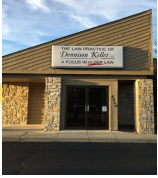


"Who Respects the Elderly is as if he Respects the Lord"
-Alphabet of Ben Sira



THE LAW PRACTICE OF
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A FOCUS IN ELDER LAW



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*Note: Power Point packet is intended for informational purposes only and is not to be construed as legal advice.

1

Ethical Considerations:
Health Care Powers of Attorney, Living Wills, and DNRs

When do you use which document?

2


Health Care Power of Attorney

- Document that allows you to specify whom you wish to make health care decisions for you **if you are unable.**
- Not always a life and death decision. A Health Care Power of Attorney becomes effective even if you are only temporarily unconscious.



3


Living Will



- Takes point of view that you do not want to be kept alive by artificial means if you are terminal or permanently unconscious
- Similar end of life language as the Health Care POA
- Trumps a Health Care POA because a Living Will is viewed as the patient's own words

4

DNR Order:



DNR (Not Resuscitate) Order is a legal document, signed by a physician which informs other caregivers that the patient **does not want** cardio-pulmonary resuscitation (CPR) if the heart and/or breathing stops.

5

MOLST



- Medical Orders for Life Sustaining Treatment
- Designed to supplement DNR with easier to understand document
- May see it at some facilities – not Ohio law. {blocked by Right to Life Groups}

6

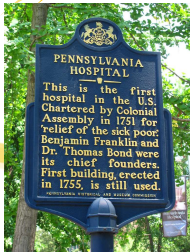
Where are the Documents?



- Pennsylvania study looked at 9,000 patients with less than two-years life expectancy.
- Screened at dozens of clinics across state.
- Found only 2% had Advance Directives in their medical records. - STATNEWS.COM

10

Pennsylvania Patient Safety Reporting System



- ✓ 2018 Report
- ✓ 100 problem events involving code status or treatment level
- ✓ 29 patients resuscitated against their wishes
- ✓ 2 patients not treated when they should have been
- ✓ Likely undercounted

- PA Patient Safety Authority

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Scenario 1

- 46 year old woman is brought to the ER with a heart attack and then into cardiac arrest.
- She has Living Will refusing all life saving medical interventions.
- Do you intervene to save life?




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Scenario 1


- 46 year old woman is brought to the ER with a heart attack and then into cardiac arrest.
- She has Living Will refusing all life saving medical interventions.
- Do you intervene to save life?

Only 43% of doctors said yes!
-Kaiser Health News (Univ. of Pittsburgh study)



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Scenario 2



- 70 year-old-man with diabetes and cardiac disease has MOLST form indicating he did not want CPR, but agreed to a limited set of other medical interventions including defibrillation.
- He goes into cardiac arrest.
- Do you pursue the defibrillation?

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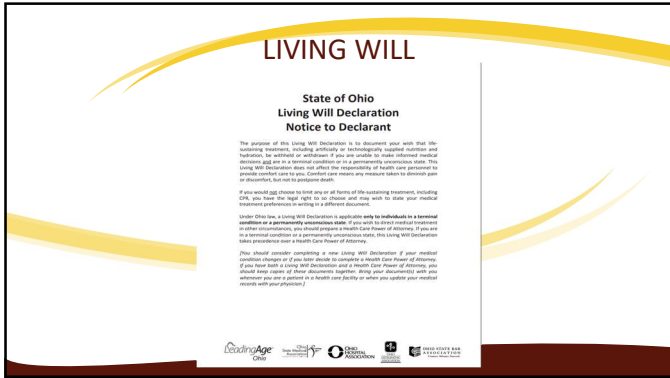
Scenario 2



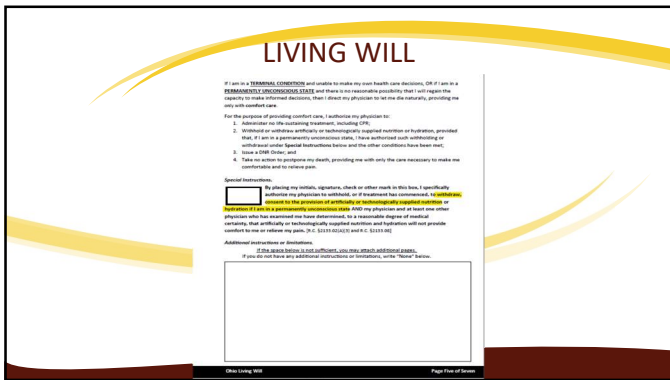
- 70 year-old-man with diabetes and cardiac disease has MOLST form indicating he did not want CPR, but agreed to a limited set of other medical interventions including defibrillation.
- He goes into cardiac arrest.
- Do you pursue the defibrillation?

75% of doctors said they would not have pursued defibrillation.

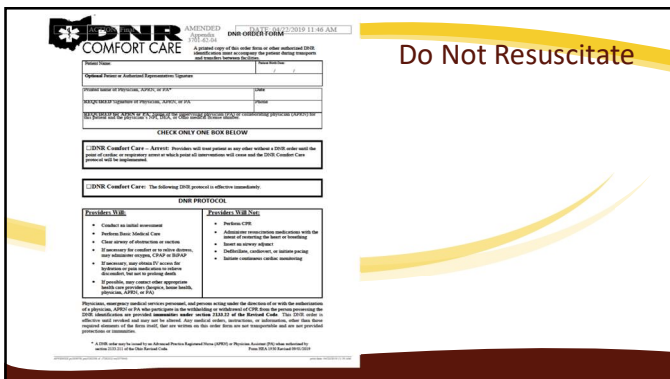
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What is CPR?

Cardiopulmonary resuscitation includes:

- ✓ Administration of chest compression;
- ✓ Insertion of an artificial airway;
- ✓ Administration of resuscitative drugs;
- ✓ Defibrillation or cardioversion;
- ✓ Provision of respiratory assistance;
- ✓ Initiation of a resuscitative IV line; or
- ✓ Cardiac monitoring - ODH

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DNR Protocol



<p>Health Care Providers WILL</p> <ul style="list-style-type: none"> ✓ Conduct an initial assessment ✓ Perform basic medical care ✓ Clear airway of obstruction or suction ✓ If necessary, (for comfort of the patient) may administer oxygen, CPAP, or BiPAP ✓ If necessary, (for comfort of the patient) may obtain IV access for hydration or pain medication to relieve discomfort, but not to prolong death ✓ If possible, may contact other appropriate health care providers (e.g., hospice, home health, physician/APRN/PA) 	<p>Health Care Providers WILL NOT</p> <ul style="list-style-type: none"> ○ Perform CPR ○ Insert artificial airway adjunct (intubation, ventilator, etc.) ○ Administer medications with the intent of restarting the heart or breathing ○ Defibrillate, cardiovert, or initiate pacing ○ Initiate continuous cardiac monitoring
--	--

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Ohio has two types of DNR

<p>An individual may be a:</p> <ul style="list-style-type: none"> • DNR Comfort Care (DNRCC) or • DNR Comfort Care - Arrest (DNRCC-Arrest) 	<p>The difference between the two is when the DNR protocol becomes active. - ODH</p>
--	--

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DNRCC


The DNRCC is effective as soon as an authorized healthcare provider signs the form. This means that as soon as the form is signed, you will not receive any of the treatments listed in the DNR protocol as **'Will Not,'** including resuscitative medications, CPR, ventilator care, continuous cardiac monitoring, or defibrillation.

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DNRCC – Arrest

The DNRCC - Arrest does not become effective until you experience cardiac or respiratory arrest. Up until the time you experience a cardiac or respiratory arrest, you will receive all medical care necessary to treat any illness or injury, including intubation. You will be treated as any other medical patient. Should you experience cardiac or respiratory arrest during treatment, at that time the DNR protocol will be initiated and all resuscitative measures will stop.



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**DNR-CC
ARREST**

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DNR – Letting People Know

Does a DNR Tattoo work?



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DNR – Letting People Know

Does a DNR Tattoo work?

- ✓ No – Can use:
- ✓ DNR Order Form,
- ✓ a necklace,
- ✓ a bracelet,
- ✓ a wallet card,
- ✓ hospital type bracelet.


All of these items must contain the DNR Comfort Care Logo and the patient's name.



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Who can change my DNR?

- You can change your DNR status at any time.
- If you have assigned someone to be your Health Care Power of Attorney agent, absent a substantial change in your condition, they cannot change or override your DNR decisions if you completed a DNR order form with your authorized health care provider.
- A Health Care Power of Attorney agent can only revoke a DNR order if they were the one who requested/had the DNR. -ODH



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What happens if I move to a new facility?

Discharging must notify receiving facility and transport team.





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Quick Poll

Scenario: 85 year old woman with advanced dementia has a living will. She no longer recognizes her spouse or children and resides in a nursing home. She suffers a heart attack. Should the medical staff try to resuscitate her with CPR, electric shock, etc.?

Yes

No





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“Wrongful Living”

Anderson v. St. Francis St. George Hospital (1988)

- 82 year old Edward Winters
- Had DNR
- Cardiac Arrest and nurse revived with electric shock
- Had Stroke 2 days later, left him partly paralyzed
- Sued for “Wrongful Living”
- Ohio Supreme Court ruled no case for “wrongful living”, but could sue if the procedure caused the injury.




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Wendland v. Sparks 1996 (Iowa)

Loss of Chance Doctrine

- Cancer Patient entered hospital for failure to thrive
- 3 weeks later suffered cardiac arrest
- Physician did not initiate resuscitation stating, “I just can’t do it to her.”
- Court found doctor’s negligence deprived patient a loss of chance to survive the cancer
- Ohio follows doctrine (even if less than 50% chance of survival)



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“IMPLIED CONSENT”

Medical treatment is lawful under the doctrine of implied consent when a medical emergency requires immediate action to preserve the health or life of the patient. *Estate of Leach v. Shapiro*, 13 Ohio App. 3d 393,



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Yes.....but

A patient may, however, expressly refuse treatment. If so, even in an emergency, any medical treatment is a battery. *Estate of Leach v. Shapiro*, 13 Ohio App. 3d 393,



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What crosses the line between comfort care and hastening death?

Gelesh v. State Med. Bd., 2010-Ohio-4378



- 88 yr. old terminally ill patient with severe abdominal pain
- Had DNR Comfort Care
- Dr. tried Morphine but patient still in pain
- Then ordered Succinylcholine.
- Patient died within 3 minutes.

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What crosses the line between comfort care and hastening death?

Gelesh v. State Med. Bd., 2010-Ohio-4378

- Dr. argued immunity under O.R.C. 2133.11



Prescribing.....any particular medical procedure, treatment, intervention.....or other medication, for the purpose of diminishing the...patient's discomfort and not for the purpose of postponing or causing the qualified patient's death, **even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death, [is]carrying out in good faith the responsibility to provide comfort care**

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What crosses the line between comfort care and hastening death?

Gelesh v. State Med. Bd., 2010-Ohio-4378

- Court said it's a bridge too far.
- Found drug did not fall within minimal standards of care. Doctor received stayed license suspension.



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What if there is no document in place?

O.R.C. § 2133.08 says if terminal or permanently unconscious for 12 months, you can LOOK TO FAMILY

1. The guardian of the patient;
2. The patient's spouse;
3. An adult child of the patient or majority are available within a reasonable period of time;
4. The patient's parents;
5. An adult sibling or majority available within a reasonable period of time;
6. The nearest blood relative available



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What if there is no document in place?

LOSER CAN STILL OBJECT

- Must notify Physician within 48 hours
- Must then file objection on probate court within 2 business days
- Can present evidence decision was contrary to patient's wishes



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Scenario 3

You have a DNR form signed by your doctor and you have chosen to be a DNRCC-Arrest. You develop pneumonia and the doctors at the hospital determine that a short period of time on a ventilator is necessary as part of your care.



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Is this allowed?

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Scenario 3

You have a DNR form signed by your doctor and you have chosen to be a DNRCC-Arrest. You develop pneumonia and the doctors at the hospital determine that a short period of time on a ventilator is necessary as part of your care.



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Is this allowed?

Yes, based on your DNRCC- Arrest you can still be provided ventilator care as part of the treatment for your condition until such time as you experience cardiac or respiratory arrest. Once you experience cardiac or respiratory arrest all resuscitative interventions would stop. You would be removed from the ventilator and provided Comfort Care that would include medications and treatments for comfort purposes only. - ODH

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Scenario 4

You have a DNR form signed by your doctor and you have chosen to be a DNR Comfort Care (DNRCC). You reside in a nursing home, you develop a urinary tract infection, a high fever, and require medical treatment. Your daughter transports you to the hospital and the staff question why you were brought to the hospital when you have a DNRCC.

Is this an appropriate response? What should you do?



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Scenario 4

You have a DNR form signed by your doctor and you have chosen to be a DNR Comfort Care (DNRCC). You reside in a nursing home, you develop a urinary tract infection, a high fever, and require medical treatment. Your daughter transports you to the hospital and the staff question why you were brought to the hospital when you have a DNRCC.

Is this an appropriate response? What should you do?



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DNR does not mean do not treat. You and your daughter should remind the staff that the DNR applies to CPR and that your current medical condition should still be treated. You may also contact the hospital's patient advocate if you need assistance. – ODH

Scenario 5

You complete a DNR form with your doctor and you have chosen to be a DNR Comfort Care (DNRCC). You are in hospice and you have declined to the point where your breathing is very shallow, your heartbeat is weak, and death is imminent. Your family member becomes upset and frightened and calls the emergency squad. When the rescue unit arrives your family member insists that they treat you and wants all rescue measures taken to revive you if you experience cardiac or respiratory arrest.

How should the EMS squad respond?




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Scenario 5

You complete a DNR form with your doctor and you have chosen to be a DNR Comfort Care (DNRCC). You are in hospice and you have declined to the point where your breathing is very shallow, your heartbeat is weak, and death is imminent. Your family member becomes upset and frightened and calls the emergency squad. When the rescue unit arrives your family member insists that they treat you and wants all rescue measures taken to revive you if you experience cardiac or respiratory arrest.

How should the EMS squad respond?



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EMS personnel should explain to the family member that your DNRCC is valid since you completed it with your doctor and that you will only receive Comfort Care and no resuscitative measures. - ODH

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Scenario 6

You complete a DNR form with your doctor and you have chosen to be a DNR Comfort Care (DNRCC) and you wear a DNR bracelet with the Ohio DNRCC logo and your information. You are in a car accident and your leg is broken and bleeding badly. You are unconscious when the ambulance arrives and the EMS personnel find your DNR bracelet on your wrist.

How should the EMS squad respond?




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Scenario 6

You complete a DNR form with your doctor and you have chosen to be a DNR Comfort Care (DNRCC) and you wear a DNR bracelet with the Ohio DNRCC logo and your information. You are in a car accident and your leg is broken and bleeding badly. You are unconscious when the ambulance arrives and the EMS personnel find your DNR bracelet on your wrist.

How should the EMS squad respond?



EMS personnel should provide the emergency medical care that you need such as basic medical care, stopping your bleeding, and transporting you to the hospital to have your broken leg treated. - ODH

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Stop by Viki's exhibit booth at the conference to say "Hi," and to see her newly released workbook:
The Caregiver's Path: Resource Workbook, Conversation Guide and Visual Toolkit

This 100 page workbook includes worksheets, diagrams and articles that are written in simple language and are designed to be photocopied and shared with patients and families.

"Love your book and workbook!" Martha J. Brown, MSW, CMC, NCG

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Ohio Department of Health
odh.ohio.gov/know-our-programs/do-not-resuscitate-comfort-care

Ohio Department of Health

WHO WE ARE ABOUT US PROGRAMS HEALTH RULES EXPLORE FIND LOCAL HEALTH DISTRICTS

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odh / Know Our Programs / Do Not Resuscitate Comfort Care / Do Not Resuscitate (DNR)

Do Not Resuscitate (DNR)

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