

First Supplement to Memorandum 83-2

Subject: Study L-703 - Delegation of Authority to Make Health Care
Decisions

At the last meeting, the Commission discussed the basic approach that should be taken in drafting legislation providing for the delegation of authority to make health care decisions. The Commission considered a staff draft of a new, separate statute that provided a method of appointing a health care representative and provided that a health care representative could not be appointed under the Uniform Durable Power of Attorney Act unless the power of attorney met the requirements of the separate statute. After considerable discussion, the Commission decided to abandon the separate statute approach. Instead, the Commission directed the staff to prepare a draft statute that would permit use of a durable power of attorney to give the attorney-in-fact the authority to make health care decisions. The draft statute prepared in response to this request is set out in Memorandum 83-2.

The staff has received a letter and attached revised statute from the Bioethics Committee of the Los Angeles County Bar Association. The Committee believes that the separate statute approach is better than attempting to change the current Uniform Durable Power of Attorney. See the letter attached as Exhibit 1. The Committee has also submitted a revision of the original staff draft of the separate statute showing the changes suggested by the Committee. The Commission's staff has not made a careful analysis of the changes suggested by the Committee. At the January meeting, we suggest that the Commission again review the approach that should be taken in preparing legislation in this field. If the Commission determines to adopt the separate statute approach, the staff will prepare a detailed analysis of the Committee's revised draft for consideration at the March meeting.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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December 23, 1982

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Room D-2
Palo Alto, Ca. 94306

Re: Study L-703
Delegation of Authority to Make
Health Care Decisions

Dear John:

I enjoyed meeting you, Stan Ulrich and the rest of the commission members at the recent meeting in Los Angeles.

As was discussed at that meeting, the Bioethics Committee of the Los Angeles County Bar Association reviewed the staff draft of the proposed legislation concerning the appointment of a health care representative, as well as the commission's recommendations, and in light of the November meeting, I returned with the Commission's decision to attempt to incorporate the approach of appointing a health care representative into the existing Uniform Durable Power of Attorney Act.

The subcommittee formed to draft the recommendations and proposed changes, as well as the whole committee, believed after its comprehensive review, that a separate statute for this important area was a better approach, rather than attempting to change the current Uniform Durable Power of Attorney Act.

Accordingly, I am enclosing herewith the comments which the Bioethics Committee has drafted, as well as our proposed changes to your Staff Draft.

In preparing this draft, we reviewed all of the comments which the Commission received, together with the commission's recommendations and comments, as well as several other proposed model acts. Our unanimous conclusion was that the Staff Draft of July 31, 1982 was by far the best approach, and we proceeded from that point.

I have received the Tentative Recommendation relating to the Durable Power of Attorney to Make Health Care Decisions, and

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this was reviewed as well by the subcommittee.

The next general meeting of the Bioethics Committee will be held on January 12, 1982, at which time the entire committee will again review the comments and the Staff Draft of its Tentative Recommendation relating to the Durable Power of Attorney to Make Health Care Decisions.

I will be attending the January 21 hearing in connection with this matter, and hope that the Commission will consider the enclosed comments and revised draft.

In addition, I have asked for comments from the Probate Department of the Los Angeles Superior Court, and hope that I will be able to present those comments at the January 21 meeting.

For your information, I personally would like to call your attention to one particular area mentioned in our comments, and deleted by us in the proposed legislation. The subcommittee was not in unanimous agreement regarding §53.150, and the comments found on page 4 of our Memorandum.

Although we discussed this area in depth, as stated above, our subcommittee was not in agreement with the meaning of "authority" in the Staff Draft. I, individually, believe that an authority granted in an appointment (meaning specific directions or instructions relating to treatment or non-treatment) should not be revoked orally, and must be revoked in writing. This, of course, assumes that such direction or authority can only be revoked while the appointor is competent. The subcommittee had discussed the concept of requiring any attempt at changing, modifying or revoking instructions, directions (authority) by requiring the execution of a new appointment document, however, after extensive discussion, decided to leave this out of the proposed legislation and our comments.

I believe this area should be considered by the Commission for the reason that a health care provider will most likely see the appointment document when accepting another individual to carry out the intentions of the incapacitated patient (appointor), and if such document contains specific instructions, any deviation or change from those instructions, would most assuredly be questioned. The other members of the subcommittee believed that by authorizing a health care provider to petition the court when there was a question such as an oral revocation of the written instructions in the appointment document adequately covered this point. They believed that an oral revocation should be authorized by a competent adult patient due to the fact, that as a practical matter, most individuals will not

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ATTORNEY AT LAW

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re-execute these appointment documents from time to time, as their ideas or desires change, if in fact, such desires or wishes do change, and that to require such in writing would be unduly burdensome.

I believe this requirement, although more restrictive, should be incorporated in any proposed legislation, due to the nature of the appointment itself, and the fact that there should be as little Court involvement as possible. More restrictive language in this area will in the long run afford more protection to those individuals and health care professionals involved, and leave less room for treatment or non-treatment that the patient did not wish to occur.

I look forward to seeing you again at the next hearing in January in San Francisco. In the meantime, should you have any questions, or require any additional information from the Committee, please do not hesitate to contact me.

Very truly yours,



IRENE L. SILVERMAN
Chairperson
Bioethics Committee of the
Los Angeles County Bar Association

ILS:dh
encs.

cc: Stan Ulrich
Staff Counsel - Law Revision Commission
Jay N. Hartz
Richard S. Scott
Roy Aaron, President, Los Angeles County Bar Association

M E M O R A N D U M

TO: California Law Revision Commission

FROM: Bioethics Committee of the
Los Angeles County Bar Association

DATE: December 23, 1982

RE: COMMENTS REGARDING PROPOSED HEALTH CARE
REPRESENTATIVE LEGISLATION AND REVISED DRAFT
OF PROPOSED LEGISLATION

The Comments contained herein on the Commission's recommendations and the Staff Drafts of the proposed legislation relating to the appointment of a Health Care Representative, do not represent the views of the Los Angeles County Bar Association, but only those of the Bioethics Committee thereof. These comments were drafted by a subcommittee of the Bioethics Committee, consisting of Irene L. Silverman (Chairperson of the Bioethics Committee), Richard S. Scott, and Jay N. Hartz.

INTRODUCTION

The Bioethics Committee of the Los Angeles County Bar Association ("the Committee") strongly supports the concept which the Commission is attempting to achieve through its proposed legislation, and believes that there is a significant need for such legislation.

The Committee has reviewed in detail the Commission's proposed legislation, as well as all of the comments thereto, and has also discussed and analyzed the possibility of achieving similar results by amendments to the Uniform Durable Power of Attorney Act, contained in Civil Code §2400, et seq.

Having reviewed both approaches, it is the considered opinion of the Committee that the Commission's original approach is preferable, because:

(1) utilizing the durable power of attorney may encourage laymen wishing only to appoint a health care representative to execute a document conveying enormous power to another without a full appreciation of the extent of that power or an understanding of appropriate limitations to place on the power;

(2) accurate and informed usage of a durable power of attorney essentially requires the assistance of legal counsel, whereas the appointment of a health care representative should be an act which laymen could accomplish without legal assistance; and

(3) the Committee believes that the special and unique role of health care decisions deserves a separate and distinct vehicle for transferring that decision-making authority in anticipation of potential incapacity.

The Committee has reviewed, in addition to the Commission's drafts and all comments thereto, a variety of other proposed statutes and Model Acts dealing with health care decision-making, including the Uniform Power of Attorney Act, and the Commission's December 6, 1982 proposed modifications thereto. After this review, the Committee has concluded that the July 30, 1982 draft of the proposed Part 2.2 of the Civil Code presents the most workable format for providing adequate legislation.

The Committee has, therefore, made suggestions regarding the Commission's July 31, 1982 draft which are attached hereto. The basis for these recommendations is set forth below.

COMMENTS RE SPECIFIC MODIFICATIONS

§ 53.100

The definition of "health care representative" in Part (b) was ambiguous in that it defines a term by utilizing the same term. The Committee has utilized the phrase "individual appointed pursuant to § 53.110."

The Committee suggests the addition of a part (d) to define "health care provider," to permit use of that term in § 53.190 so as to provide that a health care provider may initiate a legal action to question the decision of a health care representative. It is most frequently health care providers who first encounter impending health care decisions which do not seem to be in the best interests of the appointor.

The committee has broadly defined "health care provider", but has limited the definition so that, for example, if an appointor is a patient in a hospital, only the physician or the hospital may bring an action to question the actions of a health care representative, and not each and every employee of the hospital.

The comments under this section should emphasize that an individual person is to be appointed as health care representative, thus precluding appointment of an entity such as a corporation, or of a group (e.g., "all one's adult children") for a joint or majority decision.

§ 53.110

Part (b)(2) was unclear. The Committee attempted to clarify what it understood the language to mean.

Part (e) was modified by the Committee, since it believes that it is unwise to encourage or permit persons capable of giving informed consent to delegate that right to another. Individual responsibility for such decisions should be encouraged. Additionally, enormous complexity could arise in the area of medical malpractice based upon lack of informed consent if such a substituted decision-maker were to be recognized when the appointor himself or herself was competent.

The Committee therefore suggests that the appointment become effective only when the appointor is not capable of giving informed consent, and only so long as the health care representative is capable of giving informed consent, as was earlier suggested in the revisions proposed by Lawrence J. Nelson, Esq. in correspondence to the Commission dated October 22, 1982 (Exhibit 6 to the Commission, First Supplement to Memo #82-82).

Parts (a) and (c) of this section use the term of "of sound mind"; while other sections use the standard "able to give informed consent". The Committee understands the two to be synonymous, but is unaware of any cases so stating. The Commission may wish to review the use of these phrases, and/or address this issue in its comments.

§ 53.120

The Committee suggests modifying part (b) to address the situation where no specific instructions have been set forth in the appointment. In such cases, the Committee recommends that the standard for the health care representative be stated to be that which the patient would choose for himself or herself if capable of doing so (the test utilized in Quinlan, Saikewicz, and many other cases), rather than the "best interests" of the patient, which could be taken to mean that which most people would choose under the circumstances instead of that which this person would choose. This is a critical issue which should be addressed, since it can be anticipated that many appointments will contain no special written instructions.

§ 53.130

The Committee found this uncertain and attempted to clarify the language.

§ 53.150

The Committee did not understand the use of the phrase "appointment or authority," in parts (a)(1) and (b), and believed that this phrase may raise questions as to what "authority" the health care representative has outside the appointment.

The Committee suggests deleting part (a)(2) because it assumes that the health care representative may act while the appointor is still capable of giving informed consent, a concept which the Committee recommends against, as set forth in the comments to § 53.110(e).

The Committee suggests the addition of a part (c) to state that if multiple appointments have been made, the last in time controls and all others are deemed revoked, unless the appointment states to the contrary. Contrary instructions might be given where a person appoints one person as health care representative to make only certain types of decisions, and another to make other types of health care decisions.

§ 53.160

The Committee recommends deletion of the "Disqualification" section completely, because:

(1) It is unnecessary because the purpose of the legislation is to establish a method for creating a substituted decision-maker, precisely because no such power exists now absent court appointment, and this section creates confusion by suggesting that a person other than a health care representative or a guardian or conservator may have a right to make health care decisions for another; and

(2) its only effect would seem to be to influence a court in determining who to appoint as conservator of the person, and since any writing or statement of intent is currently effective for that purpose, a code section formalizing such a process is not required.

§ 53.170

The Committee suggests deleting parts (d) and (e), since they deal with the effects of a person "disqualified" under § 53.160.

§ 53.180

With respect to Part (c), Probate Code §§ 1810, 1821, 1822, 3201, 3204 and 3206 should be amended to require notice

to any known health care representative of any proposed appointment of a conservator with powers to make health care decisions, or of any petitions under Probate Code § 3200, and to require an allegation in any such petition that there is no known health care representative able and willing to make medical care decisions. The interrelationships between this Act and the conservatorship proceedings under the Probate Code should be carefully considered.

The Committee understands the effect of § 53.180 to be that if the court appointed a conservator of the person, since such an appointment does not require a finding of incapacity, the conservatee could still appoint a health care representative, while under conservatorship, unless the court in the conservatorship proceedings finds that the conservatee lacks the capacity to give informed consent, as must occur if the court grants a conservator of the person authority to make health care decisions.

Modifications to part (e) are recommended for purposes of consistency with prior recommendations.

§ 53.190

The addition of part (c) is recommended to permit a health care provider to seek review of a seemingly improper or irrational decision by a health care representative, since health care providers are typically requested to carry out such decisions.

§ 53.200

Modification of part (a) is recommended to state that if the power of attorney format is utilized to appoint an attorney-in-fact as a health care representative, it becomes effective as to health care decision-making only when the principal lacks capacity to give informed consent, unlike a power of attorney as to other matters which may become effective immediately. Additionally, the section should be modified to state that even if the power of attorney format is utilized, the provisions and protections of this proposed legislation control as to the attorney-in-fact's conduct and responsibility as a health care representative.

Article 3, Durable Powers of Attorney Act §§ 2400-2407 should be amended to state that if, after January 1, 1984, the Act is to be used to appoint an attorney-in-fact as health care representative, the power of attorney must comply with the

requirements of this part, and the health care representative so appointed is subject to the provisions of this part.

§ 53.210

Minor changes are recommended for purposes of consistency with prior recommendations.

Modification of Part (b) is recommended to assure that those who executed a durable power of attorney prior to the effective date of this Act shall be deemed to have appointed a health care representative who shall be governed by the provisions of this part. This will avoid uncertainty as to the status of such appointments. This should not involve a large number of such appointments since the durable power of attorney provisions have only been in effect for a short time.

§ 53.220

Deletion of the entire section is suggested, consistent with the suggestion for deletion of § 53.160.

§ 53.230

The Committee recommends the addition of a § 53.230, which is modelled after Health and Safety Code § 7192, to state that refusal of care on behalf of an appointor does not constitute suicide, and execution of an appointment shall not affect insurance coverage. This section also prohibits anyone from requiring the execution of an appointment as a condition of being insured or of receiving health care.

COMMENTS

The Commission may wish to consider specifically addressing the impact of this proposed legislation on medical malpractice actions based on an alleged failure to obtain informed consent, and the ability, or lack thereof, of the health care representative to bring a medical malpractice action, or other action, to assert the rights of the appointor with respect to health care decisions.

If the recommendations of the Committee, or any of them, are accepted, the "comments" by the Commission should be reviewed to assure consistency with the changes.

STATE OF CALIFORNIA LAW REVISION COMMISSION

PROPOSED LEGISLATION RE

APPOINTMENT OF A HEALTH CARE REPRESENTATIVE

Civil Code §§ 53.100-53.220 (added). Health Care Representative

SECTION 1. Part 2.2 (commencing with Section 53.100) is added to Division 1 of the Civil Code, to read:

PART 2.2. HEALTH CARE REPRESENTATIVE

§ 53.100. Definitions

53.100. As used in this part:

(a) "Health care decision" means consent, refusal to consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

(b) "Health care representative" means ^{an individual} ~~a health~~ ~~care representative appointed pursuant to § 53.110.~~ ~~appointed under this part.~~

(c) "Person" means an individual who is 18 or more years of age or who is an emancipated minor under Section 62.

(d) "Health care provider" means any health care facility identified in Health and Safety Code § 1250, and any medical practitioner licensed pursuant to Division 2 of the Health and Safety Code. However, as used herein, "health care provider" shall not include any person licensed pursuant to Division 2 of the Business and Professions Code who treats the appointor primarily in a health care facility of the type identified in Health and Safety Code § 1250 as an employee of the health facility.

§ 53.110. Appointment of Health Care Representative

53.110.

(a) A person may appoint another person as a health care representative under this part if at the time the appointment is made the appointor is of sound mind.

(b) An appointment of a health care representative shall be in writing and shall satisfy both of the following requirements:

(1) The appointment shall be signed either (A) by the appointor or (B) in the appointor's name by some other person in the appointor's presence and by the appointor's direction.

(2) The appointment shall be signed by at least two persons other than the health care representative each of whom witnessed either (A) the signing of the appointment by the appointor or (B) the appointor's acknowledgement either that the appointor signed the appointment, ^{or that it was} ~~or that the~~ signed pursuant to the appointor's direction. ~~appointment is the appointor's.~~

(c) Each witness who signs the appointment shall certify both of the following:

(1) That the witness believes that the appointor was of sound mind at the time the appointor signed or acknowledged the appointment.

(2) That the witness has no knowledge of any facts indicating that the appointment was procured by duress, menace, fraud, or undue influence.

(d) The appointment is not effective until the health care representative accepts the appointment by signing the writing that makes the appointment.

(e) ~~Unless the appointment otherwise specifically provides, the appointment is effective whether or not the~~ The health care representative has authority to exercise the powers of his or her appointment only when the appointor lacks the capacity or is unable to give informed consent to medical treatment, and only so long as the appointor remains of sound mind or is or becomes incapable of making health care decisions. ~~the health care representative has capacity and is able to give informed consent.~~

§ 53.120. Authority of Health Care Representative

53.120.

(a) Subject to any limitations or instructions in the appointment and except as otherwise provided in this part, a health care representative may make health care decisions for the appointor to the same extent as the health care representative could make health care decisions for himself or herself.

(b) In making all health care decisions, the health care representative shall act in good faith and in the best interest of the appointor so as to carry out any instructions in the appointment, or if there are no instructions in the appointment, to carry out the desires of the appointor to the extent they have been made known to the health care representative.

(c) Unless the appointment provides otherwise, a health care representative who is reasonably available and willing to act has priority over any other person authorized to make health care decisions for the appointor.

§ 53.130. Availability of Medical Information

53.130. A health care representative has the same right as the appointor to receive information regarding the proposed health care, ^{to receive and review medical records,} and to consent to the disclosure of medical records to ^{current} the health care ^{providers} representative and to any proposed health care provider.

§ 53.140. Resignation Or Refusal of Health Care Representative To Act.

53.140. A health care representative who resigns or is unwilling to follow the instructions in the appointment may not exercise any further authority under the appointment and shall so inform all of the following:

- (a) The appointor, whether or not the appointor is capable of giving consent to health care.
- (b) The appointor's conservator of the person, if any, known to the health care representative.
- (c) The appointor's health care provider, if any, known to the health care representative.

§ 53.150. Revocation of Appointment ~~Or Authority~~ of Health Care Representative

53.150.

- (a) A person who has appointed a health care representative and is of sound mind may ~~do any of the following~~

~~(1)~~ Revoke the appointment or authority of the health care representative by notifying the health care representative orally or in writing.

~~(2) Revoke any authority of the health care representative or health care decision made by the health care representative by notifying the health care provider orally or in writing.~~

(b) A health care representative may exercise the authority granted in an appointment until the health care representative knows of the revocation of the appointment, ~~or the authority.~~

(c) If multiple appointments have been executed, the one made last in time controls, and revokes all prior appointments unless contrary instructions are made in the subsequent appointment.

~~§ 53.160. Disqualification of Persons From Making Health Care Decisions~~

~~53.160.~~

~~(a) A person may disqualify another person from making health care decisions for him or her if at the time the disqualification is made the person making the disqualification is of sound mind.~~

~~(b) A disqualification under this section shall be in writing and shall satisfy both of the following requirements:~~

~~(1) The disqualification shall be signed either (A) by the person making it or (B) in that person's name by some other person in the presence of and by the direction of the person making the disqualification.~~

~~(2) The disqualification shall be signed by at least two persons each of whom witnessed either (A) the signing of the disqualification by the person making it or (B) that person's acknowledgement either that he or she signed the disqualification or that the disqualification is his or her act.~~

~~(c) Each witness who signs the disqualification shall certify both of the following:~~

~~(1) That the witness believes the person making the disqualification was of sound mind at the time the person signed or acknowledged the disqualification.~~

~~(2) That the witness has no knowledge of any facts indicating the disqualification was procured by duress, menace, fraud, or undue influence.~~

~~(d) A health care provider with knowledge of a disqualification made pursuant to this section may not rely on a health care decision from the disqualified person involving the health care of the person who made the disqualification.~~

~~(e) A person who knows that he or she has been disqualified pursuant to this section may not make a health care decision for the person who made the disqualification.~~

~~(f) A person who has made a disqualification under this section and is of sound mind may revoke the disqualification by a signed writing or, with respect to a particular health care decision, by notifying the health care provider orally or in writing.~~

and Representatives

§ 53.170. Protection of Health Care Provider From Liability

(a)

53.170. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action based on any of the following:

1

(a) If the health care provider relies on a health care decision made by a health care representative who the health care provider believes in good faith is authorized by this part to make health care decisions.

2

(b) If the health care provider refuses to follow a health care decision of a health care representative who the health care provider believes in good faith is not capable of giving informed consent.

3

(c) If the health care provider refuses to follow a health care decision of a health care representative whose appointment or authority the health care provider believes in good faith has been revoked.

~~(d) If the health care provider refuses to follow a health care decision of a person who the health care provider believes in good faith has been disqualified from making health care decisions on behalf of another person.~~

~~(e) If the health care provider relies on a health care decision made by a person who was once disqualified but whom the health care provider believes in good faith has been restored to the authority to make health care decisions on behalf of another person by the revocation of the~~

~~disqualification.~~

(b) The health care representative shall be immune from civil or criminal liability for health care decisions made on behalf of an appointor in the good faith belief that the decisions were consistent with the desires of the appointor.

§ 53.180. Limitations On Application of This Part

53.180.

(a) This part does not authorize a health care representative to consent to any of the following on behalf of the appointor:

(1) Commitment to a mental health treatment facility.

(2) Prescribing or administering an experimental drug (as defined in Section 26668 of the Health and Safety Code).

(3) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).

(4) Sterilization.

(b) The provisions of this part are subject to any valid and effective directive of the patient under Chapter 3.9 (commencing with Section 7185 of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act)).

(c) This part does not affect any requirement of notice to others of proposed health care under any other law.

(d) This part does not affect the law governing medical treatment in an emergency.

(e) Except as provided in subdivision (c) of Section 53.120 ~~and Section 53.160~~, nothing in this part affects the law governing when one person may make health care decisions on behalf of another.

§ 53.190. Court Enforcement of Duties of Health Care Representative

53.190.

(a) Article 4 (commencing with Section 2410) of Chapter 2 of Title 9 of Part 4 of Division 3 applies in cases when a health care representative has been appointed.

(b) For the purpose of applying Article 4 (commencing with Section 2410) of Chapter 2 of Title 9 of Part 4 of Division 3 as provided in subdivision (a):

(1) "Attorney in fact" as used in Article 4 means the health care representative.

(2) "Conservator of the estate of the principal" as used in Article 4 means the conservator of the person of the individual who appointed the health care representative.

(3) "Power of attorney" as used in Article 4 means the writing appointing the health care representative.

(4) "Principal" as used in Article 4 means the individual who appointed the health care representative.

(c) A health care provider may bring an action under Article 4 (commencing with Section 2410) of Chapter 2 of Title 9 of Part 4 of Division 3.

§ 53.200. Limitation of Power of Attorney

53.200.

After January 1, 1984, an
(a) An attorney in fact may not make a health care decision nor act as a health care representative unless the power of attorney meets the requirements of this part, and states that appointment of an attorney-in-fact as health care representative does not become effective until the principal either lacks capacity, or is unable, to give informed consent and states that the attorney-in-fact as health care representative is subject to all of the provisions of this part.

(b) Any durable power of attorney executed prior to January 1, 1984 which authorizes an attorney-in-fact to make health care decisions on behalf of the principal shall be deemed a valid appointment under this part, notwithstanding failure to comply with the requirements of Part (a) of this section, and the health care representative so appointed shall be subject to all of the provisions of this part.

~~(b) Nothing in this part affects the validity of any health care decision made prior to January 1, 1984, and the validity of any such health care decision is determined by the law that would be applicable if this part had not been enacted.~~

§ 53.210. Form For Appointment

53.210. An appointment of a health care representative shall be in substantially the following form:

APPOINTMENT OF HEALTH CARE REPRESENTATIVE

I, _____ (name),
being of sound mind, voluntarily appoint _____ (name)
(whose current telephone number is _____)
and whose current address is _____)
as my health care representative authorized to act for me in
all matters of health care, except as otherwise specified in
this appointment.

This appointment is subject to the following
limitations on the authority of the health care representative
and instructions concerning exercise of that authority:

~~Should I become incapable of giving informed consent
to my health care, this appointment ----- remains effective --
----- terminates. -----~~

I understand that so long as I am of sound mind I
may (1) revoke this appointment or authority by notifying
the health care representative orally or in writing and --
(2) ~~revoke any authority of the health care representative.~~

~~-or-any-health-care-decision-made-by-the-health-care-represen-~~
~~-tative-by-notifying-the-doctor-or-other-health-care-provider---~~
~~-orally-or-in-writing--~~

(signature of appointor)

(street address)

(city, state)

(date)

Statement of Witnesses

I certify that this appointment was signed by the person making it or that it was acknowledged by that person to be his or her appointment. I also certify that I believe that the person making this appointment is of sound mind and that I have no knowledge of any facts indicating that this appointment was procured by duress, menace, fraud, or undue influence.

(signature of witness)

(street address)

(city, state)

(date)

(signature of witness)

(street address)

(city, state)

(date)

Acceptance by Health Care Representative

I, _____ (name) _____, understand that acceptance of this appointment as health care representative means that I have a duty to act in good faith and in the best interest of the person appointing me, and that I also have a duty to follow any instructions in the appointment. In the event I cannot do so, I will exercise no further power under the appointment and will inform the person appointing me, his or her conservator of the person if known to me, and his or her health care provider if known to me.

(signature of health care representative)

(street address)

(city, state)

(date)

~~§ 53.220. Form For Disqualification~~

~~53.220. A disqualification of a person from making health care decisions for another person shall be in substantially the following form:~~

~~DISQUALIFICATION OF PERSON FROM
MAKING HEALTH CARE DECISIONS~~

~~I, _____ (name) _____,
being of sound mind, disqualify the following person from
making health care decisions on my behalf:~~

~~_____
(name of person disqualified)~~

~~_____
(street address if known)~~

~~_____
(city, state, if known)~~

~~I understand that, unless I revoke this disqualification, the person named above is disqualified from making health care decisions on my behalf in any circumstances. I understand that so long as I am of sound mind I may revoke this disqualification by a signed writing or by notifying my doctor or other health care provider orally or in writing.~~

~~_____
(signature of person making disqualification)~~

~~_____
(street address)~~

~~_____
(city, state)~~

~~_____
(date)~~

~~Statement of Witnesses~~

~~I certify that this disqualification was signed by the person making it or that it was acknowledged by that person to be his or her disqualification of the named person. I also certify that I believe that the person making this disqualification is of sound mind and that I have no knowledge of any facts indicating that this disqualification was procured by duress, menace, fraud, or undue influence.~~

~~_____
(signature of witness)~~

~~_____
(signature of witness)~~

~~_____
(street address)~~

~~_____
(street address)~~

~~_____
(city, state)~~

~~_____
(city, state)~~

~~_____
(date)~~

~~_____
(date)~~

§ 53.230. Prohibition of Requirement of Execution of Appointment53.230

(a) Refusal of medical care by a health care representative on behalf of an appointor which results in the death of the appointor shall not constitute suicide of the appointor.

(b) The execution of an appointment pursuant to § 53.110, with or without specific instructions, shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life or health or disability insurance, nor shall it be deemed to modify the terms of an existing policy of life or health or disability insurance. No policy of life or health or disability insurance shall be legally impaired or invalidated in any manner by refusal of care on behalf of an insured appointor, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility or other health provider, and no health care service plan, insurer issuing disability insurance, self-insure employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute an appointment pursuant to § 53.110 as a condition for being insured for, or receiving, health care services.

Civil Code § 2356 (amended). Termination of Agency

SEC. 2. Section 2356 of the Civil Code is amended to read:

2356.

(a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

- (1) Its revocation by the principal.
- (2) The death of the principal.
- (3) The incapacity of the principal to contract.

(b) Notwithstanding subdivision (a), any bona fide transaction entered into with such agent by any person acting without actual knowledge of such revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors-in-interest.

(c) Nothing in this section shall affect the provisions of Section 1216.

(d) With respect to a power of attorney, the provisions of this section are subject to the provisions of Article 3 (commencing with Section 2400) of Chapter 2.

(e) With respect to a proxy given by a person to another person relating to the exercise of voting rights, to the extent the provisions of this section conflict with or contravene any other provisions of the statutes of California pertaining to the proxy, the latter provisions shall prevail.

(f) With respect to an appointment of a health care representative, the provisions of this section are subject to the provisions of Part 2.2 (commencing with Section 53.100) of Division 1.

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