

Memorandum 90-51

Subject: Study L-3038 - Seven-Year Limit on Durable Power of Attorney
for Health Care

Attached is a Staff Draft of a *Tentative Recommendation Relating to Elimination of Seven-Year Limit for Durable Powers of Attorney for Health Care*. This TR was suggested by attorney William Hoehler of San Francisco. His letter is attached as Exhibit 1.

Civil Code Section 2436.5 provides that a durable power of attorney for health care executed after January 1, 1984, expires seven years after its execution, unless at the end of the seven-year period the principal lacks capacity to make health care decisions. If the principal lacks capacity, the durable power continues in effect until the principal regains capacity. The seven-year limit is a maximum: The durable power may provide an earlier termination (Civ. Code § 2436.5), and, if the principal has legal capacity, the principal may revoke the durable power (*id.* § 2437).

Section 2436.5 was enacted in 1983 in a Law Revision Commission bill authored by Senator Barry Keene. The Commission recommendation did not have the seven-year limit. The seven-year limit was added in the Legislature in response to pressure from interested groups.

The staff agrees with Mr. Hoehler (Exhibit 1) that the seven-year limit is a potential trap for estate planning clients. The attached TR eliminates the seven-year limit for durable powers of attorney for health care that do not contain the presently-required warning statement that the power will exist for seven years.

Transitional Provisions

The TR amends Civil Code Sections 2436.5, 2444, and 2503.5 to do the following:

(1) To provide that the seven-year limit continues to apply to a durable power of attorney for health care containing a warning statement that the power will exist for seven years from the date of its execution. The warning statement is now required for durable powers of attorney for health care executed on and after January 1, 1984. The warning statement will no longer be required for those

executed on or after the operative date of the proposed legislation (January 1, 1992). Those executed between January 1, 1984, and December 31, 1991, or executed on an old form after December 31, 1991, will continue to have a seven-year limit. This seems necessary to avoid catching unawares a person who did not provide a time limit in the document because he or she was relying on the statutory limit.

(2) To validate a durable power of attorney for health care, regardless of whether it is on a form that complies with the proposed legislation or with prior law. The policy is not to invalidate a durable power because it is executed on an obsolete form.

(3) To provide that old printed and statutory forms that complied with prior versions of the statute may be used, sold, or distributed after the operative date of the proposed legislation, except that any form printed after the operative date that is sold or distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set out in the proposed legislation (that is, without reference to the seven-year limit). The policy is to permit use of old forms until the supply is exhausted, but to require use of the new form when forms are reprinted.

Staff Recommendation

The staff recommends the Commission approve the attached TR for distribution for comment.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

LAW OFFICES OF

PILLSBURY, MADISON & SUTRO

FEB 20 1990

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February 16, 1990

Durable Power of Attorney for
Health Care -- California Civil
Code Section 2436.5

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, CA 94303

Dear Mr. Sterling:

I am writing to request that the California Law Revision Commission propose a change in California law: repeal of Civil Code section 2436.5, which forces a durable power of attorney for health care to expire seven years after the date of its execution.

California law authorizes an individual to grant a "durable power of attorney for health care" ("DPAHC"), by which the individual (the principal) names an agent to make health care decisions for the principal. Civ.Code §§ 2430-2444. The purpose of the durable power of attorney for health care is well discussed in Recommendation Relating to Statutory Forms for Durable Powers of Attorney, 17 California Law Revision Commission Reports 701 (1984).

Civil Code section 2436.5 provides that a DPAHC expires seven years after its execution unless the principal lacks capacity at that time, in which case the DPAHC expires when the principal regains capacity.

Section 2436.5 should be repealed because its application contradicts the intent of most people who sign a DPAHC. I have practiced exclusively in the estate planning area for twenty years and have offered the DPAHC to virtually all my clients since it became available. A person usually signs a DPAHC while enjoying good health. That person recognizes that the DPAHC may never be needed, but signs the

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DPAHC thinking it will act as a safeguard if its use becomes appropriate. Once the DPAHC is signed, that person normally has no reason to reconsider the matter. When that person becomes ill years later, there is no reason to assume that the person has changed his or her mind. Yet after seven years, the individual's stated wishes are summarily voided under section 2436.5.

Conceivably, a person might not want a DPAHC to last indefinitely. Such a person may specifically include an expiration period as part of the terms of his or her DPAHC. There is no need for automatic revocation of all seven-year-old DPAHCs when the person in each case may state an expiration date if desired.

If repeal seems too severe, section 2436.5 might be amended to require that a DPAHC shall state whether it lasts indefinitely or only for a fixed period. Each person signing a DPAHC then could choose the terms that best fit that person's wishes.

Support for repeal of section 2436.5 may be found in the legislative history of former Civil Code section 2307.1. Before its repeal in 1981, section 2307.1 provided that a principal could grant a regular power of attorney (concerning financial decisions) that would survive the principal's incapacity, but would expire one year after the incapacity was started. This one-year period was repealed when, upon the recommendation of the Law Revision Commission, the legislature enacted California's version of the Uniform Durable Power of Attorney Act (California Civil Code sections 2400-2423), which does not have a statutory expiration period.

The California Law Revision Commission appears best suited to propose the repeal of section 2436.5 because the Commission has taken the lead in revising the estate planning laws generally and in particular was the driving force behind the legislation creating the DPAHC.

I look forward to hearing from you.

Sincerely,



William J. Hoehler

Staff Draft

TENTATIVE RECOMMENDATION
relating to
ELIMINATION OF SEVEN-YEAR LIMIT FOR
DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

A durable power of attorney for health care¹ authorizes an attorney in fact to make health care decisions for the principal after the principal is no longer able to give informed consent. This is a useful and effective alternative to leaving authority to make health care decisions with the courts for persons who cannot give informed consent.² It promotes self-determination and personal autonomy: Instead of leaving health care decisions to a judge, the principal may choose a trusted relative or friend to make health care decisions on his or her behalf if the need should arise.

A durable power of attorney for health care expires seven years after its execution, unless at the end of the seven-year period the

1. Durable powers of attorney for health care are authorized by a 1983 statute enacted on recommendation of the Law Revision Commission. See 1983 Cal. Stat. ch. 1204, § 10 (codified at Civ. Code §§ 2430-2443); Recommendation Relating to Durable Power of Attorney for Health Care Decisions, 17 Cal. L. Revision Comm'n Reports 105 (1984). See also 1984 Cal. Stat. ch. 312 (statutory form for durable power of attorney for health care); Recommendation Relating to Statutory Forms for Durable Powers of Attorney, 17 Cal. L. Revision Comm'n Reports 701 (1984).

2. See Prob. Code §§ 2354 (medical treatment of conservatee not adjudicated to lack capacity to give informed consent), 2355 (medical treatment of conservatee adjudicated to lack capacity to give informed consent), 2357 (court-ordered medical treatment), 3200-3211 (court-ordered medical treatment for person without conservator).

principal lacks capacity to make health care decisions.³ The seven-year limit was included in the 1983 legislation because it was thought that a person who makes a durable power of attorney for health care should review it periodically, and at least every seven years. But experienced probate practitioners report that this has not been the effect of the legislation; instead it is a potential trap and is inconsistent with the intent of people who make a durable power of attorney for health care.⁴ The seven-year limit creates a likelihood that the durable power will expire and the principal will be unaware of the expiration. If this happens and the principal loses capacity, he or she will be unable to get needed health care without cumbersome and expensive court proceedings.

For this reason, the Commission recommends that the seven-year limit for durable powers of attorney for health care be eliminated.⁵ Although the mandatory seven-year limit is not continued, a person who

3. Civ. Code § 2436.5. If at the end of the seven-year period the principal lacks capacity to make health care decisions, the durable power of attorney for health care continues in effect until the principal regains capacity. Under Section 2436.5, the durable power of attorney for health care may provide that it expires earlier than seven years after its execution. The principal may also revoke the durable power at any time if the principal has legal capacity. Civ. Code § 2437.

The seven-year limit was not in the legislation recommended by the Law Revision Commission. See Recommendation Relating to Durable Power of Attorney for Health Care Decisions, 17 Cal. L. Revision Comm'n Reports 105 (1984). It was added in the Legislature at the urging of interested groups, and only applies to a durable power of attorney executed after January 1, 1984.

4. Letter from William J. Hoehler to Nathaniel Sterling (February 16, 1990).

5. The recommended legislation keeps the seven-year limit for durable powers of attorney for health care executed after January 1, 1984, but before January 1, 1992 (the operative date of the recommended legislation), and for those executed on a form that contains a warning statement that refers to a seven-year limit on its duration. Such a power will expire seven years from the date of its execution unless at the end of the seven-year period the principal lacks capacity to make health care decisions, in which case the power will continue in effect until the principal regains capacity. This will avoid catching unawares a person who made a durable power in reliance on automatic revocation at the end of seven years.

so desires can provide in the durable power that it will expire seven years, or at some other longer or shorter time, after its execution.

The statutory form for a durable power of attorney for health care⁶ is revised in the recommended legislation to substitute for the seven-year limit a provision that the principal can complete if the principal desires to limit the duration of the durable power.⁷ This will alert the person using the statutory form to the need to consider whether the duration of the durable power should be limited.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendments:

Civil Code § 2433 (amended). Warning statement

2433. (a) A printed form durable power of attorney for health care that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

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 consistently with your desires as stated in this document or otherwise made known.

6. Civ. Code § 2500. The recommended legislation also conforms the warning statement in a durable power of attorney for health care by deleting the reference to the seven-year limit. See *id.* §§ 2433, 2500.

7. If a person uses an old form that refers to the seven-year limit after the recommended legislation becomes operative, the power will expire seven years from its execution unless at the end of the seven-year period the principal lacks capacity to make health care decisions, in which case the power will continue in effect until the principal regains capacity. See *supra* note 5.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

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 at the time.

This document gives your agent authority to consent, to refuse 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 that you do not desire. In addition, the court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

~~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.~~ This power will exist for an indefinite period of time unless you limit its duration in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives you agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or

educational or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice: "This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California."

(c) A durable power of attorney prepared for execution by a person resident in this state that permits the attorney in fact to make health care decisions and that is not a printed form shall include one of the following:

(1) The substance of the statements provided for in subdivision (a) in capital letters.

(2) A certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(d) If a durable power of attorney includes the certificate provided for in paragraph (2) of subdivision (c) and permits the attorney in fact to make health care decisions for the principal, the applicable law of which the client is to be advised by the lawyer signing the certificate includes, but is not limited to, the matters listed in subdivision (a).

Comment. Section 2433 is amended to delete the former reference to the seven-year limit on a durable power of attorney for health care, and to substitute new language drawn from the warning statement for a printed form durable power of attorney that is not a durable power of attorney for health care. See Section 2510. The former seven-year limit has been repealed for a power executed on or after January 1, 1992, that does not contain a warning statement that refers to a seven-year limit on its duration. See Section 2436.5.

Civil Code § 2436.5 (amended). Expiration of durable power of attorney for health care

2436.5. (a) This section applies only to a durable power of attorney for health care that satisfies one of the following requirements:

(1) The power of attorney was executed after January 1, 1984, but before January 1, 1992.

(2) The power of attorney was executed on or after January 1, 1992, and contains a warning statement that refers to a seven-year limit on its duration.

(b) 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.

Comment. Section 2436.5 is amended to add subdivision (a). Subdivision (a) restricts the seven-year limit for a durable power of attorney for health care (1) to those executed between January 1, 1984, and December 31, 1991, and (2) to those containing a warning statement that refers to a seven-year limit on its duration. For a durable power of attorney for health care executed on or after January 1, 1992, that does not contain a warning statement that refers to a seven-year limit on its duration, there is no statutory limit, but only the limit, if any, provided in the durable power itself.

The principal may revoke a durable power of attorney for health care if the principal has legal capacity. Civ. Code § 2437. A durable power of attorney for health care is also revoked by death of the principal or attorney in fact. Civ. Code §§ 2355, 2356.

Note. The January 1, 1992, date assumes the proposed legislation will be introduced and enacted in 1991, with an operative date of January 1, 1992.

Civil Code § 2444 (amended). Forms

2444. (a) Notwithstanding Section 2433, on and after January 1, 1986, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with Section 2433 as amended by Section 5 of Chapter 312 of the Statutes of 1984, with Section 2433 as amended by Chapter 403 of the Statutes of 1985, or with

Section 2433 as in effect at the time of sale or distribution. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall comply with Section 2433 as in effect at the time of printing.

(b) Notwithstanding Section 2432, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with Section 2342 as originally enacted, or with Section 2432 as subsequently amended. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, shall comply with the requirements of Section 2432 in effect at the time of printing.

(c) A durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it complies with Section 2432 as originally enacted or as subsequently amended. A Subject to Section 2436.5, a durable power of attorney for health care executed on or after January 1, 1986, using a printed form that complied with Section 2433 as amended by Section 5 of Chapter 312 of the Statutes of 1984, or with Section 2433 as amended by Chapter 403 of the Statutes of 1985, is as valid as if it had been executed using a printed form that complied with Section 2433 as thereafter amended.

Comment. Section 2444 is amended to validate a durable power of attorney for health care made on a printed form that complied with prior versions of Section 2433, including Section 2433 as amended by Chapter 403 of the Statutes of 1985.

A durable power of attorney for health care executed after January 1, 1984, but before January 1, 1992, or one that contains a warning statement that refers to a seven-year limit on its duration, expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks capacity to make health care decisions, in which case the durable power of attorney for health care continues in effect until the principal regains capacity to make health care decisions. Section 2436.5.

Civil Code § 2500 (amended). Statutory form 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 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 WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

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 CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.

EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.

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 AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

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 THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.

~~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.~~ THE POWERS GIVEN BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT.

YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.

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

UNLESS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER AFTER YOU DIE TO (1) AUTHORIZE AN AUTOPSY, (2) DONATE YOUR BODY OR PARTS THEREOF FOR TRANSPLANT OR THERAPEUTIC OR EDUCATIONAL OR SCIENTIFIC PURPOSES, AND (3) DIRECT THE DISPOSITION OF YOUR REMAINS.

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

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.

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

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.

DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint _____

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, (4) a nonrelative employee of an operator of a community care facility, (5) an operator of a residential care facility for the elderly, or (6) a nonrelative employee of an operator of a residential care facility for the elderly.)

as my attorney in fact (agent) 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 Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 2550 to 2506, 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 my agent 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, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care

decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services, and procedures:

7. AUTOPSY; ANATOMICAL GIFTS; DISPOSITION OF REMAINS. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.

(If you want to limit the authority of your agent to consent to an autopsy, make an anatomical gift, or direct the disposition of your remains, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

8. DURATION.

(Unless you specify a ~~shorter period~~ otherwise 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~~ an indefinite period of time.)

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,~~ to limit the duration of this power of attorney.)

9. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care

decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent _____

(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent _____

(Insert name, address, and telephone number of second alternate agent)

10. 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 under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. 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)

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

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on _____ at _____, _____.

(Date)

(City)

(State)

(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate 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 care facility, (6) the operator of a residential care facility for the elderly, or (7) an employee of an operator of a residential care facility for the elderly. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any one or more of the following:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers'

licenses.

(c) An identification card issued by a state other than California.

(d) An identification card issued by any branch of the armed forces of the United States.

(Other kinds of proof of identity are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledges 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, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Signature: _____ Residence address: _____
Print name: _____ Residence address: _____
Date: _____

Signature: _____ Residence address: _____
Print name: _____ Residence address: _____
Date: _____

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

I further 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: _____

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility -- a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: _____

Comment. Section 2500 is amended to delete the former reference to the seven-year limit for a durable power of attorney for health care, and to substitute new language drawn from the warning statement for a printed form durable power of attorney that is not a durable power of attorney for health care. See Section 2510. The former seven-year limit has been repealed for a power executed on or after January 1, 1992, that does not contain a warning statement that refers to a seven-year limit on its duration. See Section 2436.5.

Note. Section 2500 is amended by AB 835. If the bill is enacted, this draft of Section 2500 will be conformed.

Civil Code § 2503.5 (amended). Forms

2503.5. (a) A Subject to Section 2436.5, a statutory form durable power of attorney for health care executed on or after January 1, 1986, using a form that complied with Section 2500 as originally enacted, or as amended by Chapter 403 of the Statutes of 1985, or as amended by Chapter 1543 of the Statutes of 1988, is as valid as if it had been executed using a form that complied with the requirements of Section 2500 as amended in effect at the time of execution.

(b) Notwithstanding Section 2501, a statutory form durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it contains the warning using the language set forth in

Section 2500 as originally enacted, or as amended by Chapter 403 of the Statutes of 1985, or as amended by Chapter 1543 of the Statutes of 1988, instead of the warning using the language set forth in that section as amended in effect at the time of execution.

(c) For the purposes of subdivision (c) of Section 2503, on and after January 1, 1986, a printed statutory form durable power of attorney for health care may be sold or otherwise distributed if it contains the exact wording of the form set out in Section 2500 as originally enacted, or the exact wording of the form set out in Section 2500 as amended by Chapter 403 of the Statutes of 1985, or as amended by Chapter 1543 of the Statutes of 1988, including the warning and instructions, and nothing else; but any printed statutory form durable power of attorney for health care printed on or after January 1, 1986, 1992, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set out in Section 2500 as-amended in effect at the time of printing, including the warning and instructions, and nothing else.

Comment. Section 2503.5 is amended to do the following:

(1) To validate a durable power of attorney for health care executed on a statutory form that complied with any of the prior amended versions of Section 2500 or 2501.

(2) To permit sale or distribution of a printed statutory form durable power of attorney for health care if it contains the exact wording of the form set out in any of the prior amended versions of Section 2500.

(3) To require that a statutory form durable power of attorney for health care printed on or after January 1, 1992, that is sold or distributed in this state for use by a person without counsel have the exact wording set out in Section 2500 in effect at the time of printing.

A durable power of attorney for health care containing a warning statement that refers to a seven-year limit on its duration expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks capacity to make health care decisions, 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. Section 2436.5.