

By: Johnson

S.B. No. 2039

A BILL TO BE ENTITLED

AN ACT

1
2 relating to health care practitioner authority regarding certain
3 do-not-resuscitate orders, including the use of electronic copies
4 and photographs of out-of-hospital 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. Sections 166.083(b) and (d), Health and Safety

1 Code, are 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 who
10 executed or issued the document or for whom the document was
11 executed or issued;

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

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

26 (6) places for the printed names and signatures of the
27 witnesses or the notary public's acknowledgment and for the printed

1 name and signature of the person's attending physician, or a
2 physician assistant or an advanced practice registered nurse
3 providing care to ~~of~~ the person, and the professional's ~~medical~~
4 license number ~~[of the attending physician]~~;

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

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

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

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

1 physically incapable of communication, including:

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

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

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

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

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

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

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

24 (d) A photocopy or other complete facsimile, including an
25 electronic copy or photograph, of the original written
26 out-of-hospital DNR order executed under this subchapter may be
27 used for any purpose for which the original written order may be

1 used under this subchapter.

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

4 (b) A declarant must issue the nonwritten out-of-hospital
5 DNR order in the presence of the declarant's attending physician,
6 or a physician assistant or advanced practice registered nurse
7 providing care to the declarant, and two witnesses who qualify
8 under Section 166.003, at least one of whom must be a witness who
9 qualifies under Section 166.003(2).

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

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

22 (b) If the adult person has designated a person to make a
23 treatment decision as authorized by Section 166.032(c), the adult
24 person's attending physician, or a physician assistant or advanced
25 practice registered nurse providing care to the person, and the
26 designated person shall comply with the out-of-hospital DNR order.

27 (c) If the adult person has not designated a person to make a

1 treatment decision as authorized by Section 166.032(c), the
2 person's attending physician, or a physician assistant or advanced
3 practice registered nurse providing care to the person, shall
4 comply with the out-of-hospital DNR order unless the physician,
5 physician assistant, or advanced practice registered nurse
6 believes that the order does not reflect the person's present
7 desire.

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

10 (a) If an adult person has not executed or issued an
11 out-of-hospital DNR order and is incompetent or otherwise mentally
12 or physically incapable of communication, the person's attending
13 physician, or a physician assistant or advanced practice registered
14 nurse providing care to the person, and the person's legal
15 guardian, proxy, or agent having a medical power of attorney may
16 execute an out-of-hospital DNR order on behalf of the person.

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

25 (f) If there is not a qualified relative available to act
26 for the person under Subsection (b), an out-of-hospital DNR order
27 must be concurred in by another physician, physician assistant, or

1 advanced practice registered nurse who is not involved in the
2 treatment of the patient or who is a representative of the ethics or
3 medical committee of the health care facility in which the person is
4 a patient.

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

7 (d) The responding health care professionals must determine
8 that the out-of-hospital DNR order form appears to be valid in that
9 it includes:

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

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

16 (3) the signature or digital or electronic signature
17 of the declarant or persons executing or issuing the order and the
18 attending physician, a physician assistant, or an advanced practice
19 registered nurse in the appropriate places designated on the form
20 for indicating that the order form has been properly completed.

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

25 (1) identify themselves as the declarant or as the
26 attending physician of the person who executed or issued the
27 out-of-hospital DNR order or for whom the out-of-hospital DNR order

1 was executed or issued, a physician assistant or advanced practice
2 registered nurse providing care to the person, or the legal
3 guardian, qualified relative, or agent of the person having a
4 medical power of attorney who executed or issued the
5 out-of-hospital DNR order on behalf of the person; and

6 (2) request that cardiopulmonary resuscitation or
7 certain other life-sustaining treatment designated by department
8 rule be initiated or continued.

9 (i) If the policies of a health care facility preclude
10 compliance with the out-of-hospital DNR order of a person or an
11 out-of-hospital DNR order issued by an attending physician, a
12 physician assistant, or an advanced practice registered nurse on
13 behalf of a person who is admitted to or a resident of the facility,
14 or if the facility is unwilling to accept DNR identification
15 devices as evidence of the existence of an out-of-hospital DNR
16 order, that facility shall take all reasonable steps to notify the
17 person or, if the person is incompetent, the person's guardian or
18 the person or persons designated as having authority to make health
19 care treatment decisions on behalf of the person for whom the order
20 was executed or issued, of the facility's policy and shall take all
21 reasonable steps to effect the transfer of the person to the
22 person's home or to a facility where the provisions of this
23 subchapter can be carried out.

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

26 (b) An oral revocation under Subsection (a)(3) or (a)(4)
27 takes effect only when the declarant or a person who identifies

1 himself or herself as the legal guardian, a qualified relative, or
2 the agent of the declarant having a medical power of attorney who
3 executed the out-of-hospital DNR order communicates the intent to
4 revoke the order to the responding health care professionals or the
5 declarant's attending physician, or the physician assistant or
6 advanced practice registered nurse providing care to the declarant,
7 at the scene. The responding health care professionals shall
8 record the time, date, and place of the revocation in accordance
9 with the statewide out-of-hospital DNR protocol and rules adopted
10 by the executive commissioner and any applicable local
11 out-of-hospital DNR protocol. The attending physician, ~~or~~ the
12 physician's designee, the physician assistant, or the advanced
13 practice registered nurse shall record in the declarant's
14 ~~person's~~ medical record the time, date, and place of the
15 revocation and, if different, the time, date, and place that the
16 physician, physician assistant, or advanced practice registered
17 nurse received notice of the revocation. The attending physician,
18 ~~or~~ the physician's designee, the physician assistant, or the
19 advanced practice registered nurse shall also enter the word "VOID"
20 on each page of the copy of the order in the declarant's ~~person's~~
21 medical record.

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

24 (c) If a person's ~~an~~ attending physician, or a physician
25 assistant or advanced practice registered nurse providing care to
26 the person, refuses to execute or comply with an out-of-hospital
27 DNR order, the physician, physician assistant, or advanced practice

1 registered nurse shall inform the person, the legal guardian or
2 qualified relatives of the person, or the agent of the person having
3 a medical power of attorney and, if the person or another authorized
4 to act on behalf of the person so directs, shall make a reasonable
5 effort to transfer the person to another physician, physician
6 assistant, or advanced practice registered nurse who is willing to
7 execute or comply with an out-of-hospital DNR order.

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

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

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

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

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

21 (a) A DNR order issued for a patient is valid only if the
22 patient's attending physician, or a physician assistant or advanced
23 practice registered nurse providing care to the patient, issues the
24 order, the order is dated, and the order:

25 (1) is issued in compliance with:

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

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

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

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

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

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

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

19 (B) the DNR order is medically appropriate.

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

22 (a) A physician, physician assistant, or advanced practice
23 registered nurse providing direct care to a patient for whom a DNR
24 order is issued shall revoke the patient's DNR order if the patient
25 or, as applicable, the patient's agent under a medical power of
26 attorney or the patient's legal guardian if the patient is
27 incompetent:

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

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

7 (b) A person providing direct care to a patient under the
8 supervision of a physician, physician assistant, or advanced
9 practice registered nurse shall notify the physician, physician
10 assistant, or advanced practice registered nurse of the request to
11 revoke a DNR order under Subsection (a).

12 (c) A patient's attending physician, or a physician
13 assistant or advanced practice registered nurse providing care to
14 the patient, may at any time revoke a DNR order issued under Section
15 166.203(a)(2).

16 SECTION 14. Section 166.083(d), Health and Safety Code, as
17 amended by this Act, is intended to clarify rather than change
18 existing law.

19 SECTION 15. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2023.