

# Challenge to Texas' Advance Directives Act ruled moot

On March 25, the First Court of Appeals left Texas' long-standing Advanced Directives Act undisturbed. The court of appeals ruled that the case was moot.

TAPA filed a friend of the court brief in support of the Advanced Directives Act at both the trial and appellate court.

Five right-to-life groups joined TAPA on the brief: Texas Alliance for Life, Texas Catholic Conference of Bishops, Texas Baptist Christian Life Commission, Texans for Life Coalition, and Coalition of Texans With Disabilities.

Also, joining the brief were the Texas Medical Association, Texas Hospital Association, Texas Osteopathic Medical Association, and LeadingAge Texas.

Texas Advance Directives Act, passed in 1999, was a collaborative effort among many stakeholders. One of those original stakeholders, Texas Right to Life, attempted to invalidate the very statute they helped construct. The purpose of the law is to promote dignity at the end of life and protect physicians and hospitals from being forced to perform interventions that they believe are harmful to patients.

As stated in the TAPA brief:

“Medical treatment can cause a patient to suffer. Medical ethics tolerates this suffering only if the treatment provides a corresponding benefit. Physicians invoke the §166.046 process because they believe that medical intervention will no longer benefit the patient but instead will only inflict suffering.

“Performing an intervention under that circumstance violates a doctor or nurse’s ethical obligations. And the failure to recognize this ethical dilemma disrespects health-care providers’ medical judgment and moral conscience.

The case in question, *Kelly v. Houston Methodist Hospital*, involved Christopher Dunn, an adult male, suffering from pancreatic cancer, end-stage liver disease, acute renal failure, and sepsis.

Dunn’s treating physicians concluded that he was suffering from the treatment necessary to sustain his life. With no expectation for improvement, life-sustaining treatment was medically inappropriate. As a result, Dunn’s attending physicians and patient care team recommended to his parents that these aggressive treatment measures be withdrawn, and that comfort care is provided.

Dunn’s mother, Evelyn Kelly, strongly disagreed with the providers’ recommendation to discontinue life-sustaining treatment. The hospital went through the prescribed processes to remove him from life support. Since Dunn had no advanced directives in place, was not married, and had no children, his parents became his attorney surrogate decision makers.

Dunn’s mother disagreed with the legal process and sued, arguing that the provisions of Texas Health and Safety Code section 166.046 violated her son’s due process rights. While the case was pending, Methodist agreed to preserve the status quo.

Before the case could be resolved, Dunn died of natural causes. Methodist moved to dismiss the case as moot, and the motion was granted.

In September 2017, a Houston trial court ruled for the hospital and upheld the so-called “futile care statute”. Dunn’s mother, Evelyn Kelly, appealed the case to the Houston First Court of Appeals.

The appeals court affirmed the trial court’s dismissal, holding that because Dunn was kept on life support, there was no deprivation of his rights. Moreover, there can be no deprivation of his future rights because he is deceased. And because he is deceased, there is also no remaining controversy between the parties regarding the alleged due process violations.

Dunn’s mother also argued that the case fell under the “capable of repetition yet evading review” exception which is a “rare exception to the mootness doctrine.” The court of appeals disagreed with this argument holding that this exception did not apply to Dunn because he cannot be subjected to the same complained-of actions again since he is deceased. One of the requirements of the exception is the requirement that the same complaining party will be subjected to the same action again.