

Memorandum 84-71

Subject: Study L-500 - Durable Powers of Attorney

During recent years, four separate statutes relating to durable powers of attorney have been enacted upon recommendation of the Law Revision Commission. 1981 Cal. Stats. ch. 511 (Uniform Durable Power of Attorney Act); 1983 Cal. Stats. ch. 1204 (Durable Power of Attorney for Health Care); 1984 Cal. Stats. ch. 312 (Statutory Form Durable Power of Attorney for Health Care); 1984 Cal. Stats. ch. 602 (Statutory Short Form for General Power of Attorney).

During recent months, the Commission has received a number of communications suggesting revisions in one or more of these statutes. The significant communications are reviewed below. A staff recommended draft is attached as Exhibit 4.

Eliminate provision permitting notarization in lieu of two witnesses

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar (Exhibit 2) suggests that the provision permitting acknowledgement of a durable power of attorney for health care before a notary public be eliminated. Elimination of this provision means that the document must be witnessed by two qualified witnesses. The provision authorizing notarization was originally included because the requirement that the two witnesses "personally know" the principal limited the situations where two witnesses could be used. The notary was not required to "personally know" the principal.

During the course of the legislative process, the provision for notarization as an alternative to two witnesses was deleted from the bill introduced to provide a statutory form durable power of attorney for health care. The office of the Secretary of State expressed concern about the form of the notary's certificate which required the notary to certify that the person executing the document "appears to be of sound mind and under no duress, fraud, or undue influence." The concern was that the notary might expose himself or herself to liability if the notary executed such a certificate. The office of the Secretary of State is advising notaries not to execute such certificates, and the staff is uncertain whether it is possible to find a notary who is willing to execute such a certificate.

The 1984 statute did not eliminate the general provision enacted in 1983 that permits use of a notary in lieu of two witnesses, and the staff recommends that that provision be deleted as suggested by the State Bar. This also would eliminate the uncertainty concerning the meaning of existing law noted in the letter from Ann O'Connell (Exhibit 3). The requirement that the two witnesses "personally know" the principal is discussed below.

Delay expiration of durable power of attorney for health care until six months after principal regains capacity

A durable power of attorney for health care expires seven years after the date of its execution. In recognition that the principal may lack the capacity to make health care decisions for himself or herself at the time the seven-year period expires, the statute includes a provision that in those circumstances the durable power continues in effect until the time when the principal regains the capacity to make health care decisions for himself or herself. The State Bar (Exhibit 2) suggests that the expiration of the power of attorney be delayed until six months after the principal regains capacity. See Exhibit 1 attached for the suggested statutory amendment.

The duration of a durable power of attorney for health care was a hotly contested issue when the statute was enacted. The existing provision described above was a compromise that was accepted by all persons who were concerned about the legislation and reflects a decision made by Senator Keene personally. The staff is not persuaded that the case made by the State Bar is sufficient to justify reopening this controversial matter. We expect that the lawyer will check with the client when the seven-year period ends to determine whether the client wishes to execute a new power of attorney. If the client is then incompetent, the lawyer can advise the attorney in fact of the importance of having a new power of attorney executed as soon as the client recovers the capacity to execute a new one. If the lawyer does not make a practice of following up on powers of attorney, it is likely that the power will expire at the end of seven years in most cases, and the client will be left to the general law governing consent to medical care for incompetent persons should the client later require medical care and lack the capacity to give consent. Another factor that influences the staff is that we believe that all the other necessary changes in existing law can

be made without the need to reprint the new statutory form durable power of attorney for health care. This means that the old printed forms could continue to be used after the 1985 changes become operative. We believe that this would not be possible if a change were made in the time the power of attorney for health care expires.

Effect of objection of incompetent patient

Ann O'Connell, a lawyer who represents health care providers, raises another matter in her letter attached as Exhibit 3. The existing statute provides that an incompetent patient can prevent the attorney in fact from effectuating any decision to which the patient objects--not just decisions involving withholding or withdrawal of care necessary to keep the patient alive. The staff believes that this is a proper interpretation of the statute. However, the California Hospital Association believes:

However, an attorney-in-fact may not consent to health care to keep the principal alive if the principal objects to the treatment, and may not consent to the withdrawal of [such] care if the principal objects.

The staff believes that it is proper for the statute to provide that health care necessary to keep the principal alive can not be withheld or withdrawn if the principal objects to the withholding or withdrawal. This was considered an important provision by the right-to-life groups and, the staff believes, represents a sound policy. Upon review of the matter, however, the staff believes that the provision should be limited to the case where the principal objects to a withholding or withdrawal of health care necessary to keep the principal alive. If the issue is providing health care over the objection of an incompetent principal, we believe that the attorney in fact should be allowed to consent to the providing of the health care (especially where necessary to keep the principal alive) where providing the health care is consistent with the desires of the principal as expressed in the power of attorney or, if the principal's desires are unknown, is consistent with the best interests of the principal. Accordingly, we recommend that the statutory provision be limited to cases where the principal objects to the withholding or withdrawal of health care necessary to keep the principal alive.

Requirement that witness "personally know" the principal

The new statute providing a form for a durable power of attorney for health care eliminated the provision for notarization as an alternative to having two witnesses. When the provision for notarization was deleted, the provision that each of the two witnesses must "personally know" the principal was expanded to permit a person to serve as a witness if it is proved to the witness "on the basis of convincing evidence" that the person executing the document is the principal. It has been suggested that it is uncertain what meaning is to be given to the requirement that the principal is "personally known" to the witness and to the requirement that the identity of the principal be proved to the witness "on the basis of convincing evidence." It is noted that the requirements for a notary are that the person executing a document be "personally known" to the notary or that the identity of the person executing the document be proved to the notary "on the basis of satisfactory evidence." How does "convincing evidence" compare to "satisfactory evidence"? What does "personally known" mean? To resolve the existing uncertainty, the staff suggests that (1) "satisfactory" evidence be substituted for "convincing" evidence and (2) the definition of "personally known" and "satisfactory evidence" that apply to notaries be made applicable to witnesses to powers of attorney. However, we would omit one provision that now applies to a notary; we would not allow a witness to act as such merely because another person known to the witnesses identifies the person executing the power of attorney as the principal. This recommendation would provide more certainty. The attached staff draft would implement this recommendation.

Extension of requirements that apply to forms sold to persons without a lawyer to forms "otherwise distributed"

Various provisions require a "warning statement" in a form "sold" in this state for use by a person acting without the advice of an attorney. The new statute providing a statutory form for the durable power of attorney for health care provides that the warning statement must be included in a printed form sold "or otherwise distributed" in this state for use by a person who does not have the advice of a lawyer. The chief counsel of the Senate Judiciary Committee received a call from a right-to-life group in New York suggesting that this same language ("or other-

wise distributed") be added in other provisions providing for a warning statement in a form sold in this state. The attached draft would make this addition.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

Civil Code § 2436.5 (amended). Expiration of durable power of attorney for health care

SEC. . Section 2436.5 of the Civil Code is amended to read:

2436.5. Unless a shorter period is provided in the durable power of attorney for health care, a durable power of attorney for health care executed after January 1, 1984, expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks the capacity to make health care decisions for himself or herself, in which case the durable power of attorney for health care ~~continues in effect until~~ expires six months after the time when the principal regains the capacity to make health care decisions for himself or herself.

Comment. Section 2436.5 is amended to make the durable power of attorney expire six months after the time the principal regains capacity to make health care decisions.

Note. A conforming change would be required in Sections 2433 and 2500.

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May 18, 1984

Hon. Elihu Harris, Chairman
Assembly Judiciary Committee
State Capitol, Room 2187
Sacramento, California 95814

RE : S.B. 1365 : Keene Health Care Agent Act

Dear Mr. Harris:

By a sharply divided vote, the Executive Committee of the above section of the State Bar of California is in passive support of the concept of an optional statutory form of Durable Power of Attorney For Health Care. The Executive Committee is not enthusiastic about any statutory form in the area of health care. However, there are some who believe that individuals - and perhaps some attorneys - would find it useful to have an optional form. Accordingly, the Executive has reversed its earlier position of disapproval of S.B. 1365 and is now working to remove "traps" from the bill.

I. The Special Certificate of Acknowledgment "Trap"

The present law regarding a Durable Power of Attorney For Health Care is that the document must either be:

- A. Witnessed by two witnesses; or
- B. Acknowledged before a Notary Public. Civil C 2432
 - (a) (2) (A).

The "trap": the form of the certificate of acknowledgment is not the customary statutory form that practicing attorneys are accustomed to placing on deeds and other instruments. It is a special form that requires the addition of this declaration:

"I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence".

In the original draft of S.B. 1365, as introduced, the statutory optional form provided for the same two methods of witnessing, namely:

- A. Witnessed by two witnesses; or
- B. Acknowledged before a Notary Public.

Due to (i) widespread objection to the special form of the certificate of acknowledgment and (ii) the refusal of many Notaries Public to use the special form of certificate, the March 22, 1984 amendment deleted the entire acknowledgment procedure. Now, under the optional statutory form, it is not possible to have the Durable Power of Attorney For Health Care statutory form witnessed before a Notary Public.

That is a very salutary amendment. Unfortunately, and perhaps through oversight, a similar change was not made as to non statutory forms. We urge that the method of witnessing a Durable Power of Attorney for Health Care should be identical for both:

1. The statutory form.
2. Non statutory forms.

There is no discernible reason to have two different methods of execution.

We strongly recommend, accordingly, that Civil C 2432 (a) (2) (A) be amended in the same manner as is set forth in section 2500 of S.B. 1365. Namely, that any Durable Power of Attorney For Health Care be witnessed before two witnesses and that the acknowledgment - before-a-notary-public alternative be deleted.

II. The Restoration To Capacity "Trap"

Civil Code Section 2436.5 reads:

"Unless a shorter period is provided in the durable power of attorney for health care, a durable power of attorney for health care executed after January 1, 1984, expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks the capacity to make health care decisions for himself or herself, in which case the durable power of attorney for health care continues in effect until the time when the principal regains the capacity to make health care decisions for himself or herself."

That is present law, governing both the non statutory and the statutory form (if S.B. 1365 is enacted) of a durable power of attorney for health care.

The "trap" is that the durable power of attorney for health care terminates the very moment, after the expiration of 7 years,

upon which the incapacitated principal regains his capacity. He is given no grace period whatsoever to reaffirm his durable power of attorney for health care, or to sign a new durable power of attorney for health care. This problem is common in law practice: an incapacitated person is restored to capacity; is "normal" for a period of time; and then sinks, again, into incapacity; the attorney for the incapacitated person (usually, but not always a conservatee) normally does not learn of the incapacitated person's recovery to capacity for a period of weeks, or months, and would have no way of promptly advising the former incapacitated person to reexecute a durable power of attorney for health care while she/he is competent; and by the time the attorney learns of his client's "recovery" the durable power of attorney for health care would have automatically lapsed!

The Executive Committee urges that Civil Code 2436.5 be amended to read somewhat along the following lines:

"Unless a shorter period is provided in the durable power of attorney for health care, a durable power of attorney for health care executed after January 1, 1984, expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks the capacity to make health care decisions for himself or herself, in which case the durable power of attorney for health care continues in effect until six months after the time when the principal regains the capacity to make health care decisions for himself or herself."

(new words underscored)

Hon. Elihu Harris, Chairman

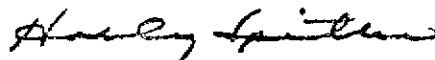
May 18, 1984

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This would permit the former incapacitated person a six months grace period within which to act before the durable power for health care expires and not immediately terminate the durable power of attorney for health care at the moment she/he regains capacity.

In recent years, the legislature has, very properly, been concerned to protect the right of the incapacitated. This suggested amendment is in accord with that concern. We urge your consideration.

Sincerely,



Harley J. Spitler

HJS:al

cc : Senator Barry Keene
California Law Revision
Commission

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March 23, 1984

JAMES F. McCONNELL, JR.*

*ADMITTED IN DISTRICT OF COLUMBIA ONLY

The Honorable Barry Keene
Member of the State Senate
Rm. 2032, State Capitol
Sacramento, CA 95814

Dear Senator Keene:

I note with interest -- and support -- that you are currently sponsoring two bills dealing with Durable Powers of Attorney for Health Care.

Several of my clients are health care providers who have requested my interpretation of the existing legislation. In rendering these interpretations, I have noted two areas of ambiguity in the existing law on Durable Powers of Attorney for Health Care. These ambiguities are discussed below, as are my suggestions for their resolution.

1. Patient Objections - The Act is unclear about the effect of a patient objection in situations not involving withholding or withdrawal of life support. Read literally, even an incompetent patient can prevent the attorney-in-fact from effecting any decision to which the patient objects -- not just decisions involving withholding or withdrawal of care necessary to keep the patient alive. This conclusion is reached through reading the Preamble and Section 10 of SB 762 [amending Civil Code §§2433 and 2440]:

"It [the Act] would prohibit an attorney in fact from consenting to the provision of health care if the principal objects or to the withdrawal of health care necessary to keep the principal alive if the principal objects." [See Preamble.]

"In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may be stopped if you object." [See Section 10, amending Civil Code §2433, ¶5.]

"Nothing in this article authorizes an attorney in fact to consent to health care, or to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects to the health care or to the withholding or withdrawal of the health care." [See Section 10, amending CC §2440.]

If one relies on the grammar to assist in interpretation, the conclusion has to be that the patient can effectively object to any treatment -- regardless of competence and regardless of whether life sustaining treatment is involved. However, this interpretation emasculates Section 2437, which limits the principal's power to revoke either the appointment or the authority of the attorney-in-fact to periods when the principal is competent.

A more reasonable interpretation is that the legislature only intended to give effect to an incompetent's objections when life sustaining treatments were involved. This interpretation must ignore the grammar of the statute, and rely instead on the fact that the objection language always appears in proximity to language about health care necessary to keep the patient alive. This latter interpretation appears to be that favored by the California Hospital Association:

"However, an attorney-in-fact may not consent to health care to keep the principal alive if the principal objects to the treatment, and may not consent to the withdrawal of [such] care if the principal objects." [Charles F. Forbes, "CHA Insight," Vol. 8, No. 7, January 17, 1984.]

My recommendation would be an amendment changing the language of the above-referenced sections to that written in Mr. Forbes' article [with the insertion of the word "such" as indicated above].

2. Notaries - The Act is also unclear as to whether a Notary who is also an employee of the health facility may witness the execution of a durable power of attorney.

The Honorable Barry Keene

March 23, 1984

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The Notary-witness provision falls under subdivision (a) of Section 2432; and subdivision (d) of that section states that no health provider employee may be a witness under (a). However, because of the independent legal responsibilities of Notaries, and because the Notary's declaration is not required to contain language comparable to that in Section 2432(a) (2) (A) [i.e., ". . . that I am not . . . an employee of a health care provider . . ."], a reasonable interpretation is that the Notary may be a health care provider employee. Indeed, this is the interpretation preferred by CHA. [See CHA Memorandum, CHA/83-10-32, October 31, 1983.]

If the latter interpretation is correct, then Section 2432(d) should be amended to read:

"(d) None of the following may be used as a witness under subdivision (a) (2) (A):"

Your consideration of these suggestions is appreciated. Please call me if you have any questions.

Very truly yours,


Ann O'Connell

AO'C:t'p

EXHIBIT 4

STAFF RECOMMENDED DRAFT

90928

Civil Code § 2400 (amended). Durable power of attorney

SECTION 1. Section 2400 of the Civil Code is amended to read:

2400. (a) A durable power of attorney is a power of attorney by which a principal designates another his or her attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

(b) For the purposes of this article, a durable power of attorney does not include a proxy given by a person to another person with respect to the exercise of voting rights that is governed by any other statute of California.

(b) A printed form of a durable power of attorney sold in this state for use by a person who does not have the advice of legal counsel shall include the following notice in 10/point bold face type:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

1. This document may provide the person you designate as your attorney in fact with broad powers to dispose, sell, convey, and encumber your real and personal property.

2. These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.

3. You have the right to revoke or terminate this durable power of attorney at any time.

~~(e) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.~~

Comment. Section 2400 is amended to delete subdivisions (b) and (c). These subdivisions are superseded by Section 2510.

09936

Civil Code § 2432 (amended). Requirements for durable power of attorney for health care

SEC. 2. Section 2432 of the Civil Code is amended to read:

2432. (a) An attorney in fact under a durable power of attorney may not make health care decisions unless ~~both~~ all of the following requirements are satisfied:

(1) The durable power of attorney specifically authorizes the attorney in fact to make health care decisions.

(2) The durable power of attorney contains the date of its execution, ~~and is witnessed by one of the following methods:~~

~~(A) Be~~ (3) The durable power of attorney is signed by at least two persons witnesses each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature or of the instrument, each witness making the following declaration in substance: "I declare under penalty of perjury under the laws of California that the ~~principal~~ person who signed or acknowledged this document is, within the meaning of Section 2511 of the California Civil Code, personally known to me (or proved to me on the basis of satisfactory evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility."

(4) ~~In addition, the declaration of at~~ At least one of the witnesses must include has also signed the following declaration: "I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of

the principal upon the death of the principal under a will now existing or by operation of law."

~~(B)~~ Be acknowledged before a notary public at any place within this state, the notary public certifying to the substance of the following:

State of California }
County of +++++ } SSr

On this +++++ day of +++++ in the year +++++ before me,
+++++ personally appeared
(here insert name of notary public)
+++++ personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person whose name is subscribed
to this instrument, and acknowledged that he or she executed it. I
declare under penalty of perjury that the person whose name is sub-
scribed to this instrument appears to be of sound mind and under no
duress, fraud, or undue influence.

NOTARY SEAL

+++++
(Signature of Notary Public)

(b) Except as provided in Section 2432.5:

(1) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a community care facility nor an employee of an operator of a community care facility, may be designated as the attorney in fact to make health care decisions under a durable power of attorney.

(2) A health care provider or employee of a health care provider may not act as an attorney in fact to make health care decisions if the health care provider becomes the principal's treating health care provider.

(c) A conservator may not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, unless (1) the power of attorney is otherwise valid, (2) the conservatee is represented by legal counsel, and (3) the lawyer representing the conservatee signs a certificate stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this

matter power of attorney and the applicable law and the consequences of signing or not signing this durable power of attorney, and my client, after being so advised, has executed this durable power of attorney."

(d) None of the following may be used as a witness under subdivision (a):

- (1) A health care provider.
- (2) An employee of a health care provider.
- (3) The attorney in fact.
- (4) The operator of a community care facility.
- (5) An employee of an operator of a community care facility.

(e) At least one of the persons used as a witness under subdivision (a) shall be a person who is not one of the following:

- (1) A relative of the principal by blood, marriage, or adoption.
- (2) A person who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the durable power of attorney or by operation of law then existing.

(f) A durable power of attorney for health care is not effective if the principal is a patient in a skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code at the time of its execution unless one of the witnesses is a patient advocate or ombudsman as may be designated by the State Department of Aging for this purpose pursuant to any other applicable provision of law. The patient advocate or ombudsman shall include in the declaration required by subdivision (a) ~~(2)(A)~~ a declaration that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing a durable power of attorney for health care.

Comment. Section 2432 is amended to delete the provision that permitted the durable power of attorney to be acknowledged before a notary public as an alternative to being witnessed by two witnesses. This deletion conforms Section 2432 to Section 2500 (Statutory Form Durable Power of Attorney for Health Care).

Subdivision (a) is also amended to require each witness to make a declaration under penalty of perjury that the person who signed or acknowledged the document is personally known or proved by satisfactory evidence to be the principal. See also Section 2511 (meaning of "person-

ally known" and "satisfactory evidence"). This adopts a standard for Section 2432 that is comparable to that used for the certificate of acknowledgment of a notary public. See Section 1189. See also Section 1185.

Subdivision (c) is amended to conform the certificate to the language used for the attorney's certificate in Sections 2421, 2433(c)(2), 2451, and 2501.

The remaining revisions of Section 2432 are technical or clarifying.

09943

Civil Code § 2432.5 (technical amendment). Relative of principal may be attorney in fact even though employed by health care provider or community care facility

SEC. 3. Section 2432.5 of the Civil Code is amended to read:

2432.5. ~~Notwithstanding subdivision (b) of Section 2432,~~ an An employee of the treating health care provider or an employee of an operator of a community care facility may be designated as the attorney in fact to make health care decisions under a durable power of attorney if (a) the employee so designated is a relative of the principal by blood, marriage, or adoption, and (b) the other requirements of this article are satisfied.

Comment. Section 2432.5 is amended to delete language that is unnecessary in view of the amendment to subdivision (b) of Section 2432.

101/177

Civil Code § 2433 (amended). Requirements for printed form; certificate of attorney in lieu of warning statements

SEC. 4. Section 2433 of the Civil Code is amended to read:

2433. (a) A printed form of a durable power of attorney for health care that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall ~~include the following notice in~~ contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. ~~It creates a durable power of attorney for health care.~~ Before executing this document, you should know these important facts:

This document gives the person you designate as your attorney in fact the power to make health care decisions for you, subject to any limitations or statement of your desires that you include in this document. The power to make health care decisions for you may include consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. You may state in this document any types of treatment or placements that you do not desire.

The person you designate in this document has a duty to act consistent with your desires as stated in this document or otherwise made known or, if your desires are unknown, to act in your best interests.

Except as you otherwise specify in this document, the power of the person you designate to make health care decisions for you may include the power to consent to your doctor not giving treatment or stopping treatment which would keep you alive.

Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped if you object.

You have the right to revoke the appointment of the person designated in this document by notifying that person of the revocation orally or in writing.

You have the right to revoke the authority granted to the person designated in this document to make health care decisions for you by notifying the treating physician, hospital, or other health care provider orally or in writing.

The person designated in this document to make health care decisions for you has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

ALL IN

STRIKEOUT

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

Unless you specify shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or

educational or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice: "This power of attorney will not be valid for making health care decisions unless it is ~~either (1)~~ signed by two qualified adult witnesses ~~who are personally known to you and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California.~~ A person can sign as a witness only if the witness personally knows you or your identity is proved to the witness by satisfactory evidence. To personally know you, the witness must have an acquaintance, derived from association with you in relation to other people and based upon a chain of circumstances surrounding you, which establishes your identity with at least reasonable certainty. To have satisfactory evidence of your identity, the witness must be presented with the kind of proof of identity that is specified in Section 2511 of the Civil Code; other kinds of proof are not allowed."

(c) A durable power of attorney prepared in this state that permits the attorney in fact to make health care decisions and that is not a printed form shall include one of the following:

(1) The substance of the statements provided for in subdivision (a) in capital letters.

(2) A certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(d) If a durable power of attorney includes the certificate provided for in paragraph (2) of subdivision (c) and permits the attorney in fact to make health care decisions for the principal, the applicable law of which the client is to be advised by the lawyer signing the certificate includes, but is not limited to, the matters listed in subdivision (a).

Comment. The introductory clause of subdivision (a) of Section 2433 is extended to apply to any printed form that is "otherwise distributed" in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be "in not less than 10-point boldface type or a reasonable equivalent thereof." These revisions conform Section 2433 to Section 2451(a) (Statutory Short Form Power of Attorney), Sections 2501(a) and 2503(c) (Statutory Form Durable Power of Attorney for Health Care), and Section 2510(b) (introductory clause).

A new warning statement is substituted for the one formerly provided by subdivision (a). The new warning statement is drawn from the warning statement prescribed in Section 2500 (Statutory Form Durable Power of Attorney for Health Care). See the Comment to that section.

Subdivision (b) is revised to conform to the changes made in Section 2432 which (1) delete the provision that permitted the durable power of attorney to be acknowledged before a notary public as an alternative to being witnessed by two witnesses and (2) require each witness to make a declaration that the person who signed or acknowledged the document is personally known or proved by satisfactory evidence to be the principal. See the Comment to Section 2432.

12341

Civil Code § 2440 (amended). Effect of principal objecting to not providing health care

SEC. 5. Section 2440 of the Civil Code is amended to read:

2440. Nothing in this article authorizes an attorney in fact ~~to consent to health care, or~~ to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects ~~to the health care or~~ to the withholding or withdrawal of the health care. In such a case, the case is governed by the law that would apply if there were no durable power of attorney for health care.

Comment. Section 2440 is amended to delete the provision that nothing in the article authorizes an attorney in fact to consent to the providing of health care if the patient objects to the health care. Whether an attorney in fact can consent to the providing of health care depends on whether the providing of the health care is consistent with the desires of the principal as expressed in the power of attorney or otherwise made known or, if not known, whether the providing of the health care is in the best interests of the principal. See Section 2434(b). Accordingly, for example, the objection of an incompetent patient to the providing of health care necessary to keep the patient alive would not preclude the providing of the health care if that would be consistent with the desires of the principal as expressed in the power of attorney. However, the principal can revoke the authority to provide the health care under the power of attorney if the principal has the capacity to do so. See Section 2434(a), (c).

Civil Code § 2450 (amended). Statutory Short Form Power of Attorney

SEC. 6. Section 2450 of the Civil Code is amended to read:

2450. The use of the following form in the creation of a power of attorney is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and, if the power of attorney is a durable power of attorney, shall be subject to the provisions of Article 3 (commencing with Section 2400) of Chapter 2:

STATUTORY SHORT FORM POWER OF ATTORNEY
(California Civil Code Section 2450)

WARNING. UNLESS YOU LIMIT THE POWER IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF. FOR EXAMPLE, YOUR AGENT CAN:

--BUY, SELL, AND MANAGE REAL AND PERSONAL PROPERTY FOR YOU. THIS MEANS THAT YOUR AGENT CAN SELL YOUR HOME, YOUR SECURITIES, AND YOUR OTHER PROPERTY.

--DEPOSIT AND WITHDRAW MONEY FROM YOUR CHECKING AND SAVINGS ACCOUNTS.

--BORROW MONEY USING YOUR PROPERTY AS SECURITY FOR THE LOAN.

--PUT THINGS IN AND TAKE THINGS OUT OF YOUR SAFETY DEPOSIT BOX.

--OPERATE YOUR BUSINESS FOR YOU.

--PREPARE AND FILE TAX RETURNS FOR YOU AND ACT FOR YOU IN TAX MATTERS.

--ESTABLISH TRUSTS FOR YOU AND TAKE OTHER ACTIONS FOR YOU IN CONNECTION WITH PROBATE AND ESTATE PLANNING MATTERS.

--PROVIDE FOR THE SUPPORT AND WELFARE OF YOUR SPOUSE, CHILDREN, AND DEPENDENTS.

--CONTINUE PAYMENTS TO THE CHURCH AND OTHER ORGANIZATIONS OF WHICH YOU ARE A MEMBER AND MAKE GIFTS TO YOUR SPOUSE, DESCENDANTS, AND CHARITIES.

THIS DOCUMENT DOES NOT AUTHORIZE YOUR AGENT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU CAN DESIGNATE AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU ONLY BY A SEPARATE DOCUMENT.

IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTIONS 2460 TO 2473, INCLUSIVE, OF THE CALIFORNIA CIVIL CODE.

THE POWERS GRANTED BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY UNLESS YOU INDICATE OTHERWISE IN THIS DOCUMENT.

YOU CAN ELIMINATE POWERS OF YOUR AGENT BY CROSSING OUT ANY ONE OR MORE OF THE POWERS LISTED IN PARAGRAPH 3 OF THIS FORM. YOU CAN WRITE OTHER LIMITATIONS AND SPECIAL PROVISIONS IN PARAGRAPH 4 OF THIS FORM. HOWEVER, IF YOU DO NOT WANT TO GRANT YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A LAWYER INSTEAD OF USING THIS FORM.

THIS DOCUMENT MUST BE SIGNED BY TWO WITNESSES AND BE NOTARIZED TO BE VALID.

YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS POWER OF ATTORNEY.

YOU ARE NOT REQUIRED TO USE THIS FORM; YOU MAY USE A DIFFERENT POWER OF ATTORNEY IF THAT IS DESIRED BY THE PARTIES CONCERNED.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. DESIGNATION OF AGENT.

I, _____
 (Insert your name and address)

do hereby appoint _____

(Insert name and address of your agent, or each agent if you want to designate more than one)
 as my attorney(s)-in-fact (agent) to act for me and in my name as authorized in this document.

2. CREATION OF DURABLE POWER OF ATTORNEY. By this document I intend to create a general power of attorney under Sections 2450 to 2473, inclusive, of the California Civil Code. Subject to any limitations in this document, this power of attorney is a durable power of attorney and shall not be affected by my subsequent incapacity.

(If you want this power of attorney to terminate automatically when you lack capacity, you must so state in paragraph 4 ("Special Provisions and Limitations") below.)

3. STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent(s) full power and authority to act for me and in my name, in any way which I myself could act, if I were personally present and able to act, with respect to the following matters as each of them is defined in Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the California Civil Code to the extent that I am permitted by law to act through an agent:

- (1) Real estate transactions.
- (2) Tangible personal property transactions.
- (3) Bond, share, and commodity transactions.
- (4) Financial institution transactions.
- (5) Business operating transactions.
- (6) Insurance transactions.
- (7) Retirement plan transactions.
- (8) Estate transactions.

- (9) Claims and litigation.
- (10) Tax matters.
- (11) Personal relationships and affairs.
- (12) Benefits from military service.
- (13) Records, reports, and statements.
- (14) Full and unqualified authority to my agent (s) to delegate any or all of the foregoing powers to any person or persons whom my agent (s) shall select.
- (15) All other matters.

(Strike out any one or more of the items above to which you do NOT desire to give your agent authority. Such elimination of any one or more of items (1) to (14), inclusive, automatically constitutes an elimination of item (15). TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM.)

4. SPECIAL PROVISIONS AND LIMITATIONS. In exercising the authority under this power of attorney, my agent (s) is subject to the following special provisions and limitations:

(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2453 of the California Civil Code.)

5. EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED. If I have designated more than one agent, the agents are to act

(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the word "severally." Failure to make an insertion or the insertion of the word "jointly" will require that the agents act jointly.)

6. DURATION.

(The powers granted by this document will exist for an indefinite period of time unless you limit their duration below.)

This power of attorney expires on _____

(Fill in this space ONLY if you want the authority of your agent to terminate before your death.)

7. NOMINATION OF CONSERVATOR OF ESTATE.

(A conservator of the estate may be appointed for you if a court decides that one should be appointed. The conservator is responsible for the management of your financial affairs and your property. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your agent. You may nominate a person as your conservator by completing the space below.)

If a conservator of the estate is to be appointed for me, I nominate the following person to serve as conservator of the estate _____

(Insert name and address of person nominated as conservator of the estate)

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Short Form Power of Attorney on

(Date) at (City) (State)

(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS BOTH (1) SIGNED BY TWO ADULT WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE AND (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA.)

STATEMENT OF WITNESSES

(You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by satisfactory evidence. To personally know the principal, you must have an acquaintance, derived from association with the principal in relation to other people and based upon a chain of circumstances surrounding the principal, which establishes the identity of the principal with at least reasonable certainty. To have satisfactory evidence of the identity of the principal, you must be presented with the kind of proof of identity that is specified in Section 2511 of the Civil Code; other kinds of proof are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is, within the meaning of Section 2511 of the California Civil Code, personally known to me (or proved to me on the basis of ~~convincing~~ satisfactory evidence) to be the principal, that the principal signed or acknowledged this power of attorney in my presence, and that the principal appears to be of sound mind and under no duress, fraud, or undue influence.

Signature: _____ Residence Address: _____

Print Name: _____

Date: _____

Signature: _____ Residence Address: _____

Print Name: _____

Date: _____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

State of California }
County of _____ } ss.

On this _____ day of _____, in the year _____, before me,

(Insert name of notary public)
personally appeared _____,

(Insert name of principal)
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

NOTARY SEAL _____
(Signature of Notary Public)

Comment. Section 2450 is amended to revise the Statement of Witnesses to conform to Section 2511 and to add an informational statement that alerts the witnesses to the requirements of Section 2511. Forms that comply with prior law may still be used after the time the amendment to Section 2450 goes into effect. See Section 2457.

Civil Code § 2451 (technical amendment). Form must contain "warning" or lawyer's certificate

SEC. 7. Section 2451 of the Civil Code is amended to read:

2451. (a) ~~Notwithstanding Section 2400, except~~ Except as provided in subdivision (b), a statutory short form power of attorney, to be valid, shall contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the warning which is printed in capital letters at the beginning of Section 2450.

(b) Subdivision (a) does not apply if the statutory short form power of attorney contains a certificate signed by the principal's lawyer stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

Comment. Section 2451 is amended to delete the reference to Section 2400. This reference becomes unnecessary in view of the amendment of Section 2400 and the enactment of Section 2510.

09748

Civil Code § 2457 (added). Use of form prescribed by prior law

SEC. 8. Section 2457 is added to the Civil Code, to read:

2457. (a) A statutory short form power of attorney executed on or after January 1, 1986, using a form that complied with Section 2450 as originally enacted is as valid as if it had been executed using a form that complied with Section 2450 as amended.

(b) Notwithstanding Section 2452, a statutory short form power of attorney signed by the witnesses on or after January 1, 1986, is not invalid if it otherwise satisfies the requirements of Section 2452 except that the declaration executed by the witnesses uses the language set out in Section 2450 as originally enacted instead of the language set out in that section as amended.

Comment. Section 2457 permits continued use of the form prescribed for a statutory short form power of attorney under Section 2450 before the amendment to that section changed the language of the declaration of witnesses. Section 2457 permits use of the original form even after the amendment takes effect. Accordingly, after the amendment to Section 2450 takes effect, either the form set forth in Section 2450 as originally enacted or the form set forth in Section 2450 as amended may be used. This avoids the need to discard existing printed forms on the date the amendment to Section 2450 takes effect.

Civil Code § 2500 (amended). Statutory Form Durable Power of Attorney
for Health Care

SEC. 9. Section 2500 of the Civil Code is amended to read:

2500. The use of the following form in the creation of a durable power of attorney for health care under Article 5 (commencing with Section 2430) of Chapter 2 is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and shall be subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2.

STATUTORY FORM DURABLE POWER OF ATTORNEY FOR
HEALTH CARE
(California Civil Code Section 2500)

WARNING TO PERSON EXECUTING THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT (THE ATTORNEY IN FACT) THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MUST ACT CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.

EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.

NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, ~~NO TREATMENT MAYBE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND~~ HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

THIS DOCUMENT GIVES YOUR AGENT AUTHORITY TO CONSENT, TO REFUSE TO CONSENT, OR TO WITHDRAW CONSENT TO ANY CARE, TREATMENT, SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT A PHYSICAL OR MENTAL CONDITION. THIS POWER IS SUBJECT TO ANY STATEMENT OF YOUR DESIRES AND ANY LIMITATIONS THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.

UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST FOR SEVEN YEARS FROM THE DATE YOU EXECUTE THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AT THE TIME WHEN THIS SEVEN-YEAR PERIOD ENDS, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.

YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.

YOUR AGENT HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.

UNLESS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER AFTER YOU DIE TO (1) AUTHORIZE AN AUTOPSY, (2) DONATE YOUR BODY OR PARTS THEREOF FOR TRANSPLANT OR THERAPEUTIC OR EDUCATIONAL OR SCIENTIFIC PURPOSES, AND (3) DIRECT THE DISPOSITION OF YOUR REMAINS.

THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS FORM. THIS DOCUMENT WILL NOT BE VALID UNLESS YOU COMPLY WITH THE WITNESSING PROCEDURE.

IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.

DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

1. DESIGNATION OF HEALTH CARE AGENT. I. _____

(Insert your name and address)

do hereby designate and appoint _____

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, or (4) a nonrelative employee of an operator of a community care facility.)

as my attorney in fact (agent) to make health care decisions for me

as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care under Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 2500 to 2506, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services, and procedures:

(b) Additional statement of desires, special provisions, and limitations: _____

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. ~~UNIFORM ANATOMICAL GIFT ACT~~ AUTOPSY; ANATOMICAL GIFTS; DISPOSITION OF REMAINS. Subject to any limitations in this document, my agent has the power and authority to **make do all of the following:**

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.

(If you want to limit the authority of your agent to **make a disposition under the Uniform Anatomical Gift Act, consent to an autopsy, make an anatomical gift, or direct the disposition of your remains,** you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

8. DURATION

(Unless you specify a shorter period in the space below, this power of attorney will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, the power will continue to exist until the time when you become able to make health care decisions for yourself.)

This durable power of attorney for health care expires on _____

(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

9. DESIGNATION OF ALTERNATE AGENTS

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me, or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent _____

(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent _____

(Insert name, address, and telephone number of second alternate agent)

10. NOMINATION OF CONSERVATOR OF PERSON

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person _____

(Insert name and address of person nominated as conservator of the person)

11. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on _____ at _____

(Date)

(City)

(State)

(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

(You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by satisfactory evidence. To personally know the principal, you must have an acquaintance, derived from association with the principal in relation to other people and based upon a chain of circumstances surrounding the principal, which establishes the identity of the principal with at least reasonable certainty. To have satisfactory evidence of the identity of the principal, you must be presented with the kind of proof of identity that is specified in Section 2511 of the Civil Code; other kinds of proof are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is, within the meaning of Section 2511 of the California Civil Code, personally known to me (or proved to me on the basis of convincing satisfactory evidence)

to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: _____ Residence Address: _____
Print Name: _____
Date: _____

Signature: _____ Residence Address: _____
Print Name: _____
Date: _____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: _____
Signature: _____

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility--a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: _____

Comment. The Statement of Witnesses in Section 2500 is revised to conform to Section 2511 and to add an additional informational statement that alerts the witnesses to the requirements of Section 2511. The revisions in the Warning Statement and in paragraph 7 of the form merely provide additional information concerning the power and authority of the agent and make no change in applicable law. Forms that comply with prior law may still be used after the time the amendment to Section 2500 goes into effect. See Section 2503.5.

09931

Civil Code § 2502 (amended). Formal requirements

SEC. 10. Section 2502 of the Civil Code is amended to read:

2502. (A) ~~Notwithstanding paragraph (2) of subdivision (a) of Section 2432,~~ a A statutory form durable power of attorney for health care is valid, and the designated attorney in fact may make health care decisions pursuant to such authority, only if it (1) contains the date of its execution, (2) is signed by the principal, and (3) is signed by two qualified witnesses, each of whom executes, under penalty of perjury, the declaration set out in the first paragraph of the "Statement of Witnesses" in the form set out in Section 2500, and one of whom also executes the declaration under penalty of perjury set out in the second paragraph of the "Statement of Witnesses" in the form set out in Section 2500.

(b) Nothing in this section excuses compliance with the special requirements imposed by subdivisions (c) and (f) of Section 2432.

Comment. Section 2502 is amended to delete the reference to Section 2432. Section 2432 has been amended to delete the provision to which the reference was made in Section 2502.

Civil Code § 2503.5 (added). Use of form prescribed by prior law

SEC. 11. Section 2503.5 is added to the Civil Code, to read:

2503.5. (a) A statutory form durable power of attorney for health care executed on or after January 1, 1986, using a form that complied with Section 2500 as originally enacted is as valid as if it had been executed using a form that complied with Section 2500 as amended.

(b) Notwithstanding Section 2501, a statutory form durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it contains the warning using the language set forth in Section 2500 as originally enacted instead of the warning using the language set forth in that section as amended.

(c) Notwithstanding Section 2502, a statutory form durable power of attorney for health care signed by the witnesses on or after January 1, 1986, is not invalid if it otherwise satisfies the requirements of Section 2502 except that the declaration executed by the witnesses uses the language set out in Section 2500 as originally enacted instead of the language set out in that section as amended.

(d) For the purposes of subdivision (c) of Section 2503, on and after January 1, 1986, a printed statutory form durable power of attorney may be sold or otherwise distributed if it contains the exact wording of the form set out in Section 2500 as originally enacted, or the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else; but any printed statutory form durable power of attorney for health care printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else.

Comment. Section 2503.5 permits continued use of the form prescribed for a statutory form durable power of attorney for health care under Section 2500 as originally enacted. Section 2503.5 permits use of the original form even after the amendment to Section 2500 takes effect. Accordingly, after the amendment to Section 2500 takes effect, either the form set forth in Section 2500 as originally enacted or the form set forth in Section 2500 as amended may be used. This avoids the need to discard existing printed forms on the date the amendment to Section 2500 takes effect. However, forms printed on or after January 1, 1986, must contain the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else.

Civil Code §§ 2510-2511 (added)

SEC. 12. Chapter 5 (commencing with Section 2510) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 5. MISCELLANEOUS PROVISIONS RELATING TO
POWERS OF ATTORNEY

Civil Code § 2510. Warning statement in printed form

2510. (a) This section does not apply to either of the following:

(1) A durable power of attorney for health care.

(2) A Statutory Short Form Power of Attorney that satisfies the requirements of Chapter 3 (commencing with Section 2450).

(b) A printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

This document may provide the person you designate as your attorney in fact with broad powers to manage, dispose, sell, and convey your real and personal property and to borrow money using your property as security for the loan.

These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.

You have the right to revoke or terminate this power of attorney.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

(c) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.

Comment. Section 2510 continues the substance of former subdivisions (b) and (c) of Section 2400 with the following revisions:

(1) Subdivision (a) of Section 2510 is a new provision that recognizes that other provisions prescribe the content of the warning state-

ment for particular types of durable powers of attorney. See Sections 2433 and 2500 (durable power of attorney for health care); Sections 2450 and 2451 (Statutory Short Form Power of Attorney). See also Section 2433(a) (introductory clause) (printed form of a durable power of attorney for health care to provide only authority to make health care decisions).

(2) The warning statement requirement is extended to apply to a printed form that is "otherwise distributed" in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be "in not less than 10-point boldface type or a reasonable equivalent thereof." These changes make Section 2510 consistent with portions of Section 2433(a) (introductory clause), Section 2451(a) (Statutory Short Form Power of Attorney), and Sections 2501(a) and 2503(c) (Statutory Form Durable Power of Attorney For Health Care).

(3) The last paragraph of the warning statement is added. A comparable provision is included in other required warning statements. See Sections 2433, 2450, and 2500.

09726

Civil Code § 2511. Requirement that witness personally know or establish proper identity of person executing power of attorney

2511. For the purposes of the declaration of witnesses required by Section 2432, 2450, or 2500:

(a) "Personally known" means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity with at least reasonable certainty.

(b) "Satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(1) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(A) An identification card or driver's license issued by the California Department of Motor Vehicles.

(B) A passport issued by the Department of State of the United States.

(2) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five

years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(A) A passport issued by a foreign government.

(B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the armed forces of the United States.

Comment. Section 2511 is drawn from Section 1185 (acknowledgment of instrument by notary public) but is more restrictive than that section because Section 2511 does not include the substance of subdivision (c)(1) of Section 1185.

12804

SEC. 13. Nothing in this act affects the validity of a power of attorney executed prior to the date this act becomes operative.