

By: Johnson

S.B. No. 1752

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of an advanced practice registered nurse
3 or physician assistant, or physician, regarding death certificates
4 and certain do-not-resuscitate orders.

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

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

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

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

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

24 (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 declarant's attending
10 physician, or a physician assistant or an advanced practice
11 registered nurse providing care to [of] the declarant, must sign
12 the order and shall make the fact of the existence of the order and
13 the reasons for execution of the order a part of the declarant's
14 medical record. The declarant, in lieu of signing in the presence
15 of witnesses, may sign the out-of-hospital DNR order and have the
16 signature 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, or a physician assistant or 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, physician assistant, or advanced
24 practice registered nurse shall sign the order in lieu of the person
25 signing under Subsection (b) and may use a digital or electronic
26 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 is directing~~] health care professionals acting
15 in out-of-hospital settings, including a hospital emergency
16 department, are being directed not to initiate or continue certain
17 life-sustaining treatment on behalf of the person, and a listing of
18 those procedures not to be initiated or continued;

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

24 (6) places for the printed names and signatures of the
25 witnesses or the notary public's acknowledgment and for the printed
26 name and signature of the person's attending physician, or a
27 physician assistant or an advanced practice registered nurse of the

1 person, and the professional's ~~[medical]~~ license number ~~[of the~~
2 ~~attending physician]~~;

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

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

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

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

27 (A) a statement that the relative of the person

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

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

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

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

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

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

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

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

24 (b) A declarant must issue the nonwritten out-of-hospital
25 DNR order in the presence of the person's attending physician, or a
26 physician assistant or advanced practice registered nurse of the
27 person, and two witnesses who qualify under Section 166.003, at

1 least one of whom must be a witness who qualifies under Section
2 [166.003\(2\)](#).

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

13 SECTION 5. Sections [166.087\(b\)](#) and (c), Health and Safety
14 Code, are amended to read as follows:

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

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

27 SECTION 6. Sections [166.088\(a\)](#), (b), and (f), Health and

1 Safety Code, are amended to read as follows:

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

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

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

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

26 (d) The responding health care professionals must determine
27 that the out-of-hospital DNR order form appears to be valid in that

1 it includes:

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

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

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

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

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

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

26 (i) If the policies of a health care facility preclude
27 compliance with the out-of-hospital DNR order of a person or an

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

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

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

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

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

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

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

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

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

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

7 SECTION 12. Section 166.203(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) A DNR order issued for a patient is valid only if the
10 patient's attending physician, or a physician assistant or advanced
11 practice registered nurse of the patient, issues the order, the
12 order is dated, and the order:

13 (1) is issued in compliance with:

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

16 (B) the oral directions of a competent patient
17 delivered to or observed by two competent adult witnesses, at least
18 one of whom must be a person not listed under Section 166.003(2)(E)
19 or (F);

20 (C) the directions in an advance directive
21 enforceable under Section 166.005 or executed in accordance with
22 Section 166.032, 166.034, or 166.035;

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

26 (E) a treatment decision made in accordance with
27 Section 166.039; or

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

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

7 (B) the DNR order is medically appropriate.

8 SECTION 13. Sections 166.205(a), (b), and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) A physician, physician assistant, or advanced practice
11 registered nurse providing direct care to a patient for whom a DNR
12 order is issued shall revoke the patient's DNR order if the patient
13 or, as applicable, the patient's agent under a medical power of
14 attorney or the patient's legal guardian if the patient is
15 incompetent:

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

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

22 (b) A person providing direct care to a patient under the
23 supervision of a physician, physician assistant, or advanced
24 practice registered nurse shall notify the physician, physician
25 assistant, or advanced practice registered nurse of the request to
26 revoke a DNR order under Subsection (a).

27 (c) A patient's attending physician, or a physician

1 assistant or advanced practice registered nurse of the patient, may
2 at any time revoke a DNR order issued under Section 166.203(a)(2).

3 SECTION 14. Section 193.005(a), Health and Safety Code, is
4 amended to read as follows:

5 (a) A person required to file a death certificate or fetal
6 death certificate shall obtain the required medical certification
7 from the decedent's attending physician, or [~~subject to Subsection~~
8 ~~(a-1),~~] a physician assistant or advanced practice registered nurse
9 of the decedent, if the death occurred under the care of the person
10 in connection with the treatment of the condition or disease
11 process that contributed to the death.

12 SECTION 15. Section 193.005(a-1), Health and Safety Code,
13 is repealed.

14 SECTION 16. This Act takes effect immediately if it
15 receives a vote of two-thirds of all the members elected to each
16 house, as provided by Section 39, Article III, Texas Constitution.
17 If this Act does not receive the vote necessary for immediate
18 effect, this Act takes effect September 1, 2021.