

UNDERSTANDING IOWA'S OUT-OF-HOSPITAL DNR LAW – ITS BENEFITS AND ITS LIMITATIONS

By Jeanine Freeman

The 2009 IMS House of Delegates received Resolution 09-03, calling for an expansion of Iowa's current out-of-hospital Do-Not-Resuscitate (OOH-DNR) law for patients with terminal medical conditions to also recognize an OOH-DNR order for non-terminal patients. The HOD voted to refer Resolution 09-03 to the Committee on Law and Ethics for study and report to the IMS Board. The Law and Ethics Committee took up the resolution at its October 2009 meeting, reviewed Iowa's OOH-DNR law and its legislative history, examined relevant medical ethics, received testimony from the sponsors of the resolution regarding their concerns, collected information from the Iowa Department of Public Health's (IDPH) Bureau of Emergency Medical Services regarding its experiences with the law, and heard a presentation on legal and ethical considerations with end-of-life care directives.

The Committee then deliberated and found that 1) it is not unethical for, nor does Iowa's current OOH-DNR law preclude, a physician from entering a OOH-DNR order for non-terminal patients consistent with standards of medical care and ethics; 2) it may be appropriate to expand the umbrella of legal immunities under Iowa's existing OOH-DNR law to include OOH-DNR orders entered for non-terminal patients who are competent to consent or who have designated an agent through a medical power of attorney to consent on their behalf; but 3) a physician-directed legislative effort in favor of such a change may be unwise at this time given the current political environment fraught with concerns, however misunderstood, for death panels and cost savings at the expense of vulnerable populations. At its December 2009 meeting, the IMS Board received and voted to accept the Committee's recommendations. The Board, however, asked that an article be prepared in *Iowa Medicine* explaining Iowa's OOH-DNR law and physician liabilities and protections in entering OOH-DNRs for terminal and non-terminal patients.

Iowa's OOH-DNR law was passed by the General Assembly in 2002 following a grant-supported facilitated process lead by IMS and involving more than 40 interested entities who met in several sessions. Discussion particularly focused on confusion by emergency medical personnel faced with a patient who needs resuscitation but who also has a DNR order in effect. After much dialogue, debate and language drafting, parties to the facilitated process essentially agreed that Iowans would be well-served by an OOH-DNR law with statutory immunity protections but such law should focus on adult patients with terminal medical conditions, leaving the more difficult medical decision of entry of a DNR order for non-terminal patients up to existing standards of medical care and ethics.

The fact that Iowa's OOH-DNR law addresses only out-of-hospital situations does not change or make illegal DNRs entered within the hospital care setting. In the same way, the fact that the law addresses OOH-DNRs for adult patients diagnosed with terminal medical conditions does not change standards of medical care or make illegal DNRs entered in appropriate situations for non-terminal patients. As was the case before passage of Iowa's OOH-DNR law, the appropriateness of DNR orders entered and honored for non-terminal patients in the hospital, at home, in a nursing facility, or any other setting is measured by standards of medical care and ethics. Iowa's OOH-DNR statute states that its provisions are "cumulative" of existing rights and responsibilities and are not meant "to impair or supersede any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner."

Operationally, the OOH-DNR provisions were written into Iowa's Life Sustaining Procedures Act, our state's living will statute for adult persons with terminal medical conditions. The definitions of the living will statute, then, apply to Iowa's



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OOH-DNR law. “Terminal condition” is defined to address two medical situations: 1) an incurable or irreversible condition that, without the administration of life-sustaining procedures, will result in death within a relatively short period of time or 2) a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery. “Resuscitation” is defined to include, but is not limited to, chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise sustain life.

Under the OOH-DNR law, a health care provider may withhold or withdraw resuscitation outside a hospital consistent with an OOH-DNR order issued in accordance with the law’s requirements and IDPH rules. IDPH rules are a physician’s best guide on how to work with this law. The rules provide the OOH-DNR uniform order form to be used by physicians as well as suggested guidelines for physicians in entering an OOH-DNR order; the MedicAlert® identifier that patients can obtain and wear to show they have an OOH-DNR order in effect; and uniform protocol that EMS must follow in implementing an OOH-DNR.

The rules and IDPH emergency service protocol advise EMS personnel on how to respond if the patient has an OOH-DNR identifier and/or an OOH-DNR order as well as in the case of a patient who has a DNR order in place but not an OOH-DNR. In the absence of either an OOH-DNR patient identifier or an OOH-DNR or an otherwise executed DNR, EMS will employ full resuscitative measures. Further, the law and rules require initiation of resuscitative measures for patients with an OOH-DNR identifier or order in cases of a sudden accident or injury resulting from a motor vehicle collision, fire, mass casualty, or other cause outside the scope of the patient’s terminal medical condition. Too, resuscitative measures are to be employed if there is uncertainty regarding the validity or applicability of an OOH-DNR order.

A physician or other health care provider who complies with the OOH-DNR law is not subject to civil or criminal liability or guilty of unprofessional conduct in entering, executing or otherwise participating in an OOH-DNR order. Similarly, physicians will be protected from liability in ceasing or not starting resuscitative measures consistent with a patient’s living will directive or statutory protocol in the absence of a living will. The appropriateness of issuing a DNR order and honoring that order outside of these two statutory situations will be measured by standards of medical care and ethics.

Finding the law, regulations and ethical opinions

Iowa law and regulations can be accessed from the General Assembly’s Web page at www.legis.state.ia.us and then click on “Iowa Law.” For law, go to the Iowa Code and for regulations, go to the Iowa Administrative Code (IAC). Iowa’s OOH-DNR law is found in Iowa Code chapter 144A, in particular section 144A.7A. IDPH’s rules implementing the OOH-DNR law are found at IAC chapter 641-142.

AMA ethical opinions can be accessed by searching the AMA’s Web site at www.ama-assn.org. Those opinions include “Do-Not-Resuscitate Orders” (E-2.22) and “Optimal Use of Orders-Not-to-Intervene and Advance Directives” (E-2.225).