

Memorandum 83-99

Subject: Study L-704 - Durable Power of Attorney for Health Care
(Statutory Form)

At the last meeting, the Commission approved for printing the recommendation relating to statutory forms for durable powers of attorney.

The staff has revised the draft statute relating to the statutory short for durable power of attorney for health care to make the draft consistent with the decisions made at the last meeting. A copy of the revised statute is attached. Because of the importance of this statute, the staff believes that the Commissioners should have a chance to review it prior to the November meeting so members can suggest revisions at the November meeting. We will wait until after the November meeting to print the recommendation.

Also attached as Exhibit 1 is a draft of a statute to conform the living will statute to the seven-year period provided in the durable power of attorney for health care statute. At the last meeting, the Commission decided to recommend this change. We have not included the provision extending the seven-year period as provided in the durable power of attorney for health care statute because the living will statute has its own provision for extension which appears to be appropriate. The change to conform to the seven-year period of expiration will mean that both the durable power and living will ordinarily will expire at the same time. That seems sufficient.

Attached as Exhibit 2 is a technical amendment to a provision of the durable power of attorney for health care statute enacted this year. The staff recommends that this technical correction be included in the bill to provide a statutory form for a durable power of attorney for health care.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Section 1. Section 7188 of the Health and Safety Code is amended to read: 7188.)

Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant upon his decease under any will of the declarant or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year).

I _____, being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

1. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I have been diagnosed and notified at least 14 days ago as having a terminal condition by _____ M.D., whose address is _____ and whose telephone number is _____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

5. This directive shall have no force or effect ~~five~~ seven years from the date filled in above.

6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____

City, County and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

Comment. Section 7188 is amended to adopt the seven-year period of duration provided for a durable power of attorney for health care. See Civil Code §2436.5. Conforming the period of existence of the directive to physicians and the durable power will make it less likely that the need to execute new documents will be overlooked.

SEC. 2. Section 7189.5 of the Health and Safety Code is amended to read:

7189.5.)

A directive shall be effective for ~~five~~ seven years from the date of execution thereof unless sooner revoked in a manner prescribed in Section 7189. Nothing in this chapter shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Section 7188, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.

Comment. See the Comment to Section 7188.

SEC. 3. The amendments made to Sections 7188 and 7189.5 of the Health and Safety Code by this act apply only if the directive executed by the declarant pursuant to Section 7188 of the Health and Safety Code includes the statement: "This directive shall have no force or effect seven years from the date filled in above." If the directive does not have that statement, the period of effectiveness of the directive is determined by Section 7189.5 of the Health and Safety Code as that section read immediately prior to its amendment by this act.

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 the time when the principal regains the capacity to make health care decisions for himself or herself.

SEC. . Section 2437 of the Civil Code is amended to read:

2437. (a) At any time while the principal has the capacity to give a durable power of attorney for health care, the principal may do any of the following:

(1) Revoke the appointment of the attorney in fact under the durable power of attorney for health care by notifying the attorney in fact orally or in writing.

(2) Revoke the authority granted to the attorney in fact to make health care decisions by notifying the health care provider orally or in writing.

(b) If the principal notifies the health care provider orally or in writing that the authority granted to the attorney in fact to make health care decisions is revoked, the health care provider shall make the notification a part of the principal's medical records and shall make a reasonable effort to notify the attorney in fact of the revocation.

(c) It is presumed that the principal has the capacity to revoke a durable power of attorney for health care. This presumption is a presumption affecting the burden of proof.

(d) Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

(e) Unless the durable power of attorney expressly provides otherwise, if after executing a durable power of attorney for health care the principal's marriage is dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as an attorney in fact to make health care decisions for the principal. If any designation is revoked solely by this subdivision, it is revived by the principal's remarriage to the former spouse.

(f) If a durable power of attorney for health care is revoked under this section, a person is not subject to criminal prosecution or civil liability for acting in reliance upon the durable power of attorney unless the person has actual knowledge of the revocation.

Comment. Subdivision (f) is merely a specific application of the rule stated in subdivision (b) of Section 2356. The subdivision makes clear that a person is not liable for acting in reliance upon the durable power of attorney being effective unless the person has actual knowledge of its revocation. The provision is comparable to a provision found in the living will statute. See Section 7189(b) of the Health and Safety Code.

§ 7189. Revocation of directive; failure to act upon revocation; civil or criminal liability

(a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) By being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction.

(2) By a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he received notification of the written revocation.

(3) By a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

(Added by Stats.1976, c. 1439, p. 6478, § 1.)

SEC. __. Chapter 4 (commencing with Section 2500) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 4. STATUTORY SHORT FORM DURABLE POWER OF ATTORNEY FOR HEALTH CARE

§ 2500. Statutory short form of durable power of attorney for health care

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 SHORT 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. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. 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 CONSISTENT WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE KNOWN. IF YOUR DESIRES ARE UNKNOWN, YOUR AGENT MUST MAKE DECISIONS THAT IN THE JUDGMENT OF THE AGENT ARE IN YOUR BEST INTERESTS.

2. EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR WITHHOLDING OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.

3. 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 OR WITHHELD IF YOU OBJECT.

4. 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 OR PLACEMENTS THAT YOU DO NOT DESIRE.

5. 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.

6. YOU HAVE THE RIGHT TO REVOKE THE APPOINTMENT OF YOUR AGENT BY NOTIFYING THE AGENT OF THE REVOCATION ORALLY OR IN WRITING.

7. YOU HAVE THE RIGHT TO REVOKE YOUR AGENT'S AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR YOU BY NOTIFYING THE TREATING PHYSICIAN, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING.

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

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

10. 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.

11. SPECIAL ADDITIONAL REQUIREMENTS MUST BE SATISFIED FOR THIS DOCUMENT TO BE VALID IF (1) YOU ARE A PATIENT IN A SKILLED NURSING FACILITY AS DEFINED IN HEALTH AND SAFETY CODE SECTION 1250(c) OR (2) YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU ARE APPOINTING THE CONSERVATOR AS YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.

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

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint _____

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

as my attorney-in-fact 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 Article 5 (commencing with Section 2430) of Chapter 2 of Title 9 of Part 4 of Division 3 of the California Civil Code. This power of attorney shall be construed in accordance with the provisions of Sections 2500 to 2505, 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 the attorney-in-fact 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, the attorney-in-fact shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to the attorney-in-fact, including but not limited to my desires concerning obtaining or refusing or withdrawing life-prolonging treatment, services, and procedures. If my desires are unknown or unclear, the attorney-in-fact shall make health decisions for me that in the judgment of the attorney-in-fact are in my best interests.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 9 ("SPECIAL PROVISIONS AND LIMITATIONS") below. You can indicate your desires by including a statement of your desires in paragraph 4 ("STATEMENT OF DESIRES") below.)

4. STATEMENT OF DESIRES. In exercising the authority under this durable power of attorney for health care, the attorney-in-fact shall act consistent with my desires as stated below:

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires by writing a statement of your desires in the space provided above. You may attach additional pages if you need more space to complete your statement. You can also make your desires known to your agent by discussing your desires with your agent or by some other means.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, the attorney-in-fact 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 9 ("SPECIAL PROVISIONS AND LIMITATIONS") below.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions the attorney-in-fact is authorized by this document to make, the attorney-in-fact 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. Subject to any limitations in this document, the attorney-in-fact has the power and authority to make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 Part 1 of Division 7 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, you must state the limitations in paragraph 9 ("SPECIAL PROVISIONS AND LIMITATIONS") below.)

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. SPECIAL PROVISIONS AND LIMITATIONS.

(By law, your agent is not permitted to consent to any of the following: commitment to or placement in a mental health treatment facility, convulsive treatment, psychosurgery, sterilization, or abortion. If there are any other types of treatment or placement that you do not want to be used, you should list them in the space below. If you do not write in any limitations, your agent will have broad powers to make health care decisions on your behalf, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, the attorney-in-fact is subject to the following special provisions and limitations: _____

(You may attach additional pages if you need more space to complete your statement.)

10. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents. You may designate one rather than two alternate agents if you desire.)

If the person designated in paragraph 1 is not available and willing to make a health care decision for me, then I designate and appoint the following persons to serve as attorney-in-fact to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Attorney-in-Fact _____

(insert name and address of first alternate agent)

B. Second Alternate Attorney-in-Fact _____

(insert name and address of second alternate agent)

11. 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 may include making health care decisions for you. YOU MAY, BUT ARE NOT REQUIRED TO, NOMINATE A PERSON TO SERVE AS YOUR CONSERVATOR IF A COURT DECIDES TO APPOINT ONE. 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)

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

DATE AND SIGNATURE OF PRINCIPAL

(THIS POWER OF ATTORNEY MUST BE DATED AND SIGNED BY THE PRINCIPAL.)

I sign my name to this Statutory Short Form Durable Power of Attorney for Health Care on _____ at _____,
(Date) (City)

(State)

(Signature of Principal)

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

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of California)
County of _____) ss.

On this _____ day of _____, in the year _____,
before me, _____,
(here insert name of notary public)

personally appeared _____
(here 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. 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.

NOTARY SEAL

(Signature of Notary Public)

STATEMENT OF WITNESSES

(If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses and three would be preferable. None of the following may be used as a witness: (1) a person you designate as the 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 health care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury under the laws of California that the principal is personally known to me, 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: _____

Signature: _____

Residence Address: _____

Print Name: _____

Signature: _____

Residence Address: _____

Print Name: _____

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

I 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: _____

Signature: _____

SPECIAL REQUIREMENTS

(Check box if it applies to you. If you check a box, attach the required declaration or certificate.)

Principal is a patient in a skilled nursing facility (as defined in Health and Safety Code Section 1250(c)). At least one witness is a patient advocate or ombudsman and has attached a declaration that he or she is serving as a witness as required by law.

Principal is a conservatee under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and the conservator is designated as the attorney-in-fact by this document. The principal is represented by legal counsel and the lawyer has attached his or her certificate containing the statement required by law.

Comment. Section 2500 is consistent with and subject to the substantive law applicable to a durable power of attorney for health care. See Sections 2430-2443. However, in the short form durable power of attorney for health care, the "warning" set out in Section 2500 replaces the one set out in Section 2433. See also Section 2501.

37972

§ 2501. "Warning" must be printed in bold-face type

2501. (a) Notwithstanding Section 2433, except as provided in subdivision (b), a statutory short form durable power of attorney for health care, to be valid, must contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the warning statement which is printed in capital letters at the beginning of Section 2500.

(b) Subdivision (a) does not apply if the statutory short form durable power of attorney for health care contains a certificate of a lawyer representing the principal stating: "I have advised my client concerning his or her rights in connection with this statutory short form durable power of attorney for health care and the law applicable thereto (including, but not limited to, the matters listed in subdivision (a) of Section 2433 of the Civil Code) and the consequences of signing or not signing this durable power of attorney, and my client, after being so advised, has executed this statutory short form durable power of attorney for health care."

Comment. Section 2501 makes invalid a statutory short form durable power of attorney for health care that does not contain the warning or, in lieu of the warning, a lawyer's certificate. The warning set out in Section 2500 must be used in the short form instead of the warning set out in Section 2433.

37973

§ 2502. Formal requirements

2502. (a) A statutory short form durable power of attorney for health care is valid only if it contains the date of its execution and is signed by the principal and one or both of the following requirements are satisfied:

(1) It is acknowledged by the principal before a notary public at any place within this state, and the notary public executes the certificate in the form set out in Section 2500.

(2) It is signed by not less than 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 consistent with Section 2432.

37974

§ 2503. Requirements for power of attorney to be a statutory short form durable power of attorney for health care

2503. (a) Subject to subdivision (b), a power of attorney is a "statutory short form durable power of attorney for health care," as this phrase is used in this chapter, if it meets both of the following requirements:

(1) It meets the requirements of Sections 2501 and 2502.

(2) It contains the exact wording of paragraphs 1, 2, and 3 of the form set out in Section 2500.

(b) A statutory short form durable power of attorney for health care may contain one or more or all of paragraphs 4 to 12 of the form set out in Section 2500.

(c) A power of attorney is not prevented from being a "statutory short form durable power of attorney for health care," as this phrase is used in this chapter, by the fact that it contains a printed statement of desires under paragraph 4 ("Statement of Desires") or a printed statement of special provisions and limitations under paragraph 9 ("Special Provisions and Limitations") or both in the form set out in Section 2500.

Comment. Section 2503 permits the development of a printed statutory short form that omits portions of the form set out in Section 2500, such as, for example, the paragraph on "Duration." Section 2503 also permits development of a printed statutory form that includes printed statements of desires, special provisions, and limitations in the form set out in Section 2500, such as, for example, a statement in the paragraph on "Special Provisions and Limitations" that the attorney-in-fact is to confer with specified members of the principal's family who are reasonably available before making specified health care decisions. Or the printed statement of desires in the form set out in Section 2500 might include a statement that the attorney-in-fact is authorized and directed to arrange for health care of the principal by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof. The statements of desires, special provisions, and limitations--whether or not printed--are, of course, subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2. See the introductory clause of Section 2500.

38221

§ 2504. Right of attorney-in-fact to hire and discharge health care professionals

2504. In a statutory short form durable power of attorney for health care, the language conferring general authority with respect to "health care decisions" authorizes the attorney-in-fact to employ and discharge physicians, dentists, nurses, therapists, and other health care professionals as the attorney-in-fact determines necessary to carry out the health care decisions the attorney-in-fact is authorized by the power of attorney to make.

Comment. Section 2504 makes clear that the principal has authority to hire and discharge health care professionals.

§ 2505. Effect of documents executed by attorney-in-fact on behalf of principal

2505. If a document is executed on behalf of the principal by the attorney-in-fact in the exercise of authority granted to the attorney-in-fact by paragraph 5 or 6 of the form set out in Section 2500, the document has the same effect as if the principal had executed the document at the same time and under the same circumstances and had the capacity to execute the document at that time.

Comment. Section 2505 makes clear that documents executed by the attorney-in-fact pursuant to authority in the statutory short form durable power of attorney for health care have the same effect as if executed by a competent principal at the same time and under the same circumstances.

38222

§ 2506. Right to use other power of attorney

2506. Nothing in this chapter affects or limits the use of any other durable power of attorney for health care.

Comment. Section 2506 makes clear that a person may use a durable power of attorney for health care that is not a statutory short form durable power of attorney for health care under this chapter. The other durable power of attorney for health care must, of course, comply with the requirements of Sections 2430-2443 and is subject to the provisions of those sections.