

Memorandum 90-92

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

Attached is the *Tentative Recommendation Relating to Elimination of Seven-Year Limit for Durable Powers of Attorney for Health Care*. We have received 13 letters, all in support. Three of the 13 letters have questions or comments. We also received two sets of comments handwritten on the face of the TR, one supporting the TR and the other opposing it. The comment in opposition was from attorney Linda Silveria of San Jose:

Clients should be encouraged to review their estate plans on a regular basis. I favor a limit on durable power of attorney for health care. Perhaps extending period to ten years would be appropriate.

The letters are attached as Exhibits 1 through 13:

Exhibit 1: Paul Gordon Hoffman
Exhibit 2: Jerome Sapiro
Exhibit 3: Frank M. Swirles
Exhibit 4: Henry Angerbauer
Exhibit 5: Roger V. Marshall
Exhibit 6: Patricia H. Jenkins
Exhibit 7: Paul H. Roskoph
Exhibit 8: Ruth E. Ratzlaff
Exhibit 9: Ruth A. Phelps
Exhibit 10: Wilbur L. Coats
Exhibit 11: David W. Knapp
Exhibit 12: John G. Lyons
Exhibit 13: Stuart D. Zimring

Keeping Seven-Year Limit for Existing Documents

Section 2436.5 keeps the seven-year limit for a durable power of attorney for health care executed during the period that the limit was in effect -- January 1, 1984, to January 1, 1992 (the operative date of the recommended legislation). Jerome Sapiro (Exhibit 2) and Frank Swirles (Exhibit 3) suggest that the seven-year limit be repealed for these powers as well. The staff recommends against doing this, both for policy and political reasons.

Some people who made a durable power of attorney for health care during this eight-year period may have omitted to put a time limit in

the document, relying instead on the statutory limit. If the statutory limit is repealed for such documents, many of those people may be unaware of the change in the law, and the document will have legal effect when they expected it not to. It seems better to require people who want the document to be effective longer than seven years to make a new document, since most of them should remember that there was a seven-year limit when they made the old document.

It also seems likely that the interested groups who had the seven-year limit added to the legislation in the first place would strongly object to repealing the seven-year limit for documents made while the limit was in effect.

Revision of Comment to Section 2436.5

The Comment to Section 2436.5 says a durable power for health care is revoked by death of the principal or attorney in fact. Paul Hoffman (Exhibit 1) properly notes that this is not completely accurate, since an attorney in fact retains some authority after the principal's death: The attorney in fact may make a disposition under the Uniform Anatomical Gift Act, may authorize an autopsy, and may direct the disposition of the principal's remains. Civ. Code § 2434. Mr. Hoffman would revise the Comment to say that a power of attorney for health care is not revoked by death of the principal to the extent provided in Section 2434(b). The staff thinks the reference in the Comment to revocation by death of the principal or attorney in fact is unnecessary surplusage and should be deleted entirely.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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SABBAN &
BRUCKER

LAWYERS

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California 90024
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EA LAW REV. COMM'N
JUN 01 1990
RECEIVED

May 29, 1990

California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to
Elimination of Seven-Year Limit For
Durable Powers of Attorney for Health Care

Ladies and Gentlemen:

I welcome the repeal of a seven-year limit on a durable power of attorney for health care. Even if people are warned upon signing that the power has a seven-year life, they are apt to forget about this limitation after a number of years have passed.

In your Comment to Amended Civil Code Section 2436.5, you note that a durable power of attorney for health care is revoked by the death of the principal. To avoid any question on the point, you should note that a power of attorney for health care is not revoked by the death of the principal to the extent set forth in Section 2434(b) of the Civil Code.

Very truly yours,



Paul Gordon Hoffman

PGH34:wb

-1-

JEROME SAPIRO
ATTORNEY AT LAW
SUTTER PLAZA, SUITE 605
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(415) 928-1515

CA LAW REV. COMM'N

MAY 18 1990

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May 17, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA, 94303-4739

Re: Tentative Recommendation
Elimination of Seven-Year Limit
for Durable Powers of Attorney
for Health Care
April 1990

Hon. Commission:

I do support the elimination of the 7 year limit for durable Powers of Attorney (Health Care).

The said Powers should remain in force indefinitely or until revoked. I think that you should add "or until revoked" wherever appropriate.

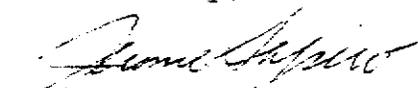
It does appear to me that the amendments are somewhat unclear and confusing, requiring another look. There is no intention to criticize the purpose to remove the limit.

In my practice, I found the 7 year limit to have been a serious mistake. It has always required explanation to clients interested in having health care powers. It does constitute the trap that you describe.

Unfortunately, you place those who presently have powers in the position of need to execute a new power before their present powers expire, assuming that they do not become incapacitated within the seven years. Is there any way by law to extend existing powers by a "grandfather" type clause until revoked or until death? Further thought should be given to this to save clients time and money. I realize the problem of giving extended life to an existing document, but this should be further explored.

Thanks again for allowing me to participate.

Sincerely,


Jerome Sapiro

JS:mes

FRANK M. SWIRLES
LAW CORPORATION

JUN 22 1990

RECEIVED

June 19, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendations -

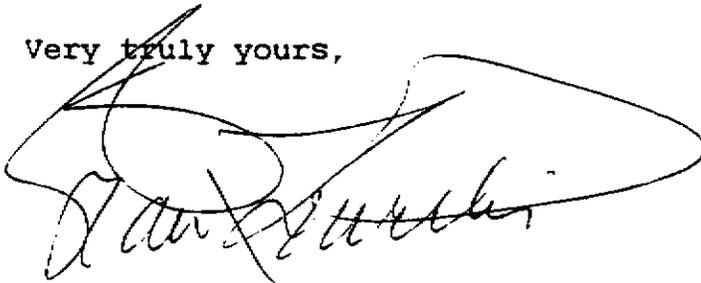
Gentlemen:

1. Litigation involving decedents - This appears to be straight forward. I have no objections to your recommendation.

2. Elimination of the seven-year limit for durable powers of attorney for health care - The recommendation is satisfactory, but the question is still with us. What do we do with all of those instruments which are now floating around and will probably lapse just before they are needed?

3. Uniform Statutory Rule Against Perpetuities - The uniform act is good. I would suggest that the language on page 30, in section 21230(c)(2) be changed by adding a "by" in the 3rd line so that the sentence reads, "The trust may be terminated by a court of competent jurisdiction on petition of the Attorney General or of any person who would be affected by the termination".

Very truly yours,



Frank M. Swirles



P.O. BOX 1490
RANCHO SANTA FE, CALIFORNIA 92067
(619) 750-2000

HENRY ANGERBAUER, CBA
4401 WILLOW GLEN CT.
CONCORD, CA 94520

CA LAW REV. COMMITTEE

JUN 19 1990

RECEIVED

California Law Revision Commission

6/17/90

Re: Recommendations:

- 1. Litigation Involving Decedents
No comment
- 2. Alternate Beneficiaries for unclaimed Distributions
Approve your recommendation
- 3. Elimination of seven-year Limit for Durable Powers of attorney for Health Care
Approve your recommendation

Thank you for ~~allowing~~ ^{allowing} me ^{to} make my
needs known

Sincerely
HA

Marshall, Burghardt & Kelleher
Attorneys at Law

CA LAW REV. COMM'n
Study L-3038
JUN 14 1990
RECEIVED

ROGER V. MARSHALL
LAW CORPORATION

JOHN L. BURGHARDT
LAW CORPORATION

TIMOTHY M. KELLEHER
LAW CORPORATION

ELIZABETH UFKES OLIVERA
ATTORNEY AT LAW

ERNEST S. MIESKE
ATTORNEY AT LAW

PROFESSIONAL PLAZA
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June 11, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Comments to Tentative Recommendation

To Whom It May Concern:

1. Probate Law and Procedure - Debts that are Contingent, Disputed, or Not Due.

We feel that this tentative recommendation is advisable as it provides flexibility to facilitate distribution and closing of an estate and, at the same time, provide for protection to the creditors and the estate's beneficiaries. Keeping an estate open until all issues involving debts are resolved or satisfied is not acceptable.

2. Elimination of Seven-Year Limit for Durable Powers of Attorney for Health Care.

While we do agree that a Durable Power of Attorney For Health Care should be reviewed on an established time basis, we also understand and agree with the statement that our clients are not efficient in reviewing and possibly renewing this statement every seven years. It has been our experience that even if reminded and encouraged to update their estate planning, clients often procrastinate. Also, quite often, we are unable to locate a client who has moved. Therefore, providing assurance that the Durable Power of Attorney For Health Care is in existence when it is necessary is more important than forcing an analysis and review by terminating the document if it is not actively renewed.

3. Alternate Beneficiaries for Unclaimed Distribution.

We agree that most testators would prefer to have unclaimed property go to an alternate taker rather escheat to the State.

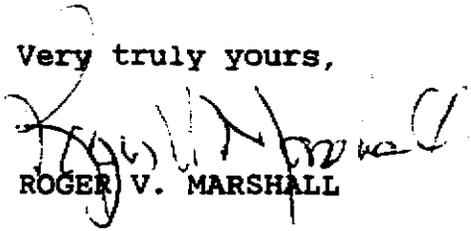
California Law Revision Commission
June 11, 1990
Page Two

Therefore, we agree with this recommendation. We do agree that the three year period for the primary distributee to claim his or her share is too short. We would be more agreeable to a five year time period.

4. Remedies of Creditor Where Personal Representative Fails to Give Notice.

We agree with this recommendation as a preliminary distribution is usually completed because of a matter of convenience to the beneficiary and should not be used as a device to defeat creditors who have failed to receive notice because of the bad faith of the personal representative. Therefore, we support this change in law.

Very truly yours,



ROGER V. MARSHALL

RVM/kc

JUN 08 1990
Study L-3038
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Memo 90-92

EXHIBIT 6

June 4, 1990

California Law Revision Commission
1000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendations

Gentlemen:

I support the following recommendations relating to:
debts that are contingent, disputed or not due; alternate
beneficiaries for unclaimed distribution; and elimination of
seven-year limit for durable power of attorney for health care.

With respect to remedies of creditor where personal
representative fails to give notice, I am concerned about what
types of actions or failure to act would constitute bad faith
on the part of the personal representative. For example,
when is failure to give notice to a known creditor bad faith as
opposed to excusable neglect?

Very truly yours,

Patricia H. Jenkins
PATRICIA H. JENKINS
Attorney at Law

PHJ:cb

FENWICK, DAVIS & WEST

A LAW PARTNERSHIP INCLUDING
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June 1, 1990

CA LAW REV. COMM'N

JUN 04 1990

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California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739Re: Comments on Tentative Recommendations

Gentlemen:

I am responding to five tentative recommendations issued by your organization pertaining to modifications of the Probate Code.

1. Contingent, Disputed or Not Due Debts:

Your proposal of April 1990 is excellent and I believe should be submitted as proposed. My only question relates to the use of the term "interested person." As you note in your comment, the term "interested person" is already defined in Section 48 of the Probate Code. Would it be redundant to expressly reference the definition of Section 48, which includes a creditor and would permit a creditor to petition the court. This would be appropriate if the executor failed to do so.

2. Creditor Remedies:

The recommendation relating to a personal representative who deals in bad faith makes no attempt to define the scope of bad faith. Perhaps it is your desire that this be left to a court to determine, but it seems appropriate that some definition be included when the purpose of this proposal is to expand the remedies of creditors for that specific purpose. Since bad faith may be very subjective, it might assist to provide specific examples which would be considered bad faith and for which the burden of proof might be imposed upon the personal representative. Such instances might include the intentional disregard of known or readily available evidence of the debt.

3. Alternate Beneficiaries for Unclaimed Distribution:

This is an excellent proposal.

4. Elimination of Seven-Year Limit for Durable Powers of Attorney:

I heartily concur. I have never understood why a limitation should be imposed; furthermore, if it is to be limited, I do not understand why it should differ from the limitation upon the directive to physicians. I concur with your proposal that the limitation be eliminated completely.

5. Litigation Involving Decedents:

Your proposal regarding litigation involving decedents is excellent. The ability to continue these actions without commencing a probate and appointing a personal representative is most practical. I have not had an opportunity to fully evaluate this proposal, but I support its intent and purpose. I will leave to those with greater litigation experience the full analysis of your proposal.

Very truly yours,



Paul H. Roskoph

PHR/rer
PHR248/1637:2

RUTH E. RATZLAFF
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CA LAW REV. COM. 78
JUN 04 1990
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May 31, 1990

RE: Tentative Recommendations Relating to Elimination
of Seven Year Limit for DPAHC

California Law Revision Commission
4000 Middlefield Suite D-2
Palo Alto, Ca 94303-4739

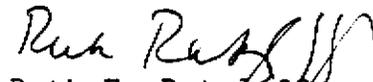
Dear Commissioners:

I have reviewed you tentative recommendations relating to
elimination of the current seven year limit for effectiveness for
a Durable Power of Attorney for Health Care. I concur
wholeheartedly with your recommendations.

A negative factor that your comments did not address is that
attorneys who assist their clients in preparing these documents
arguably have an obligation to contact the client for renewal of
the Power of Attorney sometime prior to the seven year expiration
date. With today's mobile society there is no guarantee that the
client will be at the address given to the attorney when the
Power of Attorney was prepared.

Putting the burden for review on the client rather than the
attorney is to the advantage of practitioners everywhere.

Sincerely,


Ruth E. Ratzlaff

RER/dr

CA LAW REV. COMM'N

JUN 04 1990

(818) 795-8844 RECEIVED

Facsimile: (818) 795-9586

Edward M. Phelps
Deborah Ballins Schwarz
Ruth A. Phelps
Of Counsel
Barbara E. Dunn

Phelps, Schwarz & Phelps

Attorneys at Law
215 North Marengo Avenue
Second Floor
Pasadena, California 91101

May 31, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

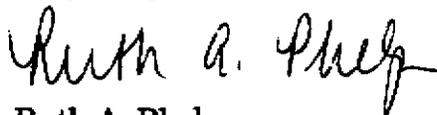
Re: Tentative Recommendation In Relation to the
Elimination of Seven-Year Limit for Durable
Powers of Attorney for Health Care

Dear Sirs/Madam:

I have read the tentative recommendation of the California Law Revision Commission relating to the elimination of 7 year limit for Durable Power Attorneys for Health Care.

I agree with it.

Very truly yours.



Ruth A. Phelps
PHELLPS, SCHWARZ & PHELPS

RAP:svt

MAY 29 1990

RECEIVED

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

May 25, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Ca 94303-4739

In re: Tentative Recommendation on:

Probate Law Procedure;
Remedies of Creditor Where Personal Representative
Fails to Give Notice;
Elimination of Seven-Year Limit Durable Powers Of
Attorney for Health Care; and
Alternate Beneficiaries for Unclaimed Distribution.

Dear Administrator:

I agree with the tentative recommendations as proposed for all of the above cited sections of the Probate Code.

I found one typographical error in the first sentence of the proposed Section 11463. I have attached a photocopy of the proposed Section pointing out the typing error.

Reference to the note on Probate Code Section 11603 (amended) concerning a three-year or four-year period for the primary distributee to claim distribution. I believe three years should be adequate. If a four-year period is set forth it will shorten the alternate distributee's claim period to one year unless you extend the time delay for the assets to escheat to the state. Two years for the alternate distributee appears to be more equitable.

Very truly yours,



Wilbur L. Coats

Encl.

LAW REV. COMM'N

MAY 29 1990

RECEIVED

DAVID W. KNAPP, SR.
DAVID W. KNAPP, JR.

LAW OFFICES
KNAPP & KNAPP
1093 LINCOLN AVENUE
SAN JOSE, CALIFORNIA 95125
TELEPHONE (408) 298-3838

May 25, 1990

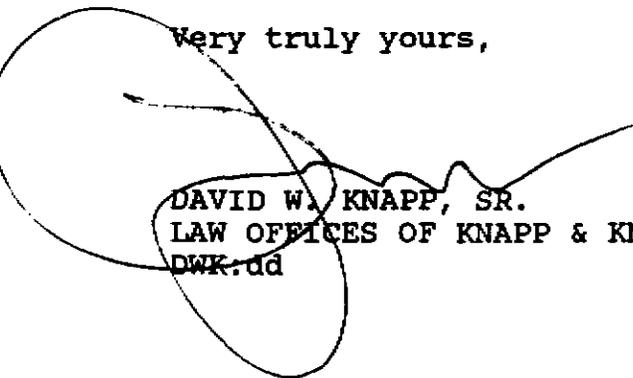
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 943303-4739

Re: Elimination of 7 year limit on DPA Health Care

It is a great recommendation to correct something that shouldn't have been placed within the section originally.

Now if another shot can be taken with the Directive To Physicians limit and eliminate it, and educate the Governor so he won't veto it, we can save our client's repeated visits and money!

Very truly yours,


DAVID W. KNAPP, SR.
LAW OFFICES OF KNAPP & KNAPP
DWK:dd

LAW OFFICES OF
VAUGHAN, PAUL & LYONS
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SAN FRANCISCO 94104
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CA LAW REV. COMM'N
MAY 24 1990
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FAX: (415) 392-2308

May 23, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation
relating to Elimination of
Seven-year Limit for Durable
Powers of Attorney for
Health Care

Gentlemen:

I approve the proposed recommendation. I have had the seven-year provision questioned by a client concerned about expiration of the power. This proposal is a real improvement.

Very truly yours,


JOHN G. LYONS

JGL:car

JUL 02 1990

LEVIN, BALLIN, PLOTKIN, ZIMRING, GOFFIN & ROSS

A PROFESSIONAL CORPORATION

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NORTH HOLLYWOOD, CALIFORNIA 91607-3492

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June 29, 1990

RECEIVED
HARMON R. BALLIN (1932-1989)

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KIRSTEN HELWEG

WILLIAM LEVIN
JAY J. PLOTKIN
STUART D. ZIMRING
NANCY O. MARUTANI
GEORGE M. GOFFIN
GIG KYRIACOU
MICHAEL A. ROSS
JOAN H. OTSU
RUTH E. GRAF
STEPHEN L. BUCKLIN

California Law Revision Commission
4000 Middlefield Road
Suite D2
Palo Alto, California 94303-4739

Re: Tentative Recommendations Relating to Alternate
Beneficiaries for Unclaimed Distribution and Elimination
of Seven Year Limit for Durable Powers of Attorney for
Health Care

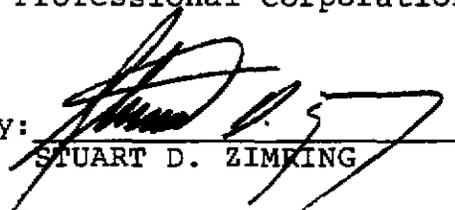
Gentlemen:

I support your tentative recommendations regarding alternate beneficiaries for unclaimed distribution. I have had a number of probates in the last several years where unclaimed bequests have essentially gone "down the drain" because the named beneficiary could not be found. While the decedent had other heirs or devisees who could have benefitted from the gift, because of existing law, the monies eventually escheated to the State. Thus, I think your recommendation is a good one.

With regards to the seven year limit for Durable Powers of Attorney for Health Care, I also endorse your recommendation. The seven year limitation is one of the few things my clients consistently inquire about, uniformly asking why the Durable Power can only last seven years. From a pragmatic standpoint, it also adds another layer of "follow-up" to our filing system that I do not believe is necessary.

Sincerely,

LEVIN, BALLIN, PLOTKIN, ZIMRING, GOFFIN & ROSS
A Professional Corporation

By: 
STUART D. ZIMRING

SDZ:rs

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

**Elimination of Seven-Year Limit
for Durable Powers of Attorney
for Health Care**

April 1990

This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JULY 1, 1990.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

RECOMMENDATION

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 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

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).

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.

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 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

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.

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.

using the statutory form to the need to consider whether the duration of the durable power should be limited.

PROPOSED LEGISLATION

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.

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 2500 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:

(b) Additional statement of desires, special provisions, and limitations:

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. 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 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, 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) *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.

