

Exhibit A

Unofficial Copy Office of Chris Daniel District Clerk

EVELYN KELLY, INDIVIDUALLY, AND
ON BEHALF OF THE ESTATE OF DAVID
CHRISTOPHER DUNN

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

THE METHODIST HOSPITAL

189TH JUDICIAL DISTRICT

AFFIDAVIT OF J. RICHARD CHENEY

THE STATE OF TEXAS

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§

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared J. Richard Cheney, who after first being duly sworn upon his oath, deposed and states as follows:

1. “My name is J. Richard Cheney. I am over eighteen years of age and fully competent and authorized to make this affidavit. This affidavit is made of my own personal knowledge and the statements made herein are true and correct.
2. At the time of the care that was provided to David Christopher Dunn (“Chris”), I was the Project Director of Spiritual Care at Houston Methodist Hospital. Furthermore, I served as the Meeting Chair for the Houston Methodist Bioethics Committee (the “Committee”), which was consulted by Chris’s treating physicians to review the ethical issues involved in his care at Houston Methodist Hospital. I am familiar with this matter, including the meetings and communications between Chris’s health care providers and Chris’s family, and the events that lead to the determination that the continuation of life-sustaining treatment was medically inappropriate. I was personally involved in communications between Chris’s family and his health care providers. Further, I coordinated the ethical review process by which Chris’s family was informed of the Biomedical Ethics consultations, the processes involved and the Committee’s ultimate determination that the life-sustaining treatment being provided to Chris was medically inappropriate.
3. At the time of admission to Houston Methodist Hospital, Chris was not married and had no children. Multiple physicians declared him lacking the requisite mental capacity to understand his terminal medical condition, its predicted progression and

his capacity to make informed decisions about his care. Therefore, pursuant to Texas statute, his divorced parents, Evelyn Kelly and David Dunn, became Chris's legal surrogate decision makers regarding Chris's medical care. Houston Methodist Hospital looked to both parents for direction on issues relating to Chris's care and treatment.

4. On Wednesday, October 28, 2015, Chris's treatment team consulted the Biomedical Ethics Team regarding increased discordance between his divorced parents on whether to continue aggressive supportive care measures or de-escalate treatment to comfort care only. A Clinical Ethicist from the Biomedical Ethics Committee consulted with Chris's treatment team and his family. During the meeting, it was noted that the patient had recently left another facility against medical advice, refused to undergo a liver biopsy and refused treatment following the diagnosis of a pancreatic mass. The patient's father, David Dunn, expressed that his son "did not want to go to the hospital for treatment, because he believed he would die there." Accordingly, Mr. Dunn requested that the treatment team provide comfort care measures only to his son in accordance with what he thought Chris would want. The patient's mother, Evelyn Kelly, was unable to support any decision about transitioning the patient to comfort measures, opining that Chris would have wanted aggressive support, despite his prior conduct in leaving the prior hospital against medical advice, refusing liver biopsy and refusing treatment. At the conclusion of the meeting, Ms. Kelly requested additional time to discuss the matter with her family.
5. On Monday, November 2, 2015, members of the Biomedical Ethics Committee, along with several of Chris's treating physicians, multiple members of Chris's family, including his mother and siblings, again met to discuss Chris's terminal condition, prognosis and recommendations regarding his continued care and treatment. After hearing about the patient's terminal condition, prognosis and recommended transition to comfort care from Chris's treating physician, Ms. Kelly requested additional time to discuss the matter with her family. Chris's father, David Kelly, did not attend the meeting, but continued to request that Chris's care be transitioned to comfort care only out of respect for Chris's wishes.
6. On Friday, November 6, 2015, I was present at a meeting with Ms. Kelly, Aditya Uppalapati, M.D. (ICU intensivist and critical care specialist caring for Chris), Andrea Downey (a member of Houston Methodist's palliative care department), and Justine Moore (a hospital social worker assigned to the case). The meeting was convened at Chris's bedside to discuss Chris's terminal condition and the physicians' recommendation that the patient be switched to comfort care and the ventilator be

removed. Ms. Kelly continued to be unable to make the decision, and informed the group that she'd discuss the matter with her family on Monday. During the meeting, I personally described Houston Methodist Hospital Policy and Procedure PC/PS011 titled, "Medically Inappropriate Decisions About Life-Sustaining Treatment" in the event a consensus couldn't be reached. During this meeting, I answered Ms. Kelly's questions regarding the issues involved, including the process going forward, including the fact that another meeting of the Committee would be held where she would have the chance to address the Committee personally. I further assured her of the hospital's commitment to help her identify an alternative care facility should she continue to pursue aggressive treatment options. I told her that I would provide her with notice of the date and time for the formal Committee review, and that she would have the opportunity to participate in the meeting. I informed Ms. Kelly that hospital personnel would assist the physicians with efforts to transfer Chris should she change her mind and allow the hospital to seek transfer to another facility. Further, I assured Ms. Kelly that life-sustaining treatment would continue to be administered to Chris throughout this review process.

7. On Monday, November 9, 2015, I was present for a meeting with Evelyn Kelly, David Dunn, Daniela Moran, MD (ICU intensivist), Andrea Downey (palliative care), and Justine Moore (social work), and numerous members of the patient's family. During this meeting, the medical team again suggested to the family that due to Chris's terminal condition, it was recommended that Chris be shifted to comfort care and the ventilator removed. David Dunn asked that the meeting be adjourned so the family could discuss Chris's treatment and the treating physicians' recommendations. At this point, I explained that the Committee review process would go forward, and life-sustaining treatment will continue to be administered while the family seeks out opportunities to transfer Chris to another facility.
8. Later that evening, I was informed that the two divorced parents still could not reach a joint decision on Chris's care. Ms. Kelly requested that full aggressive treatment continue, while Mr. Dunn requested that Chris be transitioned to comfort care only and removal of the ventilator.
9. On Tuesday, November 10, 2015, I hand delivered letters addressed to Evelyn Kelly and David Dunn providing notification of the Committee review, which was scheduled to take place on November 13, 2015. These letters invited his family to attend to participate in the process and included the statements required by Tex. Health & Safety Code §166.052 and §166.053.

10. On Friday, November 13, 2015, the Committee review meeting took place. Evelyn Kelly was present, participated in discussions and addressed the Committee. Shortly after the Committee meeting, I hand delivered letters addressed to Evelyn Kelly and David Dunn providing a written explanation of the decision reached by the Committee during the review process. The letter described the Committee's determination that life-sustaining treatment was medically inappropriate for Chris and that all treatments other than those needed to keep him comfortable would be removed in eleven days from that date. I included the statements required by Tex. Health & Safety Code §166.052 and §166.053, and provided Ms. Kelly a copy of Chris's medical records for the past 30 days.
11. While the Committee did inform Chris's parents that all treatments other than those needed to keep him comfortable would be removed in eleven days, at no time did the Committee inform Chris's parents that Chris would be provided with a medication that would hasten his death.
12. The physicians, social workers, and case managers continued efforts to assist Ms. Kelly with her request to transfer Chris. These efforts continued though December 23, 2015. Life-sustaining treatment was constantly administered to Chris until his natural death on December 23, 2015.

FURTHER AFFIANT SAYETH NOT."

J. Richard Cheney

 J. RICHARD CHENEY

Sworn to and subscribed before me by J. Richard Cheney on August 17, 2016.

Teresa Robinson

 Notary Public In and For
 The State of Texas

