official advisory opinion](#) regarding verbal Do Not Resuscitate ("DNR") Orders in Virginia.

The Attorney General's Opinion notes that there are two kinds of DNR Orders in Virginia – Durable Do Not Resuscitate Orders ("DDNRS") and "Other" DNR Orders – neither of which permits a physician to issue a verbal DNR Order if the physician is *not* present with the patient when the patient is arresting, and a verbal DDNR is *never* proper pursuant to Virginia law since a DDNR requires a patient/authorized representative's consent. However, if the physician *is* physically present with the patient when the patient goes into cardiac arrest, the physician may issue a DNR Order since he "has the authority to issue any orders he deems in his professional judgment to be appropriate under the circumstances."<sup>1</sup> Specifically, the "Other" DNR Orders provision provides 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'."<sup>2</sup> The Attorney General's advisory opinion goes on to note that "[m]oreover, 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."<sup>3</sup> In sum, in Virginia, a physician may issue a verbal DNR Order if (1) in his professional judgment it is appropriate, (2) he is present at the patient's bedside, *and* (3) the patient goes into cardiac arrest. All three elements must be present for the issuance of a verbal DNR Order and a telephonic or other remote verbal DNR Order is never appropriate pursuant to Virginia law.

With the issuance of this official advisory opinion, it may be a good time for hospitals to review their policies regarding DNR Orders and how verbal DNR Orders are addressed, as well as an opportune time for individual physicians to review their own prior practices in regard to such orders.

The attorneys at Hancock, Daniel, Johnson & Nagle, PC are available to assist in review of DNR policies and guidance regarding DNR/DDNR orders and other end-of-life issues. If you have any questions about this update or any DNR matters, please contact Molly Huffman at [mhuffman@hdjn.com](mailto:mhuffman@hdjn.com), Mary Malone at [mmalone@hdjn.com](mailto:mmalone@hdjn.com) or Michelle Calloway at [mcalloway@hdjn.com](mailto:mcalloway@hdjn.com). They are also available by phone at 866.967.9604.

<sup>1</sup> See AG's Advisory Opinion, p. 1, "Response".

<sup>2</sup> 12 Va. Admin. Code § 5-66-60(C).

<sup>3</sup> *Id.*

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