

House Committee on Public Health
April 21, 1999
Regarding HB 3527
Relating to advance directives for medical treatment; providing administrative penalties

Committee Chairwoman: Patricia Gray
House bill sponsor: Rep. Garnet Coleman

Chairwoman Gray: House Bill 3527 and recognize Representative Coleman.

Rep. Coleman: Thank you Madam Chair. Members, what the Committee Substitute will do and what House Bill 3527 does is, uh, deal with advanced directives for medical treatment providing administrative penalties. For those who weren't here last session, we actually passed this bill out of the House, out of the Senate to the floor, uh, passed it off the floor. It went to the Governor and, well it didn't become law. So, something happened in between. They gave it to the Governor and it did not become law. But you know, believe it or not, people have worked very, very hard, uh, over the interim and I think that things are, are looking up. And so here we are again. But, uh, the present law concerning the end-of-life decisions is spread out over three codes: Advance directive through physician or a living will, the out-of-hospital DNR order, do not resuscitate order, durable power of attorney for healthcare, and this consolidates the three laws into a new chapter, 166 of the Health and Safety Code. The three chapters are similar. Terminology had repetitive provisions and deal with the issue of directive or an order with or withholding or withdrawing life sustaining, sustaining procedures of an individual with a terminal condition. Inconsistencies between the three chapters caused confusion for individuals who want to develop advance directives or orders, as well as providers who must carry out such directives or orders. Um, again, I think you kind of have an understanding of where, where we're going with this. Uh, people worked very, very hard. Um, the, the Right to Life individuals, physicians and hospice movement to come up with something that would work well for Texas citizens and, uh, I think, I think we've gotten there. And so with that I ask, may I answer any questions Madam Chair?

Chairwoman Gray: Ok. Any questions of Representative Coleman?

Chairwoman Gray: Ok. And the Chair would recognize Greg Hooser.

Next Speaker: Thank you Madam Chairman. My name is Greg Hooser. I'm an attorney with the Austin firm of Sneed, Vine & Perry and I appear tonight on behalf of the Texas and New Mexico Hospice Organization and Mr. Hildebrand, no sir, there is no opposition. I am very pleased tonight to present to you a bill that has a united coalition of a very broad group of organizations and I'll hand to the clerk to hand to the members of the committee the people who worked on this bill for the last year or so. They include providers. They include health professionals. They include attorneys, law professors, legislative staffers and, Madam Chairman, I would like to, uh,

thank both Representative Delisi and her staff and Representative Coleman and his staff, and particularly Jennifer Soffer, who babysat us for about the last 8 or 9 months as we have labored over the sometimes emotional, uh, sometimes legalistic arguments about these three provisions of the code. Madam Chairman and members of the committee, this bill addresses the issue that Mr. Uresti just brought up a minute ago on behalf of, uh, Representative Art Reyna. It also addresses Mr. Longoria's bill and his issue will be addressed by Mr. Joe Kral. We would like to very briefly present you a panel of experts quote unquote. I am not going to include myself in that. Um, to, to, uh, at least answer any questions about this bill. I will not go into a, a long explanation and I know you'll be pleased with that Mr. Hildebrandt. Uh, our panel tonight includes Mr. Joe Kral of Texas Right to Life who will speak on behalf of both Texas Right to Life and National Right to Life who's a participant in this. Secondly, uh, I have, uh, Linda Rushing with the Catholic Health Care Facilities, and thirdly I have a, the reluctant Elizabeth Sjoberg and the Texas Hospital Association, uh, drafted. She's still sitting back there refusing to, to get up. We will be happy to answer any questions about the details of the bill. The governor's office also participated through his office of general counsel. A number of state agencies also participated who have jurisdiction over issues that affect them, and we think we've come up with a, a bill that does, as Mr. Coleman described, bring together these three fundamental provisions of the law and dealing with end of life issues. We have made them consistent with you, with each other. We have, uh, made the definitions consistent. We have made them more user friendly to attorneys, to families and most importantly the patients and the people who will execute them themselves. I am especially proud, uh, of the job that, uh, the Texas Medical Association and Baylor Hospitals representative Dr. Bob Fine did in drafting a new directive to physicians, families and surrogates to replace the old directive to physicians. It is a user-friendly document that he has already pretested on some of his patients at Baylor Medical in Dallas, and has found that patients like the document. They prefer it to the current document because they can understand it better. It contains explanations. It contains, um, some definition and it just makes the whole system work better. It's better for the hospices. It's better for the hospitals. It's better for the physicians, but most importantly it's better for your constituents who, uh, will be executing these documents. I'm gonna close with just a couple of comments about the two highlights of the bill. The Governor's veto of Senate Bill 414 last session, was based upon, uh, that he believed that provisions of the bill would have permitted physicians to deny life-sustaining procedures to a patient who desires them. Secondly, it, uh, eliminates the objective negligence standard for reviewing whether a physician properly discontinued the use of life sustaining procedures. Those two provisions have been fully addressed. We worked with the Governor's general counsel's office. They're happy with the bill. So, we believe we have all impediments removed, uh, to move forward with a very fine piece of legislation. This coalition has worked together on and off for 6 years. The Right to Life folks are new at the table, but we think we've come up with something that you all can be proud of and can address some very, very sensitive issues in a manner that is not quite as difficult as pushing red buttons and green buttons on the floor of the House. With that Madam Chairman, I'll be happy to close and I think Mr. Kral may have a comment and then we'll just simply answer questions.

Chairwoman Gray: Ok. Very good. Any questions of Mr. Hoosier? All right. Then the Chair will call Joseph Kral.

Joe Kral: Hello my name is, uh, Joe Kral. I'm the Legislative Director for Texas Right to Life. Again, we've been working on this coalition for approximately a year now. Again, most of our big concern was for patients who, uh, request life-saving treatment. As most of ya'll may recall from last session, uh, Judge Longoria had offered amendments on the House floor to Senate Bill 414 that addressed these concerns, for patients who request life-saving treatment. Uh, obviously it was put on. It was stripped off in conference committee and, uh, due to the request of Texas Right to Life and National Right to Life Governor Bush did veto, uh, Senate Bill 414. Over, again, over the past year, uh, we worked with the Coalition and we have had various people on all sides of the table so to speak, and we have really bridged these gaps and worked hard to, uh, really bridge these, uh, uh, moral differences. As a result, uh, we have come about and, uh, we have drafted language that is within this, uh, Committee Substitute, uh, to protect these patients that choose, uh, life-sustaining treatment. Uh, they have the ability now to doctor, uh, if they have some problem with the doctor or the facility, to effectively, um, excuse me, they have the ability to transfer to another facility or another physician that respects their right to choose to live. Um, again, that is our main, main concern with this legislation. And, uh, again, we have this, uh, legislation, uh, and the language is I guess in a sense, we, we like it and the whole coalition seems to be in agreement with this. Uh, we do have a strong coalition. Um, we are really united behind this language. There's a lot of blood, sweat and tears that went into this. Uh, we argued back and forth, for a very long time, but we all worked together. We worked hard and we found common ground. I'll, I just ask everyone on this committee to always please respect this coalition. Because even though it's strong where it's strongly united behind this language, it is still fragile. Any kind of substantial change could cause it to fall apart literally. And we would, we would respectfully request that no amendments be offered unless they're technical amendments as offered by Representative Coleman. So, that, with that I'll address any questions.

Next Speaker: It, it's, it's not really a question. It's just a comment that I, I thank you for the work that you've done with the group and I think that's really important. And you make me feel good. So, thank you.

Joe Kral: Thank you.

Chairwoman Gray: Any other questions of this witness, members? Thank you.

Chairwoman Gray: Linda Rushing.

Next Speaker: I am Linda Rushing with the Texas Conference of Catholic Health Facilities. I just have two quick comments. One is, um, we had a surprise witness at the Senate Hearing nobody was expecting. The local president of the Hemlock Society testified in favor of this bill. Not in his official capacity, but it, you know, as an individual. So, we had Right to Life and

Hemlock Society agreeing on this bill. So, it will give you some idea of how, of how well it's crafted. Um, the only other thing I would like to say is, um, in the midst of our negotiations I think in, in, um, trying to read this, January, the, uh, *Journal of the American Medical Association* published an article that all of you have your in notebooks, I believe, that, um, the American Medical Association has now come out with an article saying this is what you need to do for end of life issues. So, we are ahead of the curve. So, other than that I really don't want to waste your time. I don't have any, any questions? Thank you.

Chairwoman Gray: Any questions of Ms. Rushing, members? Thank you. Elizabeth Sjoberg wishes to be shown in favor of the bill on behalf of the Texas Hospital Association. Representative Maxey wasn't going to ask any questions.

Rep. Maxey: My microphone's disconnected.

Chairwoman Gray: Larry Farrow wishes to be shown in favor of the bill on behalf of the Texas and New Mexico Hospice Organizations. Alfred Gilchrist wishes to be shown in favor on behalf of the Texas Medical Association. Raymond Khoury on behalf of Christus Health wishes to be shown in favor of the bill. Uh, Sister Michelle O'Brien on behalf of Christus Santa Rosa Health Care wishes to be shown in favor of the bill. Ed Berger on behalf of Seton Healthcare Network wishes to be shown in favor of the bill. And James Willmann on behalf of the Texas Nurses' Association wishes to be shown in favor of the bill. Is there anyone else who wishes to testify for or against or on House Bill 3527? Ok. Members, it's my understanding then that, that this bill is the sort of the language that everyone has agreed on and that we will leave Representative Reynas bill pending. That Representative Longoria does not wish to move forward on his bill. Is that everyone's understanding? Ok. With that then is there an objection to the adoption of the Committee Substitute? Is there an objection to the adoption of the Committee Substitute to House Bill 3527? Hearing none, the Committee Substitute is adopted. Uh, Representative Capelo moves that the Committee Substitute for House Bill 3527 be reported favorably to the Consent Calendar with the recommendation that it be printed and reported favorably to the full House for the recommendation that it do pass.