

EMERGENCY REGULATIONS
GOVERNING THE
DURABLE DO NOT RESUSCITATE PROGRAM

State Department of Health

Richmond, Virginia

January 3, 2000

Promulgated under Section 54.1-2987.1 of the Code of Virginia (1950), as amended, the State Board of Health has adopted rules and regulations governing the Durable Do Not Resuscitate Program.

These regulations are new regulations, adopted to incorporate legislation effective July 1, 1999.

Effective Date: January 3, 2000

Copies may be obtained from:

Virginia Department of Health

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PART I.

DEFINITIONS

12VAC5-65-10 Definitions

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

“Agent” means an adult appointed by ~~a competent adult patient~~ the declarant under an advance directive, executed or made in accordance with the provisions of Section 54.1-2983 of the Code of Virginia, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§32.1-289 et seq.) of Chapter 8 of Title 32.1.

~~“Attending physician” means the primary physician who has responsibility for the treatment and care of the patient.~~

~~“Authorized decision maker” means, in order of priority, designated agent, guardian or committee, spouse, adult child, parent, adult brother or sister, other relative in descending order of blood relationship, provided, however, that when two or more persons in the same class with equal decision making priority are in disagreement, a majority authorization shall be controlling.~~

“Board” means the State Board of Health.

“Cardiac arrest” means the cessation of a functional heartbeat.

“Cardiopulmonary resuscitation” means medical procedures including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation, ~~administration of cardiac resuscitation medications~~ and related procedures.

“Commissioner” means the State Health Commissioner.

“Durable Do Not Resuscitate Order or Durable DNR Order” means ~~an order written by the attending physician directing that a particular patient not be resuscitated, with such order including the patient’s full legal name, the physician’s signature, and the date issued.~~—a written physician's order issued pursuant to [§4.1-2987.1](#) in a form authorized by the Board to withhold cardiopulmonary resuscitation from an individual in the event of cardiac or respiratory arrest. For purposes of this chapter, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive. When used in these regulations, the term “Durable DNR Order” shall include any authorized alternate form of identification issued in conjunction with an original Durable DNR Order form.

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“Emergency Medical Services (EMS)” means the services utilized in responding to the perceived individual needs for immediate medical care in order to prevent loss of life, aggravation of physiological or psychological illness or injury including any or all services which could be described as first response, basic life support, advanced life support, specialized life support, patient transportation, medical control, and rescue. rendered by an agency licensed by the Virginia Office of Emergency Medical Services, an equivalent agency licensed by another state or a similar agency of the federal government when operating within this Commonwealth.

“Emergency Medical Services Agency (EMS Agency)” means any person, as defined herein, firm, corporation, or organization licensed by the Board, which is properly engaged to engage in the business, service, or regular activity, whether or not for profit, of providing emergency transporting and/or rendering immediate medical care to such persons who are sick, injured, wounded or otherwise incapacitated or helpless.

~~“Emergency Medical Services Do Not Resuscitate Order” (“EMS/DNR Order”) means a written physician’s order in a form approved by the Board which authorizes qualified emergency medical services personnel [and hospital emergency department health care providers] to withhold or withdraw cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest.~~

~~“Emergency medical services personnel” (“EMS personnel”) means persons responsible for the direct provision of emergency medical services in a given medical emergency~~

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~~including any or all persons who could be described as a first responder, attendant, attendant in charge, or operator.~~

~~“Qualified emergency medical services personnel” means EMS personnel who are authorized to follow EMS/DNR Orders. This shall include any person (i) holding current certification to provide emergency medical patient care or treatment by the Department of Health, including those certified as EMS First Responders, Emergency Medical Technicians (EMT), EMT Shock/Trauma, EMT Cardiac, and EMT Paramedic and (ii) acting in accordance with EMS/DNR Order Implementation Protocols.~~

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his physician with whom he has a bona fide physician/patient relationship and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech shall not be considered incapable of making an informed decision.

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~~“Hospital emergency department health care provider” means a licensed physician or a registered nurse working in a hospital emergency department.”~~

“Persistent vegetative state” means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

“Person Authorized to Consent on the Patient’s Behalf” – means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child’s legal guardian or as otherwise provided by law.

“Physician” means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

“Qualified emergency medical services personnel,” means personnel as defined by 32.1-111.1 when acting within the scope of their certification.

“Qualified Health Care Personnel” means any licensed person functioning in any facility, program or organization operated or licensed by the State Board of Health, or by the

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Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency. For the purposes of these regulations, this definition shall include any qualified emergency medical services personnel.

“Respiratory arrest” means cessation of breathing.

“Terminal condition” means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, a patient cannot recover and (i) the patient’s death is imminent or (ii) the patient is in a persistent vegetative state, as defined in Section 54.1-2982 of the Code of Virginia.

Part II

PURPOSE AND APPLICABILITY**12VAC5-65-20 Authority for Regulation**

Section 54.1-2987.1 of the Code of Virginia (1950), as amended, vests authority for the regulation of ~~EMS/DNR~~ Durable DNR Orders in the State Board of Health and directs the Board to prescribe by regulation the procedures, including the requirements for forms, to authorize qualified health care personnel to follow Durable DNR Orders. All EMS DNR Orders issued or in effect between July 1, 1999 and the effective date of this regulation are to be considered Durable DNR Orders and shall remain valid until revoked.

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~~Section 32.1 151 of the Code directs the Board to prescribe by regulation the procedures, including the requirements for forms, to authorize qualified EMS personnel [and hospital emergency department health care providers] to follow EMS/DNR Orders pursuant to Section 54.1 2987.1. Section 32.1 153 further states that the Board shall prescribe those qualifications necessary for authorization to follow EMS/DNR Orders pursuant to Section 54.1 2987.1. Section 32.1 12 provides broad authority to the Board to promulgate regulations necessary to carry out the provisions of the Health Title, Title 32.1 of the Code.~~

12VAC5-65-30 Purpose of Regulations

The Board has promulgated these emergency regulations in order to ensure timely and appropriate implementation and application of the ~~EMS/DNR~~ Durable DNR Order Statute, effective July1, 1999.

12VAC5-65-40 Administration of Regulations

These regulations shall be administered by the following:

- A. **The State Board of Health** – The Board shall have the responsibility to promulgate and amend, as appropriate, regulations governing ~~EMS/DNR~~ Durable DNR Orders;

- B. **The State Health Commissioner** – The Commissioner, pursuant to his authority under Section 32.1-20, shall administer these regulations.

12VAC5-65-50 Application of Regulations

These regulations shall have general application throughout the Commonwealth.

12VAC5-65-60 Effective Date of Regulations

These regulations shall become effective ~~November 17, 1994~~ January 3, 2000.

Part III.

REQUIREMENTS AND PROVISIONS

Article 1.

General Provisions

**12VAC5-65-70 The ~~Emergency Medical Services~~ Durable Do Not Resuscitate
Order Form**

The ~~EMS/DNR~~ Durable DNR Order Form shall be a unique document printed on distinctive security paper and sequentially numbered, as approved by the Board, and consistent with these regulations. The following requirements and provisions shall apply to the approved ~~EMS/DNR~~ Durable DNR Order Form.

A. Content of the Form – A valid ~~EMS/DNR~~ Durable DNR Order Form shall include (i) the attending physician's signed statement regarding the patient's medical condition and his Do Not Resuscitate determination as set forth in the

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~~Order Form. (ii) the patient's signed directives, or (iii) a designated agent's or authorized decision maker's signature, if applicable contain, from a physician with whom the patient has a bona fide physician/patient relationship, a do not resuscitate determination, signature and the date of issue, the signature of the patient or if applicable the person authorized to consent on the patient's behalf.~~

B. Effective Period for a Signed EMS/DNR Durable DNR Order Form – A

~~signed EMS/DNR Durable DNR Order shall be effective for no more than one year from the date the order is written. If the patient is still living at the end of that time, a new EMS/DNR Order Form may be executed and issued by the attending physician. remain valid until revoked.~~

C....Original EMS/DNR Durable DNR Order Form – Only An original EMS/DNR

~~Durable DNR Order Form, or an unaltered EMS/DNR Order Bracelet, as provided for in Section 3.2 of these regulations, or another Do Not Resuscitate Order, as provided for in Section 3.3, shall be valid for purposes of withholding or withdrawing cardiopulmonary resuscitation by qualified EMS personnel in the event of cardiac or respiratory arrest qualified health care personnel in the event of cardiac or respiratory arrest in any facility, program or organization operated or licensed by the State Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency. The original Durable DNR Order Form shall be maintained and displayed at the patient's current location or residence in one of~~

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the places designated on the form, or if traveling; should accompany the patient.

The original form shall be maintained and displayed at the patient's home in one of the places designated on the form or shall accompany the patient, if traveling.

Copies of the ~~EMS/DNR~~ Durable DNR Order Form may be given to other providers or persons for information, with the express consent of the patient or ~~the patient's designated agent or authorized decision maker.~~ the person authorized to consent on the patient's behalf. However, such copies of the Durable DNR Order Form are not valid for withholding cardiopulmonary resuscitation.

D. Revocation of ~~an a~~ EMS/DNR Durable DNR Order – An ~~EMS/DNR~~ Durable DNR Order may be revoked at any time by the patient (i) by physical cancellation or destruction of the ~~EMS/DNR~~ Durable DNR Order Form and /and ~~or bracelet~~ any alternate form of identification by the patient or another in his presence and at his direction; or (ii) by oral expression of intent to revoke. The ~~EMS/DNR~~ Durable DNR Order may also be revoked by the patient's ~~attending physician, or the~~ designated agent or authorized decision maker for the patient the person authorized to consent on the patient's behalf.

E. Distribution of ~~EMS/DNR~~ Durable DNR Order Forms - ~~Approved,~~ sequentially numbered Authorized ~~EMS/DNR~~ Durable DNR Forms, with instructions, shall be available only to physicians and to any facility, program or organization operated or licensed by the Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated,

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~~licensed or owned by another state agency. through local Health Department offices and local hospitals, and to private physicians, on request. Other distribution points may be approved by the Commissioner to meet identified needs.~~

~~1.1 The EMS/DNR Order Bracelet~~

~~An EMS/DNR Order Bracelet, as approved by the Board, shall be issued with the EMS/DNR Order. Such EMS/DNR Order Bracelet shall be a uniquely designed, easily identifiable plastic identification bracelet containing the patient's name, Social Security Number, attending physician's name and telephone number, number of the EMS/DNR Order, and date of issuance and expiration of the Order. An intact, unaltered, current EMS/DNR Bracelet may be honored by qualified EMS personnel in lieu of an original EMS/DNR Order form.~~

12VAC5-65-80 Authorized Alternate Forms of Durable DNR Order Identification

The Board may authorize the issuance of alternate forms of Durable DNR Order identification in conjunction with the issuance of Durable DNR Orders. Any such alternate forms of identification which are issued in conjunction with a Durable DNR Order may be utilized either to validate the Durable DNR Order or in place of an original Durable DNR Order Form issued in compliance with these regulations. Such alternate forms of Durable DNR Order identification shall be uniquely designed and easily identifiable. In order to be honored by qualified health care

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personnel in place of the original Durable DNR Order Form, such alternate forms of identification must contain the minimum information approved by the State Board of Health.

12VAC5-65-90 Other Do Not Resuscitate Orders

~~As provided for in Section 54.1-2987.1 of the Code, nothing in that section or the definition of Emergency Medical Services Do Not Resuscitate orders provided in Section 54.1-2982 shall be construed to limit the issuance of or the authorization of physicians and those persons designated in Section 54.1-2901 to follow Do Not Resuscitate Orders other than Emergency Medical Services Do Not Resuscitate Orders. In accordance with this provision, qualified Emergency Medical Services personnel or hospital emergency department health care providers may honor other Do Not Resuscitate Orders in a patient's chart, provided such order includes the patient's full legal name, the physician's signature, and the date issued.~~

A. Nothing in these regulations or in the definition of Durable DNR Orders provided in Section 54.1-2982 shall be construed to limit the issuance of, or the authorization of physicians and those persons designated in Section 54.1-2901 to follow Do Not Resuscitate Orders other than Durable DNR Orders for patients who are currently admitted to a hospital or other health care facility in accordance with accepted medical practice.

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B. Additionally, nothing in these regulations or in the definition of Durable DNR Orders provided in Section 54.1-2982 shall be construed to limit the authorization of qualified health care personnel to follow Do Not Resuscitate Orders other than Durable DNR Orders which are written by a physician, with whom the patient has a bona fide physician/patient relationship, for the duration of the patient's transfer to another facility. Such other DNR Orders issued in this manner shall be valid until a Durable DNR Order or other valid DNR Order is issued by the physician assuming responsibility for the treatment and care of the patient, but not to exceed twenty-four (24) hours. Such other DNR Orders issued in this manner shall contain the information listed in 12VAC5-65-70 A. and the time of issuance by the physician.

C. Nothing 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 in attendance of such patient.

D. The provisions of these regulations shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is

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contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

PART IV.**IMPLEMENTATION PROCEDURES****12VAC5-65-100 Issuance of an EMS/DNR Order**

~~An EMS Do Not Resuscitate A Durable DNR Order may only be issued by an attending physician with whom the patient has established a bona fide physician/patient relationship, as defined by the Board of Medicine in their current guidelines for a patient who has been diagnosed as having a terminal condition or other advanced chronic illness or condition which, in the physician's judgement, warrants the issuance of such order and when such patient or the patient's agent or authorized decision maker so directs. If the patient is not an adult, the physician shall carefully review with the parents or legal guardian all of the implications of this decision. only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.~~

The physician shall explain to the patient or ~~if pertinent, his agent or his family~~
the person authorized to consent on the patient's behalf, the alternatives available,
including issuance of ~~an a~~ EMS/DNR Durable DNR Order. If the option of ~~an a~~
EMS/DNR Durable DNR Order is agreed upon, the ~~attending~~ physician shall have
the following responsibilities.

- A. Obtain the signature of the patient or ~~designated agent or authorized~~
~~decision maker or the spokesman for a majority of the highest class of decision~~
~~makers.~~ the person authorized to consent on the patient's behalf.
- B. Execute and date the Physician Order on the ~~EMS/DNR~~ Durable DNR
Order Form.
- C. Issue the original ~~EMS/DNR~~ Durable DNR Order Form ~~and Bracelet and~~
~~place Bracelet on patient.~~
- D. Explain how to, and ~~by whom~~ who may revoke the ~~EMS/DNR~~ Durable
DNR Order ~~may be revoked.~~

**12VAC5-65-110 EMS Do Not Resuscitate Durable DNR Order Implementation
Procedures**

Qualified ~~Emergency Medical Services~~ health care personnel shall ~~conform~~
comply with the following general procedures and published ~~State~~ Virginia
~~EMS/DNR~~ Durable DNR Order Implementation Protocols when ~~responding to a~~

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caring for a patient who is in cardiac or respiratory arrest and who is known or suspected to have an a ~~EMS/DNR~~ Durable DNR Order in effect.

A. Initial Assessment and Intervention

Perform routine patient assessment and resuscitation or intervention until the ~~EMS/DNR~~ Durable DNR Order or other DNR Order validity status is confirmed, as follows.

1. Determine ~~that~~ the presence of a ~~EMS/DNR~~ Durable DNR Order Form Bracelet is intact and not defaced or that the original ~~EMS/DNR~~ Order Form [or other DNR Order] is present and current or an approved alternate form of Durable DNR identification.
2. Determine that the Durable DNR item is not altered.
3. Verify, through Driver's License or other identification with photograph and signature or by positive identification by a family member or other person that knows patient, that the patient in question is the one for whom the ~~EMS/DNR~~ Durable DNR Order or other DNR Order was issued.
4. If no ~~EMS/DNR~~ Durable DNR Order ~~Bracelet~~ or other approved form of identification is found, ask a family member or other person to look for the original ~~EMS/DNR~~ Durable DNR Order Form or other written DNR order.

5. If the ~~EMS/DNR~~ Durable DNR Order Bracelet or alternate form of identification is not intact or has been altered ~~on the patient's arm or has been defaced, and if no valid EMS/DNR ORDER Form or other DNR Order~~ is produced, the qualified health care personnel shall consider the ~~EMS/DNR~~ Durable DNR Order to be invalid.

B. Resuscitative Measures to be Withheld or Withdrawn

In the event of cardiac or respiratory arrest of a patient with a valid ~~EMS/DNR~~ Durable DNR Order under the criteria set forth above, the following procedures should be withheld or withdrawn by qualified ~~EMS personnel or hospital emergency department health care providers~~ health care personnel unless otherwise directed by ~~the attending~~ a physician physically present at the patient location:

1. Cardiopulmonary Resuscitation (CPR)
2. Endotracheal Intubation or other advanced airway management
3. Artificial Ventilation
4. Defibrillation
5. Cardiac resuscitation medications
6. continuation of related procedures, as ~~defined~~ prescribed by ~~attending physician~~ the patient's physician or medical protocols.

C. Procedures to Provide Comfort Care or to Alleviate Pain

In order to provide comfort care or to alleviate pain for a patient with a valid ~~EMS/DNR~~ Durable DNR Order or other DNR Order, the following interventions may be provided, depending on the needs of the particular patient.

1. Airway (excluding intubation or advanced airway management)
2. Suction
3. Supplemental oxygen delivery devices
4. Pain medications (~~Advanced Life Support personnel only~~) or intravenous fluids
5. ~~Control~~ Bleeding control
6. ~~Make patient comfortable~~ Patient positioning or
7. ~~Be supportive to patient and family~~ Other therapies deemed necessary to provide comfort care or to alleviate pain.

D. Revocation

~~The patient, the attending physician, or the patient's designated agent or authorized decision maker may revoke the EMS/DNR Order at any time, as provided in Section 3.1 D. of these Regulations. If an EMS/DNR Order is revoked by one of these authorized persons, EMS personnel shall resume full resuscitation and treatment of the patient.~~

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These regulations shall not authorize any qualified health care personnel to follow a Durable DNR Order for any patient who is able to, and does, express to such qualified health care personnel the desire to be resuscitated in the event of cardiac or respiratory arrest.

If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the qualified health care personnel's authority to follow a Durable DNR Order or other DNR Order.

The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the Order; however, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

E. Documentation

When following an ~~EMS/DNR~~ Durable DNR Order or other DNR Order for a particular patient, ~~EMS~~ qualified health care personnel shall document ~~the response in the following way in the patient's medical record the care rendered or withheld in the following manner:~~

1. Use a standard ~~prehospital patient care report form~~ reporting documents (i.e. patient's chart, pre-hospital patient care report).

2. Describe assessment of patient's status.

3. Document which identification (~~EMS/DNR~~ Durable DNR Order Form or ~~Bracelet~~ other DNR Order or alternate form of identification) was used to confirm ~~EMS/DNR~~ Durable DNR status and that it was intact, not ~~defaced~~ altered, not canceled, or not officially revoked.

4. Record actual ~~EMS/DNR~~ Durable DNR Order Number ~~as well as~~ and name of patient's ~~attending~~ physician.

5. If ~~transporting the patient~~ the patient is being transported, keep ~~original~~ the ~~EMS/DNR~~ Durable DNR Order ~~Form~~ with the patient.

F. **General Considerations**

The following general principles shall apply to implementation of ~~EMS Do Not Resuscitate Orders~~ Durable DNR Orders.

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1. If there is misunderstanding with family members or others present at the scene patient's location or if there are other concerns about following the ~~EMS/DNR~~ Durable DNR Orders, contact the ~~attending~~ patient's physician or EMS medical control for guidance.

2. If there is any question about the validity of ~~an a~~ EMS/DNR Durable DNR Order, ~~resuscitate~~ resuscitative measures should be administered until the validity of the Durable DNR is established.

3. ~~An EMS/DNR Order does not mean do not treat otherwise or do not provide appropriate care. Provide all possible comfort care and treat patient and family with care and concern.~~