



# Attorney General

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Robert R. Corbin

May 15, 1989

Fran Roberts, Executive Director  
Arizona State Board of Nursing  
2001 West Camelback Rd., Suite 350  
Phoenix, Arizona 85015

Re: I89-037 (R89-052)

Dear Ms. Roberts:

You have asked whether a registered nurse or licensed practical nurse would be subject to disciplinary action in two situations before the Arizona State Board of Nursing:

1. The nurse is caring for a patient in his home, and does not initiate cardiopulmonary resuscitation. A living will exists which calls for non-initiation of cardiopulmonary resuscitation and prohibits the calling of "911" on the request of the patient and/or family. There is no "No Code" order from the patient's physician.
2. The nurse is caring for a patient in his home, and does not initiate cardiopulmonary resuscitation. The patient's family has requested "no heroics". There is no living will, nor "No Code" order from the patient's physician.

We conclude that a nurse may potentially be disciplined in either situation under A.R.S. § 32-1663(A) and A.A.C. R4-19-403(3), (4) and (6). These laws allow discipline to be imposed when a nurse is guilty of unprofessional conduct or is unfit or incompetent by reason of negligent habits or other causes. The imposition of discipline will depend upon the facts involved in each case.

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The first situation you pose requires review of the Medical Treatment Decision Act, A.R.S. §§ 36-3201 to 36-3210. That Act sets forth statutory requirements for living wills, which are referred to as declarations. A.R.S. § 36-3205(C) states:

No physician, health care institution or licensed health professional who relies in good faith upon a declaration shall be subject to civil or criminal liability or be deemed guilty of unprofessional conduct for withholding or withdrawing life-sustaining procedures from a qualified patient pursuant to a declaration unless that person has actual notice of the revocation of the declaration.

(Emphasis added.)

A qualified patient is defined in A.R.S. § 36-3201(5) as,

a patient, eighteen years or more of age, who executes a declaration as provided in this article and who is diagnosed and certified in writing to be affiliated with a terminal condition by two physicians who personally examined the patient, one of whom is the attending physician.

(Emphasis added.)

These statutes provide a nurse immunity from liability for non-resuscitation only if a patient is "qualified". Under the statutory definition of "qualified", two physicians must have diagnosed the patient as terminal.

Also, A.R.S. § 36-3205(C) provides immunity for a nurse only when he or she relies in "good faith" upon a declaration. "Good faith" is defined in Black's Law Dictionary, Fifth Edition, as "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry."

The second situation you have outlined, wherein the patient's family has requested no heroics and there is no living will or doctor's order, involves a constitutional and common law analysis. In Rasmussen by Mitchell v. Fleming, 154 Ariz. 207, 741 P.2d 674 (1987), the Arizona Supreme Court held that

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although a patient had not executed a living will, she could exercise a right to refuse medical treatment based on constitutional and state rights to privacy, and the common law doctrine of informed consent. A legal guardian could invoke these rights for her, but the Court specifically refused to address the issue of whether family members could invoke these rights. Id. at 220, 741 P.2d at 687. Thus, a nurse relying solely on the family's request for "no heroics" may expose himself or herself to potential discipline based on the ruling in Rasmussen.

We therefore conclude that in either of the two situations you have described, a nurse may be subject to disciplinary action by the Nursing Board. Whether discipline is actually imposed must depend upon a determination of all the facts in each case.

Sincerely,



Bob Corbin  
Attorney General

BC/JLG/vd