UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

31st Annual Health Law Conference
March 27-29, 2019
Austin, TX

Operational Hot Button Issues

Moderator: Kathy L. Poppitt
Panelists: D. Cameron Duncan III
Joanne P. Hopkins

University of Texas Annual Health Law Conference - March 27 - 29, 2019

Operational Hot Button Issues

D. Cameron Duncan III, Texas Hospital Association, Austin, TX
Joanne P. Hopkins, Law Office of Joanne P. Hopkins, Austin, TX
Kathy L. Poppitt, King & Spalding, Austin, TX

I. In-Hospital/Health Care Facility Do Not Resuscitate (In-Hospital DNR) Orders

A. Texas Advance Directives Act, Tex. Health & Safety Code Subchap. E, Sec. 166.201-.209 (SB 11 eff. 4.1.18):

1. Applicable to DNR order issued in a hospital or health care facility.
2. Requires that the DNR order be issued in compliance with one of the following:
   a) Written and dated directions of competent patient;
   b) Oral directions of competent patient delivered to or witnessed by two competent adult witnesses (at least one must meet special qualifications under Sec. 166.003(2)(E) or (F));
   c) Directions in enforceable advance directive under Sec. 166.005 (another jurisdiction) or executed in accordance with:
      (1) Sec. 166.032 (written directive by competent adult witnessed by two competent adult witnesses, at least one must meet special qualifications),
      (2) Sec. 166.034 (nonwritten directive by competent qualified adult in presence of attending physician witnessed by two competent adult witnesses, at least one must meet special qualifications), or
      (3) Sec. 166.035 (directive on behalf of qualified minor patient);
   d) Directions of legal guardian or medical power of attorney (MPOA) agent in accordance with Subchapter D;
   e) Treatment decision in accordance with Sec. 166.039 for a qualified adult patient who does not have a directive, is incompetent, and does not have a legal guardian or MPOA:
      (1) One person, if available, from one of the following categories in the following priority: spouse, reasonably available adult children, parents, or nearest living relative; or

(2) Concurred in by another physician who is not involved in treatment of patient or who is representative of ethics or medical committee of patient's health care facility.

3. Provides alternative to #2 for attending physician to issue In-Hospital DNR order (Physician-Initiated DNR Order) if it is not contrary to directions issued by competent patient and, in reasonable medical judgment of attending physician:
   a) The patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; AND
   b) DNR order is medically appropriate.

4. Two notice requirements for Physician-Initiated DNR Order under #3:

   Sec. 166.203:

   a) DNR order takes effect at time order is issued, provided it is placed in medical record as soon as is practicable.
   b) Before placing order in medical record, the attending physician, PA, nurse, or other person acting on behalf of health care facility or hospital must inform patient of order's issuance or, if patient incompetent, a reasonably diligent effort must be made to contact or cause to be contacted and inform of order's issuance:
      (1) Patient's agent under MPOA or legal guardian; or
      (2) If none, a person described under Sec. 166.039(b)(1)-(3) (spouse, reasonably available adult children, or parents – not nearest living relative).

   Sec. 166.204:

   a) If an individual arrives at a health care facility or hospital for whom a Physician-Initiated DNR Order has issued and that individual notifies a physician, PA or nurse providing direct care to the patient, the physician, PA or nurse who has actual knowledge of the order shall disclose it provided the individual is:
      (1) The patient's MPOA agent or legal guardian; or
      (2) If none, the patient's spouse, reasonably available adult children, or parents (Sec. 166.039(b)(1)-(3)).
   b) Failure to comply with this notice does not affect the validity of the In-Hospital DNR order.

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Operational Hot Button Issues

Also available as part of the eCourse
Operational Impact of Significant Cases and Hot Button Issues

First appeared as part of the conference materials for the
31st Annual Health Law Conference session
"Operational Hot Button Issues"