

1-1 By: Nelson S.B. No. 1320  
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 April 29, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 29, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1320 By: Nelson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to certain advance directives for medical treatment and  
1-11 medical treatment decisions.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 166.002, Health and Safety Code, is  
1-14 amended by amending Subdivision (7) and adding Subdivision (15) to  
1-15 read as follows:

1-16 (7) "Health care or treatment decision" means consent,  
1-17 refusal to consent, or withdrawal of consent to health care,  
1-18 treatment, service, or a procedure to maintain, diagnose, or treat  
1-19 an individual's physical or mental condition, including such a  
1-20 decision on behalf of a minor.

1-21 (15) "Cardiopulmonary resuscitation" means any  
1-22 medical intervention used to restore circulatory or respiratory  
1-23 function that has ceased.

1-24 SECTION 2. Subchapter A, Chapter 166, Health and Safety  
1-25 Code, is amended by adding Section 166.010 to read as follows:

1-26 Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO  
1-27 CHILD ABUSE AND NEGLECT. This chapter is subject to applicable  
1-28 federal law and regulations relating to child abuse and neglect to  
1-29 the extent applicable to the state based on its receipt of federal  
1-30 funds.

1-31 SECTION 3. Section 166.044, Health and Safety Code, is  
1-32 amended by adding Subsection (e) to read as follows:

1-33 (e) A physician, nurse, or other person acting under the  
1-34 direction of a physician who participates in the withholding or  
1-35 withdrawal of cardiopulmonary resuscitation from a patient who, in  
1-36 reasonable medical judgment, has a terminal or irreversible  
1-37 condition is not civilly or criminally liable for failure to  
1-38 provide resuscitation if, in reasonable medical judgment, in the  
1-39 event of cardiopulmonary arrest, the patient's death would occur  
1-40 within minutes to hours regardless of the provision of  
1-41 resuscitation. Nothing in this section may be construed to limit  
1-42 the authority of a physician, nurse, or other person to comply with  
1-43 an otherwise valid and applicable patient's directive to physicians  
1-44 or out-of-hospital do-not-resuscitate order, or the decision of a  
1-45 competent patient or the person responsible for the health care  
1-46 decisions of the patient, that authorizes a do-not-resuscitate  
1-47 order under other circumstances.

1-48 SECTION 4. The heading to Section 166.046, Health and  
1-49 Safety Code, is amended to read as follows:

1-50 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR  
1-51 TREATMENT DECISION.

1-52 SECTION 5. Section 166.046, Health and Safety Code, is  
1-53 amended by amending Subsections (a), (b), and (e) and adding  
1-54 Subsection (e-1) to read as follows:

1-55 (a) If an attending physician refuses to honor a patient's  
1-56 advance directive or a health care or treatment decision made by or  
1-57 on behalf of a patient [~~under Section 166.039~~], the physician's  
1-58 refusal shall be reviewed by an ethics or medical committee. The  
1-59 attending physician may not be a member of that committee. The  
1-60 patient shall be given life-sustaining treatment during the review.

1-61 (b) The patient or the person responsible for the health  
1-62 care decisions of the individual who has made the decision  
1-63 regarding the directive or treatment decision:

(1) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement; ~~and~~

(2) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Health Care Information Council under Section 166.053; and

(3) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process.

(e) If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed ~~have decided~~ is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b)-(e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

SECTION 6. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Sections 166.052 and 166.053 to read as follows:

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment,\* which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, he or she will request that the case be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48

3-1 hours before a meeting of the committee related to your case. You  
3-2 are entitled to attend the meeting. With your agreement, the  
3-3 meeting may be held sooner than 48 hours, if possible.

3-4 If you wish, you are entitled to receive a written  
3-5 explanation of the decision reached during the review process.

3-6 If after this review process both the attending physician and  
3-7 the ethics or medical committee conclude that life-sustaining  
3-8 treatment is inappropriate and yet you continue to request such  
3-9 treatment, then the following procedure will occur:

3-10 1. The physician, with the help of the health care facility,  
3-11 will assist you in trying to find a physician and facility willing  
3-12 to provide the requested treatment.

3-13 2. You are being given a list of health care providers and  
3-14 referral groups that have volunteered their readiness to consider  
3-15 accepting transfer, or to assist in locating a provider willing to  
3-16 accept transfer, maintained by the Texas Health Care Information  
3-17 Council. You may wish to contact providers or referral groups on  
3-18 the list or others of your choice to get help in arranging a  
3-19 transfer.

3-20 3. The patient will continue to be given the requested  
3-21 life-sustaining treatment until he or she can be transferred to a  
3-22 willing provider for up to 10 days from the time you were given the  
3-23 committee's written decision that life-sustaining treatment is not  
3-24 appropriate.

3-25 4. If a transfer can be arranged, the patient will be  
3-26 responsible for the costs of the transfer.

3-27 5. If a provider cannot be found willing to give the  
3-28 requested treatment within 10 days, life-sustaining treatment may  
3-29 be withdrawn on the 11th day unless a court of law has granted an  
3-30 extension.

3-31 6. You may ask the appropriate district or county court to  
3-32 extend the 10-day period if the court finds that there is a  
3-33 reasonable expectation that a physician or health care facility  
3-34 willing to provide life-sustaining treatment will be found if the  
3-35 extension is granted. You will probably need a lawyer's help if you  
3-36 wish to consider seeking this type of extension.

3-37 \* "Life-sustaining treatment" means treatment that, based on  
3-38 reasonable medical judgment, sustains the life of a patient and  
3-39 without which the patient will die. The term includes both  
3-40 life-sustaining medications and artificial life support, such as  
3-41 mechanical breathing machines, kidney dialysis treatment, and  
3-42 artificial nutrition and hydration. The term does not include the  
3-43 administration of pain management medication or the performance of  
3-44 a medical procedure considered to be necessary to provide comfort  
3-45 care, or any other medical care provided to alleviate a patient's  
3-46 pain.

3-47 (b) In cases in which the attending physician refuses to  
3-48 comply with an advance directive or treatment decision requesting  
3-49 the withholding or withdrawal of life-sustaining treatment, the  
3-50 statement required by Section 166.046(b)(2)(A) shall be in  
3-51 substantially the following form:

3-52 When There Is A Disagreement About Medical Treatment: The  
3-53 Physician Recommends Life-Sustaining Treatment That You Wish To  
3-54 Stop

3-55 You have been given this information because you have  
3-56 requested the withdrawal or withholding of life-sustaining  
3-57 treatment\* and the attending physician refuses to comply with that  
3-58 request. The information is being provided to help you understand  
3-59 state law, your rights, and the resources available to you in such  
3-60 circumstances. It outlines the process for resolving disagreements  
3-61 about treatment among patients, families, and physicians. It is  
3-62 based upon Section 166.046 of the Texas Advance Directives Act,  
3-63 codified in Chapter 166 of the Texas Health and Safety Code.

3-64 When an attending physician refuses to comply with an advance  
3-65 directive or other request for withdrawal or withholding of  
3-66 life-sustaining treatment for any reason, he or she will request  
3-67 that the case be reviewed by an ethics or medical committee.  
3-68 Life-sustaining treatment will be provided through the review.

3-69 You will receive notification of this review at least 48

4-1 hours before a meeting of the committee related to your case. You  
4-2 are entitled to attend the meeting. With your agreement, the  
4-3 meeting may be held sooner than 48 hours, if possible.

4-4 If you wish, you are entitled to receive a written  
4-5 explanation of the decision reached during the review process.

4-6 If you or the attending physician do not agree with the  
4-7 decision reached during the review process, and the attending  
4-8 physician still refuses to comply with your request to withhold or  
4-9 withdraw life-sustaining treatment, then the following procedure  
4-10 will occur:

4-11 1. The physician, with the help of the health care facility,  
4-12 will assist you in trying to find a physician and facility willing  
4-13 to withdraw or withhold the life-sustaining treatment.

4-14 2. You are being given a list of health care providers and  
4-15 referral groups that have volunteered their readiness to consider  
4-16 accepting transfer, or to assist in locating a provider willing to  
4-17 accept transfer, maintained by the Texas Health Care Information  
4-18 Council. You may wish to contact providers or referral groups on  
4-19 the list or others of your choice to get help in arranging a  
4-20 transfer.

4-21 \* "Life-sustaining treatment" means treatment that, based on  
4-22 reasonable medical judgment, sustains the life of a patient and  
4-23 without which the patient will die. The term includes both  
4-24 life-sustaining medications and artificial life support, such as  
4-25 mechanical breathing machines, kidney dialysis treatment, and  
4-26 artificial nutrition and hydration. The term does not include the  
4-27 administration of pain management medication or the performance of  
4-28 a medical procedure considered to be necessary to provide comfort  
4-29 care, or any other medical care provided to alleviate a patient's  
4-30 pain.

4-31 (c) An attending physician or health care facility may, if  
4-32 it chooses, include any additional information concerning the  
4-33 physician's or facility's policy, perspective, experience, or  
4-34 review procedure.

4-35 Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas  
4-36 Health Care Information Council shall maintain a registry listing  
4-37 the identity of and contact information for health care providers  
4-38 and referral groups, situated inside and outside this state, that  
4-39 have voluntarily notified the council they may consider accepting  
4-40 or may assist in locating a provider willing to accept transfer of a  
4-41 patient under Section 166.045 or 166.046.

4-42 (b) The listing of a provider or referral group in the  
4-43 registry described in this section does not obligate the provider  
4-44 or group to accept transfer of or provide services to any particular  
4-45 patient.

4-46 (c) The Texas Health Care Information Council shall post the  
4-47 current registry list on its website in a form appropriate for easy  
4-48 comprehension by patients and persons responsible for the health  
4-49 care decisions of patients and shall provide a clearly identifiable  
4-50 link from its home page to the registry page. The list shall  
4-51 separately indicate those providers and groups that have indicated  
4-52 their interest in assisting the transfer of:

4-53 (1) those patients on whose behalf life-sustaining  
4-54 treatment is being sought;

4-55 (2) those patients on whose behalf the withholding or  
4-56 withdrawal of life-sustaining treatment is being sought; and

4-57 (3) patients described in both Subdivisions (1) and  
4-58 (2).

4-59 (d) The registry list described in this section shall  
4-60 include the following disclaimer:

4-61 "This registry lists providers and groups  
4-62 that have indicated to the Texas Health Care  
4-63 Information Council their interest in  
4-64 assisting the transfer of patients in the  
4-65 circumstances described, and is provided  
4-66 for information purposes only. Neither the  
4-67 Texas Health Care Information Council nor  
4-68 the State of Texas endorses or assumes any  
4-69 responsibility for any representation,

5-1 claim, or act of the listed providers or  
5-2 groups."

5-3 SECTION 7. Subchapter C, Chapter 166, Health and Safety  
5-4 Code, is amended by adding Section 166.102 to read as follows:

5-5 Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY  
5-6 HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES  
5-7 PERSONNEL. (a) Except as provided by Subsection (b), a licensed  
5-8 nurse or person providing health care services in an  
5-9 out-of-hospital setting may honor a physician's do-not-resuscitate  
5-10 order.

5-11 (b) When responding to a call for assistance, emergency  
5-12 medical services personnel shall honor only a properly executed or  
5-13 issued out-of-hospital DNR order or prescribed DNR identification  
5-14 device in accordance with this subchapter.

5-15 SECTION 8. Subdivision (1), Section 166.081, Health and  
5-16 Safety Code, is repealed.

5-17 SECTION 9. This Act takes effect immediately if it receives  
5-18 a vote of two-thirds of all the members elected to each house, as  
5-19 provided by Section 39, Article III, Texas Constitution. If this  
5-20 Act does not receive the vote necessary for immediate effect, this  
5-21 Act takes effect September 1, 2003.

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