

Due Process Protections in the Texas Advance Directives Act

In a dispute regarding life-sustaining medical interventions, a physician can have safe harbor from liability in the Texas Advance Directives Act. However, the safe harbor is available only after meeting twelve stringent due process requirements, including attempting a transfer. § 166.045(d).

1. The patient must be determined to be a “qualified patient.” § 166.031(2) and § 166.040(b).
2. The criterion for the physician to withhold life-sustaining interventions must be based on whether the interventions are “medically inappropriate.” § 166.046(e).
3. The physician must notify the patient or family that he or she judges that the administration of life-sustaining medical interventions are not medically appropriate and that an ethics committee will meet no sooner than 48 hours to review the physician’s judgement. § 166.046(b)(2).
4. The family is entitled to relevant medical records. § 166.046(b)(4).
5. A list of entities able to assist with a transfer must be provided to the family. § 166.046(b)(3)(B).
6. The family is entitled to attend the ethics committee meeting. § 166.046(b)(4).
7. The ethics committee must review physician’s judgement and agree that the requested life-sustaining interventions are medically inappropriate. § 166.046(a).
8. The physician must make a reasonable attempt to transfer the patient to a willing provider. § 166.046(d).
9. Medical interventions must be provided during the search for providers and during the transfer. § 166.046(a) and § 166.046(e).
10. Palliative care and artificially administered nutrition and hydration must be provided during the search, during the transfer, and after the search (if no other provider is found after the search). § 166.046(e).
11. The life-sustaining interventions must be maintained for at least 10 days. § 166.046(e).
12. A court may extend the time to find an alternate provider. § 166.046(g).