

KANSAS STATUTE
POWERS AND LETTERS OF ATTORNEY
§58-625 - §58-632

58-625. Durable power of attorney for health care decisions; meaning.

A durable power of attorney for health care decisions is a power of attorney by which a principal designates another as the principal's agent in writing and the writing contains the words "this power of attorney for health care decisions shall not be affected by subsequent disability or incapacity of the principal" or "this power of attorney for health care decisions shall become effective upon the disability or 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 disability or incapacity.

History: L. 1989, ch. 181, § 1; July 1.

58-626. Same; acts of agent during disability or incapacity of principal.

All acts done by an agent pursuant to a durable power of attorney for health care decisions during any period of disability or incapacity of the principal have the same effect as if the principal were competent and not disabled.

History: L. 1989, ch. 181, § 2; July 1.

58-627. Same; power of court-appointed guardian; principal authorized to nominate conservator or guardian; court appointment.

(a) If, following execution of a durable power of attorney for health care decisions, a court of the principal's domicile appoints a guardian charged with the responsibility for the principal's person, the guardian has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney for health care decisions, a conservator or guardian for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney for health care decisions except for good cause or disqualification.

History: L. 1989, ch. 181, § 3; July 1.

58-628. Same; effect of voluntary revocation by principal; actual knowledge required.

A voluntary revocation by a principal of a durable power of attorney for health care decisions does not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the revocation, acts in good faith under the power.

History: L. 1989, ch. 181, § 4; July 1.

58-629. Same; authority of agent; limitations on agent's power; persons not to be designated as agents; witnesses and acknowledgment; effect of death of principal.

(a) A durable power of attorney for health care decisions may convey to the agent the authority to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body;

(2) make all necessary arrangements for the principal at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for the physical, mental and emotional well being of the principal; and

(3) request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

(b) The powers of the agent herein shall be limited to the extent set out in writing in the durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate a previously existing declaration by the principal in accordance with the natural death act. No agent powers conveyed pursuant to this section shall be effective until the occurrence of the principal's impairment as determined by the principal's attending physician, as defined in subsection (a) of K.S.A. 65-28,102 and amendments thereto, unless the durable power of attorney for health care decisions specifically provides otherwise. Nothing in this act shall be construed as prohibiting an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member.

(c) In exercising the authority under the durable power of attorney for health care decisions, the agent has a duty to act consistent with the expressed desires of the principal.

(d) Neither the treating health care provider, as defined by subsection (c) of K.S.A. 65-4921 and amendments thereto, nor an employee of the treating health care provider, nor an employee, owner, director or officer of a facility described [in] subsection (a)(2) in K.S.A. 58-629 may be designated as the agent to make health care decisions under a durable power of attorney for health care decisions unless:

(1) Related to the principal by blood, marriage or adoption; or

(2) the principal and agent are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

(e) A durable power of attorney for health care decisions shall be:

(1) Dated and signed in the presence of two witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's health care; or

(2) acknowledged before a notary public.

(f) Death of the principal shall not prohibit or invalidate acts of the agent in arranging for organ donation, autopsy or disposition of body.

(g) Any person who in good faith acts pursuant to the terms of a durable power of attorney for health care decisions without knowledge of its invalidity shall be immune from liability that may be incurred or imposed from such action.

History: L. 1989, ch. 181, § 5; L. 1994, ch. 224, § 1; L. 2002, ch. 114, § 57; July 1.

58-630. Same; effect if valid under laws of state of principal's residence; acts by agent in this state.

Any durable power of attorney for health care decisions which is valid under the laws of the state of the principal's residence at the time the durable power of attorney for health care decisions was signed, shall be a durable power of attorney for health care decisions under this act. All acts taken by an agent in this state under such a durable power of attorney for health care decisions, which would be valid under the laws of this state, shall be valid acts. All acts taken by an agent for a principal whose residence is Kansas at the time the durable power of attorney for health care decisions is signed shall be valid if valid under Kansas law.

History: L. 1989, ch. 181, § 6; July 1.

58-631. Same; durable power of attorney executed before July 1, 1989, not affected by this act.

A durable power of attorney executed before July 1, 1989, that specifically authorizes the attorney in fact or agent to make decisions relating to the health care of the principal shall not be limited or otherwise affected by the provisions of this act.

History: L. 1989, ch. 181, § 7; July 1.

58-632. Same; form. A durable power of attorney for health care decisions shall be in substantially the following form:

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS GENERAL
STATEMENT OF AUTHORITY GRANTED

I,

, designate and appoint:

Name

Address:

Telephone Number:

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

- (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;
- (2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and
- (3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:

(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted).

LIMITATIONS OF AUTHORITY

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

(3) This durable power of attorney for health care decisions shall be subject to the additional following limitations:

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity).

