

By: Klick

H.B. No. 1455

A BILL TO BE ENTITLED

AN ACT

relating to in-hospital and out-of-hospital do-not-resuscitate orders and advance directives; providing a criminal penalty.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by adding Subdivision (16) to read as follows:

(16) "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. The heading to Subchapter C, Chapter 166, Health and Safety Code, is amended to read as follows:

SUBCHAPTER C. OUT-OF-HOSPITAL AND IN-HOSPITAL

DO-NOT-RESUSCITATE ORDERS

SECTION 3. Section 166.081, Health and Safety Code, is amended by adding Subdivision (5-a) and amending Subdivision (6) to read as follows:

(5-a) "In-hospital DNR order":

(A) means an order placed in a patient's medical file that complies with the requirements of Sections 166.0855 and 166.0856 and that directs health care professionals in a hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

1 (ii) advanced airway management;
2 (iii) artificial ventilation;
3 (iv) defibrillation;
4 (v) transcutaneous cardiac pacing; and
5 (vi) other life-sustaining treatment
6 specified by the board under Section 166.101(a); and

7 (B) does not include authorization to withhold:
8 (i) medical interventions or therapies
9 necessary to provide comfort care or to alleviate pain; or
10 (ii) fluids or nutrition, including fluids
11 or nutrition by mouth or by nasogastric tube or artificial
12 nutrition and hydration.

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

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

22 (i) cardiopulmonary resuscitation;
23 (ii) advanced airway management;
24 (iii) artificial ventilation;
25 (iv) defibrillation;
26 (v) transcutaneous cardiac pacing; and
27 (vi) other life-sustaining treatment

specified by the board under Section 166.101(a); and

(B) does not include authorization to withhold:

(i) medical interventions or therapies
[~~considered~~] necessary to provide comfort care or to alleviate
pain; or

(ii) fluids [to provide water] or
nutrition, including fluids or nutrition by mouth or by nasogastric
tube or artificial nutrition and hydration.

SECTION 4. Subchapter C, Chapter 166, Health and Safety
Code, is amended by adding Sections 166.0855 and 166.0856 to read as
follows:

Sec. 166.0855. DNR ORDERS APPLICABLE IN-HOSPITAL. An
in-hospital DNR order is valid only if it is issued in compliance
with:

(1) the directions of the patient, if competent, given
orally or otherwise;

(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
agent under a medical power of attorney;

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

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

Sec. 166.0856. FORM OF IN-HOSPITAL DNR ORDER; PROCEDURE.

(a) A written in-hospital DNR order shall be in the standard form

1 specified by board rule as recommended by the department.

2 (b) A written in-hospital DNR order may be executed based on
3 the oral instructions of a person provided the order complies with
4 Section 166.0855.

5 (c) An in-hospital DNR order by a physician must be in
6 writing and comply with the requirements of Section 166.0855.

7 SECTION 5. Sections 166.086 and 166.087, Health and Safety
8 Code, are amended to read as follows:

9 Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL
10 OR IN-HOSPITAL DNR ORDER. The desire of a competent person,
11 including a competent minor, supersedes the effect of an
12 out-of-hospital or in-hospital DNR order executed or issued by or
13 on behalf of the person when the desire is communicated to
14 responding health care professionals as provided by this
15 subchapter.

16 Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR
17 INCAPABLE OF COMMUNICATION. (a) This section applies when a person
18 18 years of age or older has executed or issued an out-of-hospital
19 or in-hospital DNR order and subsequently becomes incompetent or
20 otherwise mentally or physically incapable of communication.

21 (b) If the adult person has designated a person to make a
22 treatment decision as authorized by Section 166.032(c), the
23 attending physician and the designated person shall comply with the
24 out-of-hospital or in-hospital DNR order.

25 (c) If the adult person has not designated a person to make a
26 treatment decision as authorized by Section 166.032(c), the
27 attending physician shall comply with the out-of-hospital or

1 in-hospital DNR order unless the physician believes that the order
2 does not reflect the person's present desire.

3 SECTION 6. Section 166.092, Health and Safety Code, is
4 amended by amending Subsections (a) and (b) and adding Subsections
5 (b-1) and (d) to read as follows:

6 (a) A declarant or another person may revoke an
7 out-of-hospital DNR order at any time without regard to the
8 declarant's mental state or competency. A patient or another person
9 may revoke an in-hospital DNR order at any time without regard to
10 the patient's mental state or competency. An order may be revoked
11 by:

12 (1) the declarant or patient or someone in the
13 declarant's or patient's presence and at the declarant's or
14 patient's direction destroying the order form and removing the DNR
15 identification device, if any;

16 (2) a person who identifies himself or herself as the
17 legal guardian, as a qualified relative, or as the agent of the
18 declarant or patient having a medical power of attorney [~~who~~
19 ~~executed the out-of-hospital DNR order~~] or another person in the
20 person's presence and at the person's direction destroying the
21 order form and removing the DNR identification device, if any;

22 (3) the declarant or patient communicating, orally or
23 in another manner, the declarant's or patient's intent to revoke the
24 order; or

25 (4) a person who identifies himself or herself as the
26 legal guardian, a qualified relative, or the agent of the declarant
27 or patient having a medical power of attorney [~~who executed the~~

~~out-of-hospital DNR order]~~ orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) of an out-of-hospital DNR order takes effect only when the declarant or patient or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant or patient having a medical power of attorney ~~[who executed the out-of-hospital DNR order]~~ communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record and enter and note the revocation in all relevant electronic medical records of the patient.

(b-1) An oral revocation under Subsection (a)(3) or (a)(4) of an in-hospital DNR order takes effect only when the patient or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the patient having a medical power of attorney communicates the intent to revoke the order to a health care professional at the hospital. The health care

1 professional shall record the time and date of the revocation. The
2 attending physician or the physician's designee shall record in the
3 person's medical record the time and date of the revocation and, if
4 different, the time, date, and place that the physician received
5 notice of the revocation. The attending physician or the
6 physician's designee shall also remove the order from the person's
7 physical and electronic medical record.

8 (d) If a health care professional fails to comply with a
9 revocation under Subsection (a), the declarant or patient, the
10 legal guardian, a qualified relative, or an agent of the declarant
11 or patient having medical power of attorney may obtain an
12 injunction to enforce the revocation.

13 SECTION 7. The heading to Section 166.096, Health and
14 Safety Code, is amended to read as follows:

15 Sec. 166.096. HONORING OUT-OF-HOSPITAL OR IN-HOSPITAL DNR
16 ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE.

17 SECTION 8. Section 166.097, Health and Safety Code, is
18 amended by adding Subsection (c) to read as follows:

19 (c) A person other than the declarant or patient commits an
20 offense if the person knowingly executes an out-of-hospital or
21 in-hospital DNR order that is not in compliance with the provisions
22 of this subchapter. An offense under this subsection is a Class A
23 misdemeanor.

24 SECTION 9. Section 166.101(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) The board shall, on the recommendation of the
27 department, adopt all reasonable and necessary rules to carry out

the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings that addresses each of the methods for executing the order described in Section 166.082, subject to Sections 166.084 and 166.085;

(2) designating life-sustaining treatment that may be included in an out-of-hospital or in-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v) or Sections 166.081(5-a)(A)(i) through (v), as applicable; ~~and~~

(3) governing recordkeeping in circumstances in which:

(A) an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals; or

(B) an in-hospital DNR order is encountered by health care professionals in a hospital setting; and

(4) explicitly specifying that:

(A) an out-of-hospital DNR order may be issued by a physician only in compliance with the methods for executing the order described in Section 166.082, subject to Sections 166.084 and 166.085; and

(B) an in-hospital DNR order may be issued only in compliance with Section 166.0855.

SECTION 10. Not later than December 1, 2013, the executive

1 commissioner of the Health and Human Services Commission shall
2 adopt the rules required by Section 166.101(a), Health and Safety
3 Code, as amended by this Act.

4 SECTION 11. (a) Except as otherwise provided by Subsection
5 (b) of this section, the changes in law made by this Act apply to an
6 in-hospital order withholding life-sustaining treatment in a
7 patient's medical file on or after the effective date of this Act,
8 regardless of whether the order was issued before, on, or after the
9 effective date of this Act.

10 (b) Sections 166.0855 and 166.0856, Health and Safety Code,
11 as added by this Act, apply only to an in-hospital DNR order that is
12 issued on or after the effective date of this Act.

13 SECTION 12. This Act takes effect September 1, 2013.