

ASSEMBLY BILL

No. 891

Introduced by Assembly Member Alquist

February 25, 1999

An act to amend Section 8205 of the Government Code, to amend Sections 1569.156, 1599.73, 7100, 7151, and 24179.5 of, to repeal Section 1418.8 of, and to repeal Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of, the Health and Safety Code, and to amend Sections 811, 1302, 2105, 2355, 2356, 3200, 3201, 3203, 3204, 3206, 3207, 3208, 3210, 3211, 3722, 4050, 4100, 4121, 4122, 4123, 4128, 4203, 4206, 4260, and 4265 of, to amend the heading of Part 7 (commencing with Section 3200) of Division 4 of, to add Sections 1302.5, 3208.5, and 3212 to, to add Part 4 (commencing with Section 4500) to Division 4.5 of, and to add Division 4.7 (commencing with Section 4600) to, and to repeal Part 4 (commencing with Section 4600) and Part 5 (commencing with Section 4900) of Division 4.5 of, the Probate Code, relating to health care decisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 891, as introduced, Alquist. Health care decisions.

Existing law, the Power of Attorney Law, among other things, governs and regulates durable powers of attorney for health care, as specified. Existing law also establishes the Natural Death Act, providing that an adult person has a right to make a written declaration instructing his or her physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition

if that person is unable to make those decisions for him or herself, among other provisions.

This bill, operative July 1, 2000, would repeal the provisions regarding durable powers of attorney for health care under the Power of Attorney Law, repeal the Natural Death Act, and revise and recast these provisions as part of a new act, the Health Care Decisions Law. This law would provide for the creation, form, and revocation of advance health care directives, for the designation and selection of health care surrogates, and for the manner of making health care decisions for patients without surrogates. The bill would also make various related and conforming changes.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8205 of the Government Code is
2 amended to read:

3 8205. (a) It is the duty of a notary public, when
4 requested:

5 (1) To demand acceptance and payment of foreign
6 and inland bills of exchange, or promissory notes, to
7 protest them for nonacceptance and nonpayment, and,
8 with regard only to the nonacceptance or nonpayment of
9 bills and notes, to exercise any other powers and duties
10 that by the law of nations and according to commercial
11 usages, or by the laws of any other state, government, or
12 country, may be performed by notaries.

13 (2) To take the acknowledgment or proof of *advance*
14 *health care directives*, powers of attorney, mortgages,
15 deeds, grants, transfers, and other instruments of writing

1 executed by any person, and to give a certificate of that
2 proof or acknowledgment, endorsed on or attached to the
3 instrument. The certificate shall be signed by the notary
4 public in the notary public's own handwriting. A notary
5 public may not accept any acknowledgment or proof of
6 any instrument that is incomplete.

7 (3) To take depositions and affidavits, and administer
8 oaths and affirmations, in all matters incident to the
9 duties of the office, or to be used before any court, judge,
10 officer, or board. Any deposition, affidavit, oath, or
11 affirmation shall be signed by the notary public in the
12 notary public's own handwriting.

13 (4) To certify copies of powers of attorney under
14 Section 4307 of the Probate Code. The certification shall
15 be signed by the notary public in the notary public's own
16 handwriting.

17 (b) It shall further be the duty of a notary public, upon
18 written request:

19 (1) To furnish to the Secretary of State certified copies
20 of the notary's journal.

21 (2) To respond within 30 days of receiving written
22 requests sent by certified mail from the Secretary of
23 State's office for information relating to official acts
24 performed by the notary.

25 SEC. 2. Section 1418.8 of the Health and Safety Code
26 is repealed.

27 ~~1418.8. (a) If the attending physician and surgeon of~~
28 ~~a resident in a skilled nursing facility or intermediate care~~
29 ~~facility prescribes or orders a medical intervention that~~
30 ~~requires informed consent be obtained prior to~~
31 ~~administration of the medical intervention, but is unable~~
32 ~~to obtain informed consent because the physician and~~
33 ~~surgeon determines that the resident lacks capacity to~~
34 ~~make decisions concerning his or her health care and that~~
35 ~~there is no person with legal authority to make those~~
36 ~~decisions on behalf of the resident, the physician and~~
37 ~~surgeon shall inform the skilled nursing facility or~~
38 ~~intermediate care facility.~~

39 ~~(b) For purposes of subdivision (a), a resident lacks~~
40 ~~capacity to make a decision regarding his or her health~~

1 care if the resident is unable to understand the nature and
2 consequences of the proposed medical intervention,
3 including its risks and benefits, or is unable to express a
4 preference regarding the intervention. To make the
5 determination regarding capacity, the physician shall
6 interview the patient, review the patient's medical
7 records, and consult with skilled nursing or intermediate
8 care facility staff, as appropriate, and family members and
9 friends of the resident, if any have been identified.

10 (e) For purposes of subdivision (a), a person with legal
11 authority to make medical treatment decisions on behalf
12 of a patient is a person designated under a valid Durable
13 Power of Attorney for Health Care, a guardian, a
14 conservator, or next of kin. To determine the existence of
15 a person with legal authority, the physician shall
16 interview the patient, review the medical records of the
17 patient and consult with skilled nursing or intermediate
18 care facility staff, as appropriate, and family members and
19 friends of the resident, if any have been identified.

20 (d) The attending physician and the skilled nursing
21 facility or intermediate care facility may initiate a
22 medical intervention that requires informed consent
23 pursuant to subdivision (e) in accordance with
24 acceptable standards of practice.

25 (e) Where a resident of a skilled nursing facility or
26 intermediate care facility has been prescribed a medical
27 intervention by a physician and surgeon that requires
28 informed consent and the physician has determined that
29 the resident lacks capacity to make health care decisions
30 and there is no person with legal authority to make those
31 decisions on behalf of the resident, the facility shall,
32 except as provided in subdivision (h), conduct an
33 interdisciplinary team review of the prescribed medical
34 intervention prior to the administration of the medical
35 intervention. The interdisciplinary team shall oversee the
36 care of the resident utilizing a team approach to
37 assessment and care planning and shall include the
38 resident's attending physician, a registered professional
39 nurse with responsibility for the resident, other
40 appropriate staff in disciplines as determined by the

1 resident's needs, and, where practicable, a patient
2 representative, in accordance with applicable federal and
3 state requirements. The review shall include all of the
4 following:

5 (1) A review of the physician's assessment of the
6 resident's condition.

7 (2) The reason for the proposed use of the medical
8 intervention.

9 (3) A discussion of the desires of the patient, where
10 known. To determine the desires of the resident, the
11 interdisciplinary team shall interview the patient, review
12 the patient's medical records and consult with family
13 members or friends, if any have been identified.

14 (4) The type of medical intervention to be used in the
15 resident's care, including its probable frequency and
16 duration.

17 (5) The probable impact on the resident's condition,
18 with and without the use of the medical intervention.

19 (6) Reasonable alternative medical interventions
20 considered or utilized and reasons for their
21 discontinuance or inappropriateness.

22 (f) A patient representative may include a family
23 member or friend of the resident who is unable to take
24 full responsibility for the health care decisions of the
25 resident, but has agreed to serve on the interdisciplinary
26 team, or other person authorized by state or federal law.

27 (g) The interdisciplinary team shall periodically
28 evaluate the use of the prescribed medical intervention
29 at least quarterly or upon a significant change in the
30 resident's medical condition.

31 (h) In case of an emergency, after obtaining a
32 physician and surgeon's order as necessary, a skilled
33 nursing or intermediate care facility may administer a
34 medical intervention which requires informed consent
35 prior to the facility convening an interdisciplinary team
36 review. If the emergency results in the application of
37 physical or chemical restraints, the interdisciplinary team
38 shall meet within one week of the emergency for an
39 evaluation of the medical intervention.

~~(i) Physician and surgeons and skilled nursing facilities and intermediate care facilities shall not be required to obtain a court order pursuant to Section 3201 of the Probate Code prior to administering a medical intervention which requires informed consent if the requirements of this section are met.~~

~~(j) Nothing in this section shall in any way affect the right of a resident of a skilled nursing facility or intermediate care facility for whom medical intervention has been prescribed, ordered, or administered pursuant to this section to seek appropriate judicial relief to review the decision to provide the medical intervention.~~

~~(k) No physician or other health care provider, whose action under this section is in accordance with reasonable medical standards, is subject to administrative sanction if the physician or health care provider believes in good faith that the action is consistent with this section and the desires of the resident, or if unknown, the best interests of the resident.~~

~~(l) The determinations required to be made pursuant to subdivisions (a), (c), and (g), and the basis for those determinations shall be documented in the patient's medical record and shall be made available to the patient's representative for review.~~

SEC. 3. Section 1569.156 of the Health and Safety Code is amended to read:

1569.156. (a) A residential care facility for the elderly shall do all of the following:

(1) Not condition the provision of care or otherwise discriminate based on whether or not an individual has executed an advance directive, consistent with applicable laws and regulations.

(2) Provide education to staff on issues concerning advance directives.

(3) Provide written information, upon admission, about the right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right, under state law, to formulate advance directives.

(4) Provide written information about policies of the facility regarding the implementation of the rights described in paragraph (3).

(b) For purposes of this section, “advance directive” means ~~instructions relating to the provision of health care when individuals are unable to communicate their wishes regarding medical treatment. The “advance directive” may be a written document authorizing an agent or surrogate to make decisions on an individual’s behalf, including a durable power of attorney for health care, as defined in Section 4700 of the Probate Code, a written statement such as a declaration, as defined in Section 7186.5, an “advance health care directive,” as defined in Section 4605 of the Probate Code, or some other form of instruction recognized under state law specifically addressing the provision of health care.~~

SEC. 4. Section 1599.73 of the Health and Safety Code is amended to read:

1599.73. (a) Every contract of admission shall state that residents have a right to confidential treatment of medical information.

(b) The contract shall provide a means by which the resident may authorize the disclosure of information to specific persons, by attachment of a separate sheet that conforms to the specifications of Section 56 of the Civil Code. After admission, the facility shall encourage ~~competent~~ residents *having capacity to make health care decisions* to execute ~~a durable power of attorney for health care~~ *an advance health care directive* in the event that he or she becomes unable to give consent for disclosure. The facility shall make available upon request to the long-term care ombudsman a list of newly admitted patients.

SEC. 5. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in,

1 and the duty of disposition and the liability for the
2 reasonable cost of disposition of the remains devolves
3 upon, the following in the order named:

4 (1) An ~~attorney-in-fact agent~~ under a ~~durable~~ power
5 of attorney for health care ~~executed pursuant to Chapter~~
6 ~~4 governed by Division 4.7~~ (commencing with Section
7 4600) ~~of Part 4 of Division 4.5~~ of the Probate Code.

8 (2) The surviving spouse.

9 (3) The sole surviving adult child of the decedent, or
10 if there is more than one adult child of the decedent,
11 one-half or more of the surviving adult children.
12 However, less than one-half of the surviving adult
13 children shall be vested with the rights and duties of this
14 section if they have used reasonable efforts to notify all
15 other surviving adult children of their instructions and
16 are not aware of any opposition to those instructions on
17 the part of more than one-half of all surviving adult
18 children. For purposes of this section, “adult child” means
19 a competent natural or adopted child of the decedent
20 who has attained 18 years of age.

21 (4) The surviving parent or parents of the decedent.
22 If one of the surviving parents is absent, the remaining
23 parent shall be vested with the rights and duties of this
24 section after reasonable efforts have been unsuccessful in
25 locating the absent surviving parent.

26 (5) The surviving competent adult person or persons
27 respectively in the next degrees of kindred. If there is
28 more than one surviving person of the same degree of
29 kindred, the majority of those persons. Less than the
30 majority of surviving persons of the same degree of
31 kindred shall be vested with the rights and duties of this
32 section if those persons have used reasonable efforts to
33 notify all other surviving persons of the same degree of
34 kindred of their instructions and are not aware of any
35 opposition to those instructions on the part of one-half or
36 more of all surviving persons of the same degree of
37 kindred.

38 (6) The public administrator when the deceased has
39 sufficient assets.

(b) (1) If any person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent. However, if a person accepts the

1 gift of an entire body under subdivision (a) of Section
2 7155.5, that person, subject to the terms of the gift, shall
3 be liable for the reasonable cost of final disposition of the
4 decedent.

5 (e) This section shall be administered and construed to
6 the end that the expressed instructions of the decedent
7 or the person entitled to control the disposition shall be
8 faithfully and promptly performed.

9 (f) A funeral director or cemetery authority shall not
10 be liable to any person or persons for carrying out the
11 instructions of the decedent or the person entitled to
12 control the disposition.

13 (g) For purposes of paragraph (5) of subdivision (a),
14 “competent adult” means an adult who has not been
15 declared incompetent by a court of law or who has been
16 declared competent by a court of law following a
17 declaration of incompetence.

18 SEC. 6. Section 7151 of the Health and Safety Code is
19 amended to read:

20 7151. (a) Except as provided in Section 7152, any
21 member of the following classes of persons, in the order
22 of priority listed, may make an anatomical gift of all or
23 part of the decedent’s body or a pacemaker for an
24 authorized purpose, unless the decedent, at the time of
25 death, has made an unrevoked refusal to make that
26 anatomical gift:

27 (1) The ~~attorney-in-fact~~ *agent* under a ~~valid—durable~~
28 *power of attorney for health care* that expressly
29 *authorizes or does not limit the authority of the*
30 ~~attorney-in-fact~~ *agent* to make an anatomical gift of all or
31 part of the principal’s body or a pacemaker.

32 (2) The spouse of the decedent.

33 (3) An adult son or daughter of the decedent.

34 (4) Either parent of the decedent.

35 (5) An adult brother or sister of the decedent.

36 (6) A grandparent of the decedent.

37 (7) A guardian or conservator of the person of the
38 decedent at the time of death.

39 (b) An anatomical gift may not be made by a person
40 listed in subdivision (a) if any of the following occur:

(1) A person in a prior class is available at the time of death to make an anatomical gift.

(2) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent.

(3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subdivision (a) shall be made by a document of gift signed by the person or the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subdivision (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subdivision (a) is not an objection to the making of an anatomical gift.

SEC. 7. Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code is repealed.

SEC. 8. Section 24179.5 of the Health and Safety Code is amended to read:

24179.5. Notwithstanding any other provision of this chapter, this chapter ~~shall~~ *does* not apply to an adult ~~person~~ in a terminal condition who executes a directive directing the withholding or withdrawal of life-sustaining procedures pursuant to Section 7188. To the extent of any conflict, ~~the provisions of Chapter 3.9 (commencing with Section 7185) of Part 1, of Division 7 shall prevail~~ *Division 4.7 (commencing with Section 4600) of the Probate Code prevails* over the provisions of this chapter.

SEC. 9. Section 811 of the Probate Code is amended to read:

1 811. (a) A determination that a person is of unsound
2 mind or lacks the capacity to make a decision or do a
3 certain act, including, but not limited to, the incapacity
4 to contract, to make a conveyance, to marry, to make
5 medical decisions, to execute wills, or to execute trusts,
6 shall be supported by evidence of a deficit in at least one
7 of the following mental functions, subject to subdivision
8 (b), and evidence of a correlation between the deficit or
9 deficits and the decision or acts in question:

10 (1) Alertness and attention, including, but not limited
11 to, the following:

12 (A) Level of arousal or consciousness.

13 (B) Orientation to time, place, person, and situation.

14 (C) Ability to attend and concentrate.

15 (2) Information processing, including, but not limited
16 to, the following:

17 (A) Short- and long-term memory, including
18 immediate recall.

19 (B) Ability to understand or communicate with
20 others, either verbally or otherwise.

21 (C) Recognition of familiar objects and familiar
22 persons.

23 (D) Ability to understand and appreciate quantities.

24 (E) Ability to reason using abstract concepts.

25 (F) Ability to plan, organize, and carry out actions in
26 one's own rational self-interest.

27 (G) Ability to reason logically.

28 (3) Thought processes. Deficits in these functions may
29 be demonstrated by the presence of the following:

30 (A) Severely disorganized thinking.

31 (B) Hallucinations.

32 (C) Delusions.

33 (D) Uncontrollable, repetitive, or intrusive thoughts.

34 (4) Ability to modulate mood and affect. Deficits in
35 this ability may be demonstrated by the presence of a
36 pervasive and persistent or recurrent state of euphoria,
37 anger, anxiety, fear, panic, depression, hopelessness or
38 despair, helplessness, apathy or indifference, that is
39 inappropriate in degree to the individual's
40 circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part ~~shall affect~~ *affects* the decisionmaking process ~~set forth in Section 1418.8 of the Health and Safety Code, nor provided in Chapter 4 (commencing with Section 4720) of Part 2 of Division 4.7.~~ *This part does not* increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

SEC. 10. Section 1302 of the Probate Code is amended to read:

1302. With respect to a power of attorney, ~~the grant or refusal to grant the following orders is appealable governed by the Power of Attorney Law (Division 4.5 (commencing with Section 4000)), an appeal may be taken from any of the following:~~

(a) Any final order under Section ~~4941-4541~~, except an order pursuant to subdivision (c) of Section ~~4941~~ 4541.

(b) ~~Any final order under Section 4942, except an order pursuant to subdivision (c) of Section 4942.~~

1 ~~(e)~~—An order dismissing the petition or denying a
2 motion to dismiss under Section ~~4944~~ 4543.

3 SEC. 11. Section 1302.5 is added to the Probate Code,
4 to read:

5 1302.5. With respect to an advance health care
6 directive governed by the Health Care Decisions Law
7 (Division 4.7 (commencing with Section 4600)), an
8 appeal may be taken from any of the following:

9 (a) Any final order under Section 4766.

10 (b) An order dismissing the petition or denying a
11 motion to dismiss under Section 4768.

12 SEC. 12. Section 2105 of the Probate Code is amended
13 to read:

14 2105. (a) The court, in its discretion, may appoint for
15 a ward or conservatee:

16 (1) Two or more joint guardians or conservators of the
17 person.

18 (2) Two or more joint guardians or conservators of the
19 estate.

20 (3) Two or more joint guardians or conservators of the
21 person and estate.

22 (b) When joint guardians or conservators are
23 appointed, each shall qualify in the same manner as a sole
24 guardian or conservator.

25 (c) Subject to subdivisions (d) and (e):

26 (1) Where there are two guardians or conservators,
27 both must concur to exercise a power.

28 (2) Where there are more than two guardians or
29 conservators, a majority must concur to exercise a power.

30 (d) If one of the joint guardians or conservators dies or
31 is removed or resigns, the powers and duties continue in
32 the remaining joint guardians or conservators until
33 further appointment is made by the court.

34 (e) Where joint guardians or conservators have been
35 appointed and one or more are (1) absent from the state
36 and unable to act, (2) otherwise unable to act, or (3)
37 legally disqualified from serving, the court may, by order
38 made with or without notice, authorize the remaining
39 joint guardians or conservators to act as to all matters
40 embraced within its order.

1 (f) If a custodial parent has been diagnosed as having
 2 a terminal condition, as evidenced by a declaration
 3 executed by a licensed physician, the court, in its
 4 discretion, may appoint the custodial parent and a person
 5 nominated by the custodial parent as joint guardians of
 6 the person of the minor. However, this appointment shall
 7 not be made over the objection of a noncustodial parent
 8 without a finding that the noncustodial parent's custody
 9 would be detrimental to the minor, as provided in Section
 10 3041 of the Family Code. It is the intent of the Legislature
 11 in enacting the amendments to this subdivision adopted
 12 during the 1995–96 Regular Session for a parent with a
 13 terminal condition to be able to make arrangements for
 14 the joint care, custody, and control of his or her minor
 15 children so as to minimize the emotional stress of, and
 16 disruption for, the minor children whenever the parent
 17 is incapacitated or upon the parent's death, and to avoid
 18 the need to provide a temporary guardian or place the
 19 minor children in foster care, pending appointment of a
 20 guardian, as might otherwise be required.

21 “Terminal condition,” for purposes of this subdivision,
 22 means an incurable and irreversible condition that,
 23 without the administration of life-sustaining treatment,
 24 will, within reasonable medical judgment, result in death.

25 ~~Nothing in this section shall be construed to broaden or~~
 26 ~~narrow the definition of the term “terminal condition,”~~
 27 ~~as defined in subdivision (j) of Section 7186 of the Health~~
 28 ~~and Safety Code.~~

29 SEC. 13. Section 2355 of the Probate Code is amended
 30 to read:

31 2355. (a) If the conservatee has been adjudicated to
 32 lack the capacity to ~~give informed consent for medical~~
 33 ~~treatment~~ *make health care decisions*, the conservator
 34 has the exclusive authority to ~~give consent for such~~
 35 ~~medical treatment to be performed on~~ *make health care*
 36 *decisions for the conservatee as that the conservator in*
 37 *good faith based on medical advice determines to be*
 38 *necessary—and the. The conservator shall make health*
 39 *care decisions for the conservatee in accordance with the*
 40 *conservatee's individual health care instructions, if any,*

1 and other wishes to the extent known to the conservator.
2 Otherwise, the conservator shall make the decision in
3 accordance with the conservator's determination of the
4 conservatee's best interest. In determining the
5 conservatee's best interest, the conservator shall consider
6 the conservatee's personal values to the extent known to
7 the conservator. The conservator may require the
8 conservatee to receive ~~such medical treatment~~ the health
9 care, whether or not the conservatee objects. In ~~any such~~
10 this case, the ~~consent~~ health care decision of the
11 conservator alone is sufficient and no person is liable
12 because the ~~medical treatment is performed upon~~ health
13 care is administered to the conservatee without the
14 conservatee's consent. For the purposes of this
15 subdivision, "health care" and "health care decision"
16 have the meanings provided in Sections 4615 and 4617,
17 respectively.

18 (b) If prior to the establishment of the conservatorship
19 the conservatee was an adherent of a religion whose
20 tenets and practices call for reliance on prayer alone for
21 healing, the treatment required by the conservator under
22 the provisions of this section shall be by an accredited
23 practitioner of that religion.

24 SEC. 14. Section 2356 of the Probate Code is amended
25 to read:

26 2356. (a) No ward or conservatee may be placed in
27 a mental health treatment facility under this division
28 against the will of the ward or conservatee. Involuntary
29 civil placement of a ward or conservatee in a mental
30 health treatment facility may be obtained only pursuant
31 to Chapter 2 (commencing with Section 5150) or Chapter
32 3 (commencing with Section 5350) of Part 1 of Division
33 5 of the Welfare and Institutions Code. Nothing in this
34 subdivision precludes the placing of a ward in a state
35 hospital under Section 6000 of the Welfare and
36 Institutions Code upon application of the guardian as
37 provided in that section. The Director of Mental Health
38 shall adopt and issue regulations defining "mental health
39 treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under this division. Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 111515) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division.

(e) This chapter is subject to ~~any of the following instruments if a~~ valid and effective:

~~(1) A directive of the conservatee under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).~~

~~(2) A power of attorney for health care, whether or not a durable power of attorney advance health care directive under the Health Care Decisions Law (Division 4.7 (commencing with Section 4600)).~~

SEC. 15. The heading of Part 7 (commencing with Section 3200) of Division 4 of the Probate Code is amended to read:

PART 7. ~~AUTHORIZATION OF MEDICAL~~
~~TREATMENT~~ CAPACITY DETERMINATIONS AND
HEALTH CARE DECISIONS FOR ADULT
WITHOUT CONSERVATOR

SEC. 16. Section 3200 of the Probate Code is amended to read:

3200. As used in this part, ~~“patient”~~ part:

(a) “Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient’s physical or mental condition.

1 (b) “Health care decision” means a decision regarding
2 the patient’s health care, including the following:

3 (1) Selection and discharge of health care providers
4 and institutions.

5 (2) Approval or disapproval of diagnostic tests,
6 surgical procedures, programs of medication.

7 (3) Directions to provide, withhold, or withdraw
8 artificial nutrition and hydration and all other forms of
9 health care, including cardiopulmonary resuscitation.

10 (c) “Health care institution” means an institution,
11 facility, or agency licensed, certified, or otherwise
12 authorized or permitted by law to provide health care in
13 the ordinary course of business.

14 (d) “Patient” means an adult who does not have a
15 conservator of the person and ~~who is in need of medical~~
16 ~~treatment~~ for whom a health care decision needs to be
17 made.

18 SEC. 17. Section 3201 of the Probate Code is amended
19 to read:

20 3201. (a) A petition may be filed to determine that a
21 patient has the capacity to ~~give informed consent to a~~
22 ~~specified medical treatment for~~ make a health care
23 decision concerning an existing or continuing medical
24 condition.

25 (b) A petition may be filed to determine that a patient
26 lacks the capacity to ~~give informed consent to a~~ make a
27 health care decision concerning specified medical
28 treatment for an existing or continuing medical
29 condition, and further for an order authorizing a
30 designated person to ~~give consent to such treatment~~
31 make a health care decision on behalf of the patient.

32 (c) One proceeding may be brought under this part
33 under both subdivisions (a) and (b).

34 (d) ~~In determining whether a person’s mental~~
35 ~~functioning is so severely impaired that the person lacks~~
36 ~~the capacity to give informed consent to any form of~~
37 ~~medical treatment, the court may take into consideration~~
38 ~~the frequency, severity and duration of periods of~~
39 ~~impairment.~~

~~(e) Nothing in this part shall supersede the right that any person may have under existing law to make medical decisions on behalf of a patient, or affect the decisionmaking process of a long-term health care facility, as defined in subdivision (b) of Section 1418.8 of the Health and Safety Code.~~

~~(f) This chapter is permissive and cumulative for the relief to which it applies.~~

~~(g) Nothing in this part shall be construed to supersede or impair the right of any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any person choosing treatment by spiritual means, in accordance with the tenets and practices of that individual's established religious tradition, be required to submit to medical testing of any kind pursuant to a determination of competency.~~

SEC. 18. Section 3203 of the Probate Code is amended to read:

3203. A petition may be filed by any of the following:

(a) The patient.

(b) The ~~patient's~~ spouse ~~of the patient~~.

(c) A relative or friend of the patient, or other interested person, *including the patient's agent under a power of attorney for health care.*

(d) The patient's physician.

(e) A person acting on behalf of the ~~medical facility~~ *health care institution* in which the patient is located if the patient is in a ~~medical facility~~ *health care institution*.

(f) The public guardian or ~~such~~ other county officer as is designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

SEC. 19. Section 3204 of the Probate Code is amended to read:

3204. The petition shall state, or set forth by medical declaration attached ~~thereto~~ *to the petition*, all of the following ~~so far as is known to the petitioner at the time the petition is filed:~~

1 (a) The ~~nature condition~~ of the ~~medical condition~~ of
2 ~~the patient which~~ *patient's health that* requires
3 treatment.

4 (b) The recommended ~~course of medical treatment~~
5 ~~which health care that~~ is considered to be medically
6 appropriate.

7 (c) The threat to the ~~health of the patient~~ *patient's*
8 *condition* if authorization for the recommended ~~course of~~
9 ~~treatment health care~~ is delayed or denied by the court.

10 (d) The predictable or probable outcome of the
11 recommended ~~course of treatment~~ *health care*.

12 (e) The medically available alternatives, if any, to the
13 ~~course of treatment~~ recommended *health care*.

14 (f) The efforts made to obtain ~~an informed~~ consent
15 from the patient.

16 (g) If the petition is filed by a person on behalf of a
17 ~~medical facility health care institution~~, the name of the
18 person to be designated to give consent to the
19 recommended ~~course of treatment~~ *health care* on behalf
20 of the patient.

21 (h) The deficit or deficits in the patient's mental
22 functions listed in subdivision (a) of Section 811 ~~which~~
23 *that* are impaired, and ~~identifying an identification of~~ a
24 link between the deficit or deficits and the patient's
25 inability to respond knowingly and intelligently to
26 queries about the recommended ~~medical treatment~~
27 *health care* or inability to participate in a ~~treatment~~
28 decision about the recommended ~~medical treatment~~
29 *health care* by means of a rational thought process.

30 (i) The names and addresses, so far as they are known
31 to the petitioner, of the persons specified in subdivision
32 (b) of Section 1821.

33 SEC. 20. Section 3206 of the Probate Code is amended
34 to read:

35 3206. (a) Not less than 15 days before the hearing,
36 notice of the time and place of the hearing and a copy of
37 the petition shall be personally served on the patient ~~and~~,
38 the patient's attorney, *and the agent under the patient's*
39 *power of attorney for health care, if any.*

(b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be mailed to the following persons:

(1) The *patient's* spouse, if any, ~~of the proposed conservatee~~ at the address stated in the petition.

(2) The *patient's* relatives named in the petition at their addresses stated in the petition.

(c) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical ~~affidavit~~ *declaration* attached to the petition or in a medical ~~affidavit~~ *declaration* presented to the court.

(2) The desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

SEC. 21. Section 3207 of the Probate Code is amended to read:

3207. Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical ~~affidavits~~ *or declarations* if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

SEC. 22. Section 3208 of the Probate Code is amended to read:

3208. (a) ~~The~~ *Except as provided in subdivision (b),* the court may make an order authorizing the recommended ~~course of medical treatment of~~ *health care for* the patient and designating a person to give consent to the recommended ~~course of medical treatment~~ *health care* on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing ~~medical~~ condition of the ~~patient~~ *patient's health* requires the recommended ~~course of medical treatment~~ *health care*.

1 (2) If untreated, there is a probability that the
2 condition will become life-endangering or result in a
3 serious threat to the physical or mental health of the
4 patient.

5 (3) The patient is unable to ~~give an informed~~ consent
6 to the recommended ~~course of treatment~~ *health care*.

7 ~~(b) If the patient has the capacity to give informed~~
8 ~~consent to the recommended course of medical~~
9 ~~treatment, the court shall so find in its order.~~

10 ~~(c) If the court finds that the patient has the capacity~~
11 ~~to give informed consent to the recommended course of~~
12 ~~medical treatment, but that the patient refuses consent,~~
13 ~~the court shall not make an order authorizing the course~~
14 ~~of recommended medical treatment or designating a~~
15 ~~person to give consent to such treatment. If an order has~~
16 ~~been made authorizing the recommended course of~~
17 ~~medical treatment and designating a person to give~~
18 ~~consent to that treatment, the order shall be revoked if~~
19 ~~the court determines that the patient has recovered the~~
20 ~~capacity to give informed consent to the recommended~~
21 ~~course of medical treatment. Until revoked or modified,~~
22 ~~the order is effective authorization for the course of~~
23 ~~medical treatment.~~

24 ~~(d) In a proceeding under this part, where the court~~
25 ~~has determined that the patient has the capacity to give~~
26 ~~informed consent, the court shall, if requested, determine~~
27 ~~whether the patient has accepted or refused the~~
28 ~~recommended course of treatment, and whether a~~
29 ~~patient's consent to the recommended course of~~
30 ~~treatment is an informed consent. In determining~~
31 ~~whether the patient's mental functioning is so severely~~
32 ~~impaired that the patient lacks the capacity to make any~~
33 ~~health care decision, the court may take into~~
34 ~~consideration the frequency, severity, and duration of~~
35 ~~periods of impairment.~~

36 ~~(c) The court may make an order authorizing~~
37 ~~withholding or withdrawing artificial nutrition and~~
38 ~~hydration and all other forms of health care and~~
39 ~~designating a person to give or withhold consent to the~~

1 *recommended health care on behalf of the patient if the*
2 *court determines from the evidence all of the following:*

3 *(1) The recommended health care is in accordance*
4 *with the patient's best interest, taking into consideration*
5 *the patient's personal values to the extent known to the*
6 *petitioner.*

7 *(2) The patient is unable to consent to the*
8 *recommended health care.*

9 *(d) Instead of designating a person to make health*
10 *care decisions on behalf of the patient under this section,*
11 *the court may refer the matter to a surrogate committee*
12 *under Chapter 4 (commencing with Section 4720) of Part*
13 *2 of Division 4.7. If there is no appropriate surrogate*
14 *committee in existence, the court may order creation of*
15 *a surrogate committee to act under Chapter 4*
16 *(commencing with Section 4720) of Part 2 of Division 4.7.*

17 SEC. 23. Section 3208.5 is added to the Probate Code,
18 to read:

19 3208.5. In a proceeding under this part:

20 (a) Where the patient has the capacity to consent to
21 the recommended health care, the court shall so find in
22 its order.

23 (b) Where the court has determined that the patient
24 has the capacity to consent to the recommended health
25 care, the court shall, if requested, determine whether the
26 patient has accepted or refused the recommended health
27 care, and whether the patient's consent to the
28 recommended health care is an informed consent.

29 (c) Where the court finds that the patient has the
30 capacity to consent to the recommended health care, but
31 that the patient refuses consent, the court shall not make
32 an order authorizing the recommended health care or
33 designating a person to give consent to the recommended
34 health care. If an order has been made authorizing the
35 recommended health care and designating a person to
36 give consent to the recommended health care, the order
37 shall be revoked if the court determines that the patient
38 has recovered the capacity to consent to the
39 recommended health care. Until revoked or modified,

1 the order is effective authorization for the recommended
2 health care.

3 SEC. 24. Section 3210 of the Probate Code is amended
4 to read:

5 3210. (a) This part is supplemental and alternative to
6 other procedures or methods for obtaining ~~medical~~
7 *consent to health care or making health care decisions,*
8 *and is permissive and cumulative for the relief to which*
9 *it applies.*

10 (b) Nothing in this part limits the providing of ~~medical~~
11 ~~treatment health care~~ in an emergency case in which the
12 ~~medical—treatment health care~~ is required because (1)
13 ~~such—treatment the health care~~ is required for the
14 alleviation of severe pain or (2) the patient has a medical
15 condition ~~—which that,~~ if not immediately diagnosed and
16 treated, will lead to serious disability or death.

17 (c) *Nothing in this part supersedes the right that any*
18 *person may have under existing law to make health care*
19 *decisions on behalf of a patient, or affects the*
20 *decisionmaking process of a health care institution.*

21 SEC. 25. Section 3211 of the Probate Code is amended
22 to read:

23 3211. (a) No person may be placed in a mental health
24 treatment facility under the provisions of this part.

25 (b) No experimental drug as defined in Section 111515
26 of the Health and Safety Code may be prescribed for or
27 administered to any person under this part.

28 (c) No convulsive treatment as defined in Section 5325
29 of the Welfare and Institutions Code may be performed
30 on any person under this part.

31 (d) No person may be sterilized under this part.

32 (e) The provisions of this part are subject to ~~any of the~~
33 ~~following instruments if valid and effective:~~

34 ~~(1) A directive of the patient under Chapter 3.9~~
35 ~~(commencing with Section 7185) of Part 1 of Division 7~~
36 ~~of the Health and Safety Code (Natural Death Act).~~

37 ~~(2) A power of attorney for health care, whether or not~~
38 ~~a durable power of attorney a valid advance health care~~
39 ~~directive under the Health Care Decisions Law, Division~~
40 ~~4.7 (commencing with Section 4600).~~

SEC. 26. Section 3212 is added to the Probate Code, to read:

3212. Nothing in this part shall be construed to supersede or impair the right of any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any individual choosing treatment by spiritual means, in accordance with the tenets and practices of that individual's established religious tradition, be required to submit to medical testing of any kind pursuant to a determination of capacity.

SEC. 27. Section 3722 of the Probate Code is amended to read:

3722. If after the absentee executes a power of attorney, the principal's spouse who is the attorney-in-fact commences a proceeding for dissolution, annulment, or legal separation, or a legal separation is ordered, the attorney-in-fact's authority is revoked. This section is in addition to the provisions of ~~Section~~ Sections 4154 and 4697.

SEC. 28. Section 4050 of the Probate Code is amended to read:

4050. (a) This division applies to the following:

(1) Durable powers of attorney, *other than powers of attorney for health care governed by Division 4.7 (commencing with Section 4600)*.

(2) Statutory form powers of attorney under Part 3 (commencing with Section 4400).

~~(3) Durable powers of attorney for health care under Part 4 (commencing with Section 4600).~~

~~(4)~~ Any other power of attorney that incorporates or refers to this division or the provisions of this division.

(b) This division does not apply to the following:

(1) A power of attorney to the extent that the authority of the attorney-in-fact is coupled with an interest in the subject of the power of attorney.

(2) Reciprocal or interinsurance exchanges and their contracts, subscribers, attorneys-in-fact, agents, and representatives.

(3) A proxy given by an attorney-in-fact to another person to exercise voting rights.

1 (c) This division is not intended to affect the validity
2 of any instrument or arrangement that is not described in
3 subdivision (a).

4 SEC. 29. Section 4100 of the Probate Code is amended
5 to read:

6 4100. This part applies to all powers of attorney under
7 this division, subject to any special rules applicable to
8 statutory form powers of attorney under Part 3
9 (commencing with Section 4400) ~~or durable powers of~~
10 ~~attorney for health care under Part 4 (commencing with~~
11 ~~Section 4600).~~

12 SEC. 30. Section 4121 of the Probate Code is amended
13 to read:

14 4121. A power of attorney is legally sufficient if all of
15 the following requirements are satisfied:

16 (a) The power of attorney contains the date of its
17 execution.

18 (b) The power of attorney is signed either (1) by the
19 principal or (2) in the principal's name by ~~some other~~
20 ~~person~~ *another adult* in the principal's presence and at
21 the principal's direction.

22 (c) The power of attorney is either (1) acknowledged
23 before a notary public or (2) signed by at least two
24 witnesses who satisfy the requirements of Section 4122.

25 SEC. 31. Section 4122 of the Probate Code is amended
26 to read:

27 4122. If the power of attorney is signed by witnesses,
28 as provided in Section 4121, the following requirements
29 shall be satisfied:

30 (a) The witnesses shall be adults.

31 (b) The attorney-in-fact may not act as a witness.

32 (c) Each witness signing the power of attorney shall
33 witness either the signing of the instrument by the
34 principal or the principal's acknowledgment of the
35 signature or the power of attorney.

36 ~~(d) In the case of a durable power of attorney for~~
37 ~~health care, the additional requirements of Section 4701.~~

38 SEC. 32. Section 4123 of the Probate Code is amended
39 to read:

1 4123. (a) In a power of attorney, a principal may
2 grant authority to an attorney-in-fact to act on the
3 principal's behalf with respect to all lawful subjects and
4 purposes or with respect to one or more express subjects
5 or purposes. The attorney-in-fact may be granted
6 authority with regard to the principal's property,
7 personal care, health care, or any other matter.

8 (b) With regard to property matters, a power of
9 attorney may grant authority to make decisions
10 concerning all or part of the principal's real and personal
11 property, whether owned by the principal at the time of
12 the execution of the power of attorney or thereafter
13 acquired or whether located in this state or elsewhere,
14 without the need for a description of each item or parcel
15 of property.

16 (c) With regard to personal care, a power of attorney
17 may grant authority to make decisions relating to the
18 personal care of the principal, including, but not limited
19 to, determining where the principal will live, providing
20 meals, hiring household employees, providing
21 transportation, handling mail, and arranging recreation
22 and entertainment.

23 ~~(d) With regard to health care, a power of attorney~~
24 ~~may grant authority to make health care decisions, both~~
25 ~~before and after the death of the principal, as provided in~~
26 ~~Part 4 (commencing with Section 4600).~~

27 SEC. 33. Section 4128 of the Probate Code is amended
28 to read:

29 4128. (a) Subject to subdivision (b), a printed form of
30 a durable power of attorney that is sold or otherwise
31 distributed in this state for use by a person who does not
32 have the advice of legal counsel shall contain, in not less
33 than 10-point boldface type or a reasonable equivalent
34 thereof, the following warning statement:

35
36 Notice to Person Executing Durable Power of Attorney
37

38 A durable power of attorney is an important legal
39 document. By signing the durable power of attorney, you
40 are authorizing another person to act for you, the

1 principal. Before you sign this durable power of attorney,
2 you should know these important facts:

3 Your agent (attorney-in-fact) has no duty to act unless
4 you and your agent agree otherwise in writing.

5 This document gives your agent the powers to manage,
6 dispose of, sell, and convey your real and personal
7 property, and to use your property as security if your
8 agent borrows money on your behalf.

9 Your agent will have the right to receive reasonable
10 payment for services provided under this durable power
11 of attorney unless you provide otherwise in this power of
12 attorney.

13 The powers you give your agent will continue to exist
14 for your entire lifetime, unless you state that the durable
15 power of attorney will last for a shorter period of time or
16 unless you otherwise terminate the durable power of
17 attorney. The powers you give your agent in this durable
18 power of attorney will continue to exist even if you can
19 no longer make your own decisions respecting the
20 management of your property.

21 You can amend or change this durable power of
22 attorney only by executing a new durable power of
23 attorney or by executing an amendment through the
24 same formalities as an original. You have the right to
25 revoke or terminate this durable power of attorney at any
26 time, so long as you are competent.

27 This durable power of attorney must be dated and must
28 be acknowledged before a notary public or signed by two
29 witnesses. If it is signed by two witnesses, they must
30 witness either (1) the signing of the power of attorney or
31 (2) the principal's signing or acknowledgment of his or
32 her signature. A durable power of attorney that may
33 affect real property should be acknowledged before a
34 notary public so that it may easily be recorded.

35 You should read this durable power of attorney
36 carefully. When effective, this durable power of attorney
37 will give your agent the right to deal with property that
38 you now have or might acquire in the future. The durable
39 power of attorney is important to you. If you do not
40 understand the durable power of attorney, or any



1 provision of it, then you should obtain the assistance of an
2 attorney or other qualified person.

3
4 (b) Nothing in subdivision (a) invalidates any
5 transaction in which a third person relied in good faith on
6 the authority created by the durable power of attorney.

7 (c) This section does not apply to the following:

8 ~~(1) A statutory form power of attorney under Part 3~~
9 ~~(commencing with Section 4400).~~

10 ~~(2) A durable power of attorney for health care under~~
11 ~~Part 4 (commencing with Section 4600).~~

12 SEC. 34. Section 4203 of the Probate Code is amended
13 to read:

14 4203. (a) A principal may designate one or more
15 successor attorneys-in-fact to act if the authority of a
16 predecessor attorney-in-fact terminates.

17 (b) The principal may grant authority to another
18 person, designated by name, by office, or by function,
19 including the initial and any successor attorneys-in-fact,
20 to designate at any time one or more successor
21 attorneys-in-fact. ~~This subdivision does not apply to a~~
22 ~~durable power of attorney for health care under Part 4~~
23 ~~(commencing with Section 4600).~~

24 (c) A successor attorney-in-fact is not liable for the
25 actions of the predecessor attorney-in-fact.

26 SEC. 35. Section 4206 of the Probate Code is amended
27 to read:

28 4206. (a) If, following execution of a durable power
29 of attorney, a court of the principal's domicile appoints a
30 conservator of the estate, guardian of the estate, or other
31 fiduciary charged with the management of all of the
32 principal's property or all of the principal's property
33 except specified exclusions, the attorney-in-fact is
34 accountable to the fiduciary as well as to the principal.
35 Except as provided in subdivision (b), the fiduciary has
36 the same power to revoke or amend the durable power
37 of attorney that the principal would have had if not
38 incapacitated, subject to any required court approval.

39 (b) If a conservator of the estate is appointed by a
40 court of this state, the conservator can revoke or amend

1 the durable power of attorney only if the court in which
2 the conservatorship proceeding is pending has first made
3 an order authorizing or requiring the fiduciary to modify
4 or revoke the durable power of attorney and the
5 modification or revocation is in accord with the order.

6 ~~(c) This section does not apply to a durable power of~~
7 ~~attorney for health care.~~

8 ~~(d) This section is not subject to limitation in the~~
9 ~~power of attorney.~~

10 SEC. 36. Section 4260 of the Probate Code is amended
11 to read:

12 4260. This article does not apply to ~~the following~~:

13 ~~(a) Statutory~~ *statutory* form powers of attorney under
14 Part 3 (commencing with Section 4400).

15 ~~(b) Durable powers of attorney for health care under~~
16 ~~Part 4 (commencing with Section 4600).~~

17 SEC. 37. Section 4265 of the Probate Code is amended
18 to read:

19 4265. A power of attorney may not authorize an
20 attorney-in-fact to ~~perform any of the following acts~~:

21 ~~(a) Make~~ *make*, publish, declare, amend, or revoke the
22 principal's will.

23 ~~(b) Consent to any action under a durable power of~~
24 ~~attorney for health care forbidden by Section 4722.~~

25 SEC. 38. Part 4 (commencing with Section 4500) is
26 added to Division 4.5 of the Probate Code, to read:

27
28 PART 4. JUDICIAL PROCEEDINGS CONCERNING
29 POWERS OF ATTORNEY

30
31 CHAPTER 1. GENERAL PROVISIONS

32
33 4500. A power of attorney is exercisable free of
34 judicial intervention, subject to this part.

35 4501. The remedies provided in this part are
36 cumulative and not exclusive of any other remedies
37 provided by law.

38 4502. Except as provided in Section 4503, this part is
39 not subject to limitation in the power of attorney.

1 4503. (a) Subject to subdivision (b), a power of
2 attorney may expressly eliminate the authority of a
3 person listed in Section 4540 to petition the court for any
4 one or more of the purposes enumerated in Section 4541
5 if both of the following requirements are satisfied:

6 (1) The power of attorney is executed by the principal
7 at a time when the principal has the advice of a lawyer
8 authorized to practice law in the state where the power
9 of attorney is executed.

10 (2) The principal's lawyer signs a certificate stating in
11 substance:

12 "I am a lawyer authorized to practice law in the state
13 where this power of attorney was executed, and the
14 principal was my client at the time this power of attorney
15 was executed. I have advised my client concerning his or
16 her rights in connection with this power of attorney and
17 the applicable law and the consequences of signing or not
18 signing this power of attorney, and my client, after being
19 so advised, has executed this power of attorney."
20

21 (b) A power of attorney may not limit the authority of
22 the attorney-in-fact, the principal, the conservator of the
23 person or estate of the principal, or the public guardian
24 to petition under this part.

25 4504. There is no right to a jury trial in proceedings
26 under this division.

27 4505. Except as otherwise provided in this division,
28 the general provisions in Division 3 (commencing with
29 Section 1000) apply to proceedings under this division.
30

31 CHAPTER 2. JURISDICTION AND VENUE
32

33 4520. (a) The superior court has jurisdiction in
34 proceedings under this division.

35 (b) The court in proceedings under this division is a
36 court of general jurisdiction and the court, or a judge of
37 the court, has the same power and authority with respect
38 to the proceedings as otherwise provided by law for a
39 superior court, or a judge of the superior court, including,

1 but not limited to, the matters authorized by Section 128
2 of the Code of Civil Procedure.

3 4521. The court may exercise jurisdiction in
4 proceedings under this division on any basis permitted by
5 Section 410.10 of the Code of Civil Procedure.

6 4522. Without limiting Section 4521, a person who acts
7 as an attorney-in-fact under a power of attorney
8 governed by this division is subject to personal
9 jurisdiction in this state with respect to matters relating
10 to acts and transactions of the attorney-in-fact performed
11 in this state or affecting property or a principal in this
12 state.

13 4523. The proper county for commencement of a
14 proceeding under this division shall be determined in the
15 following order of priority:

- 16 (a) The county in which the principal resides.
- 17 (b) The county in which the attorney-in-fact resides.
- 18 (c) A county in which property subject to the power
19 of attorney is located.
- 20 (d) Any other county that is in the principal's best
21 interest.

22

23 CHAPTER 3. PETITIONS, ORDERS, APPEALS

24

25 4540. Subject to Section 4503, a petition may be filed
26 under this part by any of the following persons:

- 27 (a) The attorney-in-fact.
- 28 (b) The principal.
- 29 (c) The spouse of the principal.
- 30 (d) A relative of the principal.
- 31 (e) The conservator of the person or estate of the
32 principal.
- 33 (f) The court investigator, described in Section 1454,
34 of the county where the power of attorney was executed
35 or where the principal resides.
- 36 (g) The public guardian of the county where the
37 power of attorney was executed or where the principal
38 resides.
- 39 (h) The personal representative or trustee of the
40 principal's estate.



1 (i) The principal's successor in interest.

2 (j) A person who is requested in writing by an
3 attorney-in-fact to take action.

4 (k) Any other interested person or friend of the
5 principal.

6 4541. A petition may be filed under this part for any
7 one or more of the following purposes:

8 (a) Determining whether the power of attorney is in
9 effect or has terminated.

10 (b) Passing on the acts or proposed acts of the
11 attorney-in-fact, including approval of authority to
12 disobey the principal's instructions pursuant to
13 subdivision (b) of Section 4234.

14 (c) Compelling the attorney-in-fact to submit the
15 attorney-in-fact's accounts or report the attorney-in-fact's
16 acts as attorney-in-fact to the principal, the spouse of the
17 principal, the conservator of the person or the estate of
18 the principal, or to any other person required by the court
19 in its discretion, if the attorney-in-fact has failed to submit
20 an accounting or report within 60 days after written
21 request from the person filing the petition.

22 (d) Declaring that the authority of the attorney-in-fact
23 is revoked on a determination by the court of all of the
24 following:

25 (1) The attorney-in-fact has violated or is unfit to
26 perform the fiduciary duties under the power of attorney.

27 (2) At the time of the determination by the court, the
28 principal lacks the capacity to give or to revoke a power
29 of attorney.

30 (3) The revocation of the attorney-in-fact's authority
31 is in the best interest of the principal or the principal's
32 estate.

33 (e) Approving the resignation of the attorney-in-fact:

34 (1) If the attorney-in-fact is subject to a duty to act
35 under Section 4230, the court may approve the
36 resignation, subject to any orders the court determines
37 are necessary to protect the principal's interests.

38 (2) If the attorney-in-fact is not subject to a duty to act
39 under Section 4230, the court shall approve the

1 resignation, subject to the court's discretion to require the
2 attorney-in-fact to give notice to other interested persons.

3 (f) Compelling a third person to honor the authority
4 of an attorney-in-fact.

5 4542. A proceeding under this part is commenced by
6 filing a petition stating facts showing that the petition is
7 authorized under this part, the grounds of the petition,
8 and, if known to the petitioner, the terms of the power of
9 attorney.

10 4543. The court may dismiss a petition if it appears
11 that the proceeding is not reasonably necessary for the
12 protection of the interests of the principal or the
13 principal's estate and shall stay or dismiss the proceeding
14 in whole or in part when required by Section 410.30 of the
15 Code of Civil Procedure.

16 4544. (a) Subject to subdivision (b), at least 15 days
17 before the time set for hearing, the petitioner shall serve
18 notice of the time and place of the hearing, together with
19 a copy of the petition, on the following:

20 (1) The attorney-in-fact if not the petitioner.

21 (2) The principal if not the petitioner.

22 (b) In the case of a petition to compel a third person
23 to honor the authority of an attorney-in-fact, notice of the
24 time and place of the hearing, together with a copy of the
25 petition, shall be served on the third person in the
26 manner provided in Chapter 4 (commencing with
27 Section 413.10) of Title 5 of Part 2 of the Code of Civil
28 Procedure.

29 4545. In a proceeding under this part commenced by
30 the filing of a petition by a person other than the
31 attorney-in-fact, the court may in its discretion award
32 reasonable attorney's fees to one of the following:

33 (a) The attorney-in-fact, if the court determines that
34 the proceeding was commenced without any reasonable
35 cause.

36 (b) The person commencing the proceeding, if the
37 court determines that the attorney-in-fact has clearly
38 violated the fiduciary duties under the power of attorney
39 or has failed without any reasonable cause or justification
40 to submit accounts or report acts to the principal or

1 conservator of the estate or of the person, as the case may
2 be, after written request from the principal or
3 conservator.

4 SEC. 39. Part 4 (commencing with Section 4600) of
5 Division 4.5 of the Probate Code is repealed.

6 SEC. 40. Division 4.7 (commencing with Section
7 4600) is added to the Probate Code, to read:

8
9 DIVISION 4.7. HEALTH CARE DECISIONS

10
11 PART 1. DEFINITIONS AND GENERAL

12
13 CHAPTER 1. SHORT TITLE AND DEFINITIONS

14
15 4600. This division may be cited as the Health Care
16 Decisions Law.

17 4603. Unless the provision or context otherwise
18 requires, the definitions in this chapter govern the
19 construction of this division.

20 4605. “Advance health care directive” or “advance
21 directive” means either an individual health care
22 instruction or a power of attorney for health care.

23 4607. (a) “Agent” means an individual designated in
24 a power of attorney for health care to make a health care
25 decision for the principal, regardless of whether the
26 person is known as an agent or attorney-in-fact, or by
27 some other term.

28 (b) “Agent” includes a successor or alternate agent.

29 4609. “Capacity” means a patient’s ability to
30 understand the nature and consequences of proposed
31 health care, including its significant benefits, risks, and
32 alternatives, and to make and communicate a health care
33 decision.

34 4611. “Community care facility” means a
35 “community care facility” as defined in Section 1502 of
36 the Health and Safety Code.

37 4613. “Conservator” means a court-appointed
38 conservator having authority to make a health care
39 decision for a patient.

1 4615. “Health care” means any care, treatment,
2 service, or procedure to maintain, diagnose, or otherwise
3 affect a patient’s physical or mental condition.

4 4617. “Health care decision” means a decision made
5 by a patient or the patient’s agent, conservator, or
6 surrogate, regarding the patient’s health care, including
7 the following:

8 (a) Selection and discharge of health care providers
9 and institutions.

10 (b) Approval or disapproval of diagnostic tests,
11 surgical procedures, and programs of medication.

12 (c) Directions to provide, withhold, or withdraw
13 artificial nutrition and hydration and all other forms of
14 health care, including cardiopulmonary resuscitation.

15 4619. “Health care institution” means an institution,
16 facility, or agency licensed, certified, or otherwise
17 authorized or permitted by law to provide health care in
18 the ordinary course of business.

19 4621. “Health care provider” means an individual
20 licensed, certified, or otherwise authorized or permitted
21 by the law of this state to provide health care in the
22 ordinary course of business or practice of a profession.

23 4623. “Individual health care instruction” or
24 “individual instruction” means a patient’s written or oral
25 direction concerning a health care decision for him or
26 herself.

27 4625. “Patient” means an adult whose health care is
28 under consideration, and includes a principal under a
29 power of attorney for health care and an adult who has
30 given an individual health care instruction or designated
31 a surrogate.

32 4627. “Physician” means a physician and surgeon
33 licensed by the Medical Board of California or the
34 Osteopathic Medical Board of California.

35 4629. “Power of attorney for health care” means a
36 written instrument designating an agent to make health
37 care decisions for the principal.

38 4631. “Primary physician” means a physician
39 designated by a patient or the patient’s agent,
40 conservator, or surrogate, to have primary responsibility

1 for the patient's health care or, in the absence of a
2 designation or if the designated physician is not
3 reasonably available or declines to act as primary
4 physician, a physician who undertakes the responsibility.

5 4633. "Principal" means an adult who executes a
6 power of attorney for health care.

7 4635. "Reasonably available" means readily able to be
8 contacted without undue effort and willing and able to
9 act in a timely manner considering the urgency of the
10 patient's health care needs.

11 4637. "Residential care facility for the elderly" means
12 a "residential care facility for the elderly" as defined in
13 Section 1569.2 of the Health and Safety Code.

14 4639. "Skilled nursing facility" means a "skilled
15 nursing facility" as defined in Section 1250 of the Health
16 and Safety Code.

17 4641. "Supervising health care provider" means the
18 primary physician or, if there is no primary physician or
19 the primary physician is not reasonably available, the
20 health care provider who has undertaken primary
21 responsibility for a patient's health care.

22 4643. "Surrogate" means an adult, other than a
23 patient's agent or conservator, authorized under this
24 division to make a health care decision for the patient.

25
26 CHAPTER 2. GENERAL PROVISIONS
27

28 4650. The Legislature finds the following:

29 (a) In recognition of the dignity and privacy a person
30 has a right to expect, the law recognizes that an adult has
31 the fundamental right to control the decisions relating to
32 his or her own health care, including the decision to have
33 life-sustaining treatment withheld or withdrawn.

34 (b) Modern medical technology has made possible the
35 artificial prolongation of human life beyond natural
36 limits. In the interest of protecting individual autonomy,
37 this prolongation of the process of dying for a person for
38 whom continued health care does not improve the
39 prognosis for recovery may violate patient dignity and

1 cause unnecessary pain and suffering, while providing
2 nothing medically necessary or beneficial to the person.

3 (c) In the absence of controversy, a court is normally
4 not the proper forum in which to make health care
5 decisions, including decisions regarding life-sustaining
6 treatment.

7 4651. (a) Except as otherwise provided, this division
8 applies to health care decisions for adults who lack
9 capacity to make health care decisions for themselves.

10 (b) This division does not affect any of the following:

11 (1) The right of an individual to make health care
12 decisions while having the capacity to do so.

13 (2) The law governing health care in an emergency.

14 (3) The law governing health care for unemancipated
15 minors.

16 4652. This division does not authorize consent to any
17 of the following on behalf of a patient:

18 (a) Commitment to, or placement in, a mental health
19 treatment facility.

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

22 (c) Psychosurgery (as defined in Section 5325 of the
23 Welfare and Institutions Code).

24 (d) Sterilization.

25 (e) Abortion.

26 4653. Nothing in this division shall be construed to
27 condone, authorize, or approve mercy killing, assisted
28 suicide, or euthanasia. This division is not intended to
29 permit any affirmative or deliberate act or omission to
30 end life other than withholding or withdrawing health
31 care pursuant to an advance health care directive, by a
32 surrogate, or as otherwise provided, so as to permit the
33 natural process of dying.

34 4654. This division does not authorize or require a
35 health care provider or health care institution to provide
36 health care contrary to generally accepted health care
37 standards applicable to the health care provider or health
38 care institution.



1 4655. (a) This division does not create a presumption
2 concerning the intention of a patient who has not made
3 or who has revoked an advance health care directive.

4 (b) In making health care decisions under this
5 division, a patient's attempted suicide shall not be
6 construed to indicate a desire of the patient that health
7 care be restricted or inhibited.

8 4656. Death resulting from withholding or
9 withdrawing health care in accordance with this division
10 does not for any purpose constitute a suicide or homicide
11 or legally impair or invalidate a policy of insurance or an
12 annuity providing a death benefit, notwithstanding any
13 term of the policy or annuity to the contrary.

14 4657. A patient is presumed to have the capacity to
15 make a health care decision, to give or revoke an advance
16 health care directive, and to designate or disqualify a
17 surrogate. This presumption is a presumption affecting
18 the burden of proof.

19 4658. Unless otherwise specified in a written advance
20 health care directive, for the purposes of this division, a
21 determination that a patient lacks or has recovered
22 capacity, or that another condition exists that affects an
23 individual health care instruction or the authority of an
24 agent or surrogate, shall be made by the primary
25 physician.

26 4659. (a) Except as provided in subdivision (b), none
27 of the following persons may make health care decisions
28 as an agent under a power of attorney for health care or
29 a surrogate under this division:

30 (1) The supervising health care provider or an
31 employee of the health care institution where the patient
32 is receiving care.

33 (2) An operator or employee of a community care
34 facility or residential care facility where the patient is
35 receiving care.

36 (b) The prohibition in subdivision (a) does not apply
37 to the following persons:

38 (1) An employee who is related to the patient by
39 blood, marriage, or adoption.

(2) An employee who is employed by the same health care institution, community care facility, or residential care facility for the elderly as the patient.

(c) A conservator under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) may not be designated as an agent or surrogate to make health care decisions by the conservatee, unless all of the following are satisfied:

(1) The advance health care directive is otherwise valid.

(2) The conservatee is represented by legal counsel.

(3) The lawyer representing the conservatee signs a certificate stating in substance:

“I am a lawyer authorized to practice law in the state where this advance health care directive was executed, and the principal or patient was my client at the time this advance directive was executed. I have advised my client concerning his or her rights in connection with this advance directive and the applicable law and the consequences of signing or not signing this advance directive, and my client, after being so advised, has executed this advance directive.”

(d) This section does not apply to participation in or decisionmaking by a surrogate committee pursuant to Chapter 4 (commencing with Section 4720) of Part 2.

4660. A copy of a written advance health care directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

CHAPTER 3. TRANSITIONAL PROVISIONS

4665. Except as otherwise provided by statute:

(a) On and after July 1, 2000, this division applies to all advance health care directives, including, but not limited to, durable powers of attorney for health care and declarations under the Natural Death Act (former Chapter 3.9 (commencing with Section 7185) of Part 1 of

1 Division 7 of the Health and Safety Code), regardless of
2 whether they were given or executed before, on, or after
3 July 1, 2000.

4 (b) This division applies to all proceedings concerning
5 advance health care directives commenced on or after
6 July 1, 2000.

7 (c) This division applies to all proceedings concerning
8 written advance health care directives commenced
9 before July 1, 2000, unless the court determines that
10 application of a particular provision of this division would
11 substantially interfere with the effective conduct of the
12 proceedings or the rights of the parties and other
13 interested persons, in which case the particular provision
14 of this division does not apply and prior law applies.

15 (d) Nothing in this division affects the validity of an
16 advance health care directive executed before July 1,
17 2000, that was valid under prior law.

18 (e) Nothing in this division affects the validity of a
19 durable power of attorney for health care executed on a
20 printed form that was valid under prior law, regardless of
21 whether execution occurred before, on, or after July 1,
22 2000.

23
24 PART 2. UNIFORM HEALTH CARE DECISIONS
25 ACT
26

27 CHAPTER 1. ADVANCE HEALTH CARE DIRECTIVES
28

29 Article 1. General Provisions
30

31 4670. An adult having capacity may give an individual
32 health care instruction. The individual instruction may be
33 oral or written. The individual instruction may be limited
34 to take effect only if a specified condition arises.

35 4671. (a) An adult having capacity may execute a
36 power of attorney for health care, as provided in Article
37 2 (commencing with Section 4680). The power of
38 attorney for health care may authorize the agent to make
39 health care decisions and may also include individual
40 health care instructions.

(b) The principal in a power of attorney for health care may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

4672. (a) A written advance health care directive may include the individual's nomination of a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the individual's person or estate are thereafter commenced.

(b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the most recent writing executed in accordance with Section 1810, whether or not the writing is a written advance health care directive.

4673. (a) If an individual is a patient in a skilled nursing facility when the advance health care directive is executed, the advance directive shall be acknowledged before a notary public or signed by at least two witnesses as provided in this section.

(b) If the advance health care directive is signed by witnesses, the following requirements shall be satisfied:

(1) The witnesses shall be adults.

(2) Each witness shall witness either the signing of the advance health care directive by the patient or the patient's acknowledgment of the signature or the advance directive.

(3) None of the following persons may act as a witness:

(A) The agent, with regard to a power of attorney for health care.

(B) The patient's health care provider or an employee of the patient's health care provider.

(C) The operator or an employee of a community care facility.

(D) The operator or an employee of a residential care facility for the elderly.

(4) Each witness shall make the following declaration in substance:

“I declare under penalty of perjury under the laws of California that the individual who signed or acknowledged this document is personally known to me, or that the identity of the individual was proven to me by convincing evidence, that the individual signed or acknowledged this advance health care directive in my presence, that the individual appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not the individual’s health care provider, an employee of the individual’s 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.”

(c) An advance health care directive governed by this section is not effective unless a patient advocate or ombudsman, as may be designated by the Department of Aging for this purpose pursuant to any other applicable provision of law, signs the advance directive as a witness, either as one of two witnesses or in addition to notarization. The patient advocate or ombudsman shall declare that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing an advance directive.

(d) For the purposes of the declaration of witnesses, “convincing evidence” means the absence of any information, evidence, or other circumstances that would lead a reasonable person to believe the individual executing the advance health care directive, whether by signing or acknowledging his or her signature, is not the individual he or she claims to be, and any one of the following:

1 (1) Reasonable reliance on the presentation of any one
2 of the following, if the document is current or has been
3 issued within five years:

4 (A) An identification card or driver's license issued by
5 the California Department of Motor Vehicles.

6 (B) A passport issued by the Department of State of
7 the United States.

8 (2) Reasonable reliance on the presentation of any one
9 of the following, if the document is current or has been
10 issued within five years and contains a photograph and
11 description of the person named on it, is signed by the
12 person, bears a serial or other identifying number, and, in
13 the event that the document is a passport, has been
14 stamped by the United States Immigration and
15 Naturalization Service:

16 (A) A passport issued by a foreign government.

17 (B) A driver's license issued by a state other than
18 California or by a Canadian or Mexican public agency
19 authorized to issue drivers' licenses.

20 (C) An identification card issued by a state other than
21 California.

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

24 (e) A witness who is a patient advocate or ombudsman
25 may rely on the representations of the administrators or
26 staff of the skilled nursing facility, or of family members,
27 as convincing evidence of the identity of the patient if the
28 patient advocate or ombudsman believes that the
29 representations provide a reasonable basis for
30 determining the identity of the patient.

31 (f) The provisions of this section applicable to
32 witnesses do not apply to a notary who acknowledges an
33 advance health care directive.

34 4674. (a) A written advance health care directive or
35 similar instrument executed in another state or
36 jurisdiction in compliance with the laws of that state or
37 jurisdiction or of this state, is valid and enforceable in this
38 state to the same extent as a written advance directive
39 validly executed in this state.

(b) In the absence of knowledge to the contrary, a physician or other health care provider may presume that a written advance health care directive or similar instrument, whether executed in another state or jurisdiction or in this state, is valid.

4675. A health care provider, health care service plan, health care institution, disability insurer, self-insured employee welfare plan, or nonprofit hospital plan or a similar insurance plan may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care, admission to a facility, or furnishing insurance.

4676. Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

Article 2. Powers of Attorney for Health Care

4680. A power of attorney for health care is legally sufficient if all of the following requirements are satisfied:

(a) The power of attorney is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction.

(b) The power of attorney satisfies applicable witnessing requirements of Section 4673.

4681. (a) Except as provided in subdivision (b), the principal may limit the application of any provision of this division by an express statement in the power of attorney for health care or by providing an inconsistent rule in the power of attorney.

(b) A power of attorney for health care may not limit either the application of a statute specifically providing that it is not subject to limitation in the power of attorney or a statute concerning any of the following:

(1) Statements required to be included in a power of attorney.

1 (2) Operative dates of statutory enactments or
2 amendments.

3 (3) Formalities for execution of a power of attorney for
4 health care.

5 (4) Qualifications of witnesses.

6 (5) Qualifications of agents.

7 (6) Protection of third persons from liability.

8 4682. Unless otherwise provided in a power of
9 attorney for health care, the authority of an agent
10 becomes effective only on a determination that the
11 principal lacks capacity, and ceases to be effective on a
12 determination that the principal has recovered capacity.

13 4683. Subject to any limitations in the power of
14 attorney for health care:

15 (a) An agent designated in the power of attorney may
16 make health care decisions for the principal to the same
17 extent the principal could make health care decisions if
18 the principal had the capacity to do so.

19 (b) The agent may also make decisions that may be
20 effective after the principal's death, including the
21 following:

22 (1) Making a disposition under the Uniform
23 Anatomical Gift Act (Chapter 3.5 (commencing with
24 Section 7150) of Part 1 of Division 7 of the Health and
25 Safety Code).

26 (2) Authorizing an autopsy under Section 7113 of the
27 Health and Safety Code.

28 (3) Directing the disposition of remains under Section
29 7100 of the Health and Safety Code.

30 4684. An agent shall make a health care decision in
31 accordance with the principal's individual health care
32 instructions, if any, and other wishes to the extent known
33 to the agent. Otherwise, the agent shall make the decision
34 in accordance with the agent's determination of the
35 principal's best interest. In determining the principal's
36 best interest, the agent shall consider the principal's
37 personal values to the extent known to the agent.

38 4685. Unless the power of attorney for health care
39 provides otherwise, the agent designated in the power of
40 attorney who is known to the health care provider to be

1 reasonably available and willing to make health care
2 decisions has priority over any other person in making
3 health care decisions for the principal.

4 4686. Unless the power of attorney for health care
5 provides a time of termination, the authority of the agent
6 is exercisable notwithstanding any lapse of time since
7 execution of the power of attorney.

8 4687. Nothing in this division affects any right the
9 person designated as an agent under a power of attorney
10 for health care may have, apart from the power of
11 attorney, to make or participate in making health care
12 decisions for the principal.

13 4688. Where this division does not provide a rule
14 governing agents under powers of attorney, the law of
15 agency applies.

16
17 Article 3. Revocation of Advance Directives
18

19 4695. (a) A patient having capacity may revoke the
20 designation of an agent only by a signed writing or by
21 personally informing the supervising health care
22 provider.

23 (b) A patient having capacity may revoke all or part
24 of an advance health care directive, other than the
25 designation of an agent, at any time and in any manner
26 that communicates an intent to revoke.

27 4696. A health care provider, agent, conservator, or
28 surrogate who is informed of a revocation of an advance
29 health care directive shall promptly communicate the
30 fact of the revocation to the supervising health care
31 provider and to any health care institution where the
32 patient is receiving care.

33 4697. (a) If after executing a power of attorney for
34 health care the principal's marriage to the agent is
35 dissolved or annulled, the principal's designation of the
36 former spouse as an agent to make health care decisions
37 for the principal is revoked.

38 (b) If the agent's authority is revoked solely by
39 subdivision (a), it is revived by the principal's remarriage
40 to the agent.

1 4698. An advance health care directive that conflicts
2 with an earlier advance directive revokes the earlier
3 advance directive to the extent of the conflict.

4
5 CHAPTER 2. ADVANCE HEALTH CARE DIRECTIVE FORMS
6

7 4700. The form provided in Section 4701 may, but
8 need not, be used to create an advance health care
9 directive. The other sections of this division govern the
10 effect of the form or any other writing used to create an
11 advance health care directive. An individual may
12 complete or modify all or any part of the form in Section
13 4701.

14 4701. The statutory advance health care directive
15 form is as follows:

16
17 ADVANCE HEALTH CARE DIRECTIVE
18

19 (California Probate Code Section 4701)
20

21 Explanation
22

23 You have the right to give instructions about your own
24 health care. You also have the right to name someone else
25 to make health care decisions for you. This form lets you
26 do either or both of these things. It also lets you express
27 your wishes regarding donation of organs and the
28 designation of your primary physician. If you use this
29 form, you may complete or modify all or any part of it. You
30 are free to use a different form.

31 Part 1 of this form is a power of attorney for health care.
32 Part 1 lets you name another individual as agent to make
33 health care decisions for you if you become incapable of
34 making your own decisions or if you want someone else
35 to make those decisions for you now even though you are
36 still capable. You may also name an alternate agent to act
37 for you if your first choice is not willing, able, or
38 reasonably available to make decisions for you. (Your
39 agent may not be an operator or employee of a
40 community care facility or a residential care facility

1 where you are receiving care, or your supervising health
2 care provider or employee of the health care institution
3 where you are receiving care, unless your agent is related
4 to you or is a co-worker).

5 Unless the form you sign limits the authority of your
6 agent, your agent may make all health care decisions for
7 you. This form has a place for you to limit the authority
8 of your agent. You need not limit the authority of your
9 agent if you wish to rely on your agent for all health care
10 decisions that may have to be made. If you choose not to
11 limit the authority of your agent, your agent will have the
12 right to:

13 (a) Consent or refuse consent to any care, treatment,
14 service, or procedure to maintain, diagnose, or otherwise
15 affect a physical or mental condition.

16 (b) Select or discharge health care providers and
17 institutions.

18 (c) Approve or disapprove diagnostic tests, surgical
19 procedures, and programs of medication.

20 (d) Direct the provision, withholding, or withdrawal
21 of artificial nutrition and hydration and all other forms of
22 health care, including cardiopulmonary resuscitation.

23 (e) Make anatomical gifts, authorize an autopsy, and
24 direct disposition of remains.

25 Part 2 of this form lets you give specific instructions
26 about any aspect of your health care, whether or not you
27 appoint an agent. Choices are provided for you to express
28 your wishes regarding the provision, withholding, or
29 withdrawal of treatment to keep you alive, as well as the
30 provision of pain relief. Space is also provided for you to
31 add to the choices you have made or for you to write out
32 any additional wishes. If you are satisfied to allow your
33 agent to determine what is best for you in making
34 end-of-life decisions, you need not fill out Part 2 of this
35 form.

36 Part 3 of this form lets you express an intention to
37 donate your bodily organs and tissues following your
38 death.

39 Part 4 of this form lets you designate a physician to have
40 primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is recommended but not required that you request two other adults to sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1.1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(1.2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box ☐, my agent's authority to make health care decisions for me takes effect immediately:



(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form:

(Add additional sheets if needed.)

(1.6) NOMINATION OF CONSERVATOR: If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

(2.1) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:



☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(2.2) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(Add additional sheets if needed.)

(2.3) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

1 (3.1) Upon my death (mark applicable box):
2
3 ☐ (a) I give any needed organs, tissues, or parts, OR
4 ☐ (b) I give the following organs, tissues, or parts only.
5
6 _____
7
8 (c) My gift is for the following purposes (strike any of
9 the following you do not want):
10 (1) Transplant
11 (2) Therapy
12 (3) Research
13 (4) Education
14

15 PART 4
16 PRIMARY PHYSICIAN
17 (OPTIONAL)
18

19 (4.1) I designate the following physician as my primary
20 physician:
21
22 _____
23 (name of physician)
24
25 _____
26 (address) (city) (state) (zip code)
27 _____
28 (phone)
29

30 OPTIONAL: If the physician I have designated above is not
31 willing, able, or reasonably available to act as my primary
32 physician, I designate the following physician as my primary
33 physician:
34
35 _____
36 (name of physician)
37
38 _____
39 (address) (city) (state) (zip code)



(phone)

* * * * *

PART 5

(5.1) EFFECT OF COPY: A copy of this form has the same effect as the original.

(5.2) SIGNATURES: Sign and date the form here:

(date)

(sign your name)

(address)

(print your name)

(city)

(state)

(Optional) SIGNATURES OF WITNESSES:

First witness

Second witness

(print name)

(print name)

(address)

(address)

(city)

(state)

(city)

(state)

(signature of witness)

(signature of witness)

(date)

(date)

PART 6
SPECIAL WITNESS REQUIREMENT

(6.1) 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 the following statement:

Statement of Patient Advocate or Ombudsman

I 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 Section 4673 of the Probate Code.

(date)

(sign your name)

(address)

(print your name)

(city)

(state)

CHAPTER 3. HEALTH CARE SURROGATES

4710. A surrogate who is designated or selected under this chapter may make health care decisions for a patient if all of the following conditions are satisfied:

(a) The patient has been determined by the primary physician to lack capacity.

(b) No agent has been designated under a power of attorney for health care and no conservator of the person has been appointed with authority to make health care decisions, or the agent or conservator is not reasonably available.

1 4711. A patient may designate an individual as a
2 surrogate to make health care decisions by personally
3 informing the supervising health care provider. An oral
4 designation of a surrogate is effective only during the
5 course of treatment or illness or during the stay in the
6 health care institution when the designation is made.

7 4712. (a) Subject to Section 4710, if no surrogate has
8 been designated under Section 4711 or if the designated
9 surrogate is not reasonably available, the primary
10 physician may select a surrogate to make health care
11 decisions for the patient from among the following adults
12 with a relationship to the patient:

13 (1) The spouse, unless legally separated.

14 (2) An adult in a long-term relationship of indefinite
15 duration with the patient in which the individual has
16 demonstrated an actual commitment to the patient
17 similar to the commitment of a spouse and in which the
18 individual and the patient consider themselves to be
19 responsible for each other's well-being and reside or have
20 been residing together. This individual may be known as
21 a domestic partner.

22 (3) Children.

23 (4) Parents.

24 (5) Brothers and sisters.

25 (6) Grandchildren.

26 (7) Close friends.

27 (b) The primary physician shall select the surrogate,
28 with the assistance of other health care providers or
29 institutional committees, in the order of priority set forth
30 in subdivision (a), subject to the following conditions:

31 (1) Where there are multiple possible surrogates at
32 the same priority level, the primary physician shall select
33 the individual who appears after a good faith inquiry to
34 be best qualified.

35 (2) The primary physician may select as the surrogate
36 an individual who is ranked lower in priority if, in the
37 primary physician's judgment, the individual is best
38 qualified to serve as the patient's surrogate.

1 (c) In determining the individual best qualified to
2 serve as the surrogate under this section, the following
3 factors shall be considered:

4 (1) Whether the proposed surrogate appears to be
5 best able to make decisions in accordance with Section
6 4714.

7 (2) The degree of regular contact with the patient
8 before and during the patient's illness.

9 (3) Demonstrated care and concern for the patient.

10 (4) Familiarity with the patient's personal values.

11 (5) Availability to visit the patient.

12 (6) Availability to engage in face-to-face contact with
13 health care providers for the purpose of fully
14 participating in the health care decisionmaking process.

15 (d) The primary physician may require a surrogate or
16 proposed surrogate (1) to provide information to assist in
17 making the determinations under this section and (2) to
18 provide information to family members and other
19 persons concerning the selection of the surrogate and
20 communicate with them concerning health care
21 decisions for the patient.

22 (e) The primary physician shall document in the
23 patient's health care record the reasons for selecting the
24 surrogate.

25 4713. (a) The surrogate designated or selected under
26 this chapter shall promptly communicate his or her
27 assumption of authority to all adults described in
28 paragraphs (1) to (5), inclusive, of subdivision (a) of
29 Section 4712 who can readily be contacted.

30 (b) The supervising health care provider, in the case
31 of a surrogate designation under Section 4711, or the
32 primary physician, in the case of a surrogate selection
33 under Section 4712, shall inform the surrogate of the duty
34 under subdivision (a).

35 4714. A surrogate shall make a health care decision in
36 accordance with the patient's individual health care
37 instructions, if any, and other wishes to the extent known
38 to the surrogate. Otherwise, the surrogate shall make the
39 decision in accordance with the surrogate's
40 determination of the patient's best interest. In

1 determining the patient's best interest, the surrogate
2 shall consider the patient's personal values to the extent
3 known to the surrogate.

4 4715. A patient having capacity at any time may
5 disqualify another person, including a member of the
6 patient's family, from acting as the patient's surrogate by
7 a signed writing or by personally informing the
8 supervising health care provider of the disqualification.

9 4716. (a) If a surrogate selected pursuant to Section
10 4712 is not reasonably available, the surrogate may be
11 replaced.

12 (b) If an individual who ranks higher in priority under
13 subdivision (a) of Section 4712 relative to a selected
14 surrogate becomes reasonably available, the individual
15 with higher priority may be substituted for the selected
16 surrogate unless the primary physician determines that
17 the lower ranked individual is best qualified to serve as
18 the surrogate.

19
20 CHAPTER 4. HEALTH CARE DECISIONS FOR PATIENTS
21 WITHOUT SURROGATES
22

23 4720. This chapter applies where a health care
24 decision needs to be made for a patient and all of the
25 following conditions are satisfied:

26 (a) The patient has been determined by the primary
27 physician to lack capacity.

28 (b) No agent has been designated under a power of
29 attorney for health care and no conservator of the person
30 has been appointed with authority to make health care
31 decisions, or the agent or conservator is not reasonably
32 available.

33 (c) No surrogate can be selected under Chapter 3
34 (commencing with Section 4710) or the surrogate is not
35 reasonably available.

36 (d) No dispositive individual health care instruction is
37 in the patient's record.

38 4721. A patient's primary physician may obtain
39 approval for a proposed health care decision by referring

1 the matter to a surrogate committee before the health
2 care decision is implemented.

3 4722. (a) A surrogate committee may be established
4 by the health care institution. If a surrogate committee
5 has not been established by the patient's health care
6 institution, or if the patient is not a patient in a health care
7 institution, the surrogate committee may be established
8 by the county health officer or as otherwise determined
9 by the county board of supervisors.

10 (b) The surrogate committee shall include the
11 following individuals:

12 (1) The patient's primary physician.

13 (2) A professional nurse with responsibility for the
14 patient and with knowledge of the patient's condition.

15 (3) A patient representative or community member.
16 The patient representative may be a family member or
17 friend of the patient who is unable to take full
18 responsibility for the patient's health care decisions, but
19 has agreed to serve on the surrogate committee. A
20 community member is an adult who is not employed by
21 or regularly associated with the primary physician, the
22 health care institution, or employees of the health care
23 institution.

24 (c) In cases involving withholding or withdrawing
25 life-sustaining treatment or other critical health care
26 decisions, in addition to the individuals described in
27 subdivision (b), the surrogate committee shall include a
28 member of the health care institution's ethics committee
29 or an outside ethics consultant.

30 (d) This section provides minimum guidelines for the
31 composition of the surrogate committee and is not
32 intended to restrict participation by other appropriate
33 persons, including health care institution staff in
34 disciplines as determined by the patient's needs.

35 4723. (a) The surrogate committee's review of
36 proposed health care shall include all of the following:

37 (1) A review of the primary physician's assessment of
38 the patient's condition.

39 (2) The reason for the proposed health care decision.

1 (3) A discussion of the desires of the patient, if known.
2 To determine the desires of the patient, the surrogate
3 committee shall interview the patient, if the patient is
4 capable of communicating, review the patient's medical
5 records, and consult with family members or friends, if
6 any have been identified.

7 (4) The type of health care to be administered in the
8 patient's care, including its probable frequency and
9 duration.

10 (5) The probable impact on the patient's condition,
11 with and without administration of the proposed health
12 care.

13 (6) Reasonable alternative health care decisions
14 considered or administered, and reasons for their
15 discontinuance or inappropriateness.

16 (b) The surrogate committee shall periodically
17 evaluate the results of an approved health care decision,
18 as appropriate under applicable standards of health care.

19 4724. (a) The surrogate committee shall attempt to
20 reach consensus on proposed health care decisions, but
21 may approve proposed health care decisions by majority
22 vote. However, proposed health care decisions relating to
23 withholding or withdrawing life-sustaining treatment
24 may not be approved if any member of the surrogate
25 committee is opposed.

26 (b) The surrogate committee shall keep a record of its
27 membership, showing who participated in making a
28 health care decision with regard to a patient, and the
29 result of votes taken, and shall keep a record of its
30 deliberations and conclusions under Section 4723.

31 4725. Provisions applicable to health care
32 decisionmaking, duties, and immunities of surrogates
33 apply to a surrogate committee and its members.

34 4726. In a case subject to this chapter where
35 emergency care is administered without approval by a
36 surrogate committee, if the emergency results in the
37 application of physical or chemical restraints, the
38 surrogate committee shall meet within one week of the
39 emergency for an evaluation of the health care decision.

40

CHAPTER 5. DUTIES OF HEALTH CARE PROVIDERS

4730. Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

4731. (a) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy. If a copy is furnished, the supervising health care provider shall arrange for its maintenance in the patient's health care record.

(b) A supervising health care provider who knows of a revocation of a power of attorney for health care or a disqualification of a surrogate shall make a reasonable effort to notify the agent or surrogate of the revocation or disqualification.

4732. A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists affecting an individual health care instruction or the authority of an agent, conservator of the person, or surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to a person then authorized to make health care decisions for the patient.

4733. Except as provided in Sections 4734 and 4735, a health care provider or health care institution providing care to a patient shall do the following:

(a) Comply with an individual health care instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient.

(b) Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the

1 decision had been made by the patient while having
2 capacity.

3 4734. (a) A health care provider may decline to
4 comply with an individual health care instruction or
5 health care decision for reasons of conscience.

6 (b) A health care institution may decline to comply
7 with an individual health care instruction or health care
8 decision if the instruction or decision is contrary to a
9 policy of the institution that is expressly based on reasons
10 of conscience and if the policy was timely communicated
11 to the patient or to a person then authorized to make
12 health care decisions for the patient.

13 4735. A health care provider or health care institution
14 may decline to comply with an individual health care
15 instruction or health care decision that requires
16 medically ineffective health care or health care contrary
17 to generally accepted health care standards applicable to
18 the health care provider or institution.

19 4736. A health care provider or health care institution
20 that declines to comply with an individual health care
21 instruction or health care decision shall do all of the
22 following:

23 (a) Promptly so inform the patient, if possible, and any
24 person then authorized to make health care decisions for
25 the patient.

26 (b) Unless the patient or person then authorized to
27 make health care decisions for the patient refuses
28 assistance, immediately make all reasonable efforts to
29 assist in the transfer of the patient to another health care
30 provider or institution that is willing to comply with the
31 instruction or decision.

32 (c) Provide continuing care to the patient until a
33 transfer can be accomplished or until it appears that a
34 transfer cannot be accomplished. In all cases, appropriate
35 pain relief and other palliative care shall be continued.

36
37 CHAPTER 6. IMMUNITIES AND LIABILITIES
38

39 4740. A health care provider or health care institution
40 acting in good faith and in accordance with generally

1 accepted health care standards applicable to the health
2 care provider or institution is not subject to civil or
3 criminal liability or to discipline for unprofessional
4 conduct for any actions in compliance with this division,
5 including, but not limited to, any of the following
6 conduct:

7 (a) Complying with a health care decision of a person
8 apparently having authority to make a health care
9 decision for a patient, including a decision to withhold or
10 withdraw health care.

11 (b) Declining to comply with a health care decision of
12 a person based on a belief that the person then lacked
13 authority.

14 (c) Complying with an advance health care directive
15 and assuming that the directive was valid when made and
16 has not been revoked or terminated.

17 (d) Declining to comply with an individual health care
18 instruction or health care decision, in accordance with
19 Sections 4734 to 4736, inclusive.

20 4741. A person acting as agent or surrogate under this
21 part is not subject to civil or criminal liability or to
22 discipline for unprofessional conduct for health care
23 decisions made in good faith.

24 4742. (a) A health care provider or health care
25 institution that intentionally violates this part is subject to
26 liability to the aggrieved individual for damages of two
27 thousand five hundred dollars (\$2,500) or actual damages
28 resulting from the violation, whichever is greater, plus
29 reasonable attorney's fees.

30 (b) A person who intentionally falsifies, forges,
31 conceals, defaces, or obliterates an individual's advance
32 health care directive or a revocation of an advance health
33 care directive without the individual's consent, or who
34 coerces or fraudulently induces an individual to give,
35 revoke, or not to give an advance health care directive,
36 is subject to liability to that individual for damages of ten
37 thousand dollars (\$10,000) or actual damages resulting
38 from the action, whichever is greater, plus reasonable
39 attorney's fees.

(c) The damages provided in this section are cumulative and not exclusive of any other remedies provided by law.

4743. Any person who alters or forges a written advance health care directive of another, or willfully conceals or withholds personal knowledge of a revocation of an advance directive, with the intent to cause a withholding or withdrawal of health care necessary to keep the patient alive contrary to the desires of the patient, and thereby directly causes health care necessary to keep the patient alive to be withheld or withdrawn and the death of the patient thereby to be hastened, is subject to prosecution for unlawful homicide as provided in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code.

PART 3. JUDICIAL PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

4750. Subject to this division:

(a) An advance health care directive is effective and exercisable free of judicial intervention.

(b) A health care decision made by an agent for a principal is effective without judicial approval.

(c) A health care decision made by a surrogate for a patient is effective without judicial approval.

(d) A health care decision made pursuant to Chapter 4 (commencing with Section 4720) is effective without judicial approval.

4751. The remedies provided in this part are cumulative and not exclusive of any other remedies provided by law.

4752. Except as provided in Section 4753, this part is not subject to limitation in an advance health care directive.

4753. (a) Subject to subdivision (b), an advance health care directive may expressly eliminate the authority of a person listed in Section 4765 to petition the court for any one or more of the purposes enumerated in

1 Section 4766, if both of the following requirements are
2 satisfied:

3 (1) The advance directive is executed by an individual
4 having the advice of a lawyer authorized to practice law
5 in the state where the advance directive is executed.

6 (2) The individual's lawyer signs a certificate stating in
7 substance:

8 "I am a lawyer authorized to practice law in the state
9 where this advance health care directive was executed,
10 and _____ [insert name] was my client at
11 the time this advance directive was executed. I have
12 advised my client concerning his or her rights in
13 connection with this advance directive and the
14 applicable law and the consequences of signing or not
15 signing this advance directive, and my client, after being
16 so advised, has executed this advance directive."
17

18 (b) An advance health care directive may not limit the
19 authority of the following persons to petition under this
20 part:

21 (1) The conservator of the person, with respect to a
22 petition relating to an advance directive, for a purpose
23 specified in subdivision (b) or (d) of Section 4766.

24 (2) The agent, with respect to a petition relating to a
25 power of attorney for health care, for a purpose specified
26 in subdivision (b) or (c) of Section 4766.

27 4754. There is no right to a jury trial in proceedings
28 under this division.

29 4755. Except as otherwise provided in this division,
30 the general provisions in Division 3 (commencing with
31 Section 1000) apply to proceedings under this division.
32

33 CHAPTER 2. JURISDICTION AND VENUE

34

35 4760. (a) The superior court has jurisdiction in
36 proceedings under this division.

37 (b) The court in proceedings under this division is a
38 court of general jurisdiction and the court, or a judge of
39 the court, has the same power and authority with respect
40 to the proceedings as otherwise provided by law for a



1 superior court, or a judge of the superior court, including,
2 but not limited to, the matters authorized by Section 128
3 of the Code of Civil Procedure.

4 4761. The court may exercise jurisdiction in
5 proceedings under this division on any basis permitted by
6 Section 410.10 of the Code of Civil Procedure.

7 4762. Without limiting Section 4761, a person who acts
8 as an agent under a power of attorney for health care or
9 as a surrogate under this division is subject to personal
10 jurisdiction in this state with respect to matters relating
11 to acts and transactions of the agent or surrogate
12 performed in this state or affecting a patient in this state.

13 4763. The proper county for commencement of a
14 proceeding under this division shall be determined in the
15 following order of priority:

16 (a) The county in which the patient resides.

17 (b) The county in which the agent or surrogate
18 resides.

19 (c) Any other county that is in the patient's best
20 interest.

21
22 CHAPTER 3. PETITIONS, ORDERS, APPEALS
23

24 4765. Subject to Section 4753, a petition may be filed
25 under this part by any of the following persons:

26 (a) The patient.

27 (b) The patient's spouse, unless legally separated.

28 (c) A relative of the patient.

29 (d) The patient's agent or surrogate, including a
30 member of a surrogate committee.

31 (e) The conservator of the person of the patient.

32 (f) The court investigator, described in Section 1454,
33 of the county where the patient resides.

34 (g) The public guardian of the county where the
35 patient resides.

36 (h) The supervising health care provider or health
37 care institution involved with the patient's care.

38 (i) Any other interested person or friend of the
39 patient.

1 4766. A petition may be filed under this part for any
2 one or more of the following purposes:

3 (a) Determining whether or not the patient has
4 capacity to make health care decisions.

5 (b) Determining whether an advance health care
6 directive is in effect or has terminated.

7 (c) Determining whether the acts or proposed acts of
8 an agent or surrogate are consistent with the patient's
9 desires as expressed in an advance health care directive
10 or otherwise made known to the court or, where the
11 patient's desires are unknown or unclear, whether the
12 acts or proposed acts of the agent or surrogate are in the
13 patient's best interest.

14 (d) Declaring that the authority of an agent or
15 surrogate is terminated, upon a determination by the
16 court that the agent or surrogate has made a health care
17 decision for the patient that authorized anything illegal
18 or upon a determination by the court of both of the
19 following:

20 (1) The agent or surrogate has violated, has failed to
21 perform, or is unfit to perform, the duty under an
22 advance health care directive to act consistent with the
23 patient's desires or, where the patient's desires are
24 unknown or unclear, is acting (by action or inaction) in
25 a manner that is clearly contrary to the patient's best
26 interest.

27 (2) At the time of the determination by the court, the
28 patient lacks the capacity to execute or to revoke an
29 advance health care directive or disqualify a surrogate.

30 (e) For the purposes of this section, "surrogate"
31 includes a surrogate committee under Chapter 4
32 (commencing with Section 4720) of Part 2.

33 4767. A proceeding under this part is commenced by
34 filing a petition stating facts showing that the petition is
35 authorized under this part, the grounds of the petition,
36 and, if known to the petitioner, the terms of any advance
37 health care directive in question.

38 4768. The court may dismiss a petition if it appears
39 that the proceeding is not reasonably necessary for the
40 protection of the interests of the patient and shall stay or

1 dismiss the proceeding in whole or in part when required
2 by Section 410.30 of the Code of Civil Procedure.

3 4769. (a) Subject to subdivision (b), at least 15 days
4 before the time set for hearing, the petitioner shall serve
5 notice of the time and place of the hearing, together with
6 a copy of the petition, on the following:

7 (1) The agent or surrogate, if not the petitioner.

8 (2) The patient, if not the petitioner.

9 (b) In the case of a petition to compel a third person
10 to honor the authority of an agent or surrogate, notice of
11 the time and place of the hearing, together with a copy
12 of the petition, shall be served on the third person in the
13 manner provided in Chapter 4 (commencing with
14 Section 413.10) of Title 5 of Part 2 of the Code of Civil
15 Procedure.

16 4770. The court in its discretion, on a showing of good
17 cause, may issue a temporary order prescribing the health
18 care of the patient until the disposition of the petition
19 filed under Section 4766. If a power of attorney for health
20 care is in effect and a conservator (including a temporary
21 conservator) of the person is appointed for the principal,
22 the court that appoints the conservator in its discretion,
23 on a showing of good cause, may issue a temporary order
24 prescribing the health care of the principal, the order to
25 continue in effect for the period ordered by the court but
26 in no case longer than the period necessary to permit the
27 filing and determination of a petition filed under Section
28 4766.

29 4771. In a proceeding under this part commenced by
30 the filing of a petition by a person other than the agent
31 or surrogate, the court may in its discretion award
32 reasonable attorney's fees to one of the following:

33 (a) The agent or surrogate, if the court determines
34 that the proceeding was commenced without any
35 reasonable cause.

36 (b) The person commencing the proceeding, if the
37 court determines that the agent or surrogate has clearly
38 violated the duties under the advance health care
39 directive.

40

PART 4. REQUEST TO FORGO RESUSCITATIVE
MEASURES

4780. (a) As used in this part:

(1) “Request to forgo resuscitative measures” means a written document, signed by (A) an individual, or a legally recognized surrogate health care decisionmaker, and (B) a physician, that directs a health care provider to forgo resuscitative measures for the individual.

(2) “Request to forgo resuscitative measures” includes a prehospital “do not resuscitate” form as developed by the Emergency Medical Services Authority or other substantially similar form.

(b) A request to forgo resuscitative measures may also be evidenced by a medallion engraved with the words “do not resuscitate” or the letters “DNR,” a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

4781. As used in this part, “health care provider” includes, but is not limited to, the following:

(a) Persons described in Section 4621.

(b) Emergency response employees, including, but not limited to, firefighters, law enforcement officers, emergency medical technicians I and II, paramedics, and employees and volunteer members of legally organized and recognized volunteer organizations, who are trained in accordance with standards adopted as regulations by the Emergency Medical Services Authority pursuant to Sections 1797.170, 1797.171, 1797.172, 1797.182, and 1797.183 of the Health and Safety Code to respond to medical emergencies in the course of performing their volunteer or employee duties with the organization.

4782. A health care provider who honors a request to forgo resuscitative measures is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance on the request, if the health care provider (a) believes in good faith that the action or decision is consistent with this part, and (b) has

1 no knowledge that the action or decision would be
2 inconsistent with a health care decision that the
3 individual signing the request would have made on his or
4 her own behalf under like circumstances.

5 4783. (a) Forms for requests to forgo resuscitative
6 measures printed after January 1, 1995, shall contain the
7 following:

8 “By signing this form, the surrogate acknowledges that
9 this request to forgo resuscitative measures is consistent
10 with the known desires of, and with the best interest of,
11 the individual who is the subject of the form.”

12
13 (b) A substantially similar printed form is valid and
14 enforceable if all of the following conditions are met:

15 (1) The form is signed by the individual, or the
16 individual’s legally recognized surrogate health care
17 decisionmaker, and a physician.

18 (2) The form directs health care providers to forgo
19 resuscitative measures.

20 (3) The form contains all other information required
21 by this section.

22 4784. In the absence of knowledge to the contrary, a
23 health care provider may presume that a request to forgo
24 resuscitative measures is valid and unrevoked.

25 4785. This part applies regardless of whether the
26 individual executing a request to forgo resuscitative
27 measures is within or outside a hospital or other health
28 care institution.

29 4786. This part does not repeal or narrow laws relating
30 to health care decisionmaking.

31
32 PART 5. ADVANCE HEALTH CARE DIRECTIVE
33 REGISTRY
34

35 4800. (a) The Secretary of State shall establish a
36 registry system through which a person who has executed
37 a written advance health care directive may register in a
38 central information center, information regarding the
39 advance directive, making that information available

1 upon request to any health care provider, the public
2 guardian, or other person authorized by the registrant.

3 (b) Information that may be received and released is
4 limited to the registrant's name, social security or driver's
5 license or other individual identifying number
6 established by law, if any, address, date and place of birth,
7 the intended place of deposit or safekeeping of the
8 written advance health care directive, and the name and
9 telephone number of the agent and any alternative
10 agent.

11 (c) The Secretary of State, at the request of the
12 registrant, may transmit the information received
13 regarding the written advance health care directive to
14 the registry system of another jurisdiction as identified by
15 the registrant.

16 (d) The Secretary of State may charge a fee to each
17 registrant in an amount such that, when all fees charged
18 to registrants are aggregated, the aggregated fees do not
19 exceed the actual cost of establishing and maintaining the
20 registry.

21 4801. The Secretary of State shall establish procedures
22 to verify the identities of health care providers, the public
23 guardian, and other authorized persons requesting
24 information pursuant to Section 4800. No fee shall be
25 charged to any health care provider, the public guardian,
26 or other authorized person requesting information
27 pursuant to Section 4800.

28 4802. The Secretary of State shall establish procedures
29 to advise each registrant of the following:

30 (a) A health care provider may not honor a written
31 advance health care directive until it receives a copy from
32 the registrant.

33 (b) Each registrant must notify the registry upon
34 revocation of the advance directive.

35 (c) Each registrant must reregister upon execution of
36 a subsequent advance directive.

37 4803. Failure to register with the Secretary of State
38 does not affect the validity of any advance health care
39 directive.



1 4804. Registration with the Secretary of State does not
2 affect the ability of the registrant to revoke the
3 registrant's advance health care directive or a later
4 executed advance directive, nor does registration raise
5 any presumption of validity or superiority among any
6 competing advance directives or revocations.

7 4805. Nothing in this chapter shall be construed to
8 require a health care provider to request from the
9 registry information about whether a patient has
10 executed an advance health care directive. Nothing in
11 this chapter shall be construed to affect the duty of a
12 health care provider to provide information to a patient
13 regarding advance health care directives pursuant to any
14 provision of federal law.

15 SEC. 41. Part 5 (commencing with Section 4900) of
16 Division 4.5 of the Probate Code is repealed.

17 SEC. 42. This act shall become operative on July 1,
18 2000.

19 SEC. 43. No reimbursement is required by this act
20 pursuant to Section 6 of Article XIII B of the California
21 Constitution because the only costs that may be incurred
22 by a local agency or school district will be incurred
23 because this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition
27 of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.