

By: Perry, et al.
(Bonnen of Galveston, Cook, Geren, Oliveira)

S.B. No. 11

Substitute the following for S.B. No. 11:

By: Cook

C.S.S.B. No. 11

A BILL TO BE ENTITLED

AN ACT

relating to general procedures and requirements for certain do-not-resuscitate orders; creating a criminal offense.

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

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

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Sec. 166.202. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) A DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order:

(1) is issued in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient

1 delivered to or observed by two competent adult witnesses, at least
2 one of whom must be a person not listed under Section 166.003(2)(E)
3 or (F);

4 (C) the directions in an advance directive
5 enforceable under Section 166.005 or executed in accordance with
6 Section 166.032, 166.034, or 166.035;

7 (D) the directions of a patient's legal guardian
8 or agent under a medical power of attorney acting in accordance with
9 Subchapter D; or

10 (E) a treatment decision made in accordance with
11 Section 166.039; or

12 (2) is not contrary to the directions of a patient who
13 was competent at the time the patient conveyed the directions and,
14 in the reasonable medical judgment of the patient's attending
15 physician:

16 (A) the patient's death is imminent, regardless
17 of the provision of cardiopulmonary resuscitation; and

18 (B) the DNR order is medically appropriate.

19 (b) The DNR order takes effect at the time the order is
20 issued, provided the order is placed in the patient's medical
21 record as soon as practicable.

22 (c) Before placing in a patient's medical record a DNR order
23 issued under Subsection (a)(2), the physician, physician
24 assistant, nurse, or other person acting on behalf of a health care
25 facility or hospital shall:

26 (1) inform the patient of the order's issuance; or

27 (2) if the patient is incompetent, make a reasonably

1 diligent effort to contact or cause to be contacted and inform of
2 the order's issuance:

3 (A) the patient's known agent under a medical
4 power of attorney or legal guardian; or

5 (B) for a patient who does not have a known agent
6 under a medical power of attorney or legal guardian, a person
7 described by Section 166.039(b)(1), (2), or (3).

8 (d) To the extent a DNR order described by Subsection (a)(1)
9 conflicts with a treatment decision or advance directive validly
10 executed or issued under this chapter, the treatment decision made
11 in compliance with this subchapter, advance directive validly
12 executed or issued as described by this subchapter, or DNR order
13 dated and validly executed or issued in compliance with this
14 subchapter later in time controls.

15 Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE
16 ORDERS. (a) If an individual arrives at a health care facility or
17 hospital that is treating a patient for whom a DNR order is issued
18 under Section 166.203(a)(2) and the individual notifies a
19 physician, physician assistant, or nurse providing direct care to
20 the patient of the individual's arrival, the physician, physician
21 assistant, or nurse who has actual knowledge of the order shall
22 disclose the order to the individual, provided the individual is:

23 (1) the patient's known agent under a medical power of
24 attorney or legal guardian; or

25 (2) for a patient who does not have a known agent under
26 a medical power of attorney or legal guardian, a person described by
27 Section 166.039(b)(1), (2), or (3).

1 (b) Failure to comply with Subsection (a) does not affect
2 the validity of a DNR order issued under this subchapter.

3 (c) Any person, including a health care facility or
4 hospital, who makes a good faith effort to comply with Subsection
5 (a) of this section or Section 166.203(c) and contemporaneously
6 records the person's effort to comply with Subsection (a) of this
7 section or Section 166.203(c) in the patient's medical record is
8 not civilly or criminally liable or subject to disciplinary action
9 from the appropriate licensing authority for any act or omission
10 related to providing notice under Subsection (a) of this section or
11 Section 166.203(c).

12 (d) A physician, physician assistant, or nurse may satisfy
13 the notice requirement under Subsection (a) by notifying the
14 patient's known agent under a medical power of attorney or legal
15 guardian or, for a patient who does not have a known agent or
16 guardian, one person in accordance with the priority established
17 under Section 166.039(b). The physician, physician assistant, or
18 nurse is not required to notify additional persons beyond the first
19 person notified.

20 (e) On admission to a health care facility or hospital, the
21 facility or hospital shall provide to the patient or person
22 authorized to make treatment decisions on behalf of the patient
23 notice of the policies of the facility or hospital regarding the
24 rights of the patient and person authorized to make treatment
25 decisions on behalf of the patient under this subchapter.

26 Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER;
27 LIMITATION OF LIABILITY. (a) A physician providing direct care to

1 a patient for whom a DNR order is issued shall revoke the patient's
2 DNR order if the patient or, as applicable, the patient's agent
3 under a medical power of attorney or the patient's legal guardian if
4 the patient is incompetent:

5 (1) effectively revokes an advance directive, in
6 accordance with Section 166.042, for which a DNR order is issued
7 under Section 166.203(a); or

8 (2) expresses to any person providing direct care to
9 the patient a revocation of consent to or intent to revoke a DNR
10 order issued under Section 166.203(a).

11 (b) A person providing direct care to a patient under the
12 supervision of a physician shall notify the physician of the
13 request to revoke a DNR order under Subsection (a).

14 (c) A patient's attending physician may at any time revoke a
15 DNR order issued under Section 166.203(a)(2).

16 (d) Except as otherwise provided by this subchapter, a
17 person is not civilly or criminally liable for failure to act on a
18 revocation described by or made under this section unless the
19 person has actual knowledge of the revocation.

20 Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE
21 DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) If an
22 attending physician, health care facility, or hospital does not
23 wish to execute or comply with a DNR order or the patient's
24 instructions concerning the provision of cardiopulmonary
25 resuscitation, the physician, facility, or hospital shall inform
26 the patient, the legal guardian or qualified relatives of the
27 patient, or the agent of the patient under a medical power of

1 attorney of the benefits and burdens of cardiopulmonary
2 resuscitation.

3 (b) If, after receiving notice under Subsection (a), the
4 patient or another person authorized to act on behalf of the patient
5 and the attending physician, health care facility, or hospital
6 remain in disagreement, the physician, facility, or hospital shall
7 make a reasonable effort to transfer the patient to another
8 physician, facility, or hospital willing to execute or comply with
9 a DNR order or the patient's instructions concerning the provision
10 of cardiopulmonary resuscitation.

11 (c) The procedures required by this section may not be
12 construed to control or supersede Section 166.203(a).

13 Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER
14 OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. A physician, health
15 care professional, health care facility, hospital, or entity that
16 in good faith issues a DNR order under this subchapter or that, in
17 accordance with this subchapter, causes cardiopulmonary
18 resuscitation to be withheld or withdrawn from a patient in
19 accordance with a DNR order issued under this subchapter is not
20 civilly or criminally liable or subject to review or disciplinary
21 action by the appropriate licensing authority for that action.

22 Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO
23 EFFECTUATE DNR ORDER. A physician, health care professional,
24 health care facility, hospital, or entity that has no actual
25 knowledge of a DNR order is not civilly or criminally liable or
26 subject to review or disciplinary action by the appropriate
27 licensing authority for failing to act in accordance with the

1 order.

2 Sec. 166.209. ENFORCEMENT. (a) A physician, physician
3 assistant, nurse, or other person commits an offense if the person
4 intentionally conceals, cancels, effectuates, or falsifies another
5 person's DNR order or if the person intentionally conceals or
6 withholds personal knowledge of another person's revocation of a
7 DNR order in violation of this subchapter. An offense under this
8 subsection is a Class A misdemeanor. This subsection does not
9 preclude prosecution for any other applicable offense.

10 (b) A physician, health care professional, health care
11 facility, hospital, or entity is subject to review and disciplinary
12 action by the appropriate licensing authority for intentionally:

13 (1) failing to effectuate a DNR order in violation of
14 this subchapter; or

15 (2) issuing a DNR order in violation of this
16 subchapter.

17 SECTION 2. The executive commissioner of the Health and
18 Human Services Commission shall adopt rules necessary to implement
19 Subchapter E, Chapter 166, Health and Safety Code, as added by this
20 Act, as soon as practicable after the effective date of this Act.

21 SECTION 3. Subchapter E, Chapter 166, Health and Safety
22 Code, as added by this Act, applies only to a do-not-resuscitate
23 order issued on or after the effective date of this Act.

24 SECTION 4. This Act takes effect April 1, 2018.