

## First Supplement to Memorandum 83-61

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

The following are revisions that should be considered in the statutory form set out in Memorandum 83-61. Additional revisions will be considered at the meeting if we receive additional suggestions from interested persons and organizations before or at the meeting.

Consideration should be given to deleting the portion entitled "Desires with respect to life-prolonging procedures" on page 3 of the draft statute and adding the following to paragraph 3 ("GENERAL STATEMENT OF AUTHORITY GRANTED"):

The attorney-in-fact shall make health care decisions that are consistent with my desires as stated in this durable power of attorney or otherwise known to the attorney-in-fact. If my desires are unknown or unclear, the attorney-in-fact shall make health care decisions that the attorney-in-fact believes are in my best interests.

It is suggested that the form unduly emphasizes decisions with respect to life-prolonging procedures, and that the ordinary use of the form will be to avoid the use of court-supervised conservatorship merely for medical decisions.

If the portion of the form entitled "Desires with respect to life-prolonging procedures" is retained, it is suggested that the boxes be eliminated and the instructions state that the principal should cross out the provision that does not apply. The person making this suggestion fears that the person will merely check the box for the one the person wants to apply. There is merit to this suggestion; it certainly would simplify the instructions. Moreover, there is no need to initial something that has been crossed out and it would not be possible to restore a provision that has been crossed out.

It is suggested that the form include a statement concerning the right to examine and consent to disclosure of medical records. This statement is unnecessary in view of Section 2436, but it is suggested that health care providers will be more willing to give up medical records if there is an express provision in the statutory form. The

staff sees no harm from including the provision and it may be useful. Accordingly, we suggest the following paragraph be added just before existing paragraph 5 ("DURATION"):

INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Except to the extent the right is limited by this durable power of attorney, the attorney-in-fact has the same right as I have to request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records, and to consent to the disclosure of that information, and to execute on behalf of me any releases or other documents that may be required in order to obtain this information.

(If you want to limit the authority of the agent to receive and disclose information relating to your health, you must state the limitations in paragraph 6 ("SPECIAL PROVISIONS AND LIMITATIONS") below.)

Respectfully submitted,

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Executive Secretary