

PRESENTED AT

University of Texas
20th Annual Health Law Conference

April 5-6, 2018
Houston, Texas

Operational Hot Button Issues

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1. DNRs and Senate Bill 11

- a. General. S.B. 11 amended the Texas Advance Directives Act (TADA), Texas Health & Safety Code to add Subchapter E, Sec. 166.021 - .209, eff. 4-1-18, to:
 - i. Establish requirements to issue a DNR in “health care facility” (not defined) or hospital, and
 - ii. Establish requirements to notify patient or legal representative of DNR order.
Texas Health and Human Services Commission to promulgate rules.
- b. Scope. Limited to orders instructing a health care professional not to attempt cardiopulmonary resuscitation when circulatory or respiratory function ceases (CPR). Sec. 166.201.
- c. OOH DNR. These requirements do not apply to “out-of-hospital DNR” under TADA Sec. 166.081. Sec. 166.202. Two key points:
 - i. OOH DNR applies to broader range of life-sustaining treatments, beyond cardiopulmonary resuscitation.
 - ii. “Out-of-hospital setting” includes long-term care facilities, inpatient hospice facilities, private homes, hospital outpatient and emergency departments, physician offices, and vehicles during transport.
- d. Procedures/Requirements to issue DNR. DNR order is valid only if issued by patient’s attending physician (physician selected by or assigned to patient who has primary responsibility for patient’s treatment and care per TADA Sec. 166.002(3)), is dated and the order:
 - i. Sec. 166.203(a)(1) – Is issued in compliance with:
 - 1. Written and dated instructions of patient who was competent at time wrote instructions;
 - 2. Oral directions of competent patient delivered to or observed by two competent adult witnesses, at least one of whom is not an employee of the health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the facility, or a person who at the time of the directions has a claim against any part of the declarant’s estate after the declarant’s death (Sec. 166.003(2)(E) or (F)); or
 - 3. The directions in an advance directive valid in another jurisdiction (Sec. 166.005) or directive under Texas Advance Directives Act (written or oral by adult, for minor, by legal guardian or MPOA, by family); OR

- ii. Sec. 166.203(a)(2) - Is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the attending physician:
 - 1. The patient's death is imminent, regardless of the provision of CPR; AND
 - 2. The DNR order is medically appropriate.

- e. When Order Effective. The DNR order takes effect when issued but must be placed in medical record as soon as practicable (see Notice to Patient below). Sec. 166.203(b).

- f. Notice to Patient for Sec. 166.203(a)(2) Order. Sec. 166.203(c). Before placing a DNR order issued under Sec. 166.203(1)(2) in medical record, physician (or physician assistant, nurse or other person acting on behalf of health care facility or hospital) must:
 - i. Inform patient of order's issuance; OR
 - ii. If patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of order's issuance:
 - 1. The legal guardian or agent under MPOA; or
 - 2. If none, a family member under TADA Sec. 166.039(b)(1) spouse, (2) reasonably available adult children or (3) parents.

- g. Notice to Another Individual for Sec. 166.203(a)(2) Order. Sec. 166.204.
 - i. If an individual arrives at health care facility or hospital and a DNR order issued under Sec. 166.203(a)(2), and individual notifies physician, PA or nurse providing direct care of arrival, the physician, PA or nurse who has direct knowledge of the DNR order must disclose the order to the individual, if:
 - 1. The individual is the legal guardian or agent under the patient's MPOA; or
 - 2. If none, the individual is a family member under TADA Sec. 166.039(b)(1) spouse, (2) reasonably available adult children or (3) parents.
 - ii. This notice requirement can be satisfied by notifying one person in accordance with the priority – there is no obligation to notify the others listed.
 - iii. Failure to comply with this notice requirement does not affect the validity of the DNR order.
 - iv. A person who makes a good faith effort to comply with this notice requirement and who contemporaneously records this effort in the medical record is not civilly or criminally liable or subject to disciplinary action for any act or omission related to providing notice.

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First appeared as part of the conference materials for the
30th Annual Health Law Conference session

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