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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 29, 2005

The Honorable Vida O. Miller
Member, House of Representatives
P. O. Box 3157
Pawleys Island, South Carolina 29585

Dear Representative Miller:

In a letter to this office you questioned whether the Five Wishes document if completed by an individual in this State would be legally binding on that individual's family and on medical professionals attending the individual. According to the sample document forwarded to this office, a Five Wishes document is

...the first living will that talks about your personal, emotional and spiritual needs as well as your medical wishes. It lets you choose the person you want to make health care decisions for you if you are not able to make them for yourself. Five Wishes lets you say exactly how you wish to be treated if you get seriously ill.

Two different statutory provisions establish means for an individual in this State to indicate his or her wishes as to when life-sustaining procedures may be withheld, the Death with Dignity Act, S.C. Code Ann. §§ 44-77-10 et seq. (2002) and provisions authorizing a health care power of attorney, as set forth in S.C. Code Ann. §§ 62-5-504 (Supp. 2004). Both provisions are quite specific in establishing the types of documents to be executed in order for an individual to express his or her will regarding life-saving treatment. Pursuant to Section 44-77-50, the form of the declaration for the Death with Dignity Act "must be substantially" in the form as set forth by that statute. Similarly, a health care power of attorney must be "substantially" in the form as set forth by Section 62-5-504(D). As stated in a prior opinion of this office dated October 26, 1987, the term "substantially" has been defined as "essentially", "without material qualification" and "materially".

Based upon my review, it is my opinion that the Five Wishes document does not sufficiently conform with the particulars of either authorized procedure, the Death with Dignity Act nor the health care power of attorney, as to the form to be executed. As a result, it is my opinion that the Five Wishes document would not be legally binding in this State in the absence of specific statutory or judicial approval of the utilization of the form for its intended purpose. Support for such a

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determination is set forth in the sample Five Wishes document which you forwarded to this office. As set forth at page five, "(i)f you live in the District of Columbia or one of the 35 states listed below, you can use Five Wishes and have the peace of mind to know that is substantially meets your state's requirements under the law...If your state is not one of the 35 states listed here, Five Wishes does not meet the technical requirements in the statutes of your state." South Carolina is not one of the thirty-five states listed. Of course, while not legally binding, such document could serve as documentation of the personal wishes of an individual with regard to life-sustaining procedures or other matters covered by the document. The Five Wishes document however would not be a substitute for expressions of will which may legally be provided for only by documents executed pursuant to the Death with Dignity Act or as a health care power of attorney.

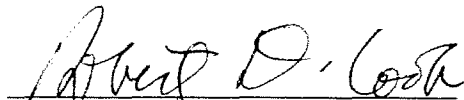
If there are any further questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General