

1-1 By: Nelson S.B. No. 28
1-2 (In the Senate - Filed November 13, 2006; January 23, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; February 26, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 February 26, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 28 By: Nelson

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

1-10 relating to transferable physician orders for life-sustaining and
1-11 related treatment.

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 adding Subdivision (16) to read as follows:

1-15 (16) "Transferable physician orders form" has the
1-16 meaning assigned by Section 166.201.

1-17 SECTION 2. Subchapter A, Chapter 166, Health and Safety
1-18 Code, is amended by adding Section 166.0075 to read as follows:

1-19 Sec. 166.0075. PERSON'S CHOICE. (a) A person may elect to
1-20 execute or have executed on the person's behalf under this chapter:

1-21 (1) a directive under Subchapter B;

1-22 (2) an out-of-hospital DNR order under Subchapter C;

1-23 (3) a medical power of attorney under Subchapter D; or

1-24 (4) a transferable physician orders form under
1-25 Subchapter E.

1-26 (b) As an alternative to or in addition to an advance
1-27 directive executed under this chapter, a person may elect to
1-28 execute or have executed on the person's behalf a transferable
1-29 physician orders form under Subchapter E for the provision or
1-30 withholding of life-sustaining and related treatment based on the
1-31 person's wishes.

1-32 SECTION 3. Section 166.008, Health and Safety Code, is
1-33 amended to read as follows:

1-34 Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES AND
1-35 TRANSFERABLE PHYSICIAN ORDERS. To the extent that a treatment
1-36 decision or an advance directive or transferable physician orders
1-37 form validly executed or issued under this chapter conflicts with
1-38 another treatment decision or an advance directive or transferable
1-39 physician orders form executed or issued under this chapter, the
1-40 treatment decision made or instrument executed later in time
1-41 controls.

1-42 SECTION 4. Chapter 166, Health and Safety Code, is amended
1-43 by adding Subchapter E to read as follows:

1-44 SUBCHAPTER E. TRANSFERABLE PHYSICIAN ORDERS

1-45 FOR LIFE-SUSTAINING AND RELATED TREATMENT

1-46 Sec. 166.201. DEFINITIONS. In this subchapter:

1-47 (1) "Advanced practice nurse" has the meaning assigned
1-48 by Section 301.152, Occupations Code.

1-49 (2) "Health care professional" has the meaning
1-50 assigned by Section 166.081.

1-51 (3) "Health care provider" means a health care
1-52 provider as defined by Section 166.151. The term includes a health
1-53 care provider described by Section 166.004 and a health care
1-54 professional.

1-55 (4) "Minor" means an unmarried person younger than 18
1-56 years of age who has not had the person's disabilities of minority
1-57 removed for general purposes.

1-58 (5) "Transferable physician orders form" means a
1-59 standardized form containing physician orders executed by a
1-60 physician or advanced practice nurse and by the patient who is the
1-61 subject of the orders or another person described by Section
1-62 166.202(b)(2) that instructs health care providers regarding the
1-63 provision or withholding of life-sustaining and related treatment

2-1 to a patient in accordance with the patient's advance directive or
2-2 wishes as determined through conversation with the patient, the
2-3 person described by Section 166.206 if the patient is a minor, or a
2-4 representative authorized to make health care decisions for the
2-5 patient.

2-6 Sec. 166.202. TRANSFERABLE PHYSICIAN ORDERS. (a) Physician
2-7 orders for the provision or withholding of life-sustaining and
2-8 related treatment in accordance with the patient's wishes may be
2-9 entered on a transferable physician orders form that complies with
2-10 this subchapter.

2-11 (b) To be valid, a transferable physician orders form under
2-12 this subchapter must be executed by:

2-13 (1) a physician or advanced practice nurse who has
2-14 personally examined the patient; and

2-15 (2) the patient who is the subject of the transferable
2-16 physician orders, the person described by Section 166.206 if the
2-17 patient is a minor, or a representative authorized to make health
2-18 care decisions for the patient.

2-19 (c) A transferable physician orders form is effective on
2-20 execution.

2-21 (d) A facility that is a health care provider shall keep an
2-22 executed transferable physician orders form as the first page in
2-23 the patient's medical record and send the form with the patient if
2-24 the patient is transferred to another facility.

2-25 Sec. 166.203. FORM OF TRANSFERABLE PHYSICIAN ORDERS. (a)
2-26 Transferable physician orders must be contained in the standard
2-27 written form specified by rule. The Department of State Health
2-28 Services and the Department of Aging and Disability Services shall
2-29 develop the form.

2-30 (b) The standard form must be a one-page document that is
2-31 printed on bright pink paper in a format that makes the document
2-32 readily identifiable as a transferable physician orders form. The
2-33 form must be designed to provide information regarding
2-34 life-sustaining and related treatment of a patient in accordance
2-35 with the patient's wishes as evidenced by the patient's advance
2-36 directive or as expressed orally by the patient or the patient's
2-37 parent, legal guardian, or representative authorized to make health
2-38 care decisions for the patient.

2-39 (c) The form must include:
2-40 (1) the physician's orders, including the basis of the
2-41 orders, regarding:

2-42 (A) cardiopulmonary resuscitation;
2-43 (B) the level of medical intervention in the
2-44 event of a medical emergency, including the use of artificial life
2-45 support but excluding medical interventions or procedures to
2-46 provide comfort or alleviate a patient's pain;

2-47 (C) the use of antibiotics; and
2-48 (D) the use of medically administered fluids and
2-49 nutrition;

2-50 (2) a place for the signature of the physician or
2-51 advanced practice nurse;

2-52 (3) a statement indicating whether the patient has
2-53 executed an advance directive or has a representative authorized to
2-54 make health care decisions for the patient;

2-55 (4) a place for the signature of the patient, the
2-56 person described by Section 166.206 if the patient is a minor, or a
2-57 representative authorized to make health care decisions for the
2-58 patient;

2-59 (5) a statement acknowledging agreement with the
2-60 orders of the physician that appears directly above the signature
2-61 line required by Subdivision (4); and

2-62 (6) the date, location, and outcome of any review of
2-63 the form by:

2-64 (A) the patient, the person described by Section
2-65 166.206 if the patient is a minor, or a representative authorized to
2-66 make health care decisions for the patient; or

2-67 (B) the treating physician or a facility's
2-68 medical review or ethics committee.

2-69 Sec. 166.204. DUTY OF FACILITIES FOLLOWING PATIENT

3-1 TRANSFER. If a patient with a transferable physician orders form is
3-2 transferred from one health care provider that is a facility to
3-3 another facility, the transferring facility shall communicate the
3-4 existence of the transferable physician orders form to the
3-5 receiving facility before the transfer occurs. The transferable
3-6 physician orders form must accompany the patient to the receiving
3-7 facility, and the form remains in effect following the transfer.
3-8 The form must be placed as the first page in the patient's medical
3-9 records, and the receiving facility and the health care
3-10 professionals at the facility shall honor the transferable
3-11 physician orders as provided by this subchapter until the document
3-12 becomes invalid.

3-13 Sec. 166.205. PATIENT DESIRE SUPERSEDES TRANSFERABLE
3-14 PHYSICIAN ORDERS. The desire of a patient, including a patient who
3-15 is a minor, supersedes the effect of transferable physician orders
3-16 when the desire is communicated to a health care provider.

3-17 Sec. 166.206. TRANSFERABLE PHYSICIAN ORDERS FORM PREPARED
3-18 FOR MINOR PATIENT. The following persons may execute a
3-19 transferable physician orders form on behalf of a patient who is a
3-20 minor:

3-21 (1) the patient's parents; or

3-22 (2) the patient's legal guardian.

3-23 Sec. 166.207. DURATION OF TRANSFERABLE PHYSICIAN ORDERS
3-24 FORM. A transferable physician orders form remains in effect until
3-25 the document is replaced or the document otherwise becomes invalid.

3-26 Sec. 166.208. LIMITATION ON CIVIL OR CRIMINAL LIABILITY. A
3-27 health care provider or an employee of a health care provider is not
3-28 subject to criminal or civil liability for good faith compliance
3-29 with or reliance on the physician orders in a transferable
3-30 physician orders form.

3-31 Sec. 166.209. HONORING TRANSFERABLE PHYSICIAN ORDERS DOES
3-32 NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit
3-33 an offense under Section 22.08, Penal Code, by withholding
3-34 life-sustaining or related treatment from a person in accordance
3-35 with transferable physician orders executed under this subchapter.

3-36 Sec. 166.210. PREGNANT PATIENTS. A person may not withhold
3-37 life-sustaining treatment under transferable physician orders
3-38 executed under this subchapter from a patient known by the person to
3-39 be pregnant.

3-40 Sec. 166.211. MERCY KILLING NOT CONDONED. This subchapter
3-41 does not condone, authorize, or approve mercy killing or permit an
3-42 affirmative or deliberate act or omission to end life except to
3-43 permit the natural process of dying as provided by this subchapter.

3-44 Sec. 166.212. RULES. The executive commissioner of the
3-45 Health and Human Services Commission shall adopt rules necessary to
3-46 implement and administer this subchapter.

3-47 SECTION 5. (a) Not later than January 1, 2008, the
3-48 Department of State Health Services and the Department of Aging and
3-49 Disability Services shall develop the transferable physician
3-50 orders form required by Subchapter E, Chapter 166, Health and
3-51 Safety Code, as added by this Act.

3-52 (b) Not later than May 1, 2008, the executive commissioner
3-53 of the Health and Human Services Commission shall adopt the rules
3-54 necessary to implement Subchapter E, Chapter 166, Health and Safety
3-55 Code, as added by this Act.

3-56 SECTION 6. (a) Except as provided by Subsection (b) of
3-57 this section, this Act takes effect September 1, 2007.

3-58 (b) Sections 166.202 and 166.204, Health and Safety Code, as
3-59 added by this Act, take effect May 1, 2008.

3-60 * * * * *