

By: Wentworth

S.B. No. 1663

A BILL TO BE ENTITLED

AN ACT

relating to the disregard or violation of a resident's advance directive by a nursing institution; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 242.061, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The department, after providing notice and opportunity for a hearing to a license holder, shall suspend or revoke a license if the department finds that the license holder has been assessed three or more administrative penalties for violating Section 242.0663(a)(2).

SECTION 2. Section 242.0663, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) The department shall assess an administrative penalty under this subchapter against an institution that:

(1) violates Section 166.004; or

(2) knowingly employs or has on staff a health care practitioner who knowingly disregards or violates a resident's advance directive if the institution has included a statement in its written policies maintained under Section 166.004 that the institution will follow a resident's advance directive.

(d) A person, including an owner or employee of an institution, who has cause to believe that a resident's advance

1 directive has been or may be knowingly disregarded in violation of a  
2 written policy maintained under Section 166.004 shall report such  
3 violation consistent with the requirements of Section 242.123.

4 (e) It is not a violation of this section or any other law if  
5 an institution, its owners, employees, agents, or physicians in  
6 good faith attempt to resuscitate a resident because the  
7 institution, its owners, employees, agents, or physicians who  
8 practice in the institution reasonably believe that the process of  
9 dying appears to be the result of an accident, unnatural causes, or  
10 suspicious circumstances.

11 (f) To the extent consistent with federal law, an  
12 institution may, on the basis of conscience, object to honoring an  
13 advanced directive if the institution includes in its policies and  
14 explains to each prospective resident before admission to the  
15 institution the circumstances under which the institution would not  
16 follow instructions of an advanced directive. The policies and  
17 explanation must include the following:

18 (1) a clear and precise statement of limitations that  
19 result from the institution's objection to implement advanced  
20 directives based on conscience;

21 (2) a description of the differences between an  
22 institution-wide policy of objection on the basis of conscience and  
23 an objection that may be raised by an individual healthcare  
24 provider; and

25 (3) a description of the range of medical conditions  
26 or procedures affected by an objection based on conscience.

27 SECTION 3. This Act takes effect September 1, 2009.