By: Klick, et al. (Senate Sponsor - Springer) H.B. No. 3162

(In the Senate - Received from the House May 9, 2023; May 11, 2023, read first time and referred to Committee on Health & Human Services; May 17, 2023, reported favorably by the following vote: Yeas 9, Nays 0; May 17, 2023, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Kolkhorst	X			
Perry	X			
Blanco	X			
Hall	X			
Hancock	X			
Hughes	X			
LaMantia	X			
Miles	X			
Sparks	X			

A BILL TO BE ENTITLED
AN ACT

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

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

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

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

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

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

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

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional conduct by participating in a medical procedure performed under Section 166.046(d-2) unless the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to harm the patient.

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

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

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

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

(a-1) If an attending physician refuses to honor an [~~a patient's~~] advance directive of or [~~a~~] health care or treatment decision made by or on behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of

2-1 that committee during the review. The patient shall be given
2-2 life-sustaining treatment during the review.
2-3 (a-2) An ethics or medical committee that reviews a
2-4 physician's refusal to honor an advance directive or health care or
2-5 treatment decision under Subsection (a-1) shall consider the
2-6 patient's well-being in conducting the review but may not make any
2-7 judgment on the patient's quality of life. For purposes of this
2-8 section, a decision by the committee based on any of the
2-9 considerations described by Subdivisions (1) through (5) is not a
2-10 judgment on the patient's quality of life. If the review requires
2-11 the committee to determine whether life-sustaining treatment
2-12 requested in the patient's advance directive or by the person
2-13 responsible for the patient's health care decisions is medically
2-14 inappropriate, the committee shall consider whether provision of
2-15 the life-sustaining treatment:
2-16 (1) will prolong the natural process of dying or
2-17 hasten the patient's death;
2-18 (2) will result in substantial, irremediable, and
2-19 objectively measurable physical pain that is not outweighed by the
2-20 benefit of providing the treatment;
2-21 (3) is medically contraindicated such that the
2-22 provision of the treatment seriously exacerbates life-threatening
2-23 medical problems not outweighed by the benefit of providing the
2-24 treatment;
2-25 (4) is consistent with the prevailing standard of
2-26 care; or
2-27 (5) is contrary to the patient's clearly documented
2-28 desires.
2-29 (b) The [~~patient or the~~] person responsible for the
2-30 patient's health care decisions [~~of the individual who has made the~~
2-31 ~~decision regarding the directive or treatment decision~~]:
2-32 (1) [~~may be given a written description of the ethics~~
2-33 ~~or medical committee review process and any other policies and~~
2-34 ~~procedures related to this section adopted by the health care~~
2-35 ~~facility;~~
2-36 [~~(2)~~] shall be informed in writing [~~of the committee~~
2-37 ~~review process~~] not less than seven calendar days [~~48 hours~~] before
2-38 the meeting called to discuss the patient's directive, unless the
2-39 [~~time~~] period is waived by written mutual agreement, of:
2-40 (A) the ethics or medical committee review
2-41 process and any other related policies and procedures adopted by
2-42 the health care facility, including any policy described by
2-43 Subsection (b-1);
2-44 (B) the rights described in Subdivisions
2-45 (3)(A)-(D);
2-46 (C) the date, time, and location of the meeting;
2-47 (D) the work contact information of the
2-48 facility's personnel who, in the event of a disagreement, will be
2-49 responsible for overseeing the reasonable effort to transfer the
2-50 patient to another physician or facility willing to comply with the
2-51 directive;
2-52 (E) the factors the committee is required to
2-53 consider under Subsection (a-2); and
2-54 (F) the language in Section 166.0465;
2-55 (2) [~~(3)~~] at the time of being [~~so~~] informed under
2-56 Subdivision (1), shall be provided:
2-57 (A) a copy of the appropriate statement set forth
2-58 in Section 166.052; and
2-59 (B) a copy of the registry list of health care
2-60 providers and referral groups that have volunteered their readiness
2-61 to consider accepting transfer or to assist in locating a provider
2-62 willing to accept transfer that is posted on the website maintained
2-63 by the department under Section 166.053; and
2-64 (3) [~~(4)~~] is entitled to:
2-65 (A) attend and participate in the meeting as
2-66 scheduled by the committee;
2-67 (B) receive during the meeting a written
2-68 statement of the first name, first initial of the last name, and
2-69 title of each committee member who will participate in the meeting;

3-1 (C) subject to Subsection (b-1):
3-2 (i) be accompanied at the meeting by the
3-3 patient's spouse, parents, adult children, and not more than four
3-4 additional individuals, including legal counsel, a physician, a
3-5 health care professional, or a patient advocate, selected by the
3-6 person responsible for the patient's health care decisions; and
3-7 (ii) have an opportunity during the open
3-8 portion of the meeting to either directly or through another
3-9 individual attending the meeting:
3-10 (a) explain the justification for the
3-11 health care or treatment request made by or on behalf of the
3-12 patient;
3-13 (b) respond to information relating
3-14 to the patient that is submitted or presented during the open
3-15 portion of the meeting; and
3-16 (c) state any concerns of the person
3-17 responsible for the patient's health care decisions regarding
3-18 compliance with this section or Section 166.0465, including stating
3-19 an opinion that one or more of the patient's disabilities are not
3-20 relevant to the committee's determination of whether the medical or
3-21 surgical intervention is medically appropriate;
3-22 (D) receive a written notice [~~explanation~~] of:
3-23 (i) the decision reached during the review
3-24 process accompanied by an explanation of the decision, including,
3-25 if applicable, the committee's reasoning for affirming that
3-26 requested life-sustaining treatment is medically inappropriate;
3-27 (ii) the patient's major medical conditions
3-28 as identified by the committee, including any disability of the
3-29 patient considered by the committee in reaching the decision,
3-30 except the notice is not required to specify whether any medical
3-31 condition qualifies as a disability;
3-32 (iii) a statement that the committee has
3-33 complied with Subsection (a-2) and Section 166.0465; and
3-34 (iv) the health care facilities contacted
3-35 before the meeting as part of the transfer efforts under Subsection
3-36 (d) and, for each listed facility that denied the request to
3-37 transfer the patient and provided a reason for the denial, the
3-38 provided reason;
3-39 (E) [~~(C)~~] receive a copy of or electronic access
3-40 to the portion of the patient's medical record related to the
3-41 treatment received by the patient in the facility for [~~the lesser~~
3-42 ~~of:~~
3-43 [~~(i)~~] the period of the patient's current
3-44 admission to the facility; [~~or~~
3-45 [~~(ii) the preceding 30 calendar days;~~] and
3-46 (F) [~~(D)~~] receive a copy of or electronic access
3-47 to all of the patient's reasonably available diagnostic results and
3-48 reports related to the medical record provided under Paragraph (E)
3-49 [~~(C)~~].
3-50 (b-1) A health care facility may adopt and implement a
3-51 written policy for meetings held under this section that is
3-52 reasonable and necessary to:
3-53 (1) facilitate information sharing and discussion of
3-54 the patient's medical status and treatment requirements, including
3-55 provisions related to attendance, confidentiality, and timing
3-56 regarding any agenda item; and
3-57 (2) preserve the effectiveness of the meeting,
3-58 including provisions disclosing that the meeting is not a legal
3-59 proceeding and the committee will enter into an executive session
3-60 for deliberations.
3-61 (b-2) Notwithstanding Subsection (b)(3), the following
3-62 individuals may not attend or participate in the executive session
3-63 of an ethics or medical committee under this section:
3-64 (1) the physicians or health care professionals
3-65 providing health care and treatment to the patient; or
3-66 (2) the person responsible for the patient's health
3-67 care decisions or any person attending the meeting under Subsection
3-68 (b)(3)(C)(i).
3-69 (b-3) If the health care facility or person responsible for

4-1 the patient's health care decisions intends to have legal counsel
4-2 attend the meeting of the ethics or medical committee, the facility
4-3 or person, as applicable, shall make a good faith effort to provide
4-4 written notice of that intention not less than 48 hours before the
4-5 meeting begins.
4-6 (c) The written notice [~~explanation~~] required by Subsection
4-7 (b)(3)(D)(i) [~~Subsection (b)(4)(B)~~] must be included in the
4-8 patient's medical record.
4-9 (d) After written notice is provided under Subsection
4-10 (b)(1), [~~If~~] the patient's attending physician [~~, the patient, or~~
4-11 ~~the person responsible for the health care decisions of the~~
4-12 ~~individual does not agree with the decision reached during the~~
4-13 ~~review process under Subsection (b), the physician~~] shall make a
4-14 reasonable effort to transfer the patient to a physician who is
4-15 willing to comply with the directive. The health care [~~If the~~
4-16 ~~patient is a patient in a health care facility, the~~] facility's
4-17 personnel shall assist the physician in arranging the patient's
4-18 transfer to:
4-19 (1) another physician;
4-20 (2) an alternative care setting within that facility;
4-21 or
4-22 (3) another facility.
4-23 (d-1) If another health care facility denies the patient's
4-24 transfer request, the personnel of the health care facility
4-25 assisting with the patient's transfer efforts under Subsection (d)
4-26 shall make a good faith effort to inquire whether the facility that
4-27 denied the patient's transfer request would be more likely to
4-28 approve the transfer request if a medical procedure, as that term is
4-29 defined in this section, is performed on the patient.
4-30 (d-2) If the patient's advance directive or the person
4-31 responsible for the patient's health care decisions is requesting
4-32 life-sustaining treatment that the attending physician has decided
4-33 and the ethics or medical committee has affirmed is medically
4-34 inappropriate:
4-35 (1) the attending physician or another physician
4-36 responsible for the care of the patient shall perform on the patient
4-37 each medical procedure that satisfies all of the following
4-38 conditions:
4-39 (A) in the attending physician's judgment, the
4-40 medical procedure is reasonable and necessary to help effect the
4-41 patient's transfer under Subsection (d);
4-42 (B) an authorized representative for another
4-43 health care facility with the ability to comply with the patient's
4-44 advance directive or the health care or treatment decision made by
4-45 or on behalf of the patient has expressed to the personnel described
4-46 by Subsection (b)(1)(D) or the attending physician that the
4-47 facility is more likely to accept the patient's transfer to the
4-48 other facility if the medical procedure is performed on the
4-49 patient;
4-50 (C) in the medical judgment of the physician who
4-51 would perform the medical procedure, performing the medical
4-52 procedure is:
4-53 (i) within the prevailing standard of
4-54 medical care; and
4-55 (ii) not medically contraindicated or
4-56 medically inappropriate under the circumstances;
4-57 (D) in the medical judgment of the physician who
4-58 would perform the medical procedure, the physician has the training
4-59 and experience to perform the medical procedure;
4-60 (E) the physician who would perform the medical
4-61 procedure has medical privileges at the facility where the patient
4-62 is receiving care authorizing the physician to perform the medical
4-63 procedure at the facility;
4-64 (F) the facility where the patient is receiving
4-65 care has determined the facility has the resources for the
4-66 performance of the medical procedure at the facility; and
4-67 (G) the person responsible for the patient's
4-68 health care decisions provides consent on behalf of the patient for
4-69 the medical procedure; and

5-1 (2) the person responsible for the patient's health
5-2 care decisions is entitled to receive:
5-3 (A) a delay notice:
5-4 (i) if, at the time the written decision is
5-5 provided as required by Subsection (b)(3)(D)(i), a medical
5-6 procedure satisfies all of the conditions described by Subdivision
5-7 (1); or
5-8 (ii) if:
5-9 (a) at the time the written decision
5-10 is provided as required by Subsection (b)(3)(D)(i), a medical
5-11 procedure satisfies all of the conditions described by Subdivision
5-12 (1) except Subdivision (1)(G); and
5-13 (b) the person responsible for the
5-14 patient's health care decisions provides to the attending physician
5-15 or another physician or health care professional providing direct
5-16 care to the patient consent on behalf of the patient for the medical
5-17 procedure within 24 hours of the request for consent;
5-18 (B) a start notice:
5-19 (i) if, at the time the written decision is
5-20 provided as required by Subsection (b)(3)(D)(i), no medical
5-21 procedure satisfies all of the conditions described by Subdivisions
5-22 (1)(A) through (F); or
5-23 (ii) if:
5-24 (a) at the time the written decision
5-25 is provided as required by Subsection (b)(3)(D)(i), a medical
5-26 procedure satisfies all of the conditions described by Subdivision
5-27 (1) except Subdivision (1)(G); and
5-28 (b) the person responsible for the
5-29 patient's health care decisions does not provide to the attending
5-30 physician or another physician or health care professional
5-31 providing direct care to the patient consent on behalf of the
5-32 patient for the medical procedure within 24 hours of the request for
5-33 consent; and
5-34 (C) a start notice accompanied by a statement
5-35 that one or more of the conditions described by Subdivisions (1)(A)
5-36 through (G) are no longer satisfied if, after a delay notice is
5-37 provided in accordance with Subdivision (2)(A) and before the
5-38 medical procedure on which the delay notice is based is performed on
5-39 the patient, one or more of those conditions are no longer
5-40 satisfied.
5-41 (d-3) After the 25-day period described by Subsection (e)
5-42 begins, the period may not be suspended or stopped for any reason.
5-43 This subsection does not limit or affect a court's ability to order
5-44 an extension of the period in accordance with Subsection (g).
5-45 Subsection (d-2) does not require a medical procedure to be
5-46 performed on the patient after the expiration of the 25-day period.
5-47 (e) If the patient's advance directive [~~patient~~] or the
5-48 person responsible for the patient's health care decisions [~~of the~~
5-49 ~~patient~~] is requesting life-sustaining treatment that the
5-50 attending physician has decided and the ethics or medical committee
5-51 has affirmed is medically inappropriate treatment, the patient
5-52 shall be given available life-sustaining treatment pending
5-53 transfer under Subsection (d). This subsection does not authorize
5-54 withholding or withdrawing pain management medication, medical
5-55 interventions [~~procedures~~] necessary to provide comfort, or any
5-56 other health care provided to alleviate a patient's pain. The
5-57 patient is responsible for any costs incurred in transferring the
5-58 patient to another health care facility. The attending physician,
5-59 any other physician responsible for the care of the patient, and the
5-60 health care facility are not obligated to provide life-sustaining
5-61 treatment after the 25th calendar [~~10th~~] day after a start notice is
5-62 [~~both the written decision and the patient's medical record~~
5-63 ~~required under Subsection (b) are~~] provided in accordance with
5-64 Subsection (d-2)(2)(B) or (C) to [~~the patient or~~] the person
5-65 responsible for the patient's health care decisions or a medical
5-66 procedure for which a delay notice was provided in accordance with
5-67 Subsection (d-2)(2)(A) is performed, whichever occurs first, [~~of~~
5-68 ~~the patient~~] unless ordered to extend the 25-day period [~~do so~~]
5-69 under Subsection (g), except that artificially administered

6-1 nutrition and hydration must be provided unless, based on
6-2 reasonable medical judgment, providing artificially administered
6-3 nutrition and hydration would:
6-4 (1) hasten the patient's death;
6-5 (2) be medically contraindicated such that the
6-6 provision of the treatment seriously exacerbates life-threatening
6-7 medical problems not outweighed by the benefit of providing [the
6-8 provision of] the treatment;
6-9 (3) result in substantial, irremediable, and
6-10 objectively measurable physical pain not outweighed by the benefit
6-11 of providing [the provision of] the treatment;
6-12 (4) be medically ineffective in prolonging life; or
6-13 (5) be contrary to the patient's or surrogate's
6-14 clearly documented desire not to receive artificially administered
6-15 nutrition or hydration.
6-16 (g) At the request of [the patient or] the person
6-17 responsible for the patient's health care decisions [of the
6-18 patient], the appropriate district or county court shall extend the
6-19 [time] period provided under Subsection (e) only if the court
6-20 finds, by a preponderance of the evidence, that there is a
6-21 reasonable expectation that a physician or health care facility
6-22 that will honor the patient's directive will be found if the time
6-23 extension is granted.
6-24 (i) In this section:
6-25 (1) "Delay notice" means a written notice that the
6-26 first day of the 25-day period provided under Subsection (e), after
6-27 which life-sustaining treatment may be withheld or withdrawn unless
6-28 a court has granted an extension under Subsection (g), will be
6-29 delayed until the calendar day after a medical procedure required
6-30 by Subsection (d-2)(1) is performed unless, before the medical
6-31 procedure is performed, the person receives written notice of an
6-32 earlier first day because one or more conditions described by that
6-33 subdivision are no longer satisfied.
6-34 (2) "Medical procedure" means only a tracheostomy or a
6-35 percutaneous endoscopic gastrostomy.
6-36 (3) "Start notice" means a written notice that the
6-37 25-day period provided under Subsection (e), after which
6-38 life-sustaining treatment may be withheld or withdrawn unless a
6-39 court has granted an extension under Subsection (g), will begin on
6-40 the first calendar day after the date the notice is provided.
6-41 SECTION 4. Subchapter B, Chapter 166, Health and Safety
6-42 Code, is amended by adding Section 166.0465 to read as follows:
6-43 Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED
6-44 TO PATIENT DISABILITY. (a) In this section, "disability" has the
6-45 meaning assigned by the Americans with Disabilities Act of 1990 in
6-46 42 U.S.C. Section 12102.
6-47 (b) During the review process under Section 166.046(b), the
6-48 ethics or medical committee may not consider a patient's disability
6-49 that existed before the patient's current admission unless the
6-50 disability is relevant in determining whether the medical or
6-51 surgical intervention is medically appropriate.
6-52 SECTION 5. Sections 166.052(a) and (b), Health and Safety
6-53 Code, are amended to read as follows:
6-54 (a) In cases in which the attending physician refuses to
6-55 honor an advance directive or health care or treatment decision
6-56 requesting the provision of life-sustaining treatment for a patient
6-57 who is determined to be incompetent or is otherwise mentally or
6-58 physically incapable of communication, the statement required by
6-59 Section 166.046(b)(2)(A) [166.046(b)(3)(A)] shall be in
6-60 substantially the following form:
6-61 When There Is A Disagreement About Medical Treatment: The
6-62 Physician Recommends Against Certain Life-Sustaining Treatment
6-63 That You Wish To Continue
6-64 You have been given this information because the patient has
6-65 requested through an advance directive or you have requested on
6-66 behalf of the patient that life-sustaining treatment* be provided
6-67 to [for yourself as the patient or on behalf of] the patient, [as
6-68 applicable,] which the attending physician believes is not
6-69 medically appropriate. This information is being provided to help

7-1 you understand state law, your rights, and the resources available
7-2 to you in such circumstances. It outlines the process for resolving
7-3 disagreements about treatment among patients, families, and
7-4 physicians. It is based upon Section 166.046 of the Texas Advance
7-5 Directives Act, codified in Chapter 166, Texas Health and Safety
7-6 Code.
7-7 When an attending physician refuses to comply with an advance
7-8 directive or other request for life-sustaining treatment for a
7-9 patient who is determined to be incompetent or is otherwise
7-10 mentally or physically incapable of communication because of the
7-11 physician's judgment that the treatment would be medically
7-12 inappropriate, the case will be reviewed by an ethics or medical
7-13 committee. Life-sustaining treatment will be provided through the
7-14 review.
7-15 You will receive notification of this review at least seven
7-16 calendar days [~~48 hours~~] before a meeting of the committee related
7-17 to your case. You are entitled to attend the meeting. With your
7-18 agreement, the meeting may be held sooner than seven calendar days
7-19 [~~48 hours~~], if possible.
7-20 You are entitled to receive a written explanation of the
7-21 decision reached during the review process.
7-22 If after this review process both the attending physician and
7-23 the ethics or medical committee conclude that life-sustaining
7-24 treatment is medically inappropriate and yet you continue to
7-25 request such treatment, then the following procedure will occur:
7-26 1. The physician, with the help of the health care facility,
7-27 will assist you in trying to find a physician and facility willing
7-28 to provide the requested treatment.
7-29 2. You are being given a list of health care providers,
7-30 licensed physicians, health care facilities, and referral groups
7-31 that have volunteered their readiness to consider accepting
7-32 transfer, or to assist in locating a provider willing to accept
7-33 transfer, maintained by the Department of State Health Services.
7-34 You may wish to contact providers, facilities, or referral groups
7-35 on the list or others of your choice to get help in arranging a
7-36 transfer.
7-37 3. The patient will continue to be given life-sustaining
7-38 treatment until the patient can be transferred to a willing
7-39 provider for up to 25 calendar [~~10~~] days from the time you were
7-40 given a written notice of the first day of the 25-day period or a
7-41 medical procedure is performed that delayed the 25-day period and
7-42 for which you received notice, whichever occurs first [~~both the~~
7-43 ~~committee's written decision that life-sustaining treatment is not~~
7-44 ~~appropriate and the patient's medical record~~]. The patient will
7-45 continue to be given after the 25-day [~~10-day~~] period treatment to
7-46 enhance pain management and reduce suffering, including
7-47 artificially administered nutrition and hydration, unless, based
7-48 on reasonable medical judgment, providing artificially
7-49 administered nutrition and hydration would hasten the patient's
7-50 death, be medically contraindicated such that the provision of the
7-51 treatment seriously exacerbates life-threatening medical problems
7-52 not outweighed by the benefit of the provision of the treatment,
7-53 result in substantial irremediable physical pain not outweighed by
7-54 the benefit of the provision of the treatment, be medically
7-55 ineffective in prolonging life, or be contrary to the patient's or
7-56 surrogate's clearly documented desires.
7-57 4. If a transfer can be arranged, the patient will be
7-58 responsible for the costs of the transfer.
7-59 5. If a provider cannot be found willing to give the
7-60 requested treatment within 25 calendar [~~10~~] days, life-sustaining
7-61 treatment may be withdrawn unless a court of law has granted an
7-62 extension.
7-63 6. You may ask the appropriate district or county court to
7-64 extend the 25-day [~~the 10-day~~] period if the court finds that there
7-65 is a reasonable expectation that you may find a physician or health
7-66 care facility willing to provide life-sustaining treatment if the
7-67 extension is granted. Patient medical records will be provided to
7-68 the patient or surrogate in accordance with Section 241.154, Texas
7-69 Health and Safety Code.

8-1 *"Life-sustaining treatment" means treatment that, based on
8-2 reasonable medical judgment, sustains the life of a patient and
8-3 without which the patient will die. The term includes both
8-4 life-sustaining medications and artificial life support, such as
8-5 mechanical breathing machines, kidney dialysis treatment, and
8-6 artificially administered nutrition and hydration. The term does
8-7 not include the administration of pain management medication or the
8-8 performance of a medical procedure considered to be necessary to
8-9 provide comfort care, or any other medical care provided to
8-10 alleviate a patient's pain.
8-11 (b) In cases in which the attending physician refuses to
8-12 comply with an advance directive or a health care or treatment
8-13 decision requesting the withholding or withdrawal of
8-14 life-sustaining treatment for a patient who is determined to be
8-15 incompetent or is otherwise mentally or physically incapable of
8-16 communication, the statement required by Section 166.046(b)(2)(A)
8-17 [~~166.046(b)(3)(A)~~] shall be in substantially the following form:
8-18 When There Is A Disagreement About Medical Treatment: The
8-19 Physician Recommends Life-Sustaining Treatment That You Wish To
8-20 Stop
8-21 You have been given this information because the patient has
8-22 requested through an advance directive or you have requested on
8-23 behalf of the patient that [~~the withdrawal or withholding of~~]
8-24 life-sustaining treatment* be withdrawn or withheld from [~~for~~
8-25 ~~yourself as the patient or on behalf of~~] the patient, [~~as~~
8-26 ~~applicable,~~] and the attending physician disagrees with and refuses
8-27 to comply with that request. The information is being provided to
8-28 help you understand state law, your rights, and the resources
8-29 available to you in such circumstances. It outlines the process for
8-30 resolving disagreements about treatment among patients, families,
8-31 and physicians. It is based upon Section 166.046 of the Texas
8-32 Advance Directives Act, codified in Chapter 166, Texas Health and
8-33 Safety Code.
8-34 When an attending physician refuses to comply with an advance
8-35 directive or other request for withdrawal or withholding of
8-36 life-sustaining treatment for any reason, the case will be reviewed
8-37 by an ethics or medical committee. Life-sustaining treatment will
8-38 be provided through the review.
8-39 You will receive notification of this review at least seven
8-40 calendar days [~~48 hours~~] before a meeting of the committee related
8-41 to your case. You are entitled to attend the meeting. With your
8-42 agreement, the meeting may be held sooner than seven calendar days
8-43 [~~48 hours~~], if possible.
8-44 You are entitled to receive a written explanation of the
8-45 decision reached during the review process.
8-46 If you or the attending physician do not agree with the
8-47 decision reached during the review process, and the attending
8-48 physician still refuses to comply with your request to withhold or
8-49 withdraw life-sustaining treatment, then the following procedure
8-50 will occur:
8-51 1. The physician, with the help of the health care facility,
8-52 will assist you in trying to find a physician and facility willing
8-53 to withdraw or withhold the life-sustaining treatment.
8-54 2. You are being given a list of health care providers,
8-55 licensed physicians, health care facilities, and referral groups
8-56 that have volunteered their readiness to consider accepting
8-57 transfer, or to assist in locating a provider willing to accept
8-58 transfer, maintained by the Department of State Health Services.
8-59 You may wish to contact providers, facilities, or referral groups
8-60 on the list or others of your choice to get help in arranging a
8-61 transfer.
8-62 *"Life-sustaining treatment" means treatment that, based on
8-63 reasonable medical judgment, sustains the life of a patient and
8-64 without which the patient will die. The term includes both
8-65 life-sustaining medications and artificial life support, such as
8-66 mechanical breathing machines, kidney dialysis treatment, and
8-67 artificially administered nutrition and hydration. The term does
8-68 not include the administration of pain management medication or the
8-69 performance of a medical procedure considered to be necessary to

9-1 provide comfort care, or any other medical care provided to
9-2 alleviate a patient's pain.
9-3 SECTION 6. Subchapter B, Chapter 166, Health and Safety
9-4 Code, is amended by adding Section 166.054 to read as follows:
9-5 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
9-6 MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day
9-7 after the date written notice is provided under Section
9-8 166.046(b)(1), a health care facility shall prepare and submit to
9-9 the commission a report that contains the following information:
9-10 (1) the number of days that elapsed from the patient's
9-11 admission to the facility to the date notice was provided under
9-12 Section 166.046(b)(1);
9-13 (2) whether the ethics or medical committee met to
9-14 review the case under Section 166.046 and, if the committee did
9-15 meet, the number of days that elapsed from the date notice was
9-16 provided under Section 166.046(b)(1) to the date the meeting was
9-17 held;
9-18 (3) whether the patient was:
9-19 (A) transferred to a physician within the same
9-20 facility who was willing to comply with the patient's advance
9-21 directive or a health care or treatment decision made by or on
9-22 behalf of the patient;
9-23 (B) transferred to a different health care
9-24 facility; or
9-25 (C) discharged from the facility to a private
9-26 residence or other setting that is not a health care facility;
9-27 (4) whether the patient died while receiving
9-28 life-sustaining treatment at the facility;
9-29 (5) whether life-sustaining treatment was withheld or
9-30 withdrawn from the patient at the facility after expiration of the
9-31 time period described by Section 166.046(e) and, if so, the
9-32 disposition of the patient after the withholding or withdrawal of
9-33 life-sustaining treatment at the facility, as selected from the
9-34 following categories:
9-35 (A) the patient died at the facility;
9-36 (B) the patient is currently a patient at the
9-37 facility;
9-38 (C) the patient was transferred to a different
9-39 health care facility; or
9-40 (D) the patient was discharged from the facility
9-41 to a private residence or other setting that is not a health care
9-42 facility;
9-43 (6) the age group of the patient selected from the
9-44 following categories:
9-45 (A) 17 years of age or younger;
9-46 (B) 18 years of age or older and younger than 66
9-47 years of age; or
9-48 (C) 66 years of age or older;
9-49 (7) the health insurance coverage status of the
9-50 patient selected from the following categories:
9-51 (A) private health insurance coverage;
9-52 (B) public health plan coverage; or
9-53 (C) uninsured;
9-54 (8) the patient's sex;
9-55 (9) the patient's race;
9-56 (10) whether the facility was notified of and able to
9-57 reasonably verify any public disclosure of the contact information
9-58 for the facility's personnel, physicians or health care
9-59 professionals who provide care at the facility, or members of the
9-60 ethics or medical committee in connection with the patient's stay
9-61 at the facility; and
9-62 (11) whether the facility was notified of and able to
9-63 reasonably verify any public disclosure by facility personnel of
9-64 the contact information for the patient's immediate family members
9-65 or the person responsible for the patient's health care decisions
9-66 in connection with the patient's stay at the facility.
9-67 (b) The commission shall ensure information provided in
9-68 each report submitted by a health care facility under Subsection
9-69 (a) is kept confidential and not disclosed in any manner, except as

10-1 provided by this section.
10-2 (c) Not later than April 1 of each year, the commission
10-3 shall prepare and publish on the commission's Internet website a
10-4 report that contains:
10-5 (1) aggregate information compiled from the reports
10-6 submitted to the commission under Subsection (a) during the
10-7 preceding year on:
10-8 (A) the total number of written notices provided
10-9 under Section 166.046(b)(1);
10-10 (B) the average number of days described by
10-11 Subsection (a)(1);
10-12 (C) the total number of meetings held by ethics
10-13 or medical committees to review cases under Section 166.046;
10-14 (D) the average number of days described by
10-15 Subsection (a)(2);
10-16 (E) the total number of patients described by
10-17 Subsections (a)(3)(A), (B), and (C);
10-18 (F) the total number of patients described by
10-19 Subsection (a)(4);
10-20 (G) the total number of patients for whom
10-21 life-sustaining treatment was withheld or withdrawn after
10-22 expiration of the time period described by Section 166.046(e);
10-23 (H) the total number of cases for which the
10-24 facility was notified of and able to reasonably verify the public
10-25 disclosure of the contact information for the facility's personnel,
10-26 physicians or health care professionals who provide care at the
10-27 facility, or members of the ethics or medical committee in
10-28 connection with the patient's stay at the facility; and
10-29 (I) the total number of cases for which the
10-30 facility was notified of and able to reasonably verify the public
10-31 disclosure by facility personnel of contact information for the
10-32 patient's immediate family members or person responsible for the
10-33 patient's health care decisions in connection with the patient's
10-34 stay at the facility; and
10-35 (2) if the total number of reports submitted under
10-36 Subsection (a) for the preceding year is 10 or more, aggregate
10-37 information compiled from those reports on the total number of
10-38 patients categorized by:
10-39 (A) sex;
10-40 (B) race;
10-41 (C) age group, based on the categories described
10-42 by Subsection (a)(6);
10-43 (D) health insurance coverage status, based on
10-44 the categories described by Subsection (a)(7); and
10-45 (E) for patients for whom life-sustaining
10-46 treatment was withheld or withdrawn at the facility after
10-47 expiration of the period described by Section 166.046(e), the total
10-48 number of patients described by each of the following:
10-49 (i) Subsection (a)(5)(A);
10-50 (ii) Subsection (a)(5)(B);
10-51 (iii) Subsection (a)(5)(C); and
10-52 (iv) Subsection (a)(5)(D).
10-53 (d) If the commission receives fewer than 10 reports under
10-54 Subsection (a) for inclusion in an annual report required under
10-55 Subsection (c), the commission shall include in the next annual
10-56 report prepared after the commission receives 10 or more reports
10-57 the aggregate information for all years for which the information
10-58 was not included in a preceding annual report. The commission shall
10-59 include in the next annual report a statement that identifies each
10-60 year during which an underlying report was submitted to the
10-61 commission under Subsection (a).
10-62 (e) The annual report required by Subsection (c) or (d) may
10-63 not include any information that could be used alone or in
10-64 combination with other reasonably available information to
10-65 identify any individual, entity, or facility.
10-66 (f) The executive commissioner shall adopt rules to:
10-67 (1) establish a standard form for the reporting
10-68 requirements of this section; and
10-69 (2) protect and aggregate any information the

11-1 commission receives under this section.
11-2 (g) Information collected as required by this section or
11-3 submitted to the commission under this section:
11-4 (1) is not admissible in a civil or criminal
11-5 proceeding in which a physician, health care professional acting
11-6 under the direction of a physician, or health care facility is a
11-7 defendant;
11-8 (2) may not be used in relation to any disciplinary
11-9 action by a licensing or regulatory agency with oversight over a
11-10 physician, health care professional acting under the direction of a
11-11 physician, or health care facility; and
11-12 (3) is not public information or subject to disclosure
11-13 under Chapter 552, Government Code, except as permitted by Section
11-14 552.008, Government Code.
11-15 SECTION 7. Sections 166.203(a), (b), and (c), Health and
11-16 Safety Code, are amended to read as follows:
11-17 (a) A DNR order issued for a patient is valid only if [~~the~~
11-18 ~~patient's attending physician issues the order,~~] the order is
11-19 dated[~~,~~] and [~~the order~~]:
11-20 (1) is issued by a physician providing direct care to
11-21 the patient in compliance with:
11-22 (A) the written and dated directions of a patient
11-23 who was competent at the time the patient wrote the directions;
11-24 (B) the oral directions of a competent patient
11-25 delivered to or observed by two competent adult witnesses, at least
11-26 one of whom must be a person not listed under Section 166.003(2)(E)
11-27 or (F);
11-28 (C) the directions in an advance directive
11-29 enforceable under Section 166.005 or executed in accordance with
11-30 Section 166.032, 166.034, [~~or~~] 166.035, 166.082, 166.084, or
11-31 166.085;
11-32 (D) the directions of a patient's:
11-33 (i) legal guardian;
11-34 (ii) [~~or~~] agent under a medical power of
11-35 attorney acting in accordance with Subchapter D; or
11-36 (iii) proxy as designated and authorized by
11-37 a directive executed in accordance with Subchapter B to make a
11-38 treatment decision for the patient if the patient becomes
11-39 incompetent or otherwise mentally or physically incapable of
11-40 communication; or
11-41 (E) a treatment decision made in accordance with
11-42 Section 166.039; [~~or~~]
11-43 (2) is issued by the patient's attending physician
11-44 and:
11-45 (A) the order is not contrary to the directions
11-46 of a patient who was competent at the time the patient conveyed the
11-47 directions; and
11-48 (B) [~~,~~] in the reasonable medical judgment of the
11-49 patient's attending physician:
11-50 (i) [~~(A)~~] the patient's death is imminent,
11-51 within minutes to hours, regardless of the provision of
11-52 cardiopulmonary resuscitation; and
11-53 (ii) [~~(B)~~] the DNR order is medically
11-54 appropriate; or
11-55 (3) is issued by the patient's attending physician:
11-56 (A) for a patient who is incompetent or otherwise
11-57 mentally or physically incapable of communication; and
11-58 (B) in compliance with a decision:
11-59 (i) agreed on by the attending physician
11-60 and the person responsible for the patient's health care decisions;
11-61 and
11-62 (ii) concurred in by another physician who
11-63 is not involved in the direct treatment of the patient or who is a
11-64 representative of an ethics or medical committee of the health care
11-65 facility in which the person is a patient.
11-66 (b) The DNR order takes effect at the time the order is
11-67 issued, provided the order is placed in the patient's medical
11-68 record as soon as practicable and may be issued and entered in a
11-69 format acceptable under the policies of the health care facility or

12-1 hospital.
12-2 (c) Unless notice is provided in accordance with Section
12-3 166.204(a), before [Before] placing in a patient's medical record a
12-4 DNR order issued under Subsection (a)(2), a [the] physician,
12-5 physician assistant, nurse, or other person acting on behalf of a
12-6 health care facility or hospital shall:
12-7 (1) inform the patient of the order's issuance; or
12-8 (2) if the patient is incompetent, make a reasonably
12-9 diligent effort to contact or cause to be contacted and inform of
12-10 the order's issuance:
12-11 (A) the patient's known agent under a medical
12-12 power of attorney or legal guardian; or
12-13 (B) for a patient who does not have a known agent
12-14 under a medical power of attorney or legal guardian, a person
12-15 described by Section 166.039(b)(1), (2), or (3).
12-16 SECTION 8. Section 166.204, Health and Safety Code, is
12-17 amended by amending Subsections (a), (b), and (c) and adding
12-18 Subsection (a-1) to read as follows:
12-19 (a) If an individual arrives at a health care facility or
12-20 hospital that is treating a patient for whom a DNR order is issued
12-21 under Section 166.203(a)(2) and the individual notifies a
12-22 physician, physician assistant, or nurse providing direct care to
12-23 the patient of the individual's arrival, the physician, physician
12-24 assistant, or nurse who has actual knowledge of the order shall,
12-25 unless notice has been provided in accordance with Section
12-26 166.203(c), disclose the order to the individual, provided the
12-27 individual is:
12-28 (1) the patient's known agent under a medical power of
12-29 attorney or legal guardian; or
12-30 (2) for a patient who does not have a known agent under
12-31 a medical power of attorney or legal guardian, a person described by
12-32 Section 166.039(b)(1), (2), or (3).
12-33 (a-1) For a patient who was incompetent at the time notice
12-34 otherwise would have been provided to the patient under Section
12-35 166.203(c)(1) and if a physician providing direct care to the
12-36 patient later determines that, based on the physician's reasonable
12-37 medical judgment, the patient has become competent, a physician,
12-38 physician assistant, or nurse providing direct care to the patient
12-39 shall disclose the order to the patient, provided that the
12-40 physician, physician assistant, or nurse has actual knowledge:
12-41 (1) of the order; and
12-42 (2) that a physician providing direct care to the
12-43 patient has determined that the patient has become competent.
12-44 (b) Failure to comply with Subsection (a) or (a-1) or
12-45 Section 166.203(c) does not affect the validity of a DNR order
12-46 issued under this subchapter.
12-47 (c) Any person, including a health care facility or
12-48 hospital, [who makes a good faith effort to comply with Subsection
12-49 (a) of this section or Section 166.203(c) and contemporaneously
12-50 records the person's effort to comply with Subsection (a) of this
12-51 section or Section 166.203(c) in the patient's medical record] is
12-52 not civilly or criminally liable or subject to disciplinary action
12-53 from the appropriate licensing authority for any act or omission
12-54 related to providing notice under Subsection (a) or (a-1) of this
12-55 section or Section 166.203(c) if the person:
12-56 (1) makes a good faith effort to comply with
12-57 Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously
12-58 records in the patient's medical record the person's effort to
12-59 comply with those provisions; or
12-60 (2) makes a good faith determination that the
12-61 circumstances that would require the person to perform an act under
12-62 Subsection (a) or (a-1) or Section 166.203(c) are not met.
12-63 SECTION 9. Section 166.205, Health and Safety Code, is
12-64 amended by amending Subsections (a), (b), and (c) and adding
12-65 Subsection (c-1) to read as follows:
12-66 (a) A physician providing direct care to a patient for whom
12-67 a DNR order is issued shall revoke the patient's DNR order if [the
12-68 patient or, as applicable, the patient's agent under a medical
12-69 power of attorney or the patient's legal guardian if the patient is

13-1 incompetent]:
13-2 (1) an advance directive that serves as the basis of
13-3 the DNR order is properly revoked in accordance with this
13-4 chapter; [effectively revokes an advance directive, in accordance
13-5 with Section 166.042, for which a DNR order is issued under Section
13-6 166.203(a); or]
13-7 (2) the patient expresses to any person providing
13-8 direct care to the patient a revocation of consent to or intent to
13-9 revoke a DNR order issued under Section 166.203(a); or
13-10 (3) the DNR order was issued under Section
13-11 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person
13-12 responsible for the patient's health care decisions expresses to
13-13 any person providing direct care to the patient a revocation of
13-14 consent to or intent to revoke the DNR order.
13-15 (b) A person providing direct care to a patient under the
13-16 supervision of a physician shall notify the physician of the
13-17 request to revoke a DNR order or of the revocation of an advance
13-18 directive under Subsection (a).
13-19 (c) A patient's attending physician may at any time revoke a
13-20 DNR order issued under:
13-21 (1) Section 166.203(a)(1)(A), (B), or (C), provided
13-22 that:
13-23 (A) the order is for a patient who is incompetent
13-24 or otherwise mentally or physically incapable of communication; and
13-25 (B) the decision to revoke the order is:
13-26 (i) agreed on by the attending physician
13-27 and the person responsible for the patient's health care decisions;
13-28 and
13-29 (ii) concurred in by another physician who
13-30 is not involved in the direct treatment of the patient or who is a
13-31 representative of an ethics or medical committee of the health care
13-32 facility in which the person is a patient;
13-33 (2) Section 166.203(a)(1)(E), provided that the
13-34 order's issuance was based on a treatment decision made in
13-35 accordance with Section 166.039(e);
13-36 (3) Section 166.203(a)(2); or
13-37 (4) Section 166.203(a)(3).
13-38 (c-1) A patient's attending physician shall revoke a DNR
13-39 order issued for the patient under Section 166.203(a)(2) if, in the
13-40 attending physician's reasonable medical judgment, the condition
13-41 described by Section 166.203(a)(2)(B)(i) is no longer satisfied.
13-42 SECTION 10. Sections 166.206(a) and (b), Health and Safety
13-43 Code, are amended to read as follows:
13-44 (a) If a [an attending] physician, health care facility, or
13-45 hospital does not wish to execute or comply with a DNR order or the
13-46 patient's instructions concerning the provision of cardiopulmonary
13-47 resuscitation, the physician, facility, or hospital shall inform
13-48 the patient, the legal guardian or qualified relatives of the
13-49 patient, or the agent of the patient under a medical power of
13-50 attorney of the benefits and burdens of cardiopulmonary
13-51 resuscitation.
13-52 (b) If, after receiving notice under Subsection (a), the
13-53 patient or another person authorized to act on behalf of the patient
13-54 and the [attending] physician, health care facility, or hospital
13-55 remain in disagreement, the physician, facility, or hospital shall
13-56 make a reasonable effort to transfer the patient to another
13-57 physician, facility, or hospital willing to execute or comply with
13-58 a DNR order or the patient's instructions concerning the provision
13-59 of cardiopulmonary resuscitation.
13-60 SECTION 11. Section 166.209, Health and Safety Code, is
13-61 amended to read as follows:
13-62 Sec. 166.209. ENFORCEMENT. (a) Subject to Sections
13-63 166.205(d), 166.207, and 166.208 and Subsection (c), a [A]
13-64 physician, physician assistant, nurse, or other person commits an
13-65 offense if, with the specific intent to violate this subchapter,
13-66 the person intentionally:
13-67 (1) conceals, cancels, effectuates, or falsifies
13-68 another person's DNR order in violation of this subchapter; or
13-69 (2) [if the person intentionally] conceals or

14-1 withholds personal knowledge of another person's revocation of a
14-2 DNR order in violation of this subchapter.
14-3 (a-1) An offense under Subsection (a) [~~this subsection~~] is a
14-4 Class A misdemeanor. This section [~~subsection~~] does not preclude
14-5 prosecution for any other applicable offense.
14-6 (b) Subject to Sections 166.205(d), 166.207, and 166.208, a
14-7 [~~A~~] physician, health care professional, health care facility,
14-8 hospital, or entity is subject to review and disciplinary action by
14-9 the appropriate licensing authority for intentionally:
14-10 (1) failing to effectuate a DNR order in violation of
14-11 this subchapter; or
14-12 (2) issuing a DNR order in violation of this
14-13 subchapter.
14-14 (c) Subsection (a) does not apply to a person whose act or
14-15 omission was based on a reasonable belief that the act or omission
14-16 was in compliance with the wishes of the patient or the person
14-17 responsible for the patient's health care decisions.
14-18 SECTION 12. Section 313.004, Health and Safety Code, is
14-19 amended by amending Subsections (a) and (c) and adding Subsection
14-20 (a-1) to read as follows:
14-21 (a) If an adult patient of a home and community support
14-22 services agency or in a hospital or nursing home, or an adult inmate
14-23 of a county or municipal jail, is comatose, incapacitated, or
14-24 otherwise mentally or physically incapable of communication and
14-25 does not have a legal guardian or an agent under a medical power of
14-26 attorney who is reasonably available after a reasonably diligent
14-27 inquiry, an adult surrogate from the following list, in order of
14-28 priority, who has decision-making capacity, is reasonably
14-29 available after a reasonably diligent inquiry, and is willing to
14-30 consent to medical treatment on behalf of the patient may consent to
14-31 medical treatment on behalf of the patient:
14-32 (1) the patient's spouse;
14-33 (2) the patient's [~~an adult child of the patient who~~
14-34 ~~has the waiver and consent of all other qualified~~] adult children
14-35 [~~of the patient to act as the sole decision-maker~~];
14-36 (3) [~~a majority of~~] the patient's parents [~~reasonably~~
14-37 ~~available adult children~~]; or
14-38 (4) the patient's nearest living relative [~~parents; or~~
14-39 [~~(5) the individual clearly identified to act for the~~
14-40 ~~patient by the patient before the patient became incapacitated, the~~
14-41 ~~patient's nearest living relative, or a member of the clergy~~].
14-42 (a-1) If the patient does not have a legal guardian, an
14-43 agent under a medical power of attorney, or a person listed in
14-44 Subsection (a) who is reasonably available after a reasonably
14-45 diligent inquiry, another physician who is not involved in the
14-46 medical treatment of the patient may concur with the treatment.
14-47 (c) Any medical treatment consented to under Subsection (a)
14-48 or concurred with under Subsection (a-1) must be based on knowledge
14-49 of what the patient would desire, if known.
14-50 SECTION 13. Chapter 166, Health and Safety Code, as amended
14-51 by this Act, applies only to a review, consultation, disagreement,
14-52 or other action relating to a health care or treatment decision made
14-53 on or after the effective date of this Act. A review, consultation,
14-54 disagreement, or other action relating to a health care or
14-55 treatment decision made before the effective date of this Act is
14-56 governed by the law in effect immediately before the effective date
14-57 of this Act, and the former law is continued in effect for that
14-58 purpose.
14-59 SECTION 14. Section 166.209, Health and Safety Code, as
14-60 amended by this Act, applies only to conduct that occurs on or after
14-61 the effective date of this Act. Conduct that occurs before the
14-62 effective date of this Act is governed by the law in effect on the
14-63 date the conduct occurred, and the former law is continued in effect
14-64 for that purpose.
14-65 SECTION 15. This Act takes effect September 1, 2023.

14-66 * * * * *