

By: Klick

H.B. No. 2949

A BILL TO BE ENTITLED

AN ACT

relating to advance directives, including do-not-resuscitate orders; creating a criminal offense.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivision (12-a) to read as follows:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) a ~~[an out-of-hospital]~~ DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(12-a) "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. Section 166.033, Health and Safety Code, is amended to read as follows:

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

1 This is an important legal document known as an Advance
2 Directive. It is designed to help you communicate your wishes about
3 medical treatment at some time in the future when you are unable to
4 make your wishes known because of illness or injury. These wishes
5 are usually based on personal values. In particular, you may want
6 to consider what burdens or hardships of treatment you would be
7 willing to accept for a particular amount of benefit obtained if you
8 were seriously ill.

9 You are encouraged to discuss your values and wishes with
10 your family or chosen spokesperson, as well as your physician. Your
11 physician, other health care provider, or medical institution may
12 provide you with various resources to assist you in completing your
13 advance directive. Brief definitions are listed below and may aid
14 you in your discussions and advance planning. Initial the
15 treatment choices that best reflect your personal preferences.
16 Provide a copy of your directive to your physician, usual hospital,
17 and family or spokesperson. Consider a periodic review of this
18 document. By periodic review, you can best assure that the
19 directive reflects your preferences.

20 In addition to this advance directive, Texas law provides for
21 two other types of directives that can be important during a serious
22 illness. These are the Medical Power of Attorney and the
23 ~~[Out-of-Hospital]~~ Do-Not-Resuscitate Order. A Do-Not-Resuscitate
24 Order requires the consent of the patient and the signature of a
25 physician. You may wish to discuss these with your physician,
26 family, hospital representative, or other advisers. You may also
27 wish to complete a directive related to the donation of organs and

1 tissues.

2 DIRECTIVE

3 I, _____, recognize that the best health care is based
4 upon a partnership of trust and communication with my physician. My
5 physician and I will make health care decisions together as long as
6 I am of sound mind and able to make my wishes known. If there comes
7 a time that I am unable to make medical decisions about myself
8 because of illness or injury, I direct that the following treatment
9 preferences be honored:

10 If, in the judgment of my physician, I am suffering with a
11 terminal condition from which I am expected to die within six
12 months, even with available life-sustaining treatment provided in
13 accordance with prevailing standards of medical care:

14 _____ I request that all treatments other than those needed
15 to keep me comfortable be discontinued or withheld and
16 my physician allow me to die as gently as possible; OR

17 _____ I request that I be kept alive in this terminal
18 condition using available life-sustaining treatment.

19 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

20 If, in the judgment of my physician, I am suffering with an
21 irreversible condition so that I cannot care for myself or make
22 decisions for myself and am expected to die without life-sustaining
23 treatment provided in accordance with prevailing standards of care:

24 _____ I request that all treatments other than those needed
25 to keep me comfortable be discontinued or withheld and
26 my physician allow me to die as gently as possible; OR

1 _____ I request that I be kept alive in this irreversible
2 condition using available life-sustaining treatment.

3 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

4 Additional requests: (After discussion with your physician,
5 you may wish to consider listing particular treatments in this
6 space that you do or do not want in specific circumstances, such as
7 artificial nutrition and fluids, intravenous antibiotics, etc. Be
8 sure to state whether you do or do not want the particular
9 treatment.)

10 _____
11 _____
12 _____

13 After signing this directive, if my representative or I elect
14 hospice care, I understand and agree that only those treatments
15 needed to keep me comfortable would be provided and I would not be
16 given available life-sustaining treatments.

17 If I do not have a Medical Power of Attorney, and I am unable
18 to make my wishes known, I designate the following person(s) to make
19 treatment decisions with my physician compatible with my personal
20 values:

21 1. _____

22 2. _____

23 (If a Medical Power of Attorney has been executed, then an
24 agent already has been named and you should not list additional
25 names in this document.)

26 If the above persons are not available, or if I have not
27 designated a spokesperson, I understand that a spokesperson will be

1 chosen for me following standards specified in the laws of Texas.
2 If, in the judgment of my physician, my death is imminent within
3 minutes to hours, even with the use of all available medical
4 treatment provided within the prevailing standard of care, I
5 acknowledge that all treatments may be withheld or removed except
6 those needed to maintain my comfort. I understand that under Texas
7 law this directive has no effect if I have been diagnosed as
8 pregnant. This directive will remain in effect until I revoke it.
9 No other person may do so.

10 Signed_____ Date_____ City, County, State of
11 Residence _____

12 Two competent adult witnesses must sign below, acknowledging
13 the signature of the declarant. The witness designated as Witness 1
14 may not be a person designated to make a treatment decision for the
15 patient and may not be related to the patient by blood or marriage.
16 This witness may not be entitled to any part of the estate and may
17 not have a claim against the estate of the patient. This witness
18 may not be the attending physician or an employee of the attending
19 physician. If this witness is an employee of a health care facility
20 in which the patient is being cared for, this witness may not be
21 involved in providing direct patient care to the patient. This
22 witness may not be an officer, director, partner, or business
23 office employee of a health care facility in which the patient is
24 being cared for or of any parent organization of the health care
25 facility.

26 Witness 1 _____ Witness 2 _____

27 Definitions:

1 "Artificial nutrition and hydration" means the provision of
2 nutrients or fluids by a tube inserted in a vein, under the skin in
3 the subcutaneous tissues, or in the stomach (gastrointestinal
4 tract).

5 "Irreversible condition" means a condition, injury, or
6 illness:

7 (1) that may be treated, but is never cured or
8 eliminated;

9 (2) that leaves a person unable to care for or make
10 decisions for the person's own self; and

11 (3) that, without life-sustaining treatment provided
12 in accordance with the prevailing standard of medical care, is
13 fatal.

14 Explanation: Many serious illnesses such as cancer, failure
15 of major organs (kidney, heart, liver, or lung), and serious brain
16 disease such as Alzheimer's dementia may be considered irreversible
17 early on. There is no cure, but the patient may be kept alive for
18 prolonged periods of time if the patient receives life-sustaining
19 treatments. Late in the course of the same illness, the disease may
20 be considered terminal when, even with treatment, the patient is
21 expected to die. You may wish to consider which burdens of
22 treatment you would be willing to accept in an effort to achieve a
23 particular outcome. This is a very personal decision that you may
24 wish to discuss with your physician, family, or other important
25 persons in your life.

26 "Life-sustaining treatment" means treatment that, based on
27 reasonable medical judgment, sustains the life of a patient and

1 without which the patient will die. The term includes both
2 life-sustaining medications and artificial life support such as
3 mechanical breathing machines, kidney dialysis treatment, and
4 artificial hydration and nutrition. The term does not include the
5 administration of pain management medication, the performance of a
6 medical procedure necessary to provide comfort care, or any other
7 medical care provided to alleviate a patient's pain.

8 "Terminal condition" means an incurable condition caused by
9 injury, disease, or illness that according to reasonable medical
10 judgment will produce death within six months, even with available
11 life-sustaining treatment provided in accordance with the
12 prevailing standard of medical care.

13 Explanation: Many serious illnesses may be considered
14 irreversible early in the course of the illness, but they may not be
15 considered terminal until the disease is fairly advanced. In
16 thinking about terminal illness and its treatment, you again may
17 wish to consider the relative benefits and burdens of treatment and
18 discuss your wishes with your physician, family, or other important
19 persons in your life.

20 SECTION 3. Section 166.039, Health and Safety Code, is
21 amended by amending Subsections (b), (e), and (g) and adding
22 Subsections (e-1), (e-2), and (e-3) to read as follows:

23 (b) If the patient does not have a legal guardian, ~~[or]~~ an
24 agent under a medical power of attorney, or an advance directive,
25 the attending physician and one person~~[, if available,]~~ from one of
26 the following categories, in the following priority, may make a
27 treatment decision that may include a decision to withhold or

1 withdraw life-sustaining treatment:

- 2 (1) the patient's spouse;
- 3 (2) the patient's reasonably available adult children;
- 4 (3) the patient's parents; or
- 5 (4) the patient's nearest living relative.

6 (e) If the patient does not have a legal guardian and a
7 person listed in Subsection (b) is not available, in order for a
8 treatment decision under Subsection (b) to be made, the health care
9 facility must file an application for temporary guardianship under
10 Chapter 1251, Estates Code, for the appointment of a person who is
11 not involved in the treatment of the patient or associated with or
12 employed by the health care facility to serve as a temporary
13 guardian for the patient for the limited purpose of making a
14 treatment decision [made] under Subsection (b) [must be concurred
15 in by another physician who is not involved in the treatment of the
16 patient or who is a representative of an ethics or medical committee
17 of the health care facility in which the person is a patient].

18 (e-1) The term of a temporary guardian appointed under a
19 temporary guardianship created pursuant to Subsection (e) expires
20 on the date a court enters an order finding that the patient's legal
21 guardian or a person listed in Subsection (b) is available to make a
22 treatment decision under this section. When the patient's legal
23 guardian or a person listed in Subsection (b) becomes available,
24 that person may make a treatment decision according to Subsection
25 (b).

26 (e-2) If a person listed in Subsection (b) is not
27 immediately available to make a treatment decision under this

1 section, the attending physician or the attending physician's
2 designee shall notify each person listed in Subsection (b) of the
3 need for a qualified person to make a treatment decision under this
4 section by:

5 (1) personally delivering notice to the person; or
6 (2) providing written notice sent by certified mail,
7 restricted delivery, return receipt requested, to the last known
8 address of the person.

9 (e-3) A person is considered not available for the purposes
10 of Subsection (e) if 48 hours have elapsed since personal notice was
11 provided under Subsection (e-2)(1), or 72 hours have elapsed since
12 the return receipt for the written notice was received under
13 Subsection (e-2)(2), and the person who was notified remains
14 unavailable to make a treatment decision under this section.

15 (g) A person listed in Subsection (b) who wishes to
16 challenge a treatment decision made under this section may ~~must~~
17 apply for temporary guardianship under Chapter 1251, Estates
18 ~~[Section 875, Texas Probate]~~ Code. The court may waive applicable
19 fees in that proceeding.

20 SECTION 4. Subchapter B, Chapter 166, Health and Safety
21 Code, is amended by adding Section 166.054 to read as follows:

22 Sec. 166.054. APPLICABILITY OF SUBCHAPTER. This subchapter
23 applies to facilities licensed under Chapter 142.

24 SECTION 5. The heading to Subchapter C, Chapter 166, Health
25 and Safety Code, is amended to read as follows:

26 SUBCHAPTER C. ~~[OUT-OF-HOSPITAL]~~ DO-NOT-RESUSCITATE ORDERS

27 SECTION 6. Sections [166.081](#)(2), (6), (9), and (10), Health

and Safety Code, are amended to read as follows:

(2) "DNR identification device" means an identification device specified by department rule ~~[the board]~~ under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued a ~~[an out-of-hospital]~~ DNR order or on whose behalf a ~~[an out-of-hospital]~~ DNR order has been executed or issued under this subchapter.

(6) "[~~Out-of-hospital~~] DNR order":

(A) means a legally binding ~~[out-of-hospital]~~ do-not-resuscitate order, in the form specified by department rule ~~[the board]~~ under Section 166.083, prepared and signed in accordance with Section 166.082, 166.084, 166.085, or 166.0855 ~~[by the attending physician of a person]~~, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals to withhold or withdraw one or more of ~~[acting in an out-of-hospital setting not to initiate or continue]~~ the following treatments ~~[life-sustaining treatment]~~:

- (i) cardiopulmonary resuscitation;
- (ii) ~~[advanced airway management,~~
- ~~[(iii)] artificial ventilation,~~
- ~~[(iv)] defibrillation; and~~
- (iii) ~~[(v)]~~ transcutaneous cardiac pacing~~[, and~~
- ~~[(vi)] other life-sustaining treatment specified by the board under Section 166.101(a)]~~; and

(B) does not include authorization to withhold or

1 withdraw:

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

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

8 (9) "Qualified relatives" means those persons
9 authorized to execute or issue a ~~[an out-of-hospital]~~ DNR order on
10 behalf of a person who is incompetent or otherwise mentally or
11 physically incapable of communication under Section 166.088.

12 (10) "Statewide ~~[out-of-hospital]~~ DNR protocol" means
13 a set of statewide standardized procedures adopted by the executive
14 commissioner ~~[board]~~ under Section 166.101(a) for withholding or
15 withdrawing cardiopulmonary resuscitation and certain other
16 treatments listed in Subdivision (6) [life-sustaining treatment]
17 by health care professionals [acting in out-of-hospital settings].

18 SECTION 7. Sections 166.082, 166.083, 166.084, and 166.085,
19 Health and Safety Code, are amended to read as follows:

20 Sec. 166.082. ~~[OUT-OF-HOSPITAL]~~ DNR ORDER; DIRECTIVE TO
21 PHYSICIANS. (a) A competent person may at any time execute a
22 written ~~[out-of-hospital]~~ DNR order directing health care
23 professionals ~~[acting in an out-of-hospital setting]~~ to withhold
24 cardiopulmonary resuscitation and certain other treatments listed
25 in Section 166.081(6) [life-sustaining treatment designated by the
26 board].

27 (b) Except as provided by this subsection, the declarant

1 must sign the ~~[out-of-hospital]~~ DNR order in the presence of two
2 witnesses who qualify under Section 166.003, at least one of whom
3 must be a witness who qualifies under Section 166.003(2). The
4 witnesses must sign the order. The attending physician of the
5 declarant must sign the order and shall make the fact of the
6 existence of the order and the reasons for execution of the order a
7 part of the declarant's medical record. The declarant, in lieu of
8 signing in the presence of witnesses, may sign the
9 ~~[out-of-hospital]~~ DNR order and have the signature acknowledged
10 before a notary public.

11 (c) If the person is incompetent but previously executed or
12 issued a directive to physicians in accordance with Subchapter B,
13 the physician may rely on the directive as the person's
14 instructions to issue a ~~[an out-of-hospital]~~ DNR order and shall
15 place a copy of the directive in the person's medical record. The
16 physician shall sign the order in lieu of the person signing under
17 Subsection (b) and may use a digital or electronic signature
18 authorized under Section 166.011.

19 (d) If the person is incompetent but previously executed or
20 issued a directive to physicians in accordance with Subchapter B
21 designating a proxy, the proxy may make any decisions required of
22 the designating person as to a ~~[an out-of-hospital]~~ DNR order and
23 shall sign the order in lieu of the person signing under Subsection
24 (b).

25 (e) If the person is now incompetent but previously executed
26 or issued a medical power of attorney designating an agent, the
27 agent may make any decisions required of the designating person as

1 to a ~~[an out-of-hospital]~~ DNR order and shall sign the order in lieu
2 of the person signing under Subsection (b).

3 (f) The executive commissioner ~~[board]~~, on the
4 recommendation of the department, shall by rule adopt procedures
5 for the disposition and maintenance of records of an original
6 ~~[out-of-hospital]~~ DNR order and any copies of the order.

7 (g) A ~~[An out-of-hospital]~~ DNR order is effective on its
8 execution.

9 Sec. 166.083. FORM OF ~~[OUT-OF-HOSPITAL]~~ DNR ORDER. (a) A
10 written ~~[out-of-hospital]~~ DNR order shall be in the standard form
11 that complies with this subchapter specified by department ~~[board]~~
12 rule as recommended by the department.

13 (b) The standard form of a ~~[an out-of-hospital]~~ DNR order
14 specified by department rule ~~[the board]~~ must, at a minimum,
15 contain the following:

16 (1) a distinctive single-page format that readily
17 identifies the document as a ~~[an out-of-hospital]~~ DNR order;

18 (2) a title that readily identifies the document as a
19 ~~[an out-of-hospital]~~ DNR order;

20 (3) the printed or typed name of the person;

21 (4) a statement that the physician signing the
22 document is the attending physician of the person and that the
23 physician is directing health care professionals to withhold or
24 withdraw ~~[acting in out-of-hospital settings, including a hospital~~
25 ~~emergency department, not to initiate or continue]~~ certain
26 treatments listed in Section 166.081(6) ~~[life-sustaining~~
27 ~~treatment]~~ on behalf of the person, and a listing of those

1 procedures the patient has decided should be withheld or withdrawn
2 ~~[not to be initiated or continued]~~;

3 (5) a statement that the person understands that the
4 person may revoke the ~~[out-of-hospital]~~ DNR order at any time by
5 destroying the order and removing the DNR identification device, if
6 any, or by communicating to health care professionals ~~[at the~~
7 ~~scene]~~ the person's desire to revoke the ~~[out-of-hospital]~~ DNR
8 order;

9 (6) places for the printed names and signatures of the
10 witnesses or the notary public's acknowledgment and for the printed
11 name and signature of the attending physician of the person and the
12 medical license number of the attending physician;

13 (7) a separate section for execution of the document
14 by the legal guardian of the person, the person's proxy, an agent of
15 the person having a medical power of attorney, or the attending
16 physician attesting to the issuance of a ~~[an out-of-hospital]~~ DNR
17 order by nonwritten means of communication or acting in accordance
18 with a previously executed or previously issued directive to
19 physicians under Section 166.082(c) that includes the following:

20 (A) a statement that the legal guardian, the
21 proxy, the agent, or the person by nonwritten means of
22 communication~~[, or the physician]~~ directs that one or more of the
23 treatments listed in Section 166.081(6) ~~[each listed~~
24 ~~life-sustaining treatment]~~ should ~~[not]~~ be withheld or withdrawn on
25 ~~[initiated or continued in]~~ behalf of the person; and

26 (B) places for the printed names and signatures
27 of the witnesses and, as applicable, the legal guardian, proxy, or

1 agent[, ~~or physician~~];

2 (8) a separate section for execution of the document
3 by at least one qualified relative of the person when the person
4 does not have a legal guardian, proxy, or agent having a medical
5 power of attorney and is incompetent or otherwise mentally or
6 physically incapable of communication, including:

7 (A) a statement that the relative of the person
8 is qualified to make a treatment decision under Section 166.088 to
9 withhold or withdraw cardiopulmonary resuscitation and certain
10 other designated treatments listed in Section 166.081(6)
11 [~~life-sustaining treatment under Section 166.088~~] and, based on the
12 known desires of the person or a determination of the best interest
13 of the person, directs that one or more of the treatments listed in
14 Section 166.081(6) [~~each listed life-sustaining treatment~~] should
15 [~~not~~] be withheld or withdrawn on [~~initiated or continued in~~]
16 behalf of the person; and

17 (B) places for the printed names and signatures
18 of the witnesses and qualified relative of the person;

19 (9) a place for entry of the date of execution of the
20 document;

21 (10) a statement that the document is in effect on the
22 date of its execution and remains in effect until the death of the
23 person or until the document is revoked;

24 (11) a statement that the document must accompany the
25 person during transport;

26 (12) a statement regarding the proper disposition of
27 the document or copies of the document, as the executive

1 commissioner [~~board~~] determines appropriate; and

2 (13) a statement at the bottom of the document, with
3 places for the signature of each person executing the document,
4 that the document has been properly completed.

5 (b-1) Except as provided by Subsection (b-2), a written DNR
6 order may be executed based on the oral instructions of a person,
7 provided the order complies with Section 166.0855.

8 (b-2) A DNR order by a physician must be in writing and
9 comply with the requirements of Section 166.0855.

10 (c) The executive commissioner [~~board~~] may, by rule and as
11 recommended by the department, modify the standard form of the
12 [~~out-of-hospital~~] DNR order described by Subsection (b) in order to
13 accomplish the provisions and purposes of this subchapter.

14 (d) A photocopy or other complete facsimile of the original
15 written [~~out-of-hospital~~] DNR order executed under this subchapter
16 may be used for any purpose for which the original written order may
17 be used under this subchapter.

18 Sec. 166.084. ISSUANCE OF [~~OUT-OF-HOSPITAL~~] DNR ORDER BY
19 NONWRITTEN COMMUNICATION. (a) A competent person who is an adult
20 may issue a [~~an out-of-hospital~~] DNR order by nonwritten
21 communication.

22 (b) A declarant must issue the nonwritten [~~out-of-hospital~~]
23 DNR order in the presence of the attending physician and two
24 witnesses who qualify under Section 166.003, at least one of whom
25 must be a witness who qualifies under Section 166.003(2).

26 (c) The attending physician and witnesses shall sign the
27 [~~out-of-hospital~~] DNR order in the place of the document provided

1 by Section 166.083(b)(7) and the attending physician shall sign the
2 document in the place required by Section 166.083(b)(13). The
3 physician shall make the fact of the existence of the
4 ~~[out-of-hospital]~~ DNR order a part of the patient's ~~[declarant's]~~
5 medical record and the names of the witnesses shall be entered in
6 the medical record.

7 (d) A ~~[An out-of-hospital]~~ DNR order issued in the manner
8 provided by this section is valid and shall be honored by responding
9 health care professionals as if executed in the manner provided by
10 Section 166.082.

11 Sec. 166.085. EXECUTION OF ~~[OUT-OF-HOSPITAL]~~ DNR ORDER ON
12 BEHALF OF OR A MINOR. (a) The following persons may execute a ~~[an~~
13 ~~out-of-hospital]~~ DNR order on behalf of a minor:

- 14 (1) the minor's parents;
15 (2) the minor's legal guardian; or
16 (3) the minor's managing conservator.

17 (b) A person listed under Subsection (a) may not execute a
18 ~~[an out-of-hospital]~~ DNR order unless the minor has been diagnosed
19 by a physician as suffering from a terminal or irreversible
20 condition.

21 SECTION 8. Subchapter C, Chapter 166, Health and Safety
22 Code, is amended by adding Section 166.0855 to read as follows:

23 Sec. 166.0855. DNR ORDERS APPLICABLE. A DNR order is valid
24 only if it is issued in compliance with:

- 25 (1) the directions of the patient, if competent, given
26 orally or otherwise in the presence of a person authorized to make a
27 treatment decision under Section 166.039;

1 (2) the directions in an advance directive enforceable
2 in accordance with Section 166.005 or executed in accordance with
3 Section 166.032, 166.034, or 166.035;

4 (3) the directions of the patient's legal guardian or
5 agent under a medical power of attorney acting in compliance with
6 Subchapter D;

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

9 (5) the reasonable medical judgment of the patient's
10 attending physician that the patient's death is imminent within 24
11 hours even if cardiopulmonary resuscitation is provided.

12 SECTION 9. Sections 166.086, 166.087, 166.088, 166.089,
13 166.090, 166.091, 166.092, 166.093, 166.094, 166.095, 166.096, and
14 166.097, Health and Safety Code, are amended to read as follows:

15 Sec. 166.086. DESIRE OF PERSON SUPERSEDES
16 ~~[OUT-OF-HOSPITAL]~~ DNR ORDER. The desire of a competent person,
17 including a competent minor, supersedes the effect of a ~~[an~~
18 ~~out-of-hospital]~~ DNR order executed or issued by or on behalf of the
19 person when the desire is communicated to responding health care
20 professionals as provided by this subchapter.

21 Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR
22 INCAPABLE OF COMMUNICATION. (a) This section applies when a person
23 18 years of age or older has executed or issued a ~~[an~~
24 ~~out-of-hospital]~~ DNR order and subsequently becomes incompetent or
25 otherwise mentally or physically incapable of communication.

26 (b) If the adult person has designated a person to make a
27 treatment decision as authorized by Section 166.032(c), the

1 attending physician and the designated person shall comply with the
2 ~~[out-of-hospital]~~ DNR order.

3 (c) If the adult person has not designated a person to make a
4 treatment decision as authorized by Section 166.032(c), the
5 attending physician shall comply with the ~~[out-of-hospital]~~ DNR
6 order unless the physician believes that the order does not reflect
7 the person's present desire.

8 Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR
9 ISSUED ~~[OUT-OF-HOSPITAL]~~ DNR ORDER AND IS INCOMPETENT OR INCAPABLE
10 OF COMMUNICATION. (a) If an adult person has not executed or
11 issued a ~~[an-out-of-hospital]~~ DNR order and is incompetent or
12 otherwise mentally or physically incapable of communication, the
13 attending physician and the person's legal guardian, proxy, or
14 agent having a medical power of attorney may execute a ~~[an~~
15 ~~out-of-hospital]~~ DNR order on behalf of the person.

16 (b) If the person does not have a legal guardian, proxy, or
17 agent under a medical power of attorney, the attending physician
18 and at least one qualified relative from a category listed by
19 Section 166.039(b), subject to the priority established under that
20 subsection, may execute a ~~[an-out-of-hospital]~~ DNR order in the
21 same manner as a treatment decision made under Section 166.039(b).

22 (c) A decision to execute a ~~[an-out-of-hospital]~~ DNR order
23 made under Subsection (a) or (b) must be based on knowledge of what
24 the person would desire, if known.

25 (d) A ~~[An-out-of-hospital]~~ DNR order executed under
26 Subsection (b) must be made in the presence of at least two
27 witnesses who qualify under Section 166.003, at least one of whom

1 must be a witness who qualifies under Section [166.003](#)(2).

2 (e) The fact that an adult person has not executed or issued
3 ~~a [an out-of-hospital]~~ DNR order does not create a presumption that
4 the person does not want a treatment decision made to withhold or
5 withdraw cardiopulmonary resuscitation and certain other
6 designated treatments listed in Section [166.081](#)(6)
7 ~~[life-sustaining treatment designated by the board]~~.

8 (f) If there is not a qualified relative available to act
9 for the person under Subsection (b), in order for a decision to be
10 made to execute a DNR order under Subsection (a) or (b), the health
11 care facility must file an application for temporary guardianship
12 under Chapter 1251, Estates Code, for the appointment of a person
13 who is not involved in the treatment of the patient or associated
14 with or employed by the health care facility to serve as a temporary
15 guardian for the patient for the limited purpose of making a
16 decision about a [an out-of-hospital] DNR order [must be concurred
17 ~~in by another physician who is not involved in the treatment of the~~
18 ~~patient or who is a representative of the ethics or medical~~
19 ~~committee of the health care facility in which the person is a~~
20 ~~patient]~~.

21 (f-1) The term of a temporary guardian appointed under a
22 temporary guardianship created pursuant to Subsection (f) expires
23 on the date a court enters an order finding that a qualified
24 relative is available to make a decision about a DNR order. When the
25 patient's legal guardian or a person listed in Subsection (b)
26 becomes available, that person may make a treatment decision
27 according to Subsection (a) or (b).

1 (f-2) If a qualified relative is not immediately available
2 to make a treatment decision under Subsection (b), the attending
3 physician or the attending physician's designee shall notify each
4 qualified relative of the need for a qualified relative to make a
5 treatment decision under this section by:

6 (1) personally delivering notice to the person; or
7 (2) providing written notice sent by certified mail,
8 restricted delivery, return receipt requested, to the last known
9 address of the person.

10 (f-3) A qualified relative is considered not available for
11 the purposes of Subsection (f) only if 48 hours have elapsed since
12 personal notice was provided under Subsection (f-2)(1), or 72 hours
13 have elapsed since the return receipt for the written notice was
14 received under Subsection (f-2)(2), and the qualified relative who
15 was notified remains unavailable to make a treatment decision under
16 this section.

17 (g) A person listed in Section 166.039(b) who wishes to
18 challenge a decision made under this section must apply for
19 temporary guardianship under Chapter 1251, Estates [~~Section 875,~~
20 ~~Texas Probate~~] Code. The court may waive applicable fees in that
21 proceeding.

22 Sec. 166.089. COMPLIANCE WITH [~~OUT-OF-HOSPITAL~~] DNR ORDER.

23 (a) When responding to a call for assistance in an out-of-hospital
24 setting, health care professionals shall honor a [~~an~~
25 ~~out-of-hospital~~] DNR order in accordance with the statewide
26 [~~out-of-hospital~~] DNR protocol and, where applicable, locally
27 adopted [~~out-of-hospital~~] DNR protocols not in conflict with the

1 statewide protocol if:

2 (1) the responding health care professionals discover
3 an executed or issued [~~out-of-hospital~~] DNR order form on their
4 arrival at the scene; and

5 (2) the responding health care professionals comply
6 with this section.

7 (b) If the person is wearing a DNR identification device,
8 the responding health care professionals must comply with Section
9 166.090.

10 (c) The responding health care professionals must establish
11 the identity of the person as the person who executed or issued the
12 [~~out-of-hospital~~] DNR order or for whom the [~~out-of-hospital~~] DNR
13 order was executed or issued.

14 (d) The responding health care professionals must determine
15 that the [~~out-of-hospital~~] DNR order form appears to be valid in
16 that it includes:

17 (1) written responses in the places designated on the
18 form for the names, signatures, and other information required of
19 persons executing or issuing, or witnessing or acknowledging as
20 applicable, the execution or issuance of, the order;

21 (2) a date in the place designated on the form for the
22 date the order was executed or issued; and

23 (3) the signature or digital or electronic signature
24 of the declarant or persons executing or issuing the order and the
25 attending physician in the appropriate places designated on the
26 form for indicating that the order form has been properly
27 completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the ~~[out-of-hospital]~~ DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret a ~~[an out-of-hospital]~~ DNR order that does not meet the requirements of this subchapter.

(f) The ~~[out-of-hospital]~~ DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which a ~~[an out-of-hospital]~~ DNR order or DNR identification device is encountered, in accordance with the statewide ~~[out-of-hospital]~~ DNR protocol and any applicable local ~~[out-of-hospital]~~ DNR protocol not in conflict with the statewide protocol.

(h) A ~~[An out-of-hospital]~~ DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals in an out-of-hospital setting unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the ~~[out-of-hospital]~~ DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or

certain other treatments listed in Section 166.081(6)
~~[life-sustaining treatment designated by the board]~~ be initiated or
continued.

(i) If the policies of a health care facility preclude
compliance with the ~~[out-of-hospital]~~ DNR order of a person or a ~~[an~~
~~out-of-hospital]~~ DNR order issued by an attending physician on
behalf of a person who is admitted to or a resident of the facility,
or if the facility is unwilling to accept DNR identification
devices as evidence of the existence of a ~~[an out-of-hospital]~~ DNR
order, that facility shall take all reasonable steps to notify the
person or, if the person is incompetent, the person's guardian or
the person or persons having authority to make health care
treatment decisions on behalf of the person, of the facility's
policy and shall take all reasonable steps to effect the transfer of
the person to the person's home or to a facility where the
provisions of this subchapter can be carried out.

Sec. 166.090. DNR IDENTIFICATION DEVICE. (a) A person who
has a valid ~~[out-of-hospital]~~ DNR order under this subchapter and
has chosen to have all treatments listed in Section 166.081(6)
withheld or withdrawn may wear a DNR identification device around
the neck or on the wrist as prescribed by department ~~[board]~~ rule
adopted under Section 166.101.

(b) The presence of a DNR identification device on the body
of a person is conclusive evidence that the person has executed or
issued a valid ~~[out-of-hospital]~~ DNR order or has a valid
~~[out-of-hospital]~~ DNR order executed or issued on the person's
behalf. Responding health care professionals shall honor the DNR

1 identification device as if a valid ~~[out-of-hospital]~~ DNR order
2 form executed or issued by the person, which indicated the choice
3 for all treatments listed in Section 166.081(6) to be withheld or
4 withdrawn, were found in the possession of the person.

5 Sec. 166.091. DURATION OF ~~[OUT-OF-HOSPITAL]~~ DNR ORDER. A
6 ~~[An out-of-hospital]~~ DNR order is effective until it is revoked as
7 prescribed by Section 166.092.

8 Sec. 166.092. REVOCATION OF ~~[OUT-OF-HOSPITAL]~~ DNR ORDER.

9 (a) A patient or other declarant, without regard to the patient's
10 or other declarant's mental state or competency, or another person
11 authorized to make a treatment decision in Section 166.039 may
12 revoke a ~~[an out-of-hospital]~~ DNR order at any time ~~[without regard~~
13 ~~to the declarant's mental state or competency]~~. An order may be
14 revoked by ~~[+~~

15 ~~[(1) the declarant or someone in the declarant's~~
16 ~~presence and at the declarant's direction destroying the order form~~
17 ~~and removing the DNR identification device, if any,~~

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

24 ~~[(3)]~~ the patient or other declarant, or a person who
25 identifies himself or herself as the legal guardian, a qualified
26 relative, or the agent of the patient having a medical power of
27 attorney, communicating orally or in another manner the person's

1 ~~[declarant's]~~ intent to revoke the order ~~[, or~~

2 ~~[(4) a person who identifies himself or herself as the~~
 3 ~~legal guardian, a qualified relative, or the agent of the declarant~~
 4 ~~having a medical power of attorney who executed the out-of-hospital~~
 5 ~~DNR order orally stating the person's intent to revoke the order].~~

6 (b) A ~~[An oral]~~ revocation of a DNR order under Subsection
 7 (a) ~~[(a)(3) or (a)(4)]~~ takes effect only when the patient or other
 8 declarant or a person who identifies himself or herself as the legal
 9 guardian, a qualified relative, or the agent of the patient
 10 ~~[declarant]~~ having a medical power of attorney ~~[who executed the~~
 11 ~~out-of-hospital DNR order]~~ communicates the intent to revoke the
 12 order to the responding health care professionals or the attending
 13 physician ~~[at the scene]~~. The responding health care professionals
 14 shall record the time, date, and place of the revocation in
 15 accordance with the statewide ~~[out-of-hospital]~~ DNR protocol and
 16 rules adopted by the executive commissioner ~~[board]~~ and any
 17 applicable local ~~[out-of-hospital]~~ DNR protocol. The attending
 18 physician or the physician's designee shall record in the person's
 19 medical record the time, date, and place of the revocation and, if
 20 different, the time, date, and place that the physician received
 21 notice of the revocation. The attending physician or the
 22 physician's designee shall also enter the word "VOID" on each page
 23 of the copy of the order in the person's medical record and enter
 24 and note the revocation in all relevant electronic medical records
 25 of the patient.

26 (c) Except as otherwise provided by this subchapter, a
 27 person is not civilly or criminally liable for failure to act on a

1 revocation made under this section unless the person has actual
2 knowledge of the revocation.

3 (d) If a licensed health care professional does not comply
4 with a revocation under Subsection (a), the patient or other
5 declarant, the legal guardian, a qualified relative, or an agent of
6 the patient having medical power of attorney may bring an action to
7 obtain an injunction to enforce the revocation from a court of
8 competent jurisdiction.

9 (e) A person who seeks an injunction under Subsection (d)
10 must:

11 (1) prove that the person is authorized to make a
12 treatment decision on behalf of the patient under Section 166.039;
13 and

14 (2) express a desire to revoke the DNR order.

15 (f) A court considering a request for an injunction under
16 Subsection (d) may not require a person seeking an injunction under
17 Subsection (d) to:

18 (1) pay the attorney's fees of an opposing party;

19 (2) provide expert testimony in support of the
20 injunction; or

21 (3) establish irreparable harm.

22 Sec. 166.093. REEXECUTION OF ~~[OUT-OF-HOSPITAL]~~ DNR ORDER.

23 A declarant may at any time reexecute or reissue a ~~[an~~
24 ~~out-of-hospital]~~ DNR order in accordance with the procedures
25 prescribed by Section 166.082, including reexecution or reissuance
26 after the declarant is diagnosed as having a terminal or
27 irreversible condition.

1 Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING OR
 2 WITHDRAWING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER
 3 ~~[LIFE-SUSTAINING]~~ PROCEDURES. (a) A health care professional or
 4 health care facility or entity that in good faith causes
 5 cardiopulmonary resuscitation or certain other treatments listed
 6 in Section 166.081(6) ~~[life-sustaining treatment designated by the~~
 7 ~~board]~~ to be withheld or withdrawn from a person in accordance with
 8 this subchapter is not civilly liable for that action.

9 (b) A health care professional or health care facility or
 10 entity that in good faith participates in withholding or
 11 withdrawing cardiopulmonary resuscitation or certain other
 12 treatments listed in Section 166.081(6) ~~[life-sustaining treatment~~
 13 ~~designated by the board]~~ from a person in accordance with this
 14 subchapter is not civilly liable for that action.

15 (c) A health care professional or health care facility or
 16 entity that in good faith participates in withholding or
 17 withdrawing cardiopulmonary resuscitation or certain other
 18 treatments listed in Section 166.081(6) ~~[life-sustaining treatment~~
 19 ~~designated by the board]~~ from a person in accordance with this
 20 subchapter is not criminally liable or guilty of unprofessional
 21 conduct as a result of that action.

22 (d) A health care professional or health care facility or
 23 entity that in good faith causes or participates in withholding or
 24 withdrawing cardiopulmonary resuscitation or certain other
 25 treatments listed in Section 166.081(6) ~~[life-sustaining treatment~~
 26 ~~designated by the board]~~ from a person in accordance with this
 27 subchapter and rules adopted under this subchapter is not in

1 violation of any other licensing or regulatory laws or rules of this
2 state and is not subject to any disciplinary action or sanction by
3 any licensing or regulatory agency of this state as a result of that
4 action.

5 Sec. 166.095. LIMITATION ON LIABILITY FOR FAILURE TO
6 EFFECTUATE [~~OUT-OF-HOSPITAL~~] DNR ORDER. (a) A health care
7 professional or health care facility or entity that has no actual
8 knowledge of a [~~an out-of-hospital~~] DNR order is not civilly or
9 criminally liable for failing to act in accordance with the order.

10 (b) A health care professional or health care facility or
11 entity is not subject to review and disciplinary action by the
12 appropriate licensing board for failing to effectuate a [~~an~~
13 ~~out-of-hospital~~] DNR order if the decision was made in good faith.
14 This subsection does not limit remedies available under other laws
15 of this state.

16 (c) If an attending physician refuses to execute or comply
17 with a [~~an out-of-hospital~~] DNR order, the physician shall inform
18 the person, the legal guardian or qualified relatives of the
19 person, or the agent of the person having a medical power of
20 attorney and, if the person or another authorized to act on behalf
21 of the person so directs, shall make a reasonable effort to transfer
22 the person to another physician who is willing to execute or comply
23 with a [~~an out-of-hospital~~] DNR order.

24 Sec. 166.096. HONORING [~~OUT-OF-HOSPITAL~~] DNR ORDER DOES NOT
25 CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an
26 offense under Section 22.08, Penal Code, by withholding
27 cardiopulmonary resuscitation or certain other treatments listed

1 in Section 166.081(6) [~~life-sustaining treatment designated by the~~
2 ~~board]~~ from a person in accordance with this subchapter.

3 Sec. 166.097. CRIMINAL PENALTY; PROSECUTION. (a) A person
4 commits an offense if the person intentionally conceals, cancels,
5 defaces, obliterates, or damages another person's
6 [~~out-of-hospital~~] DNR order or DNR identification device without
7 that person's consent or the consent of the person or persons
8 authorized to execute or issue a [~~an out-of-hospital~~] DNR order on
9 behalf of the person under this subchapter. An offense under this
10 subsection is a Class A misdemeanor.

11 (b) A person is subject to prosecution for criminal homicide
12 under Chapter 19, Penal Code, if the person, with the intent to
13 cause cardiopulmonary resuscitation or certain other treatments
14 listed in Section 166.081(6) [~~life-sustaining treatment designated~~
15 ~~by the board]~~ to be withheld or withdrawn from another person
16 contrary to the other person's desires, falsifies or forges a [~~an~~
17 ~~out-of-hospital~~] DNR order or intentionally conceals or withholds
18 personal knowledge of a revocation and thereby directly causes
19 cardiopulmonary resuscitation and certain other treatments listed
20 in Section 166.081(6) [~~life-sustaining treatment designated by the~~
21 ~~board]~~ to be withheld or withdrawn from the other person with the
22 result that the other person's death is hastened.

23 (c) A health care professional commits an offense if the
24 person knowingly executes a DNR order that is not in compliance with
25 the provisions of this subchapter. An offense under this subsection
26 is a felony of the third degree.

27 SECTION 10. Subchapter C, Chapter 166, Health and Safety

Code, is amended by adding Section 166.0975 to read as follows:

Sec. 166.0975. DISCIPLINARY ACTION. The Texas Medical Board shall take disciplinary action under Chapter 164, Occupations Code, against a person who violates this chapter.

SECTION 11. Sections 166.098, 166.100, 166.101, and 166.102, Health and Safety Code, are amended to read as follows:

Sec. 166.098. PREGNANT PERSONS. A person may not withhold or withdraw cardiopulmonary resuscitation or certain treatments listed in Section 166.081(6) ~~[other life-sustaining treatment designated by the board]~~ under this subchapter from a person known by the responding health care professionals to be pregnant.

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a patient or other person authorized to make a treatment decision under Section 166.039 may have under a constitution, other statute, regulation, or court decision to effect the withholding or withdrawing of cardiopulmonary resuscitation or certain other treatments listed in Section 166.081(6) from himself or herself or the patient for whom the person has been authorized to make a treatment decision under Section 166.039 ~~[life-sustaining treatment designated by the board]~~.

Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER ~~[BOARD]~~. (a) The executive commissioner ~~[board]~~ shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the provisions and purposes of this subchapter, including rules:

(1) adopting a statewide ~~[out-of-hospital]~~ DNR order protocol that sets out standard procedures for the withholding or withdrawing of cardiopulmonary resuscitation and certain other treatments listed in Section 166.081(6) ~~[life-sustaining treatment]~~ by health care professionals that addresses each of the methods for executing the DNR order described in Section 166.082, subject to Sections 166.084, 166.085, and 166.092 ~~[acting in out-of-hospital settings];~~

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

(3) explicitly specifying that a DNR order may be issued by a physician only in compliance with the methods for executing the DNR order described in Section 166.082, subject to Sections 166.084, 166.085, and 166.0855.

(b) The rules adopted ~~[by the board]~~ under Subsection (a) are not effective until approved by the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~.

(c) Local emergency medical services authorities may adopt local ~~[out-of-hospital]~~ DNR order protocols if the local protocols do not conflict with the statewide ~~[out-of-hospital]~~ DNR order protocol adopted by the executive commissioner ~~[board]~~.

(d) The executive commissioner ~~[board]~~ by rule shall specify a distinctive standard design for a necklace and a bracelet

DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid ~~[out-of-hospital]~~ DNR order under this subchapter or is a person for whom a valid ~~[out-of-hospital]~~ DNR order has been executed or issued.

(e) The department shall report to the executive commissioner ~~[board]~~ from time to time regarding issues identified in emergency medical services responses in which a ~~[an out-of-hospital]~~ DNR order or DNR identification device is encountered. The report may contain recommendations to the executive commissioner ~~[board]~~ for necessary modifications to the form of the standard ~~[out-of-hospital]~~ DNR order or the designated ~~[life-sustaining]~~ procedures listed in the standard ~~[out-of-hospital]~~ DNR order, the statewide ~~[out-of-hospital]~~ DNR order protocol, or the DNR identification devices.

Sec. 166.102. DUTY OF ~~[PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN]~~ EMERGENCY MEDICAL SERVICES PERSONNEL RESPONDING TO CALL. ~~[(a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.]~~

~~[(b)]~~ When responding to a call for assistance, emergency medical services personnel:

(1) shall honor only a properly executed or issued ~~[out-of-hospital]~~ DNR order or prescribed DNR identification device in accordance with this subchapter; and

(2) have no duty to review, examine, interpret, or honor a person's other written directive, including a written

1 directive in the form prescribed by Section 166.033.

2 SECTION 12. Subchapter C, Chapter 166, Health and Safety
3 Code, is amended by adding Section 166.103 to read as follows:

4 Sec. 166.103. APPLICABILITY OF SUBCHAPTER. This subchapter
5 applies to facilities licensed under Chapter 142.

6 SECTION 13. Not later than December 1, 2015, the executive
7 commissioner of the Health and Human Services Commission shall
8 adopt the rules required by Section 166.101(a), Health and Safety
9 Code, as amended by this Act.

10 SECTION 14. (a) Except as provided by Subsection (b) of
11 this section, the changes in law made by this Act apply to a
12 do-not-resuscitate order on or after the effective date of this
13 Act, regardless of whether the order was issued before, on, or after
14 the effective date of this Act.

15 (b) Section 166.083, Health and Safety Code, as amended by
16 this Act, and Section 166.0855, Health and Safety Code, as added by
17 this Act, apply only to a do-not-resuscitate order that is issued on
18 or after the effective date of this Act.

19 SECTION 15. This Act takes effect September 1, 2015.