

By: Klick, et al.

H.B. No. 3162

Substitute the following for H.B. No. 3162:

By: Klick

C.S.H.B. No. 3162

A BILL TO BE ENTITLED

AN ACT

1
2 relating to advance directives, do-not-resuscitate orders, and
3 health care treatment decisions made by or on behalf of certain
4 patients, including a review of directives and decisions.

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

6 SECTION 1. Subchapter B, Chapter 166, Health and Safety
7 Code, is amended by adding Section 166.0445 to read as follows:

8 Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING
9 CERTAIN MEDICAL PROCEDURES. (a) A physician or a health care
10 professional acting under the direction of a physician is not
11 subject to civil liability for participating in a medical procedure
12 performed in accordance with Section 166.046(d-2).

13 (b) A physician or a health care professional acting under
14 the direction of a physician is not subject to criminal liability
15 for participating in a medical procedure performed in accordance
16 with Section 166.046(d-2) unless:

17 (1) the physician or health care professional in
18 participating in the medical procedure acted with a specific
19 malicious intent to cause the death of the patient and that conduct
20 significantly hastened the patient's death; and

21 (2) the hastening of the patient's death is not
22 attributable to the risks associated with the medical procedure.

23 (c) A physician or a health care professional acting under
24 the direction of a physician has not engaged in unprofessional

1 conduct by participating in a medical procedure performed in
2 accordance with Section 166.046(d-2) unless the physician or health
3 care professional in participating in the medical procedure acted
4 with a specific malicious intent to harm the patient.

5 SECTION 2. The heading to Section 166.046, Health and
6 Safety Code, is amended to read as follows:

7 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING [A] DIRECTIVE
8 OR TREATMENT DECISION FOR CERTAIN PATIENTS.

9 SECTION 3. Section 166.046, Health and Safety Code, is
10 amended by amending Subsections (a), (b), (c), (d), (e), and (g) and
11 adding Subsections (a-1), (a-2), (b-1), (b-2), (b-3), (d-1), (d-2),
12 (d-3), and (i) to read as follows:

13 (a) This section applies only to health care and treatment
14 for a patient who is determined to be incompetent or is otherwise
15 mentally or physically incapable of communication.

16 (a-1) If an attending physician refuses to honor an [a
17 patient's] advance directive of or [a] health care or treatment
18 decision made by or on behalf of a patient to whom this section
19 applies, the physician's refusal shall be reviewed by an ethics or
20 medical committee. The attending physician may not be a member of
21 that committee during the review. The patient shall be given
22 life-sustaining treatment during the review.

23 (a-2) An ethics or medical committee that reviews a
24 physician's refusal to honor an advance directive or health care or
25 treatment decision under Subsection (a-1) shall consider the
26 patient's well-being in conducting the review but may not make any
27 judgment on the patient's quality of life. For purposes of this

1 subsection, the committee's consideration of the issues described
2 by Subdivisions (1) through (5) is not a judgment on the patient's
3 quality of life. If the review requires the committee to determine
4 whether life-sustaining treatment requested in the patient's
5 advance directive or by the person responsible for the patient's
6 health care decisions is medically inappropriate, the committee
7 shall consider whether provision of the life-sustaining treatment:

8 (1) will prolong the natural process of dying or
9 hasten the patient's death;

10 (2) will result in substantial, irremediable, and
11 objectively measurable physical pain that is not outweighed by the
12 benefit of providing the treatment;

13 (3) is medically contraindicated such that the
14 provision of the treatment seriously exacerbates life-threatening
15 medical problems not outweighed by the benefit of providing the
16 treatment;

17 (4) is consistent with the prevailing standard of
18 care; or

19 (5) is contrary to the patient's clearly documented
20 desires.

21 (b) The [~~patient or the~~] person responsible for the
22 patient's health care decisions [~~of the individual who has made the~~
23 ~~decision regarding the directive or treatment decision~~]:

24 (1) [~~may be given a written description of the ethics~~
25 ~~or medical committee review process and any other policies and~~
26 ~~procedures related to this section adopted by the health care~~
27 ~~facility,~~

1 ~~[(2)]~~ shall be informed in writing ~~[of the committee~~
2 ~~review process]~~ not less than seven calendar days ~~[48 hours]~~ before
3 the meeting called to discuss the patient's directive, unless the
4 ~~[time]~~ period is waived by written mutual agreement, of:

5 (A) the ethics or medical committee review
6 process and any other related policies and procedures adopted by
7 the health care facility, including any policy described by
8 Subsection (b-1);

9 (B) the rights described in Subdivisions
10 (3)(A)-(D);

11 (C) the date, time, and location of the meeting;

12 (D) the work contact information of the
13 facility's personnel who, in the event of a disagreement, will be
14 responsible for overseeing the reasonable effort to transfer the
15 patient to another physician or facility willing to comply with the
16 directive;

17 (E) the factors the committee is required to
18 consider under Subsection (a-2); and

19 (F) the decision of the ethics or medical
20 committee related to patient disability under Section 166.0465;

21 (2) ~~[(3)]~~ at the time of being ~~[so]~~ informed under
22 Subdivision (1), shall be provided:

23 (A) a copy of the appropriate statement set forth
24 in Section [166.052](#); and

25 (B) a copy of the registry list of health care
26 providers and referral groups that have volunteered their readiness
27 to consider accepting transfer or to assist in locating a provider

1 willing to accept transfer that is posted on the website maintained
2 by the department under Section 166.053; and

3 (3) [~~4~~] is entitled to:

4 (A) attend and participate in the meeting as
5 scheduled by the committee;

6 (B) receive during the meeting a written
7 statement of the first name, first initial of the last name, and
8 title of each committee member who will participate in the meeting;

9 (C) subject to Subsection (b-1):

10 (i) be accompanied at the meeting by the
11 patient's spouse, parents, adult children, and not more than four
12 additional individuals, including legal counsel, a physician, a
13 health care professional, or a patient advocate, selected by the
14 person responsible for the patient's health care decisions; and

15 (ii) have an opportunity during the open
16 portion of the meeting to either directly or through another
17 individual attending the meeting:

18 (a) explain the justification for the
19 health care or treatment request made by or on behalf of the
20 patient;

21 (b) respond to information relating
22 to the patient that is submitted or presented during the open
23 portion of the meeting; and

24 (c) state any concerns of the person
25 responsible for the patient's health care decisions regarding
26 compliance with this section or Section 166.0465, including stating
27 an opinion that one or more of the patient's disabilities are not

1 relevant to the committee's determination of whether the medical or
2 surgical intervention is medically appropriate;

3 (D) receive a written notice [explanation] of:

4 (i) the decision reached during the review
5 process accompanied by an explanation of the decision, including,
6 if applicable, the committee's reasoning for affirming that
7 requested life-sustaining treatment is medically inappropriate;

8 (ii) the patient's major medical conditions
9 as identified by the committee, including any disability of the
10 patient considered by the committee in reaching the decision,
11 except the notice is not required to specify whether any medical
12 condition qualifies as a disability;

13 (iii) the committee's compliance with
14 Subsection (a-2) and Section 166.0465; and

15 (iv) the health care facilities contacted
16 before the meeting as part of the transfer efforts under Subsection
17 (d) and, for each listed facility that denied the request to
18 transfer the patient and provided a reason for the denial, the
19 provided reason;

20 (E) [~~C~~] receive a copy of or electronic access
21 to the portion of the patient's medical record related to the
22 treatment received by the patient in the facility for [~~the lesser~~
23 of.

24 [~~i~~] the period of the patient's current
25 admission to the facility; [~~or~~

26 [~~ii~~ the preceding 30 calendar days,] and

27 (F) [~~D~~] receive a copy of or electronic access

1 to all of the patient's reasonably available diagnostic results and
2 reports related to the medical record provided under Paragraph (E)
3 [~~(C)~~].

4 (b-1) A health care facility may adopt and implement a
5 written policy for meetings held under this section that is
6 reasonable and necessary to:

7 (1) facilitate information sharing and discussion of
8 the patient's medical status and treatment requirements, including
9 provisions related to attendance, confidentiality, and timing
10 regarding any agenda item; and

11 (2) preserve the effectiveness of the meeting,
12 including provisions disclosing that the meeting is not a legal
13 proceeding and the committee will enter into an executive session
14 for deliberations.

15 (b-2) Notwithstanding Subsection (b)(3), the following
16 individuals may not attend or participate in the executive session
17 of an ethics or medical committee under this section:

18 (1) the physicians or health care professionals
19 providing health care and treatment to the patient; or

20 (2) the person responsible for the patient's health
21 care decisions or any person attending the meeting under Subsection
22 (b)(3)(C)(i).

23 (b-3) If the health care facility or person responsible for
24 the patient's health care decisions intends to have legal counsel
25 attend the meeting of the ethics or medical committee, the facility
26 or person, as applicable, shall make a good faith effort to provide
27 written notice of that intention not less than 48 hours before the

1 meeting begins.

2 (c) The written notice [~~explanation~~] required by Subsection
3 (b)(3)(D)(i) [~~Subsection (b)(4)(B)~~] must be included in the
4 patient's medical record.

5 (d) After written notice is provided under Subsection
6 (b)(1), [~~If~~] the patient's attending physician [~~, the patient, or~~
7 ~~the person responsible for the health care decisions of the~~
8 ~~individual does not agree with the decision reached during the~~
9 ~~review process under Subsection (b), the physician~~] shall make a
10 reasonable effort to transfer the patient to a physician who is
11 willing to comply with the directive. The health care [~~If the~~
12 ~~patient is a patient in a health care facility, the~~] facility's
13 personnel shall assist the physician in arranging the patient's
14 transfer to:

- 15 (1) another physician;
16 (2) an alternative care setting within that facility;
17 or
18 (3) another facility.

19 (d-1) If another health care facility denies the patient's
20 transfer request, the personnel of the health care facility
21 assisting with the patient's transfer efforts under Subsection (d)
22 shall make a good faith effort to inquire whether the facility that
23 denied the patient's transfer request would be more likely to
24 approve the transfer request if a medical procedure is performed on
25 the patient.

26 (d-2) If the patient's advance directive or the person
27 responsible for the patient's health care decisions is requesting

1 life-sustaining treatment that the attending physician has decided
2 and the ethics or medical committee has affirmed is medically
3 inappropriate:

4 (1) the attending physician or another physician
5 responsible for the care of the patient shall perform on the patient
6 each medical procedure that satisfies each of the following
7 conditions:

8 (A) in the attending physician's professional
9 medical judgment, the medical procedure is reasonable and necessary
10 to help effect the patient's transfer under Subsection (d);

11 (B) an authorized representative for another
12 health care facility with the ability to comply with the patient's
13 advance directive or a health care or treatment decision made by or
14 on behalf of the patient has expressed to the personnel described by
15 Subsection (b)(1)(D) or the attending physician that the facility
16 is more likely to accept the patient's transfer to the other
17 facility if the medical procedure is performed on the patient;

18 (C) in the medical judgment of the physician who
19 would perform the medical procedure, performing the medical
20 procedure is:

21 (i) within the prevailing standard of
22 medical care; and

23 (ii) not medically contraindicated or
24 medically inappropriate under the circumstances;

25 (D) in the medical judgment of the physician who
26 would perform the medical procedure, the physician has the training
27 and experience to perform the medical procedure;

1 (E) the physician who would perform the medical
2 procedure has medical privileges at the facility where the patient
3 is receiving care authorizing the physician to perform the medical
4 procedure at the facility;

5 (F) the facility where the patient is receiving
6 care has determined the facility has the resources for the
7 performance of the medical procedure at the facility; and

8 (G) the person responsible for the patient's
9 health care decisions provides consent on behalf of the patient for
10 the medical procedure; and

11 (2) the person responsible for the patient's health
12 care decisions is entitled to receive:

13 (A) a delay notice if at the time the written
14 decision is provided as required by Subsection (b)(3)(D)(i):

15 (i) a medical procedure satisfies all of
16 the conditions described by Subdivision (1); or

17 (ii) a medical procedure satisfies only the
18 conditions described by Subdivisions (1)(A) through (E) and the
19 person responsible for the patient's health care decisions provides
20 to the attending physician or another physician or health care
21 professional providing direct care to the patient consent on behalf
22 of the patient for the medical procedure within 24 hours of the
23 request for consent;

24 (B) a start notice if at the time the written
25 decision is provided as required by Subsection (b)(3)(D)(i):

26 (i) no medical procedure satisfies the
27 conditions described by Subdivision (2)(A)(ii); or

1 (ii) a medical procedure satisfies the
2 conditions described by Subdivision (2)(A)(ii) and the person
3 responsible for the patient's health care decisions does not
4 provide to the attending physician or another physician or health
5 care professional providing direct care to the patient consent on
6 behalf of the patient for the medical procedure within 24 hours of
7 the request for consent; and

8 (C) a start notice accompanied by a statement
9 that one or more of the conditions described by Subdivisions (1)(A)
10 through (G) are no longer satisfied if, after a delay notice is
11 provided in accordance with Subdivision (2)(A) and before the
12 medical procedure on which the delay notice is based is performed on
13 the patient, one or more of those conditions are no longer
14 satisfied.

15 (d-3) After the 25-day period described by Subsection (e)
16 begins, the period may not be suspended or stopped for any reason.
17 This subsection does not limit or affect a court's ability to order
18 an extension of the period in accordance with Subsection (g).
19 Subsection (d-2) does not require a medical procedure to be
20 performed on the patient after the expiration of the 25-day period.

21 (e) If the patient's advance directive [~~patient~~] or the
22 person responsible for the patient's health care decisions [~~of the~~
23 ~~patient~~] is requesting life-sustaining treatment that the
24 attending physician has decided and the ethics or medical committee
25 has affirmed is medically inappropriate treatment, the patient
26 shall be given available life-sustaining treatment pending
27 transfer under Subsection (d). This subsection does not authorize

1 withholding or withdrawing pain management medication, medical
2 interventions [~~procedures~~] necessary to provide comfort, or any
3 other health care provided to alleviate a patient's pain. The
4 patient is responsible for any costs incurred in transferring the
5 patient to another health care facility. The attending physician,
6 any other physician responsible for the care of the patient, and the
7 health care facility are not obligated to provide life-sustaining
8 treatment after the 25th calendar [~~10th~~] day after a start notice is
9 [~~both the written decision and the patient's medical record~~
10 ~~required under Subsection (b) are~~] provided in accordance with
11 Subsection (d-2)(2)(B) or (C) to [~~the patient or~~] the person
12 responsible for the patient's health care decisions or a medical
13 procedure for which a delay notice was provided in accordance with
14 Subsection (d-2)(2)(A) is performed, whichever occurs first, [~~of~~
15 ~~the patient~~] unless ordered to extend the 25-day period [~~do so~~]
16 under Subsection (g), except that artificially administered
17 nutrition and hydration must be provided unless, based on
18 reasonable medical judgment, providing artificially administered
19 nutrition and hydration would:

- 20 (1) hasten the patient's death;
- 21 (2) be medically contraindicated such that the
22 provision of the treatment seriously exacerbates life-threatening
23 medical problems not outweighed by the benefit of providing [~~the~~
24 ~~provision of~~] the treatment;
- 25 (3) result in substantial, irremediable, and
26 objectively measurable physical pain not outweighed by the benefit
27 of providing [~~the provision of~~] the treatment;

1 (4) be medically ineffective in prolonging life; or

2 (5) be contrary to the patient's or surrogate's
3 clearly documented desire not to receive artificially administered
4 nutrition or hydration.

5 (g) At the request of [~~the patient or~~] the person
6 responsible for the patient's health care decisions [~~of the~~
7 ~~patient~~], the appropriate district or county court shall extend the
8 [~~time~~] period provided under Subsection (e) only if the court
9 finds, by a preponderance of the evidence, that there is a
10 reasonable expectation that a physician or health care facility
11 that will honor the patient's directive will be found if the time
12 extension is granted.

13 (i) In this section:

14 (1) "Delay notice" means a written notice that, unless
15 a court grants an extension under Subsection (g), the first day of
16 the 25-day period provided under Subsection (e) after which
17 life-sustaining treatment may be withheld or withdrawn will be
18 delayed until the calendar day after a medical procedure required
19 by Subsection (d-2)(1) is performed unless, before the medical
20 procedure is performed, the person receives written notice of an
21 earlier first day because one or more conditions described by that
22 subdivision are no longer satisfied.

23 (2) "Medical procedure" includes only a tracheostomy
24 or a percutaneous endoscopic gastrostomy.

25 (3) "Start notice" means a written notice that, unless
26 a court grants an extension under Subsection (g), the 25-day period
27 provided under Subsection (e) after which life sustaining treatment

1 may be withheld or withdrawn will begin on the first calendar day
2 after the date the notice is provided.

3 SECTION 4. Subchapter B, Chapter 166, Health and Safety
4 Code, is amended by adding Section 166.0465 to read as follows:

5 Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED
6 TO PATIENT DISABILITY. (a) In this section, "disability" has the
7 meaning assigned by the Americans with Disabilities Act of 1990 (42
8 U.S.C. Section 12101 et seq.).

9 (b) During the review process under Section 166.046(b), the
10 ethics or medical committee may not consider a patient's disability
11 that existed before the patient's current admission unless the
12 disability is relevant in determining whether the medical or
13 surgical intervention is medically appropriate.

14 SECTION 5. Sections 166.052(a) and (b), Health and Safety
15 Code, are amended to read as follows:

16 (a) In cases in which the attending physician refuses to
17 honor an advance directive or health care or treatment decision
18 requesting the provision of life-sustaining treatment for a patient
19 who is determined to be incompetent or is otherwise mentally or
20 physically incapable of communication, the statement required by
21 Section 166.046(b)(2)(A) [~~166.046(b)(3)(A)~~] shall be in
22 substantially the following form:

23 When There Is A Disagreement About Medical Treatment: The
24 Physician Recommends Against Certain Life-Sustaining Treatment
25 That You Wish To Continue

26 You have been given this information because the patient has
27 requested through an advance directive or you have requested on

1 behalf of the patient that life-sustaining treatment* be provided
2 to [~~for yourself as the patient or on behalf of~~] the patient, [~~as~~
3 ~~applicable,~~] which the attending physician believes is not
4 medically appropriate. This information is being provided to help
5 you understand state law, your rights, and the resources available
6 to you in such circumstances. It outlines the process for resolving
7 disagreements about treatment among patients, families, and
8 physicians. It is based upon Section [166.046](#) of the Texas Advance
9 Directives Act, codified in Chapter [166](#), Texas Health and Safety
10 Code.

11 When an attending physician refuses to comply with an advance
12 directive or other request for life-sustaining treatment for a
13 patient who is determined to be incompetent or is otherwise
14 mentally or physically incapable of communication because of the
15 physician's judgment that the treatment would be medically
16 inappropriate, the case will be reviewed by an ethics or medical
17 committee. Life-sustaining treatment will be provided through the
18 review.

19 You will receive notification of this review at least seven
20 calendar days [~~48 hours~~] before a meeting of the committee related
21 to your case. You are entitled to attend the meeting. With your
22 agreement, the meeting may be held sooner than seven calendar days
23 [~~48 hours~~], if possible.

24 You are entitled to receive a written explanation of the
25 decision reached during the review process.

26 If after this review process both the attending physician and
27 the ethics or medical committee conclude that life-sustaining

1 treatment is medically inappropriate and yet you continue to
2 request such treatment, then the following procedure will occur:

3 1. The physician, with the help of the health care facility,
4 will assist you in trying to find a physician and facility willing
5 to provide the requested treatment.

6 2. You are being given a list of health care providers,
7 licensed physicians, health care facilities, and referral groups
8 that have volunteered their readiness to consider accepting
9 transfer, or to assist in locating a provider willing to accept
10 transfer, maintained by the Department of State Health Services.
11 You may wish to contact providers, facilities, or referral groups
12 on the list or others of your choice to get help in arranging a
13 transfer.

14 3. The patient will continue to be given life-sustaining
15 treatment until the patient can be transferred to a willing
16 provider for up to 25 calendar [~~10~~] days from the time you were
17 given a written notice of the first day of the 25-day period or a
18 medical procedure is performed that delayed the 25-day period and
19 for which you received notice, whichever occurs first [~~both the~~
20 ~~committee's written decision that life-sustaining treatment is not~~
21 ~~appropriate and the patient's medical record)]. The patient will
22 continue to be given after the 25-day [~~10-day~~] period treatment to
23 enhance pain management and reduce suffering, including
24 artificially administered nutrition and hydration, unless, based
25 on reasonable medical judgment, providing artificially
26 administered nutrition and hydration would hasten the patient's
27 death, be medically contraindicated such that the provision of the~~

1 treatment seriously exacerbates life-threatening medical problems
2 not outweighed by the benefit of the provision of the treatment,
3 result in substantial irremediable physical pain not outweighed by
4 the benefit of the provision of the treatment, be medically
5 ineffective in prolonging life, or be contrary to the patient's or
6 surrogate's clearly documented desires.

7 4. If a transfer can be arranged, the patient will be
8 responsible for the costs of the transfer.

9 5. If a provider cannot be found willing to give the
10 requested treatment within 25 calendar [~~10~~] days, life-sustaining
11 treatment may be withdrawn unless a court of law has granted an
12 extension.

13 6. You may ask the appropriate district or county court to
14 extend the 25-day [~~the 10-day~~] period if the court finds that there
15 is a reasonable expectation that you may find a physician or health
16 care facility willing to provide life-sustaining treatment if the
17 extension is granted. Patient medical records will be provided to
18 the patient or surrogate in accordance with Section [241.154](#), Texas
19 Health and Safety Code.

20 *"Life-sustaining treatment" means treatment that, based on
21 reasonable medical judgment, sustains the life of a patient and
22 without which the patient will die. The term includes both
23 life-sustaining medications and artificial life support, such as
24 mechanical breathing machines, kidney dialysis treatment, and
25 artificially administered nutrition and hydration. The term does
26 not include the administration of pain management medication or the
27 performance of a medical procedure considered to be necessary to

1 provide comfort care, or any other medical care provided to
2 alleviate a patient's pain.

3 (b) In cases in which the attending physician refuses to
4 comply with an advance directive or a health care or treatment
5 decision requesting the withholding or withdrawal of
6 life-sustaining treatment for a patient who is determined to be
7 incompetent or is otherwise mentally or physically incapable of
8 communication, the statement required by Section 166.046(b)(2)(A)
9 [~~166.046(b)(3)(A)~~] shall be in substantially the following form:

10 When There Is A Disagreement About Medical Treatment: The
11 Physician Recommends Life-Sustaining Treatment That You Wish To
12 Stop

13 You have been given this information because the patient has
14 requested through an advance directive or you have requested on
15 behalf of the patient that [~~the withdrawal or withholding of~~]
16 life-sustaining treatment* be withdrawn or withheld from [~~for~~
17 ~~yourself as the patient or on behalf of~~] the patient, [~~as~~
18 ~~applicable,~~] and the attending physician disagrees with and refuses
19 to comply with that request. The information is being provided to
20 help you understand state law, your rights, and the resources
21 available to you in such circumstances. It outlines the process for
22 resolving disagreements about treatment among patients, families,
23 and physicians. It is based upon Section 166.046 of the Texas
24 Advance Directives Act, codified in Chapter 166, Texas Health and
25 Safety Code.

26 When an attending physician refuses to comply with an advance
27 directive or other request for withdrawal or withholding of

1 life-sustaining treatment for any reason, the case will be reviewed
2 by an ethics or medical committee. Life-sustaining treatment will
3 be provided through the review.

4 You will receive notification of this review at least seven
5 calendar days [~~48 hours~~] before a meeting of the committee related
6 to your case. You are entitled to attend the meeting. With your
7 agreement, the meeting may be held sooner than seven calendar days
8 [~~48 hours~~], if possible.

9 You are entitled to receive a written explanation of the
10 decision reached during the review process.

11 If you or the attending physician do not agree with the
12 decision reached during the review process, and the attending
13 physician still refuses to comply with your request to withhold or
14 withdraw life-sustaining treatment, then the following procedure
15 will occur:

16 1. The physician, with the help of the health care facility,
17 will assist you in trying to find a physician and facility willing
18 to withdraw or withhold the life-sustaining treatment.

19 2. You are being given a list of health care providers,
20 licensed physicians, health care facilities, and referral groups
21 that have volunteered their readiness to consider accepting
22 transfer, or to assist in locating a provider willing to accept
23 transfer, maintained by the Department of State Health Services.
24 You may wish to contact providers, facilities, or referral groups
25 on the list or others of your choice to get help in arranging a
26 transfer.

27 *"Life-sustaining treatment" means treatment that, based on

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

10 SECTION 6. Subchapter B, Chapter 166, Health and Safety
11 Code, is amended by adding Section 166.054 to read as follows:

12 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
13 MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day
14 after the date written notice is provided under Section
15 166.046(b)(1), a health care facility shall prepare and submit to
16 the commission a report that contains the following information:

17 (1) the number of days that elapsed from the patient's
18 admission to the facility to the date notice was provided under
19 Section 166.046(b)(1);

20 (2) whether the ethics or medical committee met to
21 review the case under Section 166.046 and, if the committee did
22 meet, the number of days that elapsed from the date notice was
23 provided under Section 166.046(b)(1) to the date the meeting was
24 held;

25 (3) whether the patient was:

26 (A) transferred to a physician within the same
27 facility who was willing to comply with the patient's advance

1 directive or a health care or treatment decision made by or on
2 behalf of the patient;

3 (B) transferred to a different health care
4 facility; or

5 (C) discharged from the facility to a private
6 residence or other setting that is not a health care facility;

7 (4) whether the patient died while receiving
8 life-sustaining treatment at the facility;

9 (5) whether life-sustaining treatment was withheld or
10 withdrawn from the patient at the facility after expiration of the
11 time described by Section 166.046(e) and the disposition of the
12 patient after the withholding or withdrawal of life-sustaining
13 treatment at the facility, as selected from the following
14 categories:

15 (A) the patient died at the facility;

16 (B) the patient is currently a patient at the
17 facility;

18 (C) the patient was transferred to a different
19 health care facility; or

20 (D) the patient was discharged from the facility
21 to a private residence or other setting that is not a health care
22 facility;

23 (6) the age group of the patient selected from the
24 following categories:

25 (A) 17 years of age or younger;

26 (B) 18 years of age or older and younger than 66
27 years of age; or

1 (C) 66 years of age or older;

2 (7) the health insurance coverage status of the
3 patient selected from the following categories:

4 (A) private health insurance coverage;

5 (B) public health plan coverage; or

6 (C) uninsured;

7 (8) the patient's sex;

8 (9) the patient's race;

9 (10) whether the facility is notified of any public
10 disclosure of the contact information for the facility's personnel,
11 physicians or health care professionals who provide care at the
12 facility, or members of the ethics or medical committee in
13 connection with the patient's stay at the facility; and

14 (11) whether the facility is notified of any public
15 disclosure by facility personnel of the contact information for the
16 patient's immediate family members or the person responsible for
17 the patient's health care decisions in connection with the
18 patient's stay at the facility.

19 (b) The commission shall ensure information provided in
20 each report submitted by a health care facility under Subsection
21 (a) is kept confidential and not disclosed in any manner, except as
22 provided by this section.

23 (c) Not later than April 1 of each year, the commission
24 shall prepare and publish on the commission's Internet website a
25 report that contains:

26 (1) aggregate information compiled from the reports
27 submitted to the commission under Subsection (a) during the

1 preceding year on:

2 (A) the total number of written notices provided
3 under Section 166.046(b)(1);

4 (B) the average number of days described by
5 Subsection (a)(1);

6 (C) the total number of meetings held by ethics
7 or medical committees to review cases under Section 166.046;

8 (D) the average number of days described by
9 Subsection (a)(2);

10 (E) the total number of patients described by
11 Subsections (a)(3)(A), (B), and (C);

12 (F) the total number of patients described by
13 Subsection (a)(4);

14 (G) the total number of patients for whom
15 life-sustaining treatment was withheld or withdrawn after
16 expiration of the time period described by Section 166.046(e);

17 (H) the total number of cases for which the
18 facility is notified of the public disclosure of the contact
19 information for the facility's personnel, physicians or health care
20 professionals who provide care at the facility, or members of the
21 ethics or medical committee in connection with the patient's stay
22 at the facility; and

23 (I) the total number of cases for which the
24 facility is notified of the public disclosure by facility personnel
25 of contact information for the patient's immediate family members
26 or person responsible for the patient's health care decisions in
27 connection with the patient's stay at the facility; and

1 (2) if the total number of reports submitted under
2 Subsection (a) for the preceding year is 10 or more, aggregate
3 information compiled from those reports on the total number of
4 patients categorized by:

5 (A) sex;

6 (B) race;

7 (C) age group, based on the categories described
8 by Subsection (a)(6);

9 (D) health insurance coverage status, based on
10 the categories described by Subsection (a)(7); and

11 (E) for patients for whom life-sustaining
12 treatment was withheld or withdrawn at the facility after
13 expiration of the period described by Section 166.046(e), the total
14 number of patients described by each of the following:

15 (i) Subsection (a)(5)(A);

16 (ii) Subsection (a)(5)(B);

17 (iii) Subsection (a)(5)(C); and

18 (iv) Subsection (a)(5)(D).

19 (d) If the commission receives fewer than 10 reports under
20 Subsection (a) for inclusion in an annual report required under
21 Subsection (c), the commission shall include in the next annual
22 report prepared after the commission receives 10 or more reports
23 the aggregate information for all years for which the information
24 was not included in a preceding annual report. The commission shall
25 include in the next annual report a statement that identifies each
26 year during which an underlying report was submitted to the
27 department under Subsection (a).

1 (e) The annual report required by Subsection (c) or (d) may
2 not include any information that could be used alone or in
3 combination with other reasonably available information to
4 identify any individual, entity, or facility.

5 (f) The executive commissioner shall adopt rules to:

6 (1) establish a standard form for the reporting
7 requirements of this section; and

8 (2) protect and aggregate any information the
9 commission receives under this section.

10 (g) Information collected as required by this section or
11 submitted to the commission under this section:

12 (1) is not admissible in a civil or criminal
13 proceeding in which a physician, health care professional acting
14 under the direction of a physician, or health care facility is a
15 defendant;

16 (2) may not be used in relation to any disciplinary
17 action by a licensing or regulatory agency with oversight over a
18 physician, health care professional acting under the direction of a
19 physician, or health care facility; and

20 (3) is not public information or subject to disclosure
21 under Chapter 552, Government Code, except as permitted by Section
22 552.008, Government Code.

23 SECTION 7. Sections 166.203(a), (b), and (c), Health and
24 Safety Code, are amended to read as follows:

25 (a) A DNR order issued for a patient is valid only if [~~the~~
26 ~~patient's attending physician issues the order,~~] the order is
27 dated[~~7~~] and [~~the order~~]:

1 (1) is issued by a physician providing direct care to
2 the patient in compliance with:

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

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

9 (C) the directions in an advance directive
10 enforceable under Section 166.005 or executed in accordance with
11 Section 166.032, 166.034, [~~or~~] 166.035, 166.082, 166.084, or
12 166.085;

13 (D) the directions of a patient's:
14 (i) legal guardian;
15 (ii) [~~or~~] agent under a medical power of
16 attorney acting in accordance with Subchapter D; or

17 (iii) proxy as designated and authorized by
18 a directive executed in accordance with Subchapter B to make a
19 treatment decision for the patient if the patient becomes
20 incompetent or otherwise mentally or physically incapable of
21 communication; or

22 (E) a treatment decision made in accordance with
23 Section 166.039; [~~or~~]

24 (2) is issued by the patient's attending physician
25 and:

26 (A) the order is not contrary to the directions
27 of a patient who was competent at the time the patient conveyed the

1 directions; and

2 (B) [~~7~~] in the reasonable medical judgment of the
3 patient's attending physician:

4 (i) [~~(A)~~] the patient's death is imminent,
5 within minutes or hours, regardless of the provision of
6 cardiopulmonary resuscitation; and

7 (ii) [~~(B)~~] the DNR order is medically
8 appropriate; or

9 (3) is issued by the patient's attending physician:

10 (A) for a patient who is incompetent or otherwise
11 mentally or physically incapable of communication; and

12 (B) in compliance with a decision:

13 (i) agreed on by the attending physician
14 and the person responsible for the patient's health care decisions;
15 and

16 (ii) concurred in by another physician who
17 is not involved in the direct treatment of the patient or who is a
18 representative of an ethics or medical committee of the health care
19 facility in which the person is a patient.

20 (b) The DNR order takes effect at the time the order is
21 issued, provided the order is placed in the patient's medical
22 record as soon as practicable and may be issued and entered in a
23 format acceptable under the policies of the health care facility or
24 hospital.

25 (c) Unless notice is provided in accordance with Section
26 166.204(a), before [~~Before~~] placing in a patient's medical record a
27 DNR order issued under Subsection (a)(2), a [~~the~~] physician,

1 physician assistant, nurse, or other person acting on behalf of a
2 health care facility or hospital shall:

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

4 (2) if the patient is incompetent, make a reasonably
5 diligent effort to contact or cause to be contacted and inform of
6 the order's issuance:

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

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

12 SECTION 8. Section 166.204, Health and Safety Code, is
13 amended by amending Subsections (a), (b), and (c) and adding
14 Subsection (a-1) to read as follows:

15 (a) If an individual arrives at a health care facility or
16 hospital that is treating a patient for whom a DNR order is issued
17 under Section 166.203(a)(2) and the individual notifies a
18 physician, physician assistant, or nurse providing direct care to
19 the patient of the individual's arrival, the physician, physician
20 assistant, or nurse who has actual knowledge of the order shall,
21 unless notice has been provided in accordance with Section
22 166.203(c), disclose the order to the individual, provided the
23 individual is:

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

26 (2) for a patient who does not have a known agent under
27 a medical power of attorney or legal guardian, a person described by

1 Section [166.039](#)(b)(1), (2), or (3).

2 (a-1) For a patient who was incompetent at the time notice
3 otherwise would have been provided to the patient under Section
4 [166.203](#)(c)(1) and if a physician providing direct care to the
5 patient later determines that, based on the physician's reasonable
6 medical judgment, the patient has become competent, a physician,
7 physician assistant, or nurse providing direct care to the patient
8 shall disclose the order to the patient, provided that the
9 physician, physician assistant, or nurse has actual knowledge:

10 (1) of the order; and

11 (2) that a physician providing direct care to the
12 patient has determined that the patient has become competent.

13 (b) Failure to comply with Subsection (a) or (a-1) or
14 Section [166.203](#)(c) does not affect the validity of a DNR order
15 issued under this subchapter.

16 (c) Any person, including a health care facility or
17 hospital, [~~who makes a good faith effort to comply with Subsection~~
18 ~~(a) of this section or Section [166.203](#)(c) and contemporaneously~~
19 ~~records the person's effort to comply with Subsection (a) of this~~
20 ~~section or Section [166.203](#)(c) in the patient's medical record]~~ is
21 not civilly or criminally liable or subject to disciplinary action
22 from the appropriate licensing authority for any act or omission
23 related to providing notice under Subsection (a) or (a-1) of this
24 section or Section [166.203](#)(c) if the person:

25 (1) makes a good faith effort to comply with
26 Subsection (a) or (a-1) or Section [166.203](#)(c) and contemporaneously
27 records in the patient's medical record the person's effort to

1 comply with those provisions; or

2 (2) makes a good faith determination that the
3 circumstances that would require the person to perform an act under
4 Subsection (a) or (a-1) or Section 166.203(c) are not met.

5 SECTION 9. Section 166.205, Health and Safety Code, is
6 amended by amending Subsections (a), (b), and (c) and adding
7 Subsection (c-1) to read as follows:

8 (a) A physician providing direct care to a patient for whom
9 a DNR order is issued shall revoke the patient's DNR order if [~~the~~
10 ~~patient or, as applicable, the patient's agent under a medical~~
11 ~~power of attorney or the patient's legal guardian if the patient is~~
12 ~~incompetent~~]:

13 (1) an advance directive that serves as the basis of
14 the DNR order is properly revoked in accordance with this
15 chapter; [~~effectively revokes an advance directive, in accordance~~
16 with Section 166.042, for which a DNR order is issued under Section
17 166.203(a); or]

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

21 (3) the DNR order was issued under Section
22 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person
23 responsible for the patient's health care decisions expresses to
24 any person providing direct care to the patient a revocation of
25 consent to or intent to revoke the DNR order.

26 (b) A person providing direct care to a patient under the
27 supervision of a physician shall notify the physician of the

1 request to revoke a DNR order or of the revocation of an advance
2 directive under Subsection (a).

3 (c) A patient's attending physician may at any time revoke a
4 DNR order issued under:

5 (1) Section 166.203(a)(1)(A), (B), or (C), provided
6 that:

7 (A) the order is for a patient who is incompetent
8 or otherwise mentally or physically incapable of communication; and

9 (B) the decision to revoke the order is:

10 (i) agreed on by the attending physician
11 and the person responsible for the patient's health care decisions;
12 and

13 (ii) concurred in by another physician who
14 is not involved in the direct treatment of the patient or who is a
15 representative of an ethics or medical committee of the health care
16 facility in which the person is a patient;

17 (2) Section 166.203(a)(1)(E), provided that the
18 order's issuance was based on a treatment decision made in
19 accordance with Section 166.039(e);

20 (3) Section 166.203(a)(2); or

21 (4) Section 166.203(a)(3).

22 (c-1) A patient's attending physician shall revoke a DNR
23 order issued for the patient under Section 166.203(a)(2) if, in the
24 attending physician's reasonable medical judgment, the condition
25 described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

26 SECTION 10. Sections 166.206(a) and (b), Health and Safety
27 Code, are amended to read as follows:

1 (a) If a [~~an attending~~] physician, health care facility, or
2 hospital does not wish to execute or comply with a DNR order or the
3 patient's instructions concerning the provision of cardiopulmonary
4 resuscitation, the physician, facility, or hospital shall inform
5 the patient, the legal guardian or qualified relatives of the
6 patient, or the agent of the patient under a medical power of
7 attorney of the benefits and burdens of cardiopulmonary
8 resuscitation.

9 (b) If, after receiving notice under Subsection (a), the
10 patient or another person authorized to act on behalf of the patient
11 and the [~~attending~~] physician, health care facility, or hospital
12 remain in disagreement, the physician, facility, or hospital shall
13 make a reasonable effort to transfer the patient to another
14 physician, facility, or hospital willing to execute or comply with
15 a DNR order or the patient's instructions concerning the provision
16 of cardiopulmonary resuscitation.

17 SECTION 11. Section 166.209, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 166.209. ENFORCEMENT. (a) Subject to Sections
20 166.205(d), 166.207, and 166.208 and Subsection (c), a [A]
21 physician, physician assistant, nurse, or other person commits an
22 offense if, with the specific intent to violate this subchapter,
23 the person intentionally:

24 (1) conceals, cancels, effectuates, or falsifies
25 another person's DNR order in violation of this subchapter; or

26 (2) [~~if the person intentionally~~] conceals or
27 withholds personal knowledge of another person's revocation of a

1 DNR order in violation of this subchapter.

2 (a-1) An offense under Subsection (a) [~~this subsection~~] is a
3 Class A misdemeanor. This section [~~subsection~~] does not preclude
4 prosecution for any other applicable offense.

5 (b) Subject to Sections 166.205(d), 166.207, and 166.208, a
6 ~~[A]~~ physician, health care professional, health care facility,
7 hospital, or entity is subject to review and disciplinary action by
8 the appropriate licensing authority for intentionally:

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

11 (2) issuing a DNR order in violation of this
12 subchapter.

13 (c) Subsection (a) does not apply to a person whose act or
14 omission was based on a reasonable belief that the act or omission
15 was in compliance with the wishes of the patient or the person
16 responsible for the patient's health care decisions.

17 SECTION 12. Section 313.004, Health and Safety Code, is
18 amended by amending Subsections (a) and (c) and adding Subsection
19 (a-1) to read as follows:

20 (a) If an adult patient of a home and community support
21 services agency or in a hospital or nursing home, or an adult inmate
22 of a county or municipal jail, is comatose, incapacitated, or
23 otherwise mentally or physically incapable of communication and
24 does not have a legal guardian or an agent under a medical power of
25 attorney who is reasonably available after a reasonably diligent
26 inquiry, an adult surrogate from the following list, in order of
27 priority, who has decision-making capacity, is reasonably

1 available after a reasonably diligent inquiry, and is willing to
2 consent to medical treatment on behalf of the patient may consent to
3 medical treatment on behalf of the patient:

4 (1) the patient's spouse;

5 (2) the patient's [~~an adult child of the patient who~~
6 ~~has the waiver and consent of all other qualified~~] adult children
7 [~~of the patient to act as the sole decision-maker~~];

8 (3) [~~a majority of~~] the patient's parents [~~reasonably~~
9 ~~available adult children~~]; or

10 (4) the patient's nearest living relative [~~parents, or~~
11 [~~(5) the individual clearly identified to act for the~~
12 ~~patient by the patient before the patient became incapacitated, the~~
13 ~~patient's nearest living relative, or a member of the clergy~~].

14 (a-1) If the patient does not have a legal guardian, an
15 agent under a medical power of attorney, or a person listed in
16 Subsection (a) who is reasonably available after a reasonably
17 diligent inquiry, another physician who is not involved in the
18 medical treatment of the patient may concur with the treatment.

19 (c) Any medical treatment consented to under Subsection (a)
20 or concurred with under Subsection (a-1) must be based on knowledge
21 of what the patient would desire, if known.

22 SECTION 13. Chapter 166, Health and Safety Code, as amended
23 by this Act, applies only to a review, consultation, disagreement,
24 or other action relating to a health care or treatment decision made
25 on or after the effective date of this Act. A review, consultation,
26 disagreement, or other action relating to a health care or
27 treatment decision made before the effective date of this Act is

1 governed by the law in effect immediately before the effective date
2 of this Act, and the former law is continued in effect for that
3 purpose.

4 SECTION 14. Section [166.209](#), Health and Safety Code, as
5 amended by this Act, applies only to conduct that occurs on or after
6 the effective date of this Act. Conduct that occurs before the
7 effective date of this Act is governed by the law in effect on the
8 date the conduct occurred, and the former law is continued in effect
9 for that purpose.

10 SECTION 15. This Act takes effect September 1, 2023.