

Current Controversies in Prehospital Resuscitation of the Terminally Ill Patient

To the Editor:

I write in reply to the letter to the editor written by Mr. Richard A. Lazar in the October 1990 issue of *Prehospital and Disaster Medicine* which critiques my article published in the January-March, 1990 issue.

The first portion of Mr. Lazar's letter appears to be a little more than a confirmation of the medical validity of the American Heart Association standards for ACLS.¹ Given the relatively clear medical consensus as to these matters, it is unclear to me why such lay commentary by Mr. Lazar was necessary. Far more troublesome to me, however, is Mr. Lazar's exposition of his disagreement with my analysis of appropriate legal reasons to withhold CPR.

To summarize these differences, Mr. Lazar first advocates that the law imposes no duty on a medical director to determine the appropriateness of a DNR order that will be followed by the medical director's physician surrogates. Therefore, Mr. Lazar reasons, if the attending physician has written a completely inappropriate DNR order such as one based on race, age, or other completely invalid medical or legal criteria, this order should nonetheless be followed without question by the medical director. If Mr. Lazar had carefully read my article, he would have noted that I recognized the controversy concerning this subject. Because of that controversy, I proposed, as a matter of my own judgment, that the medical director would be well-advised to determine the appropriateness of such orders before allowing them to be implemented by his or her surrogates. I specifically suggested that the medical director should have competent legal advice and should then attempt to devise a policy that would comply with the local standards of community practice. Mr. Lazar's analysis, other than by expressing the conclusion of disagreement, adds nothing by way of substantive content to this discussion.

Mr. Lazar also takes issue with my opinion concerning the ability of physicians or EMS providers to evaluate whether or not a particular directive to

physicians, a durable power of attorney, or for that matter, a court order is or is not legally sufficient to preclude the initiation of CPR. My article documents rather thoroughly the available research which suggests most physicians and EMS providers simply do not have the experience or expertise to make such judgments. Moreover, my article observes that delay in initiating CPR to determine the legal efficacy of an instrument would undoubtedly result in the death of the patient. The article also pointed out that this situation puts all health care providers on the horns of an unseemly dilemma. However, I did not suggest as Mr. Lazar implies, that valid directives to physician, durable powers of attorney or court orders should be ignored by any health care professional. Instead, I suggested that unless such documents had been approved in advance by the medical director and legal advisor for the system, the safer course would be err on the side of preserving life until the legalities of the situation could be determined. Again, without analysis, Mr. Lazar "disagrees" and points out that suits have been instituted for so-called "wrongful life" upon the purported basis that the patient did not desire to have his or her life prolonged and/or to be resuscitated. Mr. Lazar does not mention that to date, none of these suits have been successful. Mr. Lazar also does not discuss the fact that in many states a physician is specifically immune by statute from any liability for refusal to follow a directive to physicians or instruction not to resuscitate if he or she feels, for medical or ethical reasons, such decisions are inappropriate.

In the real world of emergency medicine, the physician in such circumstances, faces what lawyers sometimes, refer to as "Hobson's choice."² Balancing the possibility of a claim for wrongfully saving the life of a patient against the virtually certain liability and probable loss of licensure which would result from intentionally withholding treatment in reliance upon what later proved to be an invalid legal instruction, I submit the prudent choice is to err on the side of maintaining life. Notwithstanding his letter, I would be surprised if Mr. Lazar would knowingly advise any client to withhold critical life

support based on any such a legal instrument without having previously determined it was legally effective. In any case, Mr. Lazar's commentary might have been more useful if he had offered his own solution to this dilemma as opposed to a self-fulfilling prophecy of negative analysis.

Not content with discussing the actual content of my article, Mr. Lazar resorts to the ultimate *ad horrendum* by stating that my article had proposed "...that the only sound solution is to mandate that a lawyer ride along in every ambulance...." The "solution" attributed to me is laughable for two reasons. First, it certainly does not appear in my article because I have never advocated such an absurd position. Second, as Mr. Lazar's letter clearly demonstrates, having a lawyer riding in every ambulance would not necessarily produce the correct analysis or a proper result.

At least, Mr. Lazar and I apparently agree that there is a climate of controversy in regard to the prehospital resuscitation of the terminally ill patient, and that the National Association of EMS Physicians should take the lead in resolving it.

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Notes

1. American Heart Association: *Standards and Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care*.
2. In legal history and/or myth one Hobson was the proprietor of a stable in feudal England. In this stable, the customer had a choice of any horse on the premises as long as he or she took the horse nearest the door. Ergo, the term "Hobson's choice" is used in the law for no effective choice at all.

Apologium

We regret the fact that Mr. Ayres was not sent a copy of the letter from Mr. Lazar so that he could rebut it directly within the issue in which it was published. Apologies are due and extended for this oversight. The editors shall attempt in this and in future issues to provide the opportunity for direct rebuttal by any author whose work is the subject of a letter to the editor in this Forum section.