

## Health Care Decisions Act – AS 13.52

*Concerns and a legal review of the law with respect to DNR orders*

### Terms

*Individual instruction* – an individual’s direction concerning health care decisions for the individual

*Health care* – any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual’s physical or mental condition

*Health care decision* – a decision made by an individual or individual’s agent, guardian or surrogate regarding the individual’s health care

*Advance health care directive* – an individual instruction or a durable power of attorney for health care

### Concern

It appears that patient or surrogate consent is not required by Providence Alaska Medical Center for issuance of a Do Not Resuscitate (DNR) order. Providence Alaska is a partner in the WWAMI medical education program. The University of Washington Medical Center, Harborview Medical Center and Seattle VA Medical Centers all state with respect to disagreements about DNR orders – *At the UW, Harborview, and VA Medical Centers, the policy is to write a DNR order only with patient/family agreement. If there is disagreement, every reasonable effort should be made to communicate with the patient or family. In many cases, this will lead to resolution of the conflict. In difficult cases, an ethics consultation can prove helpful. Nevertheless, CPR should generally be provided to such patients, even if judged futile.(emphasis added) – Ethics in Medicine, Do Not Resuscitate Orders, University of Washington School of Medicine.*

### Question

Does current law protect the right of a patient, or the patient’s designee, to make ineffective a physician’s decision to issue a DNR order?

### Legal Opinion

State of Alaska, Legislative Legal opinion of October 28, 2011, states *AS 13.52 is fairly clear that a patient with capacity has the right to make a DNR order ineffective. However, the chapter is not as clear that an individual can prevent a doctor from placing the order or that an authorized agent of the patient may make a DNR order ineffective or prevent the doctor from placing the DNR order.*

### Review of current law (AS 13.52 Health Care Decisions Act)

- ✓ AS 13.52.065(a) allows a physician to issue a DNR order. However, this cannot be read in isolation from the rest of AS 13.52 (Health Care Decisions Act).
- ✓ AS 13.52 is fairly clear that a patient with capacity has the right to make a DNR order ineffective.
- ✓ The chapter is not as clear that an individual can prevent a doctor from placing the order or that an authorized agent of the patient may make a DNR order ineffective or prevent the doctor from placing the DNR order.
- ✓ Rights of health care providers and institutions - right to object for reasons of conscience (except a DNR); right not to comply with medically ineffective health care (13.52.060(e-f) and 13.52.120(e)); right of health care provider not to comply with a decision of a surrogate who provider observes is not

abiding by wishes, values and best interests of patient (13.52.030(g-h)); and right of judicial relief (13.52.140).

- ✓ AS 13.52.060(d) requires a health care provider to comply with an individual instruction of the patient, and with a health care decision made by an authorized person. AS 13.52.060(d) *a health care provider, health care institution, or health care facility providing care to a patient shall comply with (1) an individual instruction of the patient...; and (2) a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.*
- ✓ The term “individual instruction” appears to cover a DNR order (approving or disapproving) because it covers a health care decision, see AS 13.52.390(17), which includes any care, treatment, service, or procedure that affects an individual’s physical or mental condition.
- ✓ Specific provisions regarding DNR orders - AS 13.52.065(f) *Do not resuscitate protocol and identification requirements*, and AS 13.52.100(c) *Capacity*, clearly allow DNR orders to be made ineffective if a patient who is able to make the decision requests it, but these sections do not expressly address authorized agents. A do not resuscitate order may not be made ineffective unless, 1.) a physician revokes the do not resuscitate order; 2.) a patient for whom the order is written and who has capacity requests that the do not resuscitate order be revoked; or 3.) the patient for whom the order is written is under 18 years of age and the parent or guardian of the patient requests that the DNR order be revoked.
- ✓ The DNR protocol established by Department of Health and Social Services states that a DNR patient may revoke the patient’s DNR status at any time and in any manner in accordance with AS 13.52, but does not address revocation by agents of the individual.
- ✓ AS 13.52.060(d), mentioned above, and AS 13.52.080(a)(6)(B) *Immunities*, both indicate that an authorized agent of the patient may make a DNR order ineffective. Also, AS 13.52.010 *Advance health care directives*, allows a patient to make advance health care directives and appoint agents regarding health care decisions. Under AS 13.52.010(b), an agent may be given the authority under a durable power of attorney for health to make any health care decision the principal could have made while having capacity.
- ✓ AS 13.52.300 - The Advance Health Care Directive form allows persons to state health care decisions and appoint agents which supports an interpretation that individuals may indicate their wishes and appoint agents regarding DNR orders.
- ✓ AS 13.52.120(a) *Effect of this chapter*, states the chapter establishes a presumption in favor of life, which would seem to support interpreting the chapter to allow a patient (or authorized representative) to prevent a physician from issuing a DNR order.

### **Conclusion of Legislative Legal**

*In AS 13.52 it seems clear that a patient with capacity has the right to make a DNR order ineffective. And while I would tend to conclude that the better interpretation of AS 13.52 is that a doctor’s right to issue a DNR order is limited by the decision of the patient or the patient’s authorized representative, and that an agent with that authority can revoke a DNR order, there are some ambiguities in the chapter that could result in other interpretations. – October 28, 2011 Legal Memo to Senator Dyson*