

Study L-4003

November 29, 1999

**Second Supplement to Memorandum 99-82****Family Consent in Health Care Decisionmaking for Adults:  
Additional Comments**

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Attached to this supplement is a letter we have just received from John Doherty of AIDS Legal Services, Santa Clara County Bar Association Law Foundation. We will raise Mr. Doherty's concerns at the meeting.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

**AIDS LEGAL SERVICES**

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Stan Ulrich  
Assistant Executive Secretary  
California Law Review Commission  
4000 Middlefield Road, Room D1  
Palo Alto, CA 94303

Dear Mr. Ulrich:

Sorry for the lateness of these comments, I am hopeful that the committee will be able to review them prior to deliberations. I have a limited number of comments and most of them revolve around potential ambiguity and conflict scenarios.

**1. Determination of competency.**

Although Probate Code § 4711 has already been enacted, and is not modified in this proposal, I think the statutory language should be amended to indicate that an oral designation of a surrogate shall not negate a properly executed Power of Attorney for Health Care without a determination of competence by the primary physician.

**2. Motivation of surrogate.**

Section 4712(d) which in the proposal reads: "An individual may not be selected as a surrogate if the individual's competency or motives are questionable." This broad discretion for a primary physician to disqualify a surrogate needs to be better defined. Specifically, physicians do not have any specific expertise or evaluation skills for determining a surrogate's motives. Would this include possibility of financial gain, distrust of or by family members, moral reasoning, etc. As it stands, someone who does not agree with a physician's recommendation might be thought to have "questionable motives."

**3. Notice to other potential surrogates.**

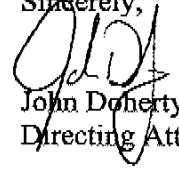
Section 4713(a) currently requires notice to potential surrogates who can be readily contacted. I would define readily contacted to contact information within the knowledge of the physician, hospital, and surrogate, and/or public sources of information.

**4. Supplement to memorandum.**

Although I understand the concern raised in the supplement to the original memorandum regarding potential confusion over the term "domestic partner", I

believe its inclusion is more helpful than harmful. Over the past decade the term has become acknowledged in common use to signify a serious relationship between two individuals. My recommendation would be to retain the second sentence in §4712(a)2 and include the proposed note limiting the meaning of “domestic partner.”

Sincerely,

A handwritten signature in black ink, appearing to read "John Doherty", written over the printed name.

John Doherty  
Directing Attorney