Senate Health and Human Services Committee
Testimony of Mark Casanova, MD
Senate Bill 1944 by Sen. Eddie Lucio
April 7, 2021

Thank you, Chair Kolkhorst and members of the committee, for allowing me to speak with you today. I am Dr. Mark Casanova, and I am a palliative medicine specialist in Dallas. Today I am speaking on behalf of the Texas Hospital Association and the Texas Medical Association and its more than 55,000 physician and medical student members in **support** of Senate Bill 1944. We are so grateful for Senator Lucio's efforts to work collaboratively across the religious, prolife, disability, and health care communities on a complex section of law. We also thank his bipartisan joint authors, Senators Bettencourt, Springer, and Dr. Campbell, as well as Senators Johnson and Zaffirini. These are truly brave leaders who are willing to put patient needs ahead of politics.

This legislation represents the hard work and sacrifice of many organizations who have sought the difficult task of communicating and working together toward a solution. No law made by man is perfect, and certainly there are ways to strengthen the Texas Advance Directives Act. TMA supports the provisions in this bill that give patients and their families better access to the process of resolving disputes on the medical appropriateness of care. We also support the changes included to bolster confidence in a fair ethics committee deliberation devoid of conflicts of interest and to repel discrimination of any kind.

You will hear about many aspects of the bill today, but some of the most important to medicine are edits that correct some inadvertent portions of Senate Bill 11 passed in the special session of 2017.

Unfortunately, there is not always adequate time for patients to thoughtfully consider their end-of-life options, properly document them, and make sure everyone involved in their care has a copy. All too often, we must make those decisions in the emergency department and in crisis moments. Physicians, therefore, often find themselves in a tough position when they know the patient's wishes, but the wishes have not been reduced to writing, or statutorily required witnesses are unavailable.

This bill corrects an error from 2017 that prevents a **physician from honoring a patient's wishes if those wishes are communicated separately to the physician.** Physicians agree a surrogate should be able to a change a do-not-resuscitate (DNR) decision he or she personally has shared with the physician. **However, no one – not the surrogate, not the physician, not the hospital, nor any organization – should be able to undo a patient's personal decision on a**

DNR. The TMA Board of Councilors Current Opinion on DNR Orders states: "When a patient suffers cardiac or respiratory arrest, attempts should be made to resuscitate the patient, except when cardiopulmonary resuscitation (CPR) is not in accord with the patient's expressed desires or is clinically inappropriate." Accordingly, TMA would strongly recommend permitting physicians to act in accord with a patient's wishes, however they are expressed.

Current law improperly, needlessly, and regrettably compromises patient autonomy. **It is not unusual for a patient's own wishes to be different from a family member's wishes for the patient.**

Additionally, this bill corrects the criminal portion of the 2017 law that left possible an interpretation that a physician or nurse could be criminally liable for effectuating any DNR order regardless of its validity. We do not believe that was the author's intent, but regrettably the language is not crystal clear.

Senator Lucio's bipartisan bill also addresses a lack of clarity in how health care professionals should give notice to surrogates, as the 2017 bill contained a duplicative requirement that is difficult and tedious to document.

I know you may have heard some comments on Section 12 of SB 1944. Importantly, this section relates to consent for treatment and does not apply to decisions to withhold or withdraw life-sustaining treatment from patients in end-of-life situations. This would include not performing CPR, an intervention at the time of death. The section details who has the decisionmaking authority to provide or refuse consent, on the patient's behalf, to treatment that has been recommended by the patient's physician. When a surrogate opts to consent to treatment, the surrogate is agreeing to proceed with, or concurring in, the treatment recommended by the patient's physician. The proposed language in this section reflects this truth.

Finally, this bill, through its robust data collection and sharing requirements, will help dispel the myth that physicians routinely disregard patient or surrogate wishes and instead willfully invoke DNR orders. In fact, on each hospital or health care facility license renewal application, any facility that has initiated even one medical or ethics committee meeting process must file a report containing aggregate, completely deidentified information on the number of ethics or medical committee meeting processes begun. This report must include the disposition of each case and, in the interest of greater transparency, will be posted on the Texas Department of State Health Services' website.

Senate Bill 1944 represents a good-faith effort to respond to some of the rare, difficult cases that have arisen over the years. It respects all those involved in these tough life moments: not only the patients and their families but also the physicians and nurses who face these scenes far more often than we wish.

Thank you for your time today. I recognize this is a difficult topic, and I welcome the opportunity to answer your questions.