

By: Birdwell

S.B. No. 1632

A BILL TO BE ENTITLED

AN ACT

relating to certain do-not-resuscitate orders and advance directives; providing penalties.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by adding Subsection (13) and renumbering the succeeding subsections accordingly:

(13) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

SECTION 2. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.012 to read as follows:

Sec. 166.012. RULES; DNR ORDERS APPLICABLE IN-HOSPITAL. The executive commissioner of the Health and Human Services Commission shall, on recommendations of the department, adopt all reasonable and necessary rules to carry out the purposes of this chapter, including rules to explicitly specify that a do-not-resuscitate order that is applicable in a hospital setting is valid only if it is issued in compliance with:

(1) the directions of the patient, if competent;

(2) the directions in an advance directive issued in accordance with Section 166.005 or 166.032;

(3) the directions of the patient's legal guardian or

1 agent under a medical power of attorney;

2 (4) a treatment decision made in accordance with
3 Section 166.039; or

4 (5) a reasonable medical judgment that the patient's
5 death is imminent within minutes to hours even if cardiopulmonary
6 resuscitation is provided.

7 SECTION 3. Section 166.081(6), Health and Safety Code, is
8 amended to read as follows:

9 (6) "Out-of-hospital DNR order":

10 (A) means a legally binding out-of-hospital
11 do-not-resuscitate order, in the form specified by the board under
12 Section 166.083, prepared and signed in accordance with Section
13 166.082, 166.084, or 166.085 [~~by the attending physician of a~~
14 ~~person~~], that documents the instructions of a person or the
15 person's legally authorized representative and directs health care
16 professionals acting in an out-of-hospital setting not to initiate
17 or continue the following life-sustaining treatment:

- 18 (i) cardiopulmonary resuscitation;
 - 19 (ii) advanced airway management;
 - 20 (iii) artificial ventilation;
 - 21 (iv) defibrillation;
 - 22 (v) transcutaneous cardiac pacing; and
 - 23 (vi) other life-sustaining treatment
- 24 specified by the board under Section 166.101(a); and

25 (B) does not include authorization to withhold
26 medical interventions or therapies considered necessary to provide
27 comfort care or to alleviate pain or to provide fluids [~~water~~] or

1 nutrition, including fluids or nutrition by mouth or by nasogastric
2 tube or artificial nutrition and hydration.

3 SECTION 4. Section 166.092, Health and Safety Code, is
4 amended by adding Subsections (a-1), (b-1), and (b-2) to read as
5 follows:

6 (a-1) A legal guardian, a qualified relative, or the agent
7 of the declarant having a medical power of attorney may revoke an
8 out-of-hospital DNR order if the person has reason to believe that
9 the order was not executed in accordance with this subchapter. The
10 person may revoke the order by:

11 (1) identifying himself or herself as a legal
12 guardian, a qualified relative, or the agent of the declarant
13 having a medical power of attorney;

14 (2) orally stating that the person has reason to
15 believe that the order was not executed in accordance with law; and

16 (3) destroying the order form and removing the DNR
17 identification device, if any, or orally stating the person's
18 intent to revoke the order.

19 (b-1) A revocation under Subsection (a-1) takes effect only
20 when a person who identifies himself or herself as a legal guardian,
21 a qualified relative, or the agent of the declarant having a medical
22 power of attorney states in the presence of the responding health
23 care professionals or the attending physician at the scene that the
24 person has reason to believe that the order was not executed in
25 accordance with law and communicates the intent to revoke the order
26 to the responding health care professionals or the attending
27 physician at the scene. The responding health care professionals

1 shall record the time, date, and place of the revocation in
2 accordance with the statewide out-of-hospital DNR protocol and
3 rules adopted under this chapter and any applicable local
4 out-of-hospital DNR protocol. The attending physician or the
5 physician's designee shall record in the person's medical record
6 the time, date, and place of the revocation and, if different, the
7 time, date, and place that the physician received notice of the
8 revocation. The attending physician or the physician's designee
9 shall also enter the word "VOID" on each page of the copy of the
10 order in the person's medical record.

11 (b-2) If a health care professional fails to comply with a
12 revocation under Subsection (a-1), the legal guardian, qualified
13 relative, or agent of the declarant having a medical power of
14 attorney may obtain an injunction to enforce the revocation.

15 SECTION 5. Section 166.097, Health and Safety Code, is
16 amended by adding Subsection (c) to read as follows:

17 (c) Any person commits an offense if a person knowingly
18 executes an out-of-hospital DNR order that is not in compliance
19 with the provisions of this subchapter. An offense under this
20 subsection is a felony of the third degree.

21 SECTION 6. Section 166.101(a), Health and Safety Code, is
22 amended to read as follows:

23 (a) The board shall, on the recommendation of the
24 department, adopt all reasonable and necessary rules to carry out
25 the purposes of this subchapter, including rules:

26 (1) adopting a statewide out-of-hospital DNR order
27 protocol that sets out standard procedures for the withholding of

1 cardiopulmonary resuscitation and certain other life-sustaining
2 treatment by health care professionals acting in out-of-hospital
3 settings that addresses each of the methods for executing the order
4 described in Section 166.082, subject to Sections 166.084 and
5 166.085;

6 (2) designating life-sustaining treatment that may be
7 included in an out-of-hospital DNR order, including all procedures
8 listed in Sections 166.081(6)(A)(i) through (v); and

9 (3) governing recordkeeping in circumstances in which
10 an out-of-hospital DNR order or DNR identification device is
11 encountered by responding health care professionals; and

12 (4) explicitly specifying that an out-of-hospital DNR
13 order may be issued by a physician only in compliance with the
14 methods for executing the order described in Section 166.082,
15 subject to Sections 166.084 and 166.085.

16 SECTION 7. Not later than December 1, 2011, the executive
17 commissioner of the Health and Human Services Commission shall
18 adopt the rules required by Section 166.012, Health and Safety
19 Code, as added by this Act, and Section 166.101(a), Health and
20 Safety Code, as amended by this Act.

21 SECTION 8. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.