

Memorandum 83-61

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

Senate Bill 762 was introduced this legislative session to effectuate the Commission's Recommendation Relating to Durable Power of Attorney for Health Care Decisions (March 1983). At this writing, the bill has passed the Senate and the policy committee in the Assembly. A copy of the latest amended version of the bill is attached.

Assuming eventual enactment of SB 762 into law, the staff suggests that the Commission consider recommending a statutory form for the durable power of attorney for health care. Senate Bill 762 permits use of printed forms and sets out several requirements for the contents and use of such forms. The staff believes a statutory form would be useful for those who do not want or have an attorney's advice and should be preferable to forms that might be prepared for sale by a form company.

Attached to this memorandum is a staff draft of proposed legislation to provide a statutory form for a durable power of attorney for health care. Also attached is the preliminary portion of a tentative recommendation that explains both the proposed legislation attached to this memorandum and the proposed legislation attached to Memorandum 83-78. If this tentative recommendation and the two proposed statutory forms are approved by the Commission, we would consolidate the material in a single tentative recommendation and distribute it for review and comment with a view to submitting a recommendation to the 1984 legislative session.

Respectfully submitted,

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Executive Secretary

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

STATUTORY SHORT FORM DURABLE POWERS OF ATTORNEY

BACKGROUND

In 1981, the Uniform Durable Power of Attorney Act was enacted in California upon recommendation of the California Law Revision Commission.¹ In 1983, provisions governing a Durable Power of Attorney for Health Care were enacted, also upon Commission recommendation.² Use of these durable powers of attorney avoids the need for a court supervised conservatorship. In addition, the durable power of attorney for health care permits an individual to determine the course of his or her medical care by appointing a trusted relative or friend to make health care decisions instead of leaving health care decisions to a judge.

This recommendation proposes enactment of statutory short forms for durable powers of attorney for property matters and for durable powers of attorney for health care. Enactment of these statutory forms will not supplant detailed lawyer-drafted powers of attorney in situations where persons have the desire and means for specially drafted documents.³ Nor will the statutory form prevent the use of other printed forms. Providing statutory forms for powers of attorney is consistent with the

1. 1981 Cal. Stats. ch. 511, adding Civil Code §§ 2400-2407. See Recommendation Relating to Uniform Durable Power of Attorney Act, 15 Cal. L. Revision Comm'n Reports 351 (1980). For additional legislative history, see 16 Cal. L. Revision Comm'n Reports 25, 43-46 (1982).
2. 1983 Cal. Stats. ch. _____, adding Civil Code §§ 2430-2443. See Recommendation Relating to Durable Power of Attorney for Health Care Decisions, 17 Cal. L. Revision Comm'n Reports 101 (1984).
3. If the principal desires to restrict the persons who may petition for a court review of actions of the attorney-in-fact, the advice of a lawyer is required and the power of attorney must include the lawyer's approval. See Civil Code § 2421. The recommended statutory forms do not provide for this option, but the forms could easily be adapted by a lawyer to limit court review of the actions of the attorney-in-fact.

well-received, recently enacted forms for a California Statutory Will and a California Statutory Will With Trust.⁴

PROPERTY MATTERS

A durable power of attorney to cover all aspects of property matters may be a lengthy document. To avoid this, New York enacted a statute that authorizes use of a "statutory short form power of attorney."⁵ This statutory form gives the attorney-in-fact authority to act with respect to 13 categories of transactions or matters, such as "real estate transactions," "bond, share and commodity transactions," and "insurance transactions."⁶ The New York statute contains "constructional sections" that spell out in considerable detail the precise powers the attorney-in-fact has if granted one or more of the general categories of authority listed in the 13 categories.⁷ For example, if the attorney-in-fact is given authority with respect to "real estate transactions" in the statutory short form, the details of the authority granted are specified in a more than 750 word statutory statement.⁸ And most of the sections that spell out the details of the authority granted with respect to other categories of authority are more extensive.⁹

The Commission recommends that California enact a statutory short form durable power of attorney drawn from the New York statute. This form can be understood and used by a person without the necessity of having a document prepared by a lawyer. At the same time, the proposed legislation will be useful to lawyers, for the statute will provide a series of detailed statements of authority with respect to particular property matters that can be incorporated by reference in a lawyer-drafted document. These detailed statutory statements provide some

4. See Prob. Code §§ 56-56.14 (to be superseded by Prob. Code §§ 6200-6248, enacted by 1983 Cal. Stats. ch. _____, operative January 1, 1985).
5. N.Y. Gen. Oblig. Law §§ 5-1501 to 5-1503 (McKinney 1978 & Supp. 1982-83).
6. N.Y. Gen. Oblig. Law § 5-1501 (McKinney Supp. 1982-83).
7. N.Y. Gen. Oblig. Law §§ 5-1502A to 5-1502L (McKinney 1978).
8. N.Y. Gen. Oblig. Law § 5-1502A (McKinney 1978).
9. See N.Y. Gen. Oblig. Law §§ 5-1502C (bond, share and commodity transactions), 5-1502D (banking transactions), 5-1502E (business operating transactions), 5-1502F (insurance transactions), 5-1502G (estate transactions) (McKinney 1978).

assurance that nothing will be overlooked in granting the attorney-in-fact all the authority necessary with respect to a particular category of transaction. In addition, the statutory short form itself will be a brief, notarized document suitable for recording where recording is necessary or desirable.

HEALTH CARE

The new statute relating to a durable power of attorney for health care is complex. The new statute contains restrictions, protections, notice requirements, and witnessing requirements that must be kept in mind when preparing a durable power of attorney for health care.¹⁰ The complexity of the new statute makes it unlikely that a person not trained in law could prepare a durable power of attorney for health care that would satisfy statutory requirements and ensure that the person's desires concerning health care are respected.

The Commission recommends that California enact a statutory short form durable power of attorney for health care. This form could be used by those who cannot afford a lawyer or who prefer not to use a lawyer. Use of the form will guard against the power of attorney being held ineffective because of a failure to comply with the complex statutory requirements. Lawyers may find the statutory form adequate for use by clients in some cases and useful in preparing individually drafted powers of attorney for other clients.¹¹

10. See, e.g., Civil Code §§ 2432(a)(2) (durable power must contain date of its execution and be properly witnessed), 2432(c) (limitation on appointing a conservator as attorney-in-fact when principal is conservatee under Lanterman-Petris-Short Act), 2432(d) (persons not qualified as witness), 2432(e) (qualifications of at least one witness), 2432(f) (ombudsman required as witness in principal patient in skilled nursing facility), 2433 (notice required in printed form), 2434 (authority of attorney-in-fact absent limitations in power of attorney), 2435 (certain types of placement or treatment not authorized), 2436 (right to inspect and disclose medical records absent limitations in power of attorney), 2436.5 (duration of power absent limitation in power of attorney), 2440 (effect of principal's objection to providing or withholding or withdrawing health care).

11. See supra note 3.

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

Article 1. General Provisions

§ 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 is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter:

STATUTORY SHORT FORM DURABLE POWER OF
ATTORNEY FOR HEALTH CARE
(California Civil Code Sections 2500-2512)

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. THIS POWER IS 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.

2. YOUR AGENT 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.

3. EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THE POWER OF YOUR AGENT MAY INCLUDE THE POWER TO CONSENT TO YOUR DOCTOR WITHHOLDING OR STOPPING TREATMENT WHICH WOULD KEEP YOU ALIVE.

4. 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.

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. THE FULL TEXT OF THE CONSTRUCTIONAL PROVISIONS THAT APPLY TO CERTAIN PHRASES USED IN THIS DOCUMENT FOLLOW THE END OF THIS FORM AND ARE CONTAINED IN THE CIVIL CODE OF CALIFORNIA.

13. 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 you name and address)

do hereby designate and appoint _____

(Insert name and address of 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.

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 2500 to 2512, 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 (as defined in California Civil Code Section 2510) for me, before or after my death, to the same extent that I could make such health care decisions for myself if I had the capacity to do so.

4. STATEMENT OF DESIRES.

(The agent must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires below. If your desires are unknown, the agent has the duty to act in your best interests; and, under some circumstances, a judicial proceeding may be necessary so that a court can determine the health care decision that is in your best interests.)

(A) Desires with respect to life-prolonging procedures. In exercising the authority under this durable power of attorney for health care, the attorney-in-fact has the duty to act consistent with my desires indicated below:

- (1) Prolong my life to the greatest extent possible (as defined in California Civil Code Section 2511), but the attorney-in-fact cannot consent to treatment or other health care procedures over my objection. ()
- (2) Refuse life-prolonging procedures if the attorney-in-fact believes that I myself would do so under the circumstances (as defined in California Civil Code Section 2512), but the attorney-in-fact cannot consent to the withholding or withdrawal of health care necessary to keep me alive over my objection. ()

(If one of the paragraphs above indicates your desires, strike out and initial in the opposite box the paragraph which does NOT indicate your desires. If neither of the paragraphs indicates your desires, you should strike out both of the paragraphs and initial the box opposite each paragraph. If you do not strike out at least one of the paragraphs, neither will be considered to express your desires.)

TO STRIKE OUT ANY PARAGRAPH YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT PARAGRAPH AND WRITE YOUR INITIALS IN THE BOX OPPOSITE.

(B) Other or additional statements of desires. _____

(You can 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.)

5. 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.)

6. SPECIAL PROVISIONS AND LIMITATIONS.

(By law, the 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: _____

(Special provisions and limitations may be included in the statutory short form durable power of attorney for health care only if they conform to the requirements of California Civil Code Section 2504. You may attach additional pages if you need more space to complete your statement.)

7. 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 deci-

sions 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)

8. 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 community care facility, (5) an employer 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.)

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 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) 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 subdivisions (b) and (c), 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 Section 2502.

(2) It contains the exact wording of paragraph 3 and of subparagraph (A) of paragraph 4 of the form set out in Section 2500.

(b) Either or both of items (1) or (2) may be stricken out and initialed by the principal in subparagraph (A) of paragraph 4 of the form set out in Section 2500, in which case the item or items so stricken out and initialed shall be deemed eliminated.

(c) A statutory short form durable power of attorney for health care may contain modifications or additions of the types described in Section 2504.

Comment. Section 2503 permits the development of a printed statutory short form that includes modifications or additions of the types described in Section 2504 and omits nonessential portions of the form set out in Section 2500, such as the paragraph on "Duration."

38221

§ 2504. Modifications of statutory short form

2504. (a) A power of attorney which satisfies the requirements of Section 2503 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 also contains additional language which does any one or more of the following:

(1) Eliminates from the power of attorney one or more of the powers enumerated in Section 2510, the constructional section defining "health care decisions."

(2) Supplements the powers enumerated in Section 2510, the constructional section defining "health care decisions," by specifically listing additional powers of the attorney-in-fact.

(3) Eliminates from the power of attorney one or more of the powers enumerated in Section 2511 or 2512, the constructional section in this chapter with respect to the item of subparagraph (A) of paragraph 4 of the statutory short form durable power of attorney for health care not eliminated therefrom by the principal.

(4) Supplements the powers enumerated in Section 2511 or 2512, the constructional section in this chapter with respect to the item of subparagraph (A) of paragraph 4 of the statutory short form durable power of attorney for health care not eliminated therefrom by the principal, by specifically listing additional powers of the attorney-in-fact.

(5) Provides some additional provision which is not inconsistent with the other provisions of the statutory short form durable power of attorney for health care or with the provisions of Article 5 (commencing with Section 2430) of Chapter 2.

(b) Nothing in subdivision (a) authorizes the attorney-in-fact to exercise any power that the attorney-in-fact is prohibited from exercising by a provision of Article 5 (commencing with Section 2430) of Chapter 2.

Comment. Under paragraph (5) of subdivision (a) of Section 2504, the principal can provide a rule contrary to the general rule stated in subdivision (f) of Section 2437 (marriage dissolution revokes designation of former spouse as attorney-in-fact to make health care decisions). Likewise, under paragraph (5) of subdivision (a), the principal can limit the right of the attorney-in-fact under Section 2436 (right to receive and review medical records and to consent to the disclosure of medical records). However, paragraph (5) of subdivision (a) does not permit the principal to retain a prior durable power of attorney for health care in effect (see subdivision (e) of Section 2437), because the statutory form contains paragraph 8 which revokes any prior durable power of attorney for health care.

38222

§ 2505. Right to use other power of attorney

2505. Nothing in this chapter affects or limits the use of any other durable power of attorney for health care.

Comment. Section 2505 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.

38214

Article 2. Construction of Provisions of
Statutory Short Form Durable Power of Attorney for Health Care

§ 2510. Health care decisions

2510. In a statutory short form durable power of attorney for health care, the language conferring general authority with respect to "health care decisions" shall be construed to mean that the principal authorizes the attorney-in-fact to do all of the following:

(a) To request, review, and receive any information, verbal or written, regarding the physical or mental health of the principal,

including medical and hospital records, and to execute on behalf of the principal any releases or other documents that may be required in order to obtain this information.

(b) To employ and discharge physicians, dentists, nurses, therapists, and other health care professionals as the attorney-in-fact determines necessary for the physical or mental health of the principal.

(c) To give or withhold consent to medical care, surgery, or any other medical procedures or tests; to arrange for the principal's hospitalization, convalescent care, or home care; and to revoke, withdraw, or modify consent to such medical care, surgery, any other medical procedure or test, hospitalization, convalescent care, or home care which the principal or the attorney-in-fact may have previously allowed or consent to which may have been implied due to emergency conditions.

(d) Where consistent with the principal's spiritual or religious preferences, to arrange for the presence and involvement of religious clergy or spiritual leaders in the health care of the principal.

(e) To make a disposition of a part or parts of the principal's body under the Uniform Anatomical Gift Act, Chapter 3.5 (commencing with Section 7150.5) of Part 1 of Division 7 of the Health and Safety Code.

(f) In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an attorney-in-fact under a durable power of attorney, with respect to 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.

38662

§ 2511. Prolong my life to the greatest extent possible

2511. (a) In a statutory short form durable power of attorney for health care, the language conferring general authority to "prolong my life to the greatest extent possible" shall be construed to mean that the principal authorizes the attorney-in-fact to arrange for the rendering of maximum medical and surgical care available and likely to have the effect of prolonging the life of the principal without regard to the medical or neurological diagnosis, condition, or prognosis and without regard to financial cost.

(b) In a statutory short form durable power of attorney for health care, the language conferring general authority to "prolong my life to

the greatest extent possible" shall be construed to mean that the attorney-in-fact may not consent to or concur with a "no-code" (do not resuscitate) order, nor may the agent refuse or withdraw consent to any medical care, surgery, or other procedure or test designed to prolong the life of the principal.

39281

§ 2512. Refuse life-prolonging procedures if the attorney-in-fact believes that I myself would do so under the circumstances

2512. (a) In a statutory short form durable power of attorney for health care, the language conferring general authority to "refuse life-prolonging procedures if the attorney-in-fact believes that I myself would do so under the circumstances" shall be construed to mean that the principal authorizes the attorney-in-fact to do all of the following:

(1) To request that aggressive medical therapy not be instituted or be discontinued, including (but not limited to) cardiopulmonary resuscitation, the implantation of a cardiac pacemaker, renal dialysis, parenteral feeding, the use of respirators or ventilators, blood transfusions, nasogastric tube use, intravenous feedings, endotracheal tube use, chemotherapy, antibiotics, and organ transplants.

(2) To specifically request and concur with the writing of a "no-code" (do not resuscitate) order by the attending or treating physician.

(3) To choose not to summon paramedics or other emergency medical personnel or not to seek emergency treatment for the principal.

(4) When dealing with hospitals and physicians, to sign documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" as well as any necessary waivers of or releases from liability required by hospitals or physicians to implement the desires of the principal regarding health care treatment or nontreatment.

(5) To consent to and arrange for the administration of pain-relieving drugs of any type, or other surgical or medical procedures calculated to relieve the principal's pain, even though their use may lead to permanent physical damages, addiction, or even hasten the moment of (but not intentionally cause) the death of the principal.

(6) To consent to and arrange for unconventional pain-relief therapies such as biofeedback, guided imagery, relaxation therapy, acupuncture,

skin stimulation or cutaneous stimulation, and other therapies which the principal or the attorney-in-fact believes may be helpful to the principal.

(b) In exercising the powers given by this section, the attorney-in-fact shall try to discuss the specifics of any decisions made to exercise a power under this section with the principal if the principal is able to communicate with the attorney-in-fact in any manner, even by blinking eyes. If the principal is unconscious, comatose, senile, or otherwise unreachable by means of such communication, the attorney-in-fact shall make a decision to exercise a power given by this section based on the sole judgment of the attorney-in-fact in light of the information given by the physicians treating the principal as to the principal's medical diagnosis and prognosis, but the decision shall not be inconsistent with any preferences which the principal may have previously made known.