

By: Coleman

H.B. No. 3857

A BILL TO BE ENTITLED

AN ACT

relating to the authority of an advanced practice registered nurse or physician assistant to sign a death certificate or out-of-hospital do-not-resuscitate order.

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

SECTION 1. Section 166.081(6), Health and Safety Code, is amended to read as follows:

(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 under Section 166.083, prepared and signed as required by this subchapter [~~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 acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

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

(B) does not include authorization to withhold

1 medical interventions or therapies considered necessary to provide
2 comfort care or to alleviate pain or to provide water or nutrition.

3 SECTION 2. Sections 166.082(b) and (c), Health and Safety
4 Code, are amended to read as follows:

5 (b) Except as provided by this subsection, the declarant
6 must sign the out-of-hospital DNR order in the presence of two
7 witnesses who qualify under Section 166.003, at least one of whom
8 must be a witness who qualifies under Section 166.003(2). The
9 witnesses must sign the order. The attending physician, a
10 physician assistant, or an advanced practice registered nurse
11 providing care to ~~of~~ the declarant must sign the order and shall
12 make the fact of the existence of the order and the reasons for
13 execution of the order a part of the declarant's medical record.
14 The declarant, in lieu of signing in the presence of witnesses, may
15 sign the out-of-hospital DNR order and have the signature
16 acknowledged before a notary public.

17 (c) If the person is incompetent but previously executed or
18 issued a directive to physicians in accordance with Subchapter B,
19 the physician, a physician assistant, or an advanced practice
20 registered nurse providing care to the person may rely on the
21 directive as the person's instructions to issue an out-of-hospital
22 DNR order and shall place a copy of the directive in the person's
23 medical record. The physician, the physician assistant, or the
24 advanced practice registered nurse shall sign the order in lieu of
25 the person signing under Subsection (b) and may use a digital or
26 electronic signature authorized under Section 166.011.

27 SECTION 3. Section 166.083(b), Health and Safety Code, is

1 amended to read as follows:

2 (b) The standard form of an out-of-hospital DNR order
3 specified by department rule must, at a minimum, contain the
4 following:

5 (1) a distinctive single-page format that readily
6 identifies the document as an out-of-hospital DNR order;

7 (2) a title that readily identifies the document as an
8 out-of-hospital DNR order;

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

10 (4) a statement that the physician, physician
11 assistant, or advanced practice registered nurse signing the
12 document is the person's attending physician or a physician
13 assistant or advanced practice registered nurse of the person and
14 that the physician, physician assistant, or advanced practice
15 registered nurse is directing health care professionals acting in
16 out-of-hospital settings, including a hospital emergency
17 department, not to initiate or continue certain life-sustaining
18 treatment on behalf of the person, and a listing of those procedures
19 not to be initiated or continued;

20 (5) a statement that the person understands that the
21 person may revoke the out-of-hospital DNR order at any time by
22 destroying the order and removing the DNR identification device, if
23 any, or by communicating to health care professionals at the scene
24 the person's desire to revoke the out-of-hospital DNR order;

25 (6) places for the printed names and signatures of the
26 witnesses or the notary public's acknowledgment and for the printed
27 name and signature of the attending physician, the physician

1 assistant, or the advanced practice registered nurse of the person
2 and the professional's ~~[medical]~~ license number ~~[of the attending~~
3 ~~physician]~~;

4 (7) a separate section for execution of the document
5 by the legal guardian of the person, the person's proxy, an agent of
6 the person having a medical power of attorney, ~~[or]~~ the attending
7 physician, the physician assistant, or the advanced practice
8 registered nurse attesting to the issuance of an out-of-hospital
9 DNR order by nonwritten means of communication or acting in
10 accordance with a previously executed or previously issued
11 directive to physicians under Section 166.082(c) that includes the
12 following:

13 (A) a statement that the legal guardian, the
14 proxy, the agent, the person by nonwritten means of communication,
15 ~~[or]~~ the physician, the physician assistant, or the advanced
16 practice registered nurse directs that each listed life-sustaining
17 treatment should not be initiated or continued in behalf of the
18 person; and

19 (B) places for the printed names and signatures
20 of the witnesses and, as applicable, the legal guardian, proxy,
21 agent, ~~[or]~~ physician, physician assistant, or advanced practice
22 registered nurse;

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

1 (A) a statement that the relative of the person
2 is qualified to make a treatment decision to withhold
3 cardiopulmonary resuscitation and certain other designated
4 life-sustaining treatment under Section 166.088 and, based on the
5 known desires of the person or a determination of the best interest
6 of the person, directs that each listed life-sustaining treatment
7 should not be initiated or continued in behalf of the person; and

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

10 (9) a place for entry of the date of execution of the
11 document;

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

15 (11) a statement that the document must accompany the
16 person during transport;

17 (12) a statement regarding the proper disposition of
18 the document or copies of the document, as the executive
19 commissioner determines appropriate; and

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

23 SECTION 4. Sections 166.084(b) and (c), Health and Safety
24 Code, are amended to read as follows:

25 (b) A declarant must issue the nonwritten out-of-hospital
26 DNR order in the presence of the person's attending physician or a
27 physician assistant or advanced practice registered nurse of the

1 person and two witnesses who qualify under Section 166.003, at
2 least one of whom must be a witness who qualifies under Section
3 166.003(2).

4 (c) The attending physician, the physician assistant, or
5 the advanced practice registered nurse and witnesses shall sign the
6 out-of-hospital DNR order in the place of the document provided by
7 Section 166.083(b)(7) and the attending physician, the physician
8 assistant, or the advanced practice registered nurse shall sign the
9 document in the place required by Section 166.083(b)(13). The
10 physician, physician assistant, or advanced practice registered
11 nurse shall make the fact of the existence of the out-of-hospital
12 DNR order a part of the declarant's medical record and the names of
13 the witnesses shall be entered in the medical record.

14 SECTION 5. Sections 166.087(b) and (c), Health and Safety
15 Code, are amended to read as follows:

16 (b) If the adult person has designated a person to make a
17 treatment decision as authorized by Section 166.032(c), the
18 person's attending physician or a physician assistant or advanced
19 practice registered nurse of the person and the designated person
20 shall comply with the out-of-hospital DNR order.

21 (c) If the adult person has not designated a person to make a
22 treatment decision as authorized by Section 166.032(c), the
23 person's attending physician or a physician assistant or advanced
24 practice registered nurse of the person shall comply with the
25 out-of-hospital DNR order unless the physician, physician
26 assistant, or advanced practice registered nurse believes that the
27 order does not reflect the person's present desire.

1 SECTION 6. Sections 166.088(a), (b), and (f), Health and
2 Safety Code, are amended to read as follows:

3 (a) If an adult person has not executed or issued an
4 out-of-hospital DNR order and is incompetent or otherwise mentally
5 or physically incapable of communication, the person's attending
6 physician or a physician assistant or advanced practice registered
7 nurse of the person and the person's legal guardian, proxy, or agent
8 having a medical power of attorney may execute an out-of-hospital
9 DNR order on behalf of the person.

10 (b) If the person does not have a legal guardian, proxy, or
11 agent under a medical power of attorney, the person's attending
12 physician or a physician assistant or advanced practice registered
13 nurse of the person and at least one qualified relative from a
14 category listed by Section 166.039(b), subject to the priority
15 established under that subsection, may execute an out-of-hospital
16 DNR order in the same manner as a treatment decision made under
17 Section 166.039(b).

18 (f) If there is not a qualified relative available to act
19 for the person under Subsection (b), an out-of-hospital DNR order
20 must be concurred in by another physician, physician assistant, or
21 advanced practice registered nurse who is not involved in the
22 treatment of the patient or who is a representative of the ethics or
23 medical committee of the health care facility in which the person is
24 a patient.

25 SECTION 7. Sections 166.089(d), (h), and (i), Health and
26 Safety Code, are amended to read as follows:

27 (d) The responding health care professionals must determine

1 that the out-of-hospital DNR order form appears to be valid in that
2 it includes:

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

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

9 (3) the signature or digital or electronic signature
10 of the declarant or persons executing or issuing the order and the
11 attending physician, a physician assistant, or an advanced practice
12 registered nurse in the appropriate places designated on the form
13 for indicating that the order form has been properly completed.

14 (h) An out-of-hospital DNR order executed or issued and
15 documented or evidenced in the manner prescribed by this subchapter
16 is valid and shall be honored by responding health care
17 professionals unless the person or persons found at the scene:

18 (1) identify themselves as the declarant or as the
19 person's attending physician or a physician assistant or advanced
20 practice registered nurse of the person, legal guardian, qualified
21 relative, or agent of the person having a medical power of attorney
22 who executed or issued the out-of-hospital DNR order on behalf of
23 the person; and

24 (2) request that cardiopulmonary resuscitation or
25 certain other life-sustaining treatment designated by department
26 rule be initiated or continued.

27 (i) If the policies of a health care facility preclude

1 compliance with the out-of-hospital DNR order of a person or an
2 out-of-hospital DNR order issued by an attending physician, a
3 physician assistant, or an advanced practice registered nurse on
4 behalf of a person who is admitted to or a resident of the facility,
5 or if the facility is unwilling to accept DNR identification
6 devices as evidence of the existence of an out-of-hospital DNR
7 order, that facility shall take all reasonable steps to notify the
8 person or, if the person is incompetent, the person's guardian or
9 the person or persons having authority to make health care
10 treatment decisions on behalf of the person, of the facility's
11 policy and shall take all reasonable steps to effect the transfer of
12 the person to the person's home or to a facility where the
13 provisions of this subchapter can be carried out.

14 SECTION 8. Section 166.092(b), Health and Safety Code, is
15 amended to read as follows:

16 (b) An oral revocation under Subsection (a)(3) or (a)(4)
17 takes effect only when the declarant or a person who identifies
18 himself or herself as the legal guardian, a qualified relative, or
19 the agent of the declarant having a medical power of attorney who
20 executed the out-of-hospital DNR order communicates the intent to
21 revoke the order to the responding health care professionals or the
22 person's attending physician or the physician assistant or advanced
23 practice registered nurse of the person at the scene. The
24 responding health care professionals shall record the time, date,
25 and place of the revocation in accordance with the statewide
26 out-of-hospital DNR protocol and rules adopted by the executive
27 commissioner and any applicable local out-of-hospital DNR

1 protocol. The attending physician, ~~[or]~~ the physician's designee,
2 the physician assistant, or the advanced practice registered nurse
3 shall record in the person's medical record the time, date, and
4 place of the revocation and, if different, the time, date, and place
5 that the physician, physician assistant, or advanced practice
6 registered nurse received notice of the revocation. The attending
7 physician, ~~[or]~~ the physician's designee, the physician assistant,
8 or the advanced practice registered nurse shall also enter the word
9 "VOID" on each page of the copy of the order in the person's medical
10 record.

11 SECTION 9. Section 166.095(c), Health and Safety Code, is
12 amended to read as follows:

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

24 SECTION 10. The heading to Section 166.102, Health and
25 Safety Code, is amended to read as follows:

26 Sec. 166.102. [~~PHYSICIAN'S~~] DNR ORDER MAY BE HONORED BY
27 HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES

1 PERSONNEL.

2 SECTION 11. Section 166.102(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) Except as provided by Subsection (b), a licensed nurse
5 or person providing health care services in an out-of-hospital
6 setting may honor a physician's, physician assistant's, or advanced
7 practice registered nurse's do-not-resuscitate order.

8 SECTION 12. Sections 193.005(a), (b), and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) A person required to file a death certificate or fetal
11 death certificate shall obtain the required medical certification
12 from the decedent's ~~[an]~~ attending physician or a physician
13 assistant or advanced practice registered nurse of the decedent if
14 the death occurred under ~~[medical attendance for]~~ the care of the
15 person in connection with the ~~[and]~~ treatment of the condition or
16 disease process that contributed to the death.

17 (b) The attending physician, physician assistant, or
18 advanced practice registered nurse shall complete the medical
19 certification not later than five days after receiving the death
20 certificate.

21 (c) An associate physician, the chief medical officer of the
22 institution where the death occurred, a physician assistant or
23 advanced practice registered nurse at the institution where the
24 death occurred, or the physician who performed an autopsy on the
25 decedent may complete the medical certification if:

26 (1) the attending physician, the physician assistant,
27 or the advanced practice registered nurse described by Subsection

1 (a) is unavailable;

2 (2) the attending physician, the physician assistant,
3 or the advanced practice registered nurse described by Subsection
4 (a) approves; and

5 (3) the person completing the medical certification
6 has access to the medical history of the case and the death is due to
7 natural causes.

8 SECTION 13. Section 671.001(d), Health and Safety Code, is
9 amended to read as follows:

10 (d) A registered nurse, including an advanced practice
11 registered nurse, or physician assistant may determine and
12 pronounce a person dead in situations other than those described by
13 Subsection (b) if permitted by written policies of a licensed
14 health care facility, institution, or entity providing services to
15 that person. Those policies must include physician assistants who
16 are credentialed or otherwise permitted to practice at the
17 facility, institution, or entity. If the facility, institution, or
18 entity has an organized nursing staff and an organized medical
19 staff or medical consultant, the nursing staff and medical staff or
20 consultant shall jointly develop and approve those policies. The
21 executive commissioner of the Health and Human Services Commission
22 shall adopt rules to govern policies for facilities, institutions,
23 or entities that do not have organized nursing staffs and organized
24 medical staffs or medical consultants.

25 SECTION 14. Section 671.002(a), Health and Safety Code, is
26 amended to read as follows:

27 (a) A physician who determines death in accordance with

1 Section 671.001(b) or a registered nurse, including an advanced
2 practice registered nurse, or physician assistant who determines
3 death in accordance with Section 671.001(d) is not liable for civil
4 damages or subject to criminal prosecution for the physician's,
5 registered nurse's, or physician assistant's actions or the actions
6 of others based on the determination of death.

7 SECTION 15. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2017.