

CAUSE NO. 096-270080-14

ERICK MUNOZ, AN INDIVIDUAL
AND HUSBAND, NEXT FRIEND,
OF MARLISE MUNOZ,
DECEASED

IN THE DISTRICT COURT

96th JUDICIAL DISTRICT

v.

JOHN PETER SMITH HOSPITAL,
AND DOES 1 THROUGH 10,
INCLUSIVE

TARRANT COUNTY, TEXAS

AFFIDAVIT OF THOMAS WM. MAYO

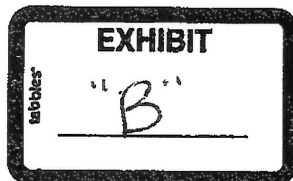
THOMAS WM. MAYO, appeared in person before me today and stated under oath as follows:

"My name is THOMAS WM. MAYO. I am over the age of eighteen (18) years, and fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are combined with my professional knowledge and skills.

"I am a professor at Southern Methodist University, Dedman School of Law, and a member of the Texas Bar. My vita is attached hereto and incorporated herein as if fully set forth at length verbatim.

"From 1998 to 1999, I was part of a large (20-25 member) drafting group that was responsible for writing SB 1260, the Advance Directives Act, which is codified as Chapter 166 of the Texas Health & Safety Code. The drafting group consisted of representatives from state agencies that either pay for or provide end-of-life care, professional organizations (including the Texas Hospital Association and Texas Medical Association), the Catholic archdiocese of Austin, and the Texas Right to Life and National Right to Life Committees, as well as other health professionals and lawyers with experience in end-of-life treatment issues.

"The task for this group was to take three existing statutes (the Natural Death Act, the Out-of-Hospital Do-Not-Resuscitate law, and the Durable Power of Attorney for Health Care law) that addressed end-of-life treatment in some fashion and combine them
Mayo Affidavit

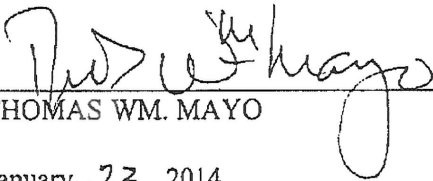


into a single law. At the same time, we sought to eliminate inconsistencies in definitions and witnessing requirements and to add or delete provisions that the group believed would make Texas law work better for patients and their families with respect to treatment decisions, primarily those that involve life-sustaining treatments for patients who lack decision-making capacity and have either a terminal or irreversible condition.

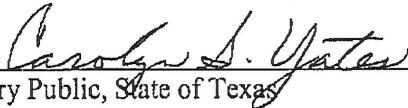
“Section 166.049, which appears in Subchapter B of the Texas Advance Directives Act, is one of two so-called “pregnancy exclusion” provisions in the Advance Directives Act. The language in this section was carried forward from the Texas Natural Death Act, as were many sections of all three of the Advance Directives Act’s three predecessor statutes. It is also my understanding that the pregnancy exclusion had been in the Texas Natural Death Act since that law’s enactment in 1977.

“I do not recall much discussion of the pregnancy exclusion in § 166.049. I recall pointing out that some academic commentary questioned the constitutionality of such provisions, but there was no general enthusiasm in favor of dropping the provision, so it stayed in our drafts. What brief discussion as did occur never considered the possible application of § 166.049 to a dead person. The reason is that, as stated above, the focus of the drafting group was on providing and improving upon various mechanisms for making treatment decisions for patients under quite limited circumstances – where the patient cannot make decisions for herself and has either a terminal or irreversible condition. These are the preconditions in Subchapter B for both the living will and for surrogate decision-making, and they establish the limited scope of Subchapter B as a whole and § 166.049 specifically.

“Further Affiant Sayeth Not.”


THOMAS WM. MAYO

SIGNED under oath before me on January 23, 2014.


Notary Public, State of Texas

