

ADVANCE DIRECTIVE NEWS

The Undoing of a Peaceful Passing

By Ellen G. Makofsky

They found him in his most comfortable chair, head back, arms crossed. At 90 years he had just recently begun calling an assisted living facility home. The day's activity was joyous and included a trip to see a local production of a well-remembered musical. He returned to his apartment to enjoy a catnap before dinner. He never awoke. Mr. Z died sometime before anyone looked in on him.



When Mr. Z was discovered in his room, 911 was called, and this began an unfortunate chain of events. Under New York State law, where there is no contrary direction in regard to an individual's wishes there is a presumption for resuscitation.¹ This presumption can result in very aggressive actions taken in an attempt to bring a very fragile person back to life. The presumption to resuscitate can be overcome with a Do-Not-Resuscitate Order ("DNR")² placed in a patient's chart by a physician.³

When Mr. Z took up residence in the assisted living facility he signed a non-hospital DNR⁴ and the assisted living facility took control of the original document. Mr. Z felt he made an appropriate choice in agreeing to the DNR because Mr. Z knew a resuscitation attempt caused a great deal of physical trauma and the likelihood of a successful resuscitation was not high. Mr. Z's concern was well-founded. Statistics show when evaluating actual success rates for post-cardiopulmonary resuscitation ("CPR") survival, a mere 5 percent of hospitalized patients who receive CPR recover and resume their regular lives. For nursing home and assisted living residents the success for unobserved arrests is between zero and 3 percent.⁵

So what happened to Mr. Z? Once 911 was called and the emergency medical technicians ("EMTs") arrived they properly asked if a DNR order existed. Without affirmative knowledge of the DNR the EMTs could not withhold CPR. It was evening and the facility's more knowledgeable daytime staff was unavailable. While staff members scurried around the assisted living facility trying to locate the DNR, the EMTs were obliged to begin and continue the unwanted CPR on Mr. Z. The DNR that everyone knew existed was not found that night and the CPR was discontinued twenty-five minutes after it was begun when Mr. Z's son was contacted by phone. Mr. Z's son, by telephone, gave a verbal instruction to discontinue CPR.

Mr. Z had a good plan that went wrong. What can we as elder law attorneys learn from this scenario? First, we need to really advise our clients what a presumption for resuscitation means and the importance of having a DNR in place in the appropriate situation. Second, we need to counsel our clients that they must be vigilant to assure that the DNR is readily available to those who must rely upon the document.

Endnotes

1. Section 2962 Pub. Health.
2. A DNR order is limited to withholding cardiopulmonary resuscitation in the event a person suffers a cardiac or respiratory arrest.
3. Article 29-B Pub. Health.
4. There is a requirement that a non-hospital DNR must be reviewed by the attending physician every time the physician examines the patient or at least every 90 days to be sure that the DNR order is still appropriate. Section 2977(8) Pub. Health.
5. Christopher, M., *End-of-Life Care Reform: Is It About "Us" or "Them"?*, NAELA Quarterly, Vol. 14, No. 2, Spring 2001, citing Jim Stoddard, *A Practical Approach to DNR Discussions*, 14 Bioethics Forum XXX (1998).

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