

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
1999 COMMISSION RECOMMENDATIONS

PART B

CLRC Staff Note. This document sets out the text of Official Comments to a Commission sponsored bill enacted in the 1999 legislative session — AB 891 (Ch. 658). The source for each Comment is given in the accompanying Table of “Sections Affected by 1999 Commission Legislation— Part B.”

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GOVERNMENT CODE

Gov't Code § 8205 (technical amendment). Duties of notary public

Comment. Subdivision (a)(2) of Section 8205 is amended to recognize that advance health care directives are treated separately by statute from powers of attorney. See Prob. Code §§ 4600 *et seq.* (Health Care Decisions Law), 4673 (witnessing or notarization of advance health care directive executed in skilled nursing facility).

HEALTH AND SAFETY CODE

Health & Safety Code § 1569.156 (amended). Information and education on advance directives in residential care facility

Comment. Subdivision (b) of Section 1569.156 is amended for conformity with the Health Care Decisions Law, Probate Code Section 4600 *et seq.* “Advance health care directive” under Probate Code Section 4605 is a broad term that includes powers of attorney for health care (defined in Probate Code Section 4629) and individual health care instructions (defined in Probate Code Section 4623). The reference to “some other form” at the end of subdivision (b) is retained out of an abundance of caution. All recognized forms of advance health care directives for adults who lack decisionmaking capacity are intended to be encompassed by the Health Care Decisions Law. See, e.g., Prob. Code §§ 4651 (scope of law), 4665 (application to existing advance directives). Specifically, declarations under former Section 7186.5 of the Natural Death Act are governed by the new law and are included in the term “advance health care directive.” See former Health & Safety Code §§ 7185 & 7186.5 Comments; Prob. Code §§ 4623 & Comment, 4665.

Health & Safety Code § 1584 (amended). Secured perimeter in adult day health care center

Comment. Subdivision (c)(4) of Section 1584 is amended to reflect the replacement of the durable power of attorney for health care under the Power of Attorney Law with advance health care directives under the Health Care Decisions Law. See Prob. Code § 4600 *et seq.*

Health & Safety Code § 1599.73 (amended). Statement of patients' right to confidential treatment

Comment. Section 1599.73 is amended to reflect the replacement of the durable power of attorney for health care under the Power of Attorney Law with advance health care directives under the Health Care Decisions Law. See Prob. Code § 4600 *et seq.*

Health & Safety Code § 7100 (amended). Right to control disposition of remains

Comment. Subdivision (a)(1) of Section 7100 is amended to refer to the Health Care Decisions Law, which supersedes the former provisions governing durable powers of attorney for health care, and to conform language to the usage in the new law. The reference to “execution” of a power of attorney “pursuant to” the California statute has been replaced by a reference to the law “governing” powers of attorney. This revision makes the scope of the authority granted by this section consistent with the general rules concerning recognition of powers of attorney for health care executed in other jurisdictions. See Prob. Code §§ 4605 (“advance health care directive” defined), 4676 (validity of written advance directive executed in another jurisdiction).

Health & Safety Code § 7151 (amended). Who may make or revoke anatomical gift

Comment. Subdivision (a)(1) of Section 7151 is amended for consistency with the language and authority provided the agent under a power of attorney for health care. See Prob. Code §§

4683 (scope of agent's authority), 4701 (optional form of advance health care directive). This amendment resolves a conflict between this section and the broad presumptive authority granted the agent selected by the principal. Of course, the agent must comply with the wishes of the principal as provided in subdivision (b). See also Prob. Code § 4684 (standard governing agent's health care decisions).

Health & Safety Code § 7185 (repealed). Short title

Comment. Former Section 7185 is not continued. The Natural Death Act is superseded by the provisions of Division 4.7 (commencing with Section 4600) of the Probate Code relating to advance health care directives. The new law is not limited to decisions concerning life-sustaining treatment of persons in a terminal or permanent unconscious condition.

Health & Safety Code § 7185.5 (repealed). Legislative findings and declarations

Comment. The substance of subdivisions (a)-(e) of former Section 7185 is continued in Probate Code Section 4650 (legislative findings), except that the references to "terminal condition or permanent unconscious decision" have been omitted to reflect relevant case law and the scope of the Uniform Health Care Decisions Act (Prob. Code § 4670 *et seq.*). See also Section 4750 (judicial intervention disfavored).

Subdivision (f) is omitted as surplus. See former Section 7185 Comment.

Health & Safety Code § 7186 (repealed). Definitions

Comment. Subdivision (a) of former Section 7186 is continued in Probate Code Section 4631 ("primary physician" defined) without substantive change. Subdivision (b) is superseded by Probate Code Section 4605 ("advance health care directive" defined). Subdivision (c) is continued in Probate Code Section 4621 ("health care provider" defined) without substantive change. Subdivisions (d) and (e) are not continued. See former Section 7185 Comment.

Subdivision (f) is unnecessary in view of Probate Code Section 56 ("person" defined). Subdivision (g) is continued in Probate Code Section 4627 ("physician" defined) without change. Subdivision (h) is superseded by Probate Code Sections 4670 (who may give individual instruction). Subdivision (i) is unnecessary in view of Probate Code Section 74 ("state" defined). Subdivision (j) is not continued. See former Section 7185 Comment.

Health & Safety Code § 7186.5 (repealed). Declaration governing life-sustaining treatment

Comment. The first sentence of former Section 7186.5(a) is superseded by Probate Code Section 4670 (who may give individual instruction). The second sentence concerning general witnessing requirements is not continued; an individual health care instruction is not generally required to be witnessed. The third sentence concerning special witnessing requirements in skilled nursing facilities is continued in Probate Code Section 4673 without substantive change.

The declaration form in subdivision (b) is superseded by the optional form of an advance health care directive in Probate Code Section 4701 and related substantive rules. For transitional provisions relating to declarations executed under the repealed Natural Death Act, see Prob. Code § 4665(a).

The substance of the record-keeping duty in subdivision (c) is continued in Probate Code Section 4731. The language concerning a health care provider who is unwilling to comply is superseded by Probate Code Sections 4734 (right to decline for reasons of conscience or institutional policy), 4735 (right to decline to provide ineffective care), and 4736 (duty of declining health care provider or institution).

Health & Safety Code § 7187 (repealed). Skilled nursing facility or long-term health care facility

Comment. Former Section 7187 is continued in Probate Code Section 4673(c) without substantive change. See also Prob. Code Section 4639 ("skilled nursing facility" defined).

Health & Safety Code § 7187.5 (repealed). When declaration becomes operative

Comment. The first sentence of former Section 7187.5 is not continued. See former Section 7185 Comment. As to the determination of preconditions to operation of the declaration (advance health care directive), see Probate Code Sections 4651(b)(1) (authority of individual with capacity not affected), 4657 (presumption of capacity), 4658 (determination of capacity and other conditions).

The duty to comply with the declaration in the second sentence is superseded by Probate Code Section 4733(a). The duty to transfer is superseded by Probate Code Section 4736 (duty of declining health care provider or institution).

Health & Safety Code § 7188 (repealed). Revocation

Comment. Subdivision (a) of former Section 7188 is superseded by Probate Code Section 4695 (revocation of advance directive).

The duty to record the revocation provided in subdivision (b) is continued in Probate Code Section 4731(a) without substantive change.

Health & Safety Code § 7189 (repealed). Determination of terminal or permanent unconscious condition

Comment. Former Section 7189 is superseded by Probate Code Sections 4658 (authority to determine capacity and other conditions) and 4732 (duty to record relevant information).

Health & Safety Code § 7189.5 (repealed). Patient's right to make decisions concerning life-sustaining treatment

Comment. Subdivision (a) of former Section 7189.5 is replaced by Probate Code Section 4651(b)(1). See also Prob. Code §§ 4657 (presumption of capacity), 4695 (revocation of advance directive).

Subdivision (b) is replaced by the general rules in Probate Code Sections 4654 (compliance with generally accepted health care standards), 4733 (obligation to comply with reasonable interpretation of health care instructions and decisions). See also Prob. Code § 4736(b) (continuing care until transfer can be accomplished).

Subdivision (c) is not continued. But *cf.* Prob. Code § 4652(e) (Health Care Decisions Law does not authorize consent to abortion).

Health & Safety Code § 7190 (repealed). Duties of health care provider unwilling to comply with chapter

Comment. Former Section 7190 is continued in Probate Code Section 4736 (duty of declining health care provider or institution) without substantive change.

Health & Safety Code § 7190.5 (repealed). Liability and professional discipline

Comment. Former Section 7190.5 is superseded by Probate Code Section 4740 (immunities of health care provider and institution).

Health & Safety Code § 7191 (repealed). Crimes

Comment. Subdivisions (a) and (b) of former Section 7191 are superseded by Probate Code Section 4742, which provides statutory damages instead of criminal penalties.

Subdivisions (c) and (d) are replaced by Probate Code Section 4743 (criminal penalties).

Subdivisions (e) and (f) are superseded by the prohibition in Probate Code Section 4677 (restriction on requiring or prohibiting advance directive).

The rule in subdivision (g) is continued in Probate Code Section 4742(c) (statutory damages cumulative with other remedies).

Health & Safety Code § 7191.5 (repealed). Effect of death on life insurance or annuity

Comment. Subdivision (a) of former Section 7191.5 is generalized in Probate Code Section 4656 (effect on death benefits).

Subdivision (b) is replaced by Probate Code Section 4656.

Subdivision (c) is continued in Probate Code Section 4677 (restriction on requiring or prohibiting advance directive) without substantive change.

Subdivision (d) is continued and generalized in Probate Code Section 4655(a) (impermissible constructions).

Subdivision (e) is superseded by Probate Code Section 4651(b)(1) (authority not affected). See also Prob. Code § 4657 (presumption of capacity)

Subdivision (f) is continued in Probate Code Section 4654 (compliance with generally accepted health care standards) without substantive change.

Subdivision (g) is continued in Probate Code Section 4653 (mercy killing, assisted suicide, euthanasia not approved) without substantive change.

Subdivision (h) is superseded by Probate Code Sections 4651(b) (other authority not affected) and 4751 (cumulative remedies).

Health & Safety Code § 7192 (repealed). Presumption of validity of declaration

Comment. Former Section 7192 is continued and generalized in Probate Code Section 4676(b) (validity of written advance directive executed in another jurisdiction).

Health & Safety Code § 7192.5 (repealed). Validity of declarations executed in another state

Comment. Former Section 7192.5 is continued in Probate Code Section 4676(a) (validity of written advance directive executed in another jurisdiction) without substantive change.

Health & Safety Code § 7193 (repealed). Effect of durable power of attorney for health care

Comment. Former Section 7193 is superseded by Probate Code Section 4698 (effect of later advance directive on earlier advance directive).

Health & Safety Code § 7193.5 (repealed). Instruments to be given effect

Comment. Former Section 7193.5 is superseded by Probate Code Sections 4665 (application to existing advance directives) and 4676 (validity of written advance directive executed in another jurisdiction). See also Prob. Code § 4605 (“advance health care directive” defined).

Health & Safety Code § 7194 (repealed). Severability clause

Comment. Former Section 7194 is superseded by Probate Code Section 11 (severability).

Health & Safety Code § 7194.5 (repealed). Conformity with Uniform Rights of the Terminally Ill Act

Comment. Former Section 7194.5 is superseded by Probate Code Section 2(b) (construction of provisions drawn from uniform acts).

Health & Safety Code § 24179.5 (amended). Application of chapter to withholding or withdrawal of life-sustaining procedures

Comment. Section 24179.5 is amended to reflect the replacement of the Natural Death Act in former Section 7185 *et seq.* with the Health Care Decisions Law, Probate Code Section 4600 *et seq.*

PROBATE CODE

Prob. Code § 2 (revised comment). Continuation of existing law, construction of provisions drawn from uniform acts

Revised Comment. Section 2 continues Section 2 of the repealed Probate Code without change. See also Gov't Code §§ 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments), 9605 (construction of amended statutory provision).

Some of the provisions of this code are the same as or similar to provisions of uniform acts. Subdivision (b) provides a rule for interpretation of these provisions. Many of the provisions of this code are drawn from the Uniform Probate Code (1987). Some provisions are drawn from other uniform acts:

- Sections 220-224 — Uniform Simultaneous Death Act (1953)
- Sections 260-288 — Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978)
- Sections 260-288 — Uniform Disclaimer of Transfers Under Nontestamentary Instrument Act (1978)
- Sections 3900-3925 — Uniform Transfers to Minors Act (1983)
- Sections 4001, 4124-4127, 4206, 4304-4305 — Uniform Durable Power of Attorney Act
- Sections 4400-4465 — Uniform Statutory Form Power of Attorney Act
- Sections 4670-4743 — Uniform Health-Care Decisions Act (1993)
- Sections 6300-6303 — Uniform Testamentary Additions to Trusts Act (1960)
- Sections 6380-6390 — Uniform International Wills Act (1977). See also Section 6387 (need for uniform interpretation of Uniform International Wills Act)
- Sections 16002(a), 16003, 16045-16054 — Uniform Prudent Investor Act (1994)
- Sections 16200-16249 — Uniform Trustees' Powers Act (1964)
- Sections 16300-16313 — Revised Uniform Principal and Income Act (1962)

A number of terms and phrases are used in the Comments to the sections of the new Probate Code (including the "Background" portion of each Comment) to indicate the sources of the new provisions and to describe how they compare with prior law. The portion of the Comment giving the background on each section of the repealed code may also use terms and phrases to indicate the source or sources of the repealed section and to describe how the repealed section compared with the prior law.

The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that a new provision "continues" or is "the same as" a former provision of the repealed Probate Code, or is "the same as" a provision of the Uniform Probate Code or another uniform act.

(2) *Continues without substantive change.* A new provision "continues" a former provision "without substantive change" if the substantive law remains the same but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision "restates" a former provision "without substantive change" if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the "same in substance."

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms is used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, Restatement, or the statutes of another state. In such cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law. A provision may also be described as codifying a Restatement rule, which may or may not represent previously existing common law in California.

(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

Prob. Code § 1302 (amended). Grounds for appeal under Power of Attorney Law

Comment. Section 1302 is amended to reflect the renumbering of former Sections 4900-4947 and to refer to powers of attorney governed by the Power of Attorney Law. Appeals relating to powers of attorney governed by the Health Care Decisions Law are governed by Section 1302.5. The introductory clause is also revised to correct erroneous language.

Prob. Code § 1302.5 (added). Grounds for appeal under Health Care Decisions Law

Comment. Section 1302.5 is added to reflect enactment of the Health Care Decisions Law (Section 4600 *et seq.*) and the removal of health care powers of attorney from the Power of Attorney Law (Section 4000 *et seq.*).

Prob. Code § 2105 (amended). Joint guardians or conservators

Comment. The last paragraph of Section 2105 is deleted because the definition to which it referred is repealed. See former Health & Safety Code § 7186 Comment.

Prob. Code § 2355 (amended). Health care where conservatee lacks capacity

Comment. Subdivision (a) of Section 2355 is amended to add the second sentence providing a standard for making health care decisions. This standard is the same in substance as the standard applicable to other surrogate health care decisionmakers under the Health Care Decisions Law of Division 4.7 (commencing with Section 4600). See Sections 4684 (standard governing agent’s health care decisions under power of attorney for health care), 4714 (standard governing statutory surrogate’s health care decisions). Under this standard, the surrogate has both the right and fiduciary duty (“shall make health care decisions”) to make a decision based on the individual

circumstances of the conservatee. As amended, subdivision (a) is consistent with *Conservatorship of Drabick*, 220 Cal. App. 3d 185, 245 Cal. Rptr. 840 (1988):

Incapacitated patients “retain the right to have appropriate medical decisions made on their behalf. An appropriate medical decision is one that is made in the patient’s best interests, as opposed to the interests of the hospital, the physicians, the legal system, or someone else. To summarize, California law gives persons a right to determine the scope of their own medical treatment, this right survives incompetence in the sense that incompetent patients retain the right to have appropriate decisions made on their behalf, and Probate Code section 2355 delegates to conservators the right and duty to make such decisions.

Id. at 205. Use of the terms “health care” and “health care decision” from the Health Care Decisions Law make clear that the scope of health care decisions that can be made by a conservator under this section is the same as provided in the Health Care Decisions Law.

The importance of the statutory language concerning the exclusive authority of the conservator and the duty this places on the conservator was also emphasized in *Drabick*:

The statute gives the conservator the exclusive authority to exercise the conservatee’s rights, and it is the conservator who must make the final treatment decision regardless of how much or how little information about the conservatee’s preferences is available. There is no necessity or authority for adopting a rule to the effect that the conservatee’s desire to have medical treatment withdrawn must be proved by clear and convincing evidence or another standard. Acknowledging that the patient’s expressed preferences are relevant, it is enough for the conservator, who must act in the conservatee’s best interests, to consider them in good faith.

Id. at 211-12. The intent of the rule in subdivision (a) is to protect and further the patient’s interest in making a health care decision in accordance with the patient’s expressed desires, where known, and if not, to make a decision in the patient’s best interest, taking personal values into account. The necessary determinations are to be made by the conservator, whether private or public, in accordance with the statutory standard. Court control or intervention in this process is neither required by statute, nor desired by the courts. See, e.g., *Conservatorship of Morrison*, 206 Cal. App. 3d 304, 312, 253 Cal. Rptr. 530 (1988). *Drabick*, 200 Cal. App. 3d at 198-200. See also Sections 4650(c) (legislative findings), 4750 (judicial intervention disfavored).

This section does not specify any special evidentiary standard for the determination of the conservatee’s wishes or best interest. Consequently, the general rule applies: the standard is by preponderance of the evidence. Proof is not required by clear and convincing evidence.

Prob. Code § 2356 (amended). Limitations on application of chapter

Comment. Subdivision (e) of Section 2356 is amended to refer to the provisions of the Health Care Decisions Law that replace the former Natural Death Act and the former durable power of attorney for health care provisions. This is a technical, nonsubstantive change that preserves the supremacy of the individual’s advance directive over the rules concerning conservatorships.

Heading for Part 7 (commencing with Section 3200) of Division 4 of Probate Code (amended, revised comment)

Comment. The part heading is amended to reflect the expanded scope of this part. See 1995 Cal. Stat. ch. 842, § 9 (adding determination of capacity to consent to specified medical treatment as independent ground for petition under Section 3201).

Revised 1990 Comment. This part supersedes Part 7 (commencing with Section 3200) of Division 4 of the repealed Probate Code. The superseded part was enacted on recommendation of the California Law Revision Commission. See *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm’n Reports 501 (1978). See also *Report of Assembly Committee on Judiciary on Assembly Bills Nos. 261 and 167*, republished in 15 Cal. L. Revision Comm’n Reports 1061, 1091 (1980). For the Guardianship-Conservatorship Law as enacted in 1979 (Chapter 726 of the Statutes of 1979) with the revisions made by Chapters 89 and

246 of the Statutes of 1980, see *Guardianship-Conservatorship Law*, 15 Cal. L. Revision Comm'n Reports 451 (1980).

The provisions of this part afford an alternative to establishing a conservatorship of the person where there is no ongoing need for a conservatorship. The procedural rules of this part provide an expeditious means of obtaining authorization for medical treatment while safeguarding basic rights of the patient: The patient has a right to counsel. Section 3205. The hearing is held after notice to the patient, the patient's attorney, and such other persons as the court orders. Section 3206. The court may determine the issue on medical declarations alone if the attorney for the petitioner and the attorney for the patient so stipulate. Section 3207. The court may not order medical treatment under this part if the patient has capacity to give informed consent to the treatment but refuses to do so. Section 3208.5.

Prob. Code § 3200 (amended). Definitions

Comment. Section 3200 is amended to adopt definitions that are consistent with the Health Care Decisions Law. See Section 4500 *et seq.* The definition of "health care decision" in subdivision (b) makes clear, as used in other provisions in this part, that court-authorized health care decisions include end-of-life decisions. See Section 3208(c). This is consistent with the scope of the Health Care Decisions Law.

Prob. Code § 3201 (amended). Petition for court authorization

Comment. Subdivisions (a) and (b) of Section 3201 are amended to use the terminology of Section 3200 and make the language internally consistent. See Section 3200 Comment. Other technical, nonsubstantive changes are also made.

Subdivision (d) is continued in Section 3208(b) (order authorizing treatment) without substantive change. See Section 3208 Comment.

Subdivision (e) is continued in Section 3210(c) (supplemental, alternative procedure) without substantive change. Subdivision (f) is continued in Section 3210(a) without substantive change. See Section 3210 Comment.

Subdivision (g) is continued in Section 3212 (choice of treatment by spiritual means) without substantive change. See Section 3212 Comment.

Prob. Code § 3203 (amended). Persons authorized to file petition

Comment. Section 3203 is amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. Subdivision (c) is amended to make clear that an agent under a power of attorney for health care is an interested person. See Section 4607 ("agent" defined under Health Care Decisions Law).

Prob. Code § 3204 (amended). Contents of petition

Comment. Section 3204 is amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. The reference to "informed" consent is omitted as unnecessary. See Section 3208.5 Comment.

Prob. Code § 3206 (amended). Notice of hearing

Comment. Subdivision (b) of Section 3206 is amended to correct the reference to a "proposed conservatee." See Section 3200(d) ("patient" defined).

Subdivision (c) is amended to replace the references to "affidavit," in conformity with Section 3204.

Prob. Code § 3207 (amended). Submission for determination on medical affidavits

Comment. Section 3207 is amended to eliminate the reference to “affidavits,” in conformity with Section 3204.

Prob. Code § 3208 (amended). Order authorizing treatment

Comment. Subdivision (a) of Section 3208 is amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. The reference to “informed” consent has been omitted as surplus. See Section 3805 Comment.

New subdivision (b) continues former subdivision (d) of Section 3201 without substantive change.

A new subdivision (c) is added to permit withholding or withdrawal of health care, including artificial nutrition and hydration. This amendment extends the authority of the court to authorize health care decisions to the same extent as surrogates and subject to the same standards as provided in the Health Care Decisions Law. See, e.g., Sections 4684 (standard governing agent’s health care decisions under power of attorney for health care), 4714 (standard governing surrogate’s health care decisions).

Former subdivisions (b)-(d) are continued in Section 3208.5 without substantive change. See Section 3208.5 Comment.

Prob. Code § 3208.5 (added). Effect of order determining that patient has capacity

Comment. Section 3208.5 continues former subdivisions (b)-(d) of Section 3208 without substantive change. The subdivisions have been placed in a different order. Terminology has been conformed to the definitions in Section 3200. Thus, for example, “health care” replaces “medical treatment” appearing in the former provision. Except in subdivision (b), references to “informed” consent have been omitted as surplus and for consistency with other provisions in this part and in the Health Care Decisions Law (Section 4600 *et seq.*). To be effective, the patient’s consent must satisfy the law of informed consent.

Prob. Code § 3210 (amended). Procedure supplemental and alternative

Comment. Subdivisions (a) and (b) of Section 3210 are amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. The second clause added to subdivision (a) continues former subdivision (f) of Section 3201 without substantive change. The erroneous reference to “this chapter” in the former provision is corrected.

Subdivision (c) continues and generalizes former subdivision (e) of Section 3201. Subdivision (c) applies to all health care institutions, as defined in Section 3200(c), not just long-term health care facilities, as defined in Health and Safety Code Section 1418.8(b). Other technical, nonsubstantive changes are also made.

Prob. Code § 3211 (amended). Limitations on part

Comment. Subdivision (e) of Section 3211 is amended to use the inclusive term “advance health care directive” used in the Health Care Decisions Law. This continues the substance of former law, since declarations under the former Natural Death Act and powers of attorney for health care are types of advance directives. See Section 4605 & Comment. Also covered by this language are “individual health care instructions.” See Section 4623 & Comment.

Prob. Code § 3212 (added). Choice of treatment by spiritual means

Comment. Section 3212 continues former subdivision (g) of Section 3201 without substantive change. The former reference to “competency” has been changed to “capacity” to conform to the terminology of this part and related statutes. See, e.g., Section 3201 (capacity determination).

Prob. Code § 3722 (technical amendment). Effect of dissolution, annulment, or legal separation on power of attorney involving federal absentees

Comment. Section 3722 is amended to refer to a corresponding section concerning advance health care directives.

See also Sections 1403 (“absentee” defined), 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined).

Prob. Code § 4014 (revised comment). Attorney-in-fact

Revised Comment. Subdivision (a) of Section 4014 supersedes part of former Civil Code Section 2400 and former Civil Code Section 2410(a), and is comparable to the first sentence of Civil Code Section 2295.

Subdivision (b) is comparable to Section 84 (“trustee” includes successor trustee). See Sections 4202 (multiple attorneys-in-fact), 4203 (successor attorneys-in-fact), 4205 (delegation of attorney-in-fact’s authority). The purpose of subdivision (b) is to make clear that the rules applicable to attorneys-in-fact under the Power of Attorney Law apply as well to successors and alternates of the original attorney-in-fact, and to other persons who act in place of the attorney-in-fact.

See also Sections 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4050 (amended). Types of powers of attorney governed by this division

Comment. Section 4050 is amended to reflect the revision of the law relating to powers of attorney for health care. See Section 4600 *et seq.* (Health Care Decisions Law). Division 4.5 no longer governs powers of attorney for health care.

Revised 1994 Comment. Section 4050 describes the types of instruments that are subject to the Power of Attorney Law. If a section in this division refers to a “power of attorney,” it generally refers to a durable power of attorney, but may, under certain circumstances, also apply to a nondurable power of attorney. For example, a statutory form power of attorney may be durable or nondurable. See Sections 4401, 4404. A nondurable power may incorporate provisions of this division, thereby becoming subject to its provisions as provided in Section 4050(a)(4).

Subdivision (b) makes clear that certain specialized types of power of attorney are not subject to the Power of Attorney Law. This list is not intended to be exclusive. See subdivision (c). Subdivision (b)(1) recognizes the special rule applicable to a power coupled with an interest in the subject of a power of attorney provided in Civil Code Section 2356(a). Subdivision (b)(2) continues the substance of the limitation in former Civil Code Section 2420(b) and broadens it to apply to the entire Power of Attorney Law. See Ins. Code § 1280 *et seq.* For the rules applicable to proxy voting in business corporations, see Corp. Code § 705. For other statutes dealing with proxies, see Corp. Code §§ 178, 702, 5069, 5613, 7613, 9417, 12405, 13242; Fin. Code §§ 5701, 5702, 5710, 6005. See also Civ. Code § 2356(e) (proxy under general agency rules).

Subdivision (c) makes clear that this division does not affect the validity of other agencies and powers of attorney. The Power of Attorney Law thus does not apply to other specialized agencies, such as real estate agents under Civil Code Sections 2373-2382. As a corollary, an instrument denominated a power of attorney that does not satisfy the execution requirements for a power of attorney under this division may be valid under general agency law or other principles.

See also Sections 4014 (“attorney-in-fact” defined), 4018 (“durable power of attorney” defined), 4022 (“power of attorney” defined).

Prob. Code § 4053 (revised comment). Recognition of durable powers of attorney executed under law of another state

Revised Comment. Section 4053 is new. This section promotes use and enforceability of durable powers of attorney executed in other states. See also Section 4018 (“durable power of attorney” defined).

Prob. Code § 4054 (revised comment). Application to existing powers of attorney and pending proceedings

Revised Comment (1994). Section 4054 is comparable to Section 15001 (application of Trust Law). Subdivision (a) provides the general rule that this division applies to all powers of attorney, regardless of when created.

Subdivision (b) is a specific application of the general rule in subdivision (a). See Section 4900 *et seq.* (judicial proceedings concerning powers of attorney). Subdivision (c) provides discretion to the court to resolve problems arising in proceedings commenced before the operative date.

For special transitional provisions, see Sections 4102 (durable power of attorney form); see also Section 4129(c) (springing powers).

See also Section 4022 (“power of attorney” defined).

Prob. Code § 4100 (amended). Application of part

Comment. Section 4100 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). See also Section 4050 (types of powers of attorney governed by this division).

Prob. Code § 4101 (revised comment). Priority of provisions of power of attorney

Revised Comment. Section 4101 is new. This section makes clear that many of the statutory rules provided in this division are subject to express or implicit limitations in the power of attorney. If a statutory rule is not subject to control by the power of attorney, this is stated explicitly, either in a particular section or as to a group of sections. See, e.g., Sections 4130 (inconsistent authority), 4151(a)(2) (revocation of power of attorney by writing), 4153(a)(2)-(3) (revocation of attorney-in-fact’s authority), 4155 (termination of authority under nondurable power of attorney on principal’s incapacity), 4206 (relation of attorney-in-fact to court-appointed fiduciary), 4207 (resignation of attorney-in-fact), 4232 (duty of loyalty), 4233 (duty to keep principal’s property separate and identified), 4234(b) (authority to disobey instructions with court approval), 4236 (duty to keep records and account; availability of records to other persons), 4502 (effect of provision in power of attorney attempting to limit right to petition), 4503 (limitations on right to petition).

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4121 (amended, revised comment). Formalities for executing a power of attorney

Comment. Subdivision (b) of Section 4121 is amended to make clear that the person signing at the principal’s direction must be an adult. This is consistent with the language of Section 4673 (formalities for executing written advance health care directive).

Revised 1994 Comment. Section 4121 provides the general execution formalities for a power of attorney under this division. A power of attorney that complies with this section is legally sufficient as a grant of authority to an attorney-in-fact. Special rules apply to a statutory form power of attorney. See Section 4402.

The dating requirement in subdivision (a) generalizes the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432(a)(2). This rule is also consistent with the statutory forms. See Sections 4401 (statutory form power of attorney).

In subdivision (b), the requirement that a power of attorney be signed by the principal or at the principal’s direction continues a rule implicit in former law. See former Civ. Code §§ 2400, 2410(c). In addition, it generalizes the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432.

The requirement that the power of attorney be either acknowledged or signed by two witnesses, in subdivision (c), generalizes part of the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432(a)(3). Former general rules did not require either

acknowledgment or witnessing. However, the statutory form power of attorney provided for acknowledgment. See former Civ. Code § 2475 (now Prob. Code § 4401). This rule still applies to the statutory form power of attorney; witnessing does not satisfy Section 4402. Subdivision (c) provides the general rule as to witnessing; specific qualifications for witnesses are provided in Section 4122.

Nothing in this section affects the requirements concerning recordable instruments. A power of attorney legally sufficient as a grant of authority under this division must satisfy the general rules concerning recordation in Civil Code Sections 1169-1231. To facilitate recordation of a power of attorney granting authority concerning real property, the power of attorney should be acknowledged before a notary, whether or not it is witnessed.

See also Sections 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4122 (amended). Requirements for witnesses

Comment. Section 4122 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). Witnessing requirements of this section, to the extent they applied to health care powers, are continued in Section 4674(a)-(c) without substantive change.

This section is not subject to limitation in the power of attorney. See Section 4101. See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4123 (amended). Permissible purposes

Comment. Section 4123 is amended to delete subdivision (d), which referred to powers of attorney for health care that are now governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). See Section 4050 (types of powers of attorney governed by this division).

Revised 1994 Comment. Subdivision (a) of Section 4123 is new and is consistent with the general agency rules in Civil Code Sections 2304 and 2305. For provisions concerning the duties and powers of an attorney-in-fact, see Sections 4230-4266. See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Subdivision (b) continues former Civil Code Section 2513 without substantive change. This subdivision makes clear that a power of attorney may by its terms apply to all real property of the principal, including after-acquired property, without the need for a specific description of the real property to which the power applies. This section is consistent with Section 4464 (after-acquired property under statutory form power of attorney).

Subdivision (c) is new and acknowledges the existing practice of providing authority to make personal care decisions in durable powers of attorney. For a comparable provision in the Health Care Decisions Law, see Section 4671.

Prob. Code § 4124 (revised comment). Requirements for durable power of attorney

Revised Comment. Section 4124 restates former Civil Code Section 2400 without substantive change. For special rules applicable to statutory form powers of attorney, see Sections 4401, 4402. See also Section 4050 (powers subject to this division).

Section 4124 is similar to the official text of Section 1 of the Uniform Durable Power of Attorney Act (1984), Uniform Probate Code Section 5-501 (1991). See Section 2(b) (construction of provisions drawn from uniform acts). The reference in the uniform act to the principal’s “disability” is omitted. Under Section 4155, it is the principal’s incapacity to contract which would otherwise terminate the power of attorney. In addition, the phrase “or lapse of time” has not been included in the language set forth in subdivision (a) of Section 4124 because it is unnecessary. As a matter of law, unless a durable power of attorney states an earlier termination date, it remains valid regardless of any lapse of time since its creation. See, e.g., Sections 4127

(lapse of time), 4152(a)(1) (termination of attorney-in-fact's authority pursuant to terms of power of attorney).

See also Sections 4014 ("attorney-in-fact" defined), 4018 ("durable power of attorney" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code § 4128 (amended). Warning statement in durable power of attorney

Comment. Subdivision (c) of Section 4128 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). This is a technical, nonsubstantive change.

Revised 1994 Comment. The warning statement in subdivision (a) of Section 4128 replaces the statement provided in former Civil Code Section 2510(b). Subdivision (b) restates former Civil Code Section 2510(c) without substantive change. Subdivision (c) restates former Civil Code Section 2510(a) without substantive change, but the reference to statutory short form powers of attorney under former Civil Code Section 2450 is omitted as obsolete. This section is not subject to limitation in the power of attorney. See Section 4101(b).

Other provisions prescribe the contents of the warning statements for particular types of durable powers of attorney. See Section 4401 (statutory form power of attorney).

Section 4102 permits a printed form to be used after January 1, 1995, if the form complies with prior law. A form printed after January 1, 1986, may be sold or otherwise distributed in this state only if it complies with the requirements of Section 4128 (or its predecessor, former Civil Code Section 2510). See Section 4102(b).

See also Sections 4014 ("attorney-in-fact" defined), 4018 ("durable power of attorney" defined), 4026 ("principal" defined), 4034 ("third person" defined).

Prob. Code § 4130 (revised comment). Inconsistent authority

Revised Comment. Section 4130 is new. See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code § 4152 (revised comment). Termination of attorney-in-fact's authority

Revised Comment. Section 4152 is drawn from the general agency rules provided in Civil Code Sections 2355 and 2356. This section continues the substance of former law as to termination of the authority of an attorney-in-fact under a power of attorney. For a special rule as to termination of nondurable powers of attorney on principal's incapacity, see Section 4155.

Subdivision (a)(1) is the same as Civil Code Section 2355(a). Subdivision (a)(2) is the same as Civil Code Section 2355(b), but the reference to fulfillment of the purpose of the power of attorney is new. Subdivision (a)(3) is the same as Civil Code Section 2356(a)(1). These subdivisions recognize that the authority of an attorney-in-fact necessarily ceases when the underlying power of attorney is terminated.

Subdivision (a)(4) is the same as Civil Code Section 2356(a)(2), but recognizes that certain tasks may remain to be performed after death. See, e.g., Sections 4238 (attorney-in-fact's duties on termination of authority).

Subdivision (a)(5) is generalized from Civil Code Section 2355(c)-(f). Subdivision (a)(6) is similar to Civil Code Section 2355(d) (renunciation by agent). For the manner of resignation, see Section 4207. Subdivision (a)(7) is similar to Civil Code Section 2355(e). Subdivision (a)(8) cross-refers to the rules governing the effect of dissolution and annulment of marriage. Subdivision (a)(9) is the same as Civil Code Section 2355(c).

Subdivision (b) preserves the substance of the introductory clause of Civil Code Section 2355 and Civil Code Section 2356(b), which protect persons without notice of events that terminate an agency.

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined), 4034 ("third person" defined); Civ. Code § 1216 (recordation of revocation of recorded instruments).

Prob. Code § 4200 (revised comment). Qualifications of attorney-in-fact

Revised Comment. Section 4200 supersedes the last part of Civil Code Section 2296 (“any person may be an agent”) to the extent that it applied to attorneys-in-fact under powers of attorney.

See also Sections 56 (“person” defined), 4014 (“attorney-in-fact” defined).

Prob. Code § 4203 (amended). Successor attorneys-in-fact

Comment. Section 4203 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). This is a technical, nonsubstantive change.

Prob. Code § 4206 (amended). Relation of attorney-in-fact to court-appointed fiduciary

Comment. Section 4206 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). This is a technical, nonsubstantive change.

Prob. Code § 4207 (revised comment). Resignation of attorney-in-fact

Revised Comment. Section 4207 is new. For judicial procedures for approving the attorney-in-fact’s resignation, see Section 4541(e) (petition as to power of attorney other than durable power of attorney for health care).

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4234 (revised comment). Duty to keep principal informed and follow instructions

Revised Comment. Section 4234 is drawn from general agency rules. The duty to follow the principal’s instructions is consistent with the general agency rule in Civil Code Section 2309. See also Civ. Code § 2019 (agent not to exceed limits of actual authority). The duty to communicate with the principal is consistent with the general agency rule in Civil Code Sections 2020 and 2332.

Subdivision (b) is a limitation on the general agency rule in Civil Code Section 2320 (power to disobey instructions). For provisions relating to judicial proceedings, see Section 4500 *et seq.*

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4235 (revised comment). Consultation and disclosure

Revised Comment. Section 4235 is drawn from the Missouri Durable Power of Attorney Law. See Mo. Ann. Stat. § 404.714(4) (Vernon 1990). This section does not provide anything inconsistent with permissible practice under former law, but is intended to recognize the desirability of consultation in appropriate circumstances and provide assurance to third persons that consultation with the attorney-in-fact is proper and does not contravene privacy rights. See also Section 4455(f) (receipt of bank statements, etc., under statutory form powers of attorney). The right to obtain information may be enforced pursuant to Section 4541(f).

See also Sections 4014 (“attorney-in-fact” defined), 4026 (“principal” defined).

Prob. Code § 4236 (revised comment). Duty to keep records and account, availability of records to other persons

Revised Comment. Section 4236 is drawn in part from Minnesota law. See Minn. Stat. Ann. § 523.21 (West Supp. 1994). For provisions relating to judicial proceedings, see Section 4500 *et seq.*

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4260 (amended). Limitation on article

Comment. Section 4260 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). This is a technical, nonsubstantive change.

Prob. Code § 4265 (amended). Excluded authority

Comment. Section 4265 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). See Section 4050 (scope of division).

Section 4265 is consistent with the general agency rule in Civil Code Section 2304. See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4300 (revised comment). Third persons required to respect attorney-in-fact’s authority

Revised Comment. Section 4300 is new. This section provides the basic rule concerning the position of an attorney-in-fact: that the attorney-in-fact acts in place of the principal, within the scope of the power of attorney, and is to be treated as if the principal were acting. The second sentence generalizes a rule in former Civil Code Section 2480.5, which was applicable only to the Uniform Statutory Form Power of Attorney. Under this rule, a third person may be compelled to honor a power of attorney only to the extent that the principal, disregarding any legal disability, could bring an action to compel the third person to act. A third person who could not be forced to do business with the principal consequently may not be forced to deal with the attorney-in-fact. However, a third person who holds property of the principal, who owes a debt to the principal, or who is obligated by contract to the principal may be compelled to accept the attorney-in-fact’s authority.

This general rule is subject to some specific exceptions. See, e.g., Sections 4309 (prior breach by attorney-in-fact), 4310 (transactions relating to accounts and loans in financial institution).

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined), 4034 (“third person” defined).

Prob. Code § 4301 (revised comment). Reliance by third person on general authority

Revised Comment. Section 4301 is drawn from the Missouri Durable Power of Attorney Law. See Mo. Ann. Stat. § 404.710(8) (Vernon 1990). This general rule is subject to specific limitations provided elsewhere. See, e.g., Sections 4264 (authority that must be specifically granted).

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4034 (“third person” defined).

Prob. Code § 4302 (revised comment). Identification of attorney-in-fact and principal

Revised Comment. Section 4302 is drawn in part from the Missouri Durable Power of Attorney Law. See Mo. Ann. Stat. § 404.719(4) (Vernon 1990). See also former Civ. Code § 2512(a)(1) (presentation by attorney-in-fact named in power of attorney) & Comment.

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined), 4034 (“third person” defined).

Prob. Code § 4303 (revised comment). Protection of third person relying in good faith on power of attorney

Revised Comment. Section 4303 continues former Civil Code Section 2512 without substantive change, with the addition of the witnessing rule in subdivision (a)(3). This section is intended to ensure that a power of attorney, whether durable or nondurable, will be accepted and relied on by third persons. The person presenting the power of attorney must actually be the attorney-in-fact designated in the power of attorney. If the person purporting to be the attorney-in-fact is an impostor, the immunity does not apply. The third person can rely in good faith on the notary public's certificate of acknowledgment or the signatures of the witnesses that the person who executed the power of attorney is the principal.

Subdivision (b) makes clear that this section provides an immunity from liability where the requirements of the section are satisfied. This section has no relevance in determining whether or not a third person who acts in reliance on a power of attorney is liable under the circumstances where, for example, the power of attorney does not include a notary public's certificate of acknowledgment.

For other immunity provisions not affected by Section 4303, see, e.g., Sections 4128(b) (reliance in good faith on durable power of attorney not containing "warning" statement required by Section 4128), 4301 (reliance by third person on general authority), 4304 (lack of knowledge of death or incapacity of principal). See also Section 3720 ("Any person who acts in reliance upon the power of attorney [of an absentee as defined in Section 1403] when accompanied by a copy of a certificate of missing status is not liable for relying and acting upon the power of attorney.").

See also Sections 4014 ("attorney-in-fact" defined), 4018 ("durable power of attorney" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined), 4034 ("third person" defined).

Prob. Code § 4307 (revised comment). Certified copy of power of attorney

Revised Comment. Section 4307 is new. This section facilitates use of a power of attorney executed in this state as well as powers of attorney executed in other states. Subdivision (d) makes clear that certification under this section is not a requirement for use of copies of powers of attorney. This recognizes, for example, the existing practice of good faith reliance on copies of durable powers of attorney for health care. See former Section 4750 (immunities of health care provider); new Section 4740.

See also Section 4022 ("power of attorney" defined).

Prob. Code § 4401 (revised comment). Statutory form power of attorney

Revised Comment. Section 4401 continues former Civil Code Section 2475 without change, except for the revision of cross-references to other provisions, the restoration of language erroneously omitted in 1993, and inclusion of a general reference to the law governing the notary's certificate of acknowledgment. Section 4401 is the same in substance as Section 1(a) of the Uniform Statutory Form Power of Attorney Act (1988), with the addition of provisions to permit designation of co-agents. See Section 2(b) (construction of provisions drawn from uniform acts).

The provisions added by former Civil Code Section 2475 were drawn from the former Statutory Short Form Power of Attorney statute. See former Civ. Code § 2450 (repealed by 1990 Cal. Stat. ch. 986, § 1). The acknowledgment portion of the form was revised to be consistent with the form used under California law. The word "incapacitated" was substituted for the words "disabled, incapacitated, or incompetent" used in the uniform act. This substitution conforms the statutory form to the California version of the Uniform Durable Power of Attorney Act. See Section 4018 (requirements for creation of durable power of attorney).

Section 4401 provides the text of the form that is sufficient and necessary to bring this part into operation. The statutory form can be used in whole or part instead of individually drafted forms or forms adapted from a form book.

A form used to create a power of attorney subject to this part should use the language provided in Section 4401. Minor variances in wording will not take it out of the scope of the part. For example, the use of the language of the official text of the uniform act in the last paragraph of the text of the statutory form (protection of third party who receives a copy of the statutory form power of attorney and acts in reliance on it) instead of the language provided in Section 4401 does not take the form out of the scope of this part. See Section 4402(a). Nor does the omission of the provisions relating to designation of co-agents take the form out of the scope of this part. See Section 4402(a).

After the introductory phrase, the term “agent” is used throughout the uniform act in place of the longer and less familiar “attorney-in-fact.” Special effort is made throughout the uniform act to make the language as informal as possible without impairing its effectiveness.

The statutory form contains a list of powers. The powers listed relate to various separate classes of activities, except the last, which includes all the others. Health care matters are not included. For a power of attorney form for health care, see Section 4701.

Space is provided in the statutory form for “Special Instructions.” In this space, the principal can add specially drafted provisions limiting or extending the powers granted to the agent. (If the space provided is not sufficient, a reference can be made in this space to an attached sheet or sheets, and the special provisions can be included on the attached sheet or sheets.)

The statutory form contains only a limited list of powers. If it is desired to give the agent the broadest possible powers, language similar to the following can be added under the “Special Instructions” portion of the form:

In addition to all of the powers listed in lines (A) to (M) above, I grant to my agent full power and authority to act for me, in any way which I myself could act if I were personally present and able to act, with respect to all other matters and affairs not listed in lines (A) to (M) above, but this authority does not include authority to make health care decisions.

Neither the form in this section, nor the constructional provisions in Sections 4450-4465, attempt to allow the grant of the power to make a will or to give the agent extensive estate planning authority, although several of the powers, especially lines (G), (H), and (L) of the statutory form, may be useful in planning the disposition of an estate. An individually tailored power of attorney can be used if the principal wants to give the agent extensive estate planning authority, or additional estate planning powers can be granted to the agent by stating those additional powers in the space provided in the form for “Special Instructions.” For example, provisions like the following might be included under the special instructions portion of the statutory form:

In addition to the powers listed in lines (A) to (M) above, the agent is empowered to do all of the following:

(1) Establish a trust with property of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper, and transfer any property in which the principal has an interest to the trust.

(2) Exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.

(3) Make a gift, grant, or other transfer without consideration to or for the benefit of the spouse or descendants of the principal or a charitable organization, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made; consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts.

(4) Loan any of the property of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(5) In general, and in addition to all the specific acts enumerated, do any other act which the principal can do through an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of other personal relationships of the principal to parents, relatives, friends, and organizations.

It should be noted that a trust may not be modified or revoked by an agent under a statutory form power of attorney unless it is expressly permitted by the instrument granting the power and by the trust instrument. See Section 15401(b).

Section 4404 and the statutory form itself make the power of attorney a durable power of attorney, remaining in effect after the incapacity of the principal, unless the person executing the form strikes out the language in the form that makes the instrument a durable power of attorney. See also Section 4018 (“durable power of attorney” defined).

The last paragraph of the text of the statutory form protects a third party who receives a copy of the statutory form power of attorney and acts in reliance on it. See also Section 4034 (“third person” defined). The statement in the statutory form — that revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation — is consistent with Sections 4304 (good faith reliance on power of attorney without actual knowledge of death or incapacity of principal), 4305 (affidavit of lack of knowledge of termination of power). See also Sections 4300 (third persons required to respect agent’s authority), 4301 (immunities of third person), 4303 (protection of person who acts in good faith reliance upon power of attorney where specified requirements are satisfied). The protection provided by these sections and other immunities that may protect persons who rely on a power of attorney (see Section 4303(b)) apply to a statutory form power of attorney. See Sections 4100 (application of division to statutory form power of attorney), 4407 (general provisions applicable to statutory form power of attorney).

The language of the last portion of the text of the statutory form set forth in Section 4401 substitutes the phrase “has actual knowledge of the revocation” for the phrase “learns of the revocation” which is used in the uniform act form. This substitution does not preclude use of a form including the uniform act language. See Section 4402(a) (third sentence).

Neither this section, nor the part as a whole, attempts to provide an exclusive method for creating a power of attorney. Other forms may be used and other law employed to create powers of attorney. See Section 4408. However, this part should be sufficient for most purposes.

For provisions relating to court enforcement of the duties of the agent, see Sections 4500-4545.

The form provided by Section 4401 supersedes the former statutory short form power of attorney under former Civil Code Sections 2450-2473 (repealed by 1990 Cal. Stat. ch. 986, § 1). But older forms consistent with former Civil Code Sections 2450-2473 are still effective. See Section 4409 & Comment.

See also Sections 4014 (“attorney-in-fact” defined to include agent), 4026 (“principal” defined), 4034 (“third person” defined).

Prob. Code § 4405 (revised comment). Springing statutory form power of attorney

Revised Comment. Section 4405 continues former Civil Code Section 2479 without substantive change. Section 4405 is not found in the Uniform Statutory Form Power of Attorney Act (1988). This section is drawn from Section 5-1602 of the New York General Obligations Law. A provision described in subdivision (a) protects a third person who relies on the declaration under penalty of perjury of the person or persons designated in the power of attorney that the specified event or contingency has occurred. The principal may designate the agent or another person, or several persons, to make this declaration.

Subdivision (d) makes clear that subdivisions (a) and (b) are not the exclusive method for creating a “springing power” (a power of attorney that goes into effect upon the occurrence of a

specified event or contingency). The principal is free to set forth in a power of attorney under this part any provision the principal desires to provide for the method of determining whether the specified event or contingency has occurred. For example, the principal may provide that his or her “incapacity” be determined by a court under Part 4 (commencing with Section 4500). See Section 4541(a). If the power of attorney provides only that it shall become effective “upon the incapacity of the principal,” the determination whether the power of attorney is in effect also may be made under Part 4(commencing with Section 4500).

See also Sections 4026 (“principal” defined), 4030 (“springing power of attorney” defined).

Prob. Code § 4407 (revised comment). General provisions applicable to statutory form power of attorney

Revised Comment. Section 4407 restates the substance of former Civil Code Section 2480. Section 4407 makes clear that the general provisions that apply to powers of attorney generally apply to statutory form powers of attorney under this part. Thus, for example, the following provisions apply to a power of attorney under this part:

Section 4123(b) (application of power of attorney to all or part of principal’s property; unnecessary to describe items or parcels of property).

Section 4124 (requirements for durable power of attorney). The statutory form set forth in Section 4401 satisfies the requirements for creation of a durable power of attorney, unless the provision making the power of attorney durable is struck out on the form.

Section 4125 (effect of acts by attorney-in-fact during incapacity of principal).

Section 4206 (relation of attorney-in-fact to court-appointed fiduciary).

Section 4303 (protection of person relying in good faith on power of attorney).

Section 4304 (good faith reliance on power of attorney after death or incapacity of principal).

Section 4306 (good faith reliance on attorney-in-fact’s affidavit as conclusive proof of the nonrevocation or nontermination of the power).

Sections 4500-4545 (judicial proceedings).

Prob. Code § 4450 (revised comment). Construction of powers generally

Revised Comment. Section 4450 continues former Civil Code Section 2485 without change, except for the revision of a cross-reference to another provision. Section 4450 is the same in substance as Section 3 of the Uniform Statutory Form Power of Attorney Act (1988). See Section 2(b) (construction of provisions drawn from uniform acts). See the Comment to this chapter under the chapter heading. See also Sections 4500-4545 (court enforcement of agent’s duties).

See also Sections 4014 (“attorney-in-fact” defined to include agent), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4500 (added). Power of attorney freely exercisable

Comment. Section 4500 continues former Section 4900 without change. See also Section 4022 (“power of attorney” defined).

Prob. Code § 4501 (added). Cumulative remedies

Comment. Section 4501 continues former Section 4901 without change.

Prob. Code § 4502 (added). Effect of provision in power of attorney attempting to limit right to petition

Comment. Section 4502 continues former Section 4902 without change. See also Sections 4022 (“power of attorney” defined), 4101(b) (general rule on limitations provided in power of attorney).

Prob. Code § 4503 (added). Limitations on right to petition

Comment. Subdivision (a) of Section 4503 continues former Section 4903(a) without change, except that the reference to the section governing petitions relating to powers of attorney for health care (former Section 4942) is omitted. Powers of attorney for health care are governed by Division 4.7 (commencing with Section 4600).

Subdivision (a) makes clear that a power of attorney may limit the applicability of this part only if it is executed with the advice and approval of the principal’s counsel. This limitation is designed to ensure that the execution of a power of attorney that restricts the remedies of this part is accomplished knowingly by the principal. The inclusion of a provision in the power of attorney making this part inapplicable does not affect the right to resort to any judicial remedies that may otherwise be available. See Section 4501.

Subdivision (b) continues the part of former Section 4903(b) relating to non-health care powers of attorney without substantive change, except that the reference to the conservator of the person of the principal is added for consistency with Section 4540(e).

See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4504 (added). Jury trial

Comment. Section 4504 continues former Section 4904 without change. This section is consistent with the rule applicable to other fiduciaries. See Prob. Code §§ 1452 (guardianships and conservatorships), 7200 (decedents’ estates), 17006 (trusts).

Prob. Code § 4505 (added). Application of general procedural rules

Comment. Section 4505 continues former Section 4905 without change, and provides a cross reference to the general procedural rules that apply to this division. See, e.g., Sections 1003 (guardian ad litem), 1021 (verification required), 1041 (clerk to set matters for hearing), 1046 (hearing and orders), 1203 (order shortening time for notice), 1215-1216 (service), 1260 (proof of service).

Prob. Code § 4520 (added). Jurisdiction and authority of court or judge

Comment. Section 4520 continues former Section 4920 without change, and is comparable to Section 7050 governing the jurisdiction and authority of the court in proceedings concerning administration of decedents’ estates. See Section 7050 Comment.

Prob. Code § 4521 (added). Basis of jurisdiction

Comment. Section 4521 continues former Section 4921 without change, and is comparable to Section 17004 (jurisdiction under Trust Law). This section recognizes that the court, in proceedings relating to powers of attorney under this division, may exercise jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. See generally Judicial Council Comment to Code Civ. Proc. § 410.10; Prob. Code § 17004 Comment (basis of jurisdiction under Trust Law).

Prob. Code § 4522 (added). Jurisdiction over attorney-in-fact

Comment. Section 4522 continues former Section 4922 without change, and is comparable to Sections 3902(b) (jurisdiction over custodian under Uniform Transfers to Minors Act) and 17003(a) (jurisdiction over trustee). This section is intended to facilitate exercise of the court's power under this part when the court's jurisdiction is properly invoked. As recognized by the introductory clause, constitutional limitations on assertion of jurisdiction apply to the exercise of jurisdiction under this section. Consequently, appropriate notice must be given to an attorney-in-fact as a condition of personal jurisdiction. *Cf.* *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code § 4523 (added). Venue

Comment. Section 4523 continues former Section 4923 without change. This section is drawn from the rules applicable to guardianships and conservatorships. See Sections 2201-2202. See also Section 4053 (durable powers of attorney under law of another jurisdiction).

Prob. Code § 4540 (added). Petitioners

Comment. Section 4540 continues former Section 4940 without change, except that the reference to the treating health care provider in former subdivision (h) is omitted. Powers of attorney for health care are governed by Division 4.7 (commencing with Section 4600). The purposes for which a person may file a petition under this part are limited by other rules. See Sections 4502 (effect of provision in power of attorney attempting to limit right to petition), 4503 (limitations on right to petition); see also Section 4501 (other remedies not affected). See also the comparable rules governing petitioners for appointment of a conservator under Section 1820.

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code § 4541 (added). Petition as to powers of attorney

Comment. Section 4541 continues former Section 4941 without change, except that the reference to powers of attorney for health care in the introductory paragraph of former law is omitted. Powers of attorney for health care are governed by Division 4.7 (commencing with Section 4600). This section applies to petitions concerning both durable and nondurable powers of attorney. See Sections 4022 ("power of attorney" defined), 4050 (scope of division).

Subdivision (a) makes clear that a petition may be filed to determine whether the power of attorney was ever effective, thus permitting, for example, a determination that the power of attorney was invalid when executed because its execution was induced by fraud. See also Section 4201 (unqualified attorney-in-fact).

The authority to petition to disobey the principal's instructions in subdivision (b) is new. This is a limitation on the general agency rule in Civil Code Section 2320. See Section 4234 (duty to follow instructions) & Comment.

Subdivision (d) requires a court determination that the principal has become incapacitated before the court is authorized to declare the power of attorney terminated because the attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney.

Subdivision (e) provides a procedure for accepting the attorney-in-fact's resignation. The court's discretion in this type of case depends on whether the attorney-in-fact is subject to any duty to act under Section 4230, as in the situation where the attorney-in-fact has agreed in writing to act or is involved in an ongoing transaction. Under subdivision (e)(1) the court may make any necessary protective order. Under subdivision (e)(2), the court's discretion is limited to requiring that notice be given to others who may be expected to look out for the principal's interests, such as a public guardian or a relative. In addition, the attorney-in-fact is required to comply with the

statutory duties on termination of authority. See Section 4238. The availability of this procedure is not intended to imply that an attorney-in-fact must or should petition for judicial acceptance of a resignation where the attorney-in-fact is not subject to a duty to act.

Subdivision (f) provides a remedy to achieve compliance with the power of attorney through recognition of the attorney-in-fact's authority. This remedy is also available to compel disclosure of information under Section 4235 (consultation and disclosure). See Section 4300 *et seq.* (relations with third persons).

A power of attorney may limit the authority to petition under this part. See Sections 4502 (effect of provision in power of attorney attempting to limit right to petition), 4503 (limitations on right to petition).

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code § 4542 (added). Commencement of proceeding

Comment. Section 4542 continues former Section 4943 without change. For a comparable provision, see Section 17201 (commencement of proceeding under Trust Law). A petition is required to be verified. See Section 1021.

See also Section 4022 ("power of attorney" defined).

Prob. Code § 4543 (added). Dismissal of petition

Comment. Section 4543 continues former Section 4944 without change. Under former Section 4944, the dismissal standard was revised to permit dismissal when the proceeding is not "reasonably necessary," rather than "necessary" as under the prior section (Civil Code Section 2416). Under this section, the court has authority to stay or dismiss a proceeding in this state if, in the interest of substantial justice, the proceeding should be heard in a forum outside this state. See Code Civ. Proc. § 410.30.

See also Section 4026 ("principal" defined).

Prob. Code § 4544 (added). Notice of hearing

Comment. Subdivision (a) of Section 4544, pertaining to internal affairs of the power of attorney, continues former Section 4945(a) without change.

Subdivision (b) continues former Section 4945(b) without change, and provides a special rule applicable to service of notice in proceedings involving third persons, i.e., not internal affairs of the power of attorney. See Section 4541(f) (petition to compel third person to honor attorney-in-fact's authority).

See also Sections 4014 ("attorney-in-fact" defined), 4026 ("principal" defined).

Prob. Code § 4545 (added). Award of attorney's fees

Comment. Section 4545 continues former Section 4947 without change.

See also Sections 4014 ("attorney-in-fact" defined), 4022 ("power of attorney" defined), 4026 ("principal" defined).

Prob. Code §§ 4600-4806 (repealed). Durable powers of attorney for health care

Comment. Former Sections 4600-4806 are superseded by relevant parts of the Health Care Decisions Law, Division 4.7 (commencing with Section 4600). See former Section 4600-4806 Comments.

Prob. Code § 4600 (repealed). Application of definitions

Comment. Former Section 4600 is continued in Section 4603 without substantive change.

Prob. Code § 4600 (added). Short title

Comment. Section 4600 is new and provides a convenient means of referring to this division. The Health Care Decisions Law is essentially self-contained, but other agency statutes may be applied as provided in Section 4688. See also Sections 20 *et seq.* (general definitions applicable in Probate Code depending on context), 4755 (application of general procedural rules). For the scope of this division, see Section 4651.

Many provisions in Parts 1, 2, and 3 are the same as or drawn from the Uniform Health-Care Decisions Act (1993). Several general provisions included in the Uniform Health-Care Decisions Act (1993) are generalized elsewhere in this code. See Sections 2(b) (construction of provisions drawn from uniform acts) (*cf.* UHCDA § 15), 11 (severability) (*cf.* UHCDA § 17). In Comments to sections in this title, a reference to the “Uniform Health-Care Decisions Act (1993)” or the “uniform act” (in context) means the official text of the uniform act approved by the National Conference of Commissioners on Uniform State Laws.

Prob. Code § 4603 (repealed). Community care facility

Comment. Former Section 4603 is continued in Section 4611 without substantive change.

Prob. Code § 4603 (added). Application of definitions

Comment. Section 4603 serves the same purpose as former Section 4600 and is comparable to Section 4010 (Power of Attorney Law).

Some definitions included in the Uniform Health-Care Decisions Act (1993) are generalized elsewhere in this code. See Sections 56 (“person” defined) (*cf.* uniform act Section 1(10)), 74 (“state” defined) (*cf.* uniform act Section 1(15)).

Prob. Code § 4605 (added). Advance health care directive, advance directive

Comment. Section 4605 is new. The first sentence is the same as Section 1(1) of the Uniform Health-Care Decisions Act (1993), except that the term “advance directive” is defined for convenience. “Advance directive” is commonly used in practice as a shorthand. Statutory language also may use the shorter term. See, e.g., Section 4698. A declaration or directive under the repealed Natural Death Act (former Health & Safety Code § 7185 *et seq.*) is a type of advance directive. See Section 4623 Comment.

See also Sections 4623 (“individual health care instruction” defined), 4629 (“power of attorney for health care” defined).

Background from Uniform Act. The term “advance health-care directive” appears in the federal Patient Self-Determination Act enacted as Sections 4206 and 4751 of the Omnibus Budget Reconciliation Act of 1990 and has gained widespread usage among health-care professionals. [Adapted from Unif. Health-Care Decisions Act § 1(1) comment (1993).]

Prob. Code § 4606 (repealed). Durable power of attorney for health care

Comment. Former Section 4606 is superseded by Section 4629 (“power of attorney for health care” defined). See Section 4629 Comment. The durability of powers of attorney for health care is implicit, so the term has been shortened in the new law to “power of attorney for health care.”

Prob. Code § 4607 (added). Agent

Comment. Section 4607 is consistent with the definition of attorney-in-fact in the Power of Attorney Law. See Section 4014. The first part of subdivision (a) is the same as Section 1(2) of the Uniform Health-Care Decisions Act (1993). For limitations on who may act as a health care agent, see Section 4659.

See also Sections 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Background from Uniform Act. The definition of “agent” is not limited to a single individual. The Act permits the appointment of co-agents and alternate agents. [Adapted from Unif. Health-Care Decisions Act § 1(2) comment (1993).]

Prob. Code § 4609 (repealed). Health care

Comment. The first part of former Section 4609 is continued in Section 4615 without substantive change. The language relating to decisions affecting the principal after death is not continued in the definition, but the authority is continued in Section 4683(b) without substantive change.

Prob. Code § 4609 (added). Capacity

Comment. Section 4609 is a new provision drawn from Health and Safety Code Section 1418.8(b) and Section 1(3) of the Uniform Health-Care Decisions Act (1993). This standard replaces the capacity to contract standard that was formerly applicable to durable powers of attorney for health care under Section 4120 in the Power of Attorney Law.

For provisions in this division relating to capacity, see Sections 4651 (authority of person having capacity not affected), 4657 (presumption of capacity), 4658 (determination of capacity and other medical conditions), 4682 (when agent’s authority effective), 4670 (authority to give individual health care instruction), 4671 (authority to execute power of attorney for health care), 4683 (scope of agent’s authority), 4695 (revocation of power of attorney for health care), 4715 (disqualification of surrogate), 4732 (duty of primary physician to record relevant information), 4733 (obligations of health care provider), 4766 (petition as to durable power of attorney for health care).

See also Sections 4615 (“health care” defined), 4617 (“health care decision” defined).

Prob. Code § 4611 (added). Community care facility

Comment. Section 4611 continues former Section 4603 without substantive change.

For provisions in this division using this term, see Sections 4659 (limitations on who may act as agent or surrogate), 4673 (witnessing requirements in skilled nursing facility).

Prob. Code § 4612 (repealed). Health care decision

Comment. Former Section 4612 is superseded by Section 4617. See Section 4617 Comment.

Prob. Code § 4613 (added). Conservator

Comment. Section 4613 is a new provision and serves the same purpose as Section 1(4) of the Uniform Health-Care Decisions Act (1993) (definition of “guardian”). Terminology in other states may vary, but the law applies the same rules regardless of terminology.

For provisions in this division concerning conservators, see Sections 4617 (“health care decision” defined), 4631 (“primary physician” defined), 4643 (“surrogate” defined), 4659 (limitations on who may act as agent or surrogate), 4672 (nomination of conservator in written advance health care directive), 4696 (duty to communicate revocation), 4732 (duty of primary physician to record relevant information), 4753 (limitations on right to petition), 4765 (petitioners), 4770 (temporary health care order).

See also Section 4617 (“health care decision” defined), 4625 (“patient” defined).

Prob. Code § 4615 (repealed). Health care provider

Comment. Former Section 4615 is continued in Section 4621 without substantive change.

Prob. Code § 4615 (added). Health care

Comment. Section 4615 continues the first part of former Section 4609 without substantive change and is the same in substance as Section 1(5) of the Uniform Health-Care Decisions Act (1993).

See also Section 4625 (“patient” defined).

Background from Uniform Act. The definition of “health care” is to be given the broadest possible construction. It includes the types of care referred to in the definition of “health-care decision” [Prob. Code § 4617], and to care, including custodial care, provided at a “health-care institution” [Prob. Code § 4619]. It also includes non-medical remedial treatment. [Adapted from Unif. Health-Care Decisions Act § 1(5) comment (1993).]

Prob. Code § 4617 (added). Health care decision

Comment. Section 4617 supersedes former Section 4612 and is the same in substance as Section 1(6) of the Uniform Health-Care Decisions Act (1993), with the substitution of the reference to cardiopulmonary resuscitation in subdivision (c) for the uniform act reference to orders not to resuscitate. Adoption of the uniform act formulation is not intended to limit the scope of health care decisions applicable under former law. Thus, like former law, this section encompasses consent, refusal of consent, or withdrawal of consent to health care, or a decision to begin, continue, increase, limit, discontinue, or not to begin any health care. Depending on the circumstances, a health care decision may range from a decision concerning one specific treatment through an extended course of treatment, as determined by applicable standards of medical practice.

An effective health care decision must be made with informed consent. See, e.g., *Cobbs v. Grant*, 8 Cal. 3d 229, 242, 502 P.2d 1, 104 Cal. Rptr. 505 (1972); *Barber v. Superior Court*, 147 Cal. App. 3d 1006, 1015, 195 Cal. Rptr. 484 (1983). While this division does not use the phrase “informed consent,” it is assumed that the statute will be read in light of this well-established doctrine.

See also Sections 4607 (“agent” defined), 4613 (“conservator” defined), 4615 (“health care” defined), 4625 (“patient” defined), 4643 (“surrogate” defined).

Prob. Code § 4618 (repealed). Residential care facility for the elderly

Comment. Former Section 4618 is continued in Section 4637 without substantive change.

Prob. Code § 4619 (added). Health care institution

Comment. Section 4619 is a new provision and is the same as Section 1(7) of the Uniform Health-Care Decisions Act (1993).

For provisions in this division using this term, see Sections 4654 (compliance with generally accepted health care standards), 4659 (limitations on who may act as agent or surrogate), 4677 (restriction on requiring or prohibiting advance directive), 4696 (duty to communicate revocation), 4701 (optional form of advance health care directive), 4711 (patient’s designation of surrogate), 4733 (obligations of health care institution), 4734 (right to decline for reasons of conscience or institutional policy), 4735 (health care institution’s right to decline ineffective care), 4736 (obligations of declining health care institution), 4740 (immunities of health care provider or institution), 4742 (statutory damages), 4765 (petitioners), 4785 (application of request to forgo resuscitative measures).

See also Section 4615 (“health care” defined).

Background from Uniform Act. The term “health-care institution” includes a hospital, nursing home, residential-care facility, home health agency, or hospice. [Adapted from Unif. Health-Care Decisions Act § 1(7) comment (1993).]

Prob. Code § 4621 (repealed). Statutory form durable power of attorney for health care

Comment. Former Section 4621 is not continued. For the replacement statutory form, see Section 4701 (optional form of advance health care directive).

Prob. Code § 4621 (added). Health care provider

Comment. Section 4621 continues former Section 4615 without substantive change and is the same as Section 1(8) of the Uniform Health-Care Decisions Act (1993). This section also continues former Health and Safety Code Section 7186(c) (Natural Death Act) without substantive change.

For provisions in this division using this term, see Sections 4617 (“health care decision” defined), 4641 (“supervising health care provider” defined), 4654 (compliance with generally accepted health care standards), 4659 (limitations on who may act as agent or surrogate), 4673 (witnessing requirements in skilled nursing facility), 4676 (validity of written advance directive executed in another jurisdiction), 4677 (restriction on requiring or prohibiting advance directive), 4685 (agent’s priority), 4696 (duty to communicate revocation), 4701 (optional form of advance health care directive), 4733 (obligations of health care provider), 4734 (health care provider’s right to decline for reasons of conscience), 4735 (health care provider’s right to decline ineffective care), 4736 (obligations of declining health care provider), 4740 (immunities of health care provider), 4742 (statutory damages).

See also Section 4615 (“health care” defined).

Prob. Code § 4623 (added). Individual health care instruction, individual instruction

Comment. Section 4623 is a new provision and is the same in substance as Section 1(9) of the Uniform Health-Care Decisions Act (1993). The term “individual health care instruction” is included to provide more clarity. A declaration or directive under the repealed Natural Death Act (former Health & Safety Code § 7185 *et seq.*) is an individual health care instruction.

For provisions in this division using this term, see Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined), 4658 (determination of capacity and other medical conditions), 4670 (individual health care instruction recognized), 4671 (power of attorney for health care may include individual instruction), 4684 (standard governing agent’s health care decisions), 4714 (standard governing surrogate’s health care decisions), 4732 (duty of primary physician to record relevant information), 4733 (obligations of health care provider or institution), 4734 (health care provider’s or institution’s right to decline), 4735 (right to decline to provide ineffective care), 4736 (obligations of declining health care provider or institution).

See also Section 4617 (“health care decision” defined), 4625 (“patient” defined).

Background from Uniform Act. The term “individual instruction” includes any type of written or oral direction concerning health-care treatment. The direction may range from a written document which is intended to be effective at a future time if certain specified conditions arise and for which a form is provided in Section 4 [Prob. Code § 4701], to the written consent required before surgery is performed, to oral directions concerning care recorded in the health-care record. The instruction may relate to a particular health-care decision or to health care in general. [Adapted from Unif. Health-Care Decisions Act § 1(9) comment (1993).]

Prob. Code § 4625 (added). Patient

Comment. Section 4625 is a new provision added for drafting convenience. “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care). For provisions governing surrogates, see Section 4711 *et seq.*

See also Sections 4615 (“health care” defined), 4623 (“individual health care instruction” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4643

(“surrogate” defined). Compare Section 3200 (“patient” defined for purposes of court-authorized medical treatment procedure).

Prob. Code § 4627 (added). Physician

Comment. Section 4627 continues and generalizes former Health and Safety Code Section 7186(g) (Natural Death Act) and is the same in substance as Section 1(11) of the Uniform Health-Care Decisions Act (1993).

Prob. Code § 4629 (added). Power of attorney for health care

Comment. Section 4629 supersedes former Section 4606 (defining “durable power of attorney for health care”) and is the same in substance as Section 1(12) of the Uniform Health-Care Decisions Act (1993). The writing requirement continues part of Section 4022 (defining “power of attorney” generally) as it applied to powers of attorney for health care under former law, and is consistent with part of the second sentence of Section 2(b) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined).

Prob. Code § 4631 (added). Primary physician

Comment. Section 4631 supersedes former Health and Safety Code Section 7186(a) (“attending physician” defined) and is the same in substance as Section 1(13) of the Uniform Health-Care Decisions Act (1993), with the addition of the reference to the ability to decline to act as primary physician. To be a “primary physician” under this division, the substantive rules in this section must be complied with. The institutional designation of a person is not relevant. Hence, a “primary care physician” or a “hospitalist” may or may not be a “primary physician,” depending on the circumstances.

For provisions in this division using this term, see Sections 4641 (“supervising health care provider” defined), 4658 (determination of capacity and other medical conditions), 4701 (optional form of advance health care directive), 4732 (duty of primary physician to record relevant information).

See also Sections 4607 (“agent” defined), 4613 (“conservator” defined), 4615 (“health care” defined), 4627 (“physician” defined), 4635 (“reasonably available” defined), 4643 (“surrogate” defined).

Background from Uniform Act. The Act employs the term “primary physician” instead of “attending physician.” The term “attending physician” could be understood to refer to any physician providing treatment to the individual, and not to the physician whom the individual, or agent, guardian, or surrogate, has designated or, in the absence of a designation, the physician who has undertaken primary responsibility for the individual’s health care. [Adapted from Unif. Health-Care Decisions Act § 1(13) comment (1993).]

Prob. Code § 4633 (added). Principal

Comment. Section 4633 is the same in substance as Section 4026 in the Power of Attorney Law. “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

See also Section 4629 (“power of attorney for health care” defined).

Prob. Code § 4635 (added). Reasonably available

Comment. Section 4635 is the same as Section 1(14) of the Uniform Health-Care Decisions Act (1993).

For provisions in this division using this term, see Sections 4631 (“primary physician” defined), 4641 (“supervising health care provider” defined), 4685 (agent’s priority), 4701 (optional form of advance health care directive).

See also Section 4615 (“health care” defined), 4625 (“patient” defined).

Background from Uniform Act. The term “reasonably available” is used in the Act to accommodate the reality that individuals will sometimes not be timely available. The term is incorporated into the definition of “supervising health-care provider” [Prob. Code § 4641]. It appears in the optional statutory form (Section 4) [Prob. Code § 4701] to indicate when an alternate agent may act. [Adapted from Unif. Health-Care Decisions Act § 1(14) comment (1993).]

Prob. Code § 4637 (added). Residential care facility for the elderly

Comment. Section 4637 continues former Section 4618 without substantive change.

For provisions in this division using this term, see Sections 4659 (limitations on who may act as agent or surrogate), 4673 (witnessing requirements in skilled nursing facility), 4701 (optional form of advance health care directive).

Prob. Code § 4639 (added). Skilled nursing facility

Comment. Section 4639 is a new provision that incorporates the relevant definition from the Health and Safety Code.

For provisions in this division using this term, see Sections 4673 (witnessing requirements in skilled nursing facility), 4701 (optional form of advance health care directive).

Prob. Code § 4641 (added). Supervising health care provider

Comment. Section 4641 is a new provision and is the same in substance as Section 1(16) of the Uniform Health-Care Decisions Act (1993).

For provisions in this division using this term, see Sections 4659 (limitations on who may act as agent or surrogate), 4695 (revocation of power of attorney for health care), 4696 (duty to communicate revocation), 4701 (optional form of advance health care directive), 4711 (patient’s designation of surrogate), 4715 (disqualification of surrogate), 4730 (duty of health care provider to communicate), 4731 (duty of supervising health care provider to record relevant information), 4765 (petitioners).

See also Sections 4607 (“agent” defined), 4615 (“health care” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4631 (“primary physician” defined), 4635 (“reasonably available” defined).

Background from Uniform Act. The definition of “supervising health-care provider” accommodates the circumstance that frequently arises where care or supervision by a physician may not be readily available. The individual’s primary physician is to assume the role, however, if reasonably available. [Adapted from Unif. Health-Care Decisions Act § 1(16) comment (1993).]

Prob. Code § 4643 (added). Surrogate

Comment. Section 4643 is a new provision and is the same in substance as Section 1(17) of the Uniform Health-Care Decisions Act (1993), except that this section refers to “conservator” instead of “guardian” and to “adult” instead of “individual.” “Adult” includes an emancipated minor. See Fam. Code § 7002 (emancipation). For other provisions concerning surrogates, see Section 4711 *et seq.*

For provisions in this division using this term, see Sections 4617 (“health care decision” defined), 4625 (“patient” defined), 4631 (“primary physician” defined), 4653 (mercy killing, assisted suicide, euthanasia not approved), 4657 (presumption of capacity), 4658 (determination of capacity and other medical conditions), 4659 (limitations on who may act as agent or

surrogate), 4660 (use of copies), 4696 (duty to communicate revocation), 4711-4715 (health care surrogates), 4731 (duty of supervising health care provider to record relevant information), 4732 (duty of primary physician to record relevant information), 4741 (immunities of agent and surrogate), 4750 (judicial intervention disfavored), 4762 (jurisdiction over agent or surrogate), 4763 (venue), 4765 (petitioners), 4766 (purposes of petition), 4769 (notice of hearing), 4771 (award of attorney's fees). See also 4780 (request to forgo resuscitative measures), 4783 (forms for requests to forgo resuscitative measures).

See also Section 4607 ("agent" defined).

Background from Uniform Act. The definition of "surrogate" refers to the individual having present authority under Section 5 [see Prob. Code § 4711 *et seq.*] to make a health-care decision for a patient. It does not include an individual who might have such authority under a given set of circumstances which have not occurred. [Adapted from Unif. Health-Care Decisions Act § 1(17) comment (1993).]

Prob. Code § 4650 (repealed). Application of chapter

Comment. Former Section 4650 is superseded by Section 4671 and related authority in the Health Care Decisions Law. For the application of the new law to existing advance health care directives, see Section 4665 & Comment.

Prob. Code § 4650 (added). Legislative findings

Comment. Section 4650 preserves and continues the substance of the legislative findings set out in former Health and Safety Code Section 7185.5 (Natural Death Act). These findings, in an earlier form, have been relied upon by the courts. *Conservatorship of Drabick*, 200 Cal. App. 3d 185, 206, 245 Cal. Rptr. 840, 853 (1988); *Bouvia v. Superior Court*, 179 Cal. App. 3d 1127, 1137, 225 Cal. Rptr. 297, 302 (1986); *Bartling v. Superior Court*, 163 Cal. App. 3d 186, 194-95, 209 Cal. Rptr. 220, 224-25 (1984); *Barber v. Superior Court*, 147 Cal. App. 3d 1006, 1015-16, 195 Cal. Rptr. 484, 489-90 (1983). The earlier legislative findings were limited to persons with a terminal condition or permanent unconscious condition. This restriction is not continued here in recognition of the broader scope of this division and the development of case law since enactment of the original Natural Death Act in 1976. References to "medical care" in former law have been changed to "health care" for consistency with the language of this division. See Section 4615 ("health care" defined). This is not intended as a substantive change. "Adult" includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

Parts of former Health and Safety Code Section 7185.5 that are more appropriately stated as substantive provisions are not continued here. See also Section 4750 (judicial intervention disfavored).

Prob. Code § 4651 (repealed). Form of durable power of attorney for health care after January 1, 1995

Comment. Former Section 4651 is not continued. See Section 4701 (optional form of advance health care directive).

Prob. Code § 4651 (added). Scope of division

Comment. Subdivision (a) of Section 4651 is a new provision.

Subdivision (b)(1) is the same in substance as Section 11(a) of the Uniform Health-Care Decisions Act (1993) and replaces former Health and Safety Code Sections 7189.5(a) and 7191.5(e) & (h) (Natural Death Act).

Subdivision (b)(2) continues the substance of former Section 4652(b).

Subdivision (b)(3) is new. This division applies to emancipated minors to the same extent as adults. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4617 (“health care decision” defined), 4687 (other authority of person named as agent not affected).

Prob. Code § 4652 (repealed). Other authority not affected

Comment. Subdivision (a) of former Section 4652 is superseded by Sections 4685 (agent’s priority) and 4687 (other authority of person named as agent not affected).

Subdivision (b) is continued in Section 4651(b)(2) (emergency treatment) without substantive change.

Prob. Code § 4652 (added). Excluded acts

Comment. Section 4652 continues former Section 4722 without substantive change and revises language for consistency with the broader scope of this division. A power of attorney may not vary the limitations of this section. See also Section 4653 (mercy killing, assisted suicide, euthanasia not approved).

Prob. Code § 4653 (repealed). Validity of durable power of attorney for health care executed elsewhere

Comment. Former Section 4653 is continued in Section 4676(a) without substantive change.

Prob. Code § 4653 (added). Mercy killing, assisted suicide, euthanasia not approved

Comment. Section 4653 continues the first sentence of former Section 4723 without substantive change, and is consistent with Section 13(c) of the Uniform Health-Care Decisions Act (1993). This section also continues the substance of former Health and Safety Code Section 7191.5(g) (Natural Death Act). Language has been revised to conform to the broader scope of this division. This section provides a rule governing the interpretation of this division. It is not intended as a general statement beyond the scope of this division nor is it intended to affect any other authority that may exist.

See Sections 4670 *et seq.* (advance health care directives), 4711 *et seq.* (health care surrogates). See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4643 (“surrogate” defined).

Prob. Code § 4654 (repealed). Durable power of attorney for health care subject to former 7-year limit

Comment. Former Section 4654 is not continued. See Section 4665 (application of Health Care Decisions Law to existing advance directives).

Prob. Code § 4654 (added). Compliance with generally accepted health care standards

Comment. Section 4654 is the same as Section 13(d) of the Uniform Health-Care Decisions Act (1993). For a special application of this general rule, see Section 4735 (right to decline to provide ineffective care). This section continues the substance of former Health & Safety Code Section 7191.5(f) (Natural Death Act) and subsumes the specific duty under former Health and Safety Code Section 7189.5(b) concerning providing comfort care and alleviation of pain.

See also Sections 4615 (“health care” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined).

Prob. Code § 4655 (added). Impermissible constructions

Comment. Subdivision (a) of Section 4655 continues and generalizes former Health and Safety Code Section 7191.5(d) (Natural Death Act), and is the same in substance as Section 13(a) of the Uniform Health-Care Decisions Act (1993).

Subdivision (b) continues the second sentence of former Section 4723 without substantive change and with wording changes to reflect the broader scope of this division.

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4617 (“health care decision” defined), 4625 (“patient” defined).

Prob. Code § 4656 (added). Effect on death benefits

Comment. Section 4656 continues and generalizes former Health and Safety Code Section 7191.5(a)-(b) (Natural Death Act), and is the same in substance as Section 13(b) of the Uniform Health-Care Decisions Act (1993).

See also Section 4615 (“health care” defined).

Prob. Code § 4657 (added). Presumption of capacity

Comment. Section 4657 is the same in substance as Section 11(b) of the Uniform Health-Care Decisions Act (1993). The presumption of capacity with regard to revocation continues the substance of former Section 4727(c), and is consistent with former Health and Safety Code Section 7189.5(a) (Natural Death Act). See also Section 4766(a) (petition to review capacity determinations). The burden of proof is on the person who seeks to establish that the principal did not have capacity. This section is also consistent with the rule applicable under Section 810 (due process in capacity determinations).

See also Sections 4605 (“advance health care directive” defined), 4609 (“capacity” defined), 4617 (“health care decision” defined), 4625 (“patient” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 11 reinforces the principle of patient autonomy by providing a rebuttable presumption that an individual has capacity for all decisions relating to health care referred to in the Act. [Adapted from Unif. Health-Care Decisions Act § 11 comment (1993).]

Prob. Code § 4658 (added). Determination of capacity and other medical conditions

Comment. Section 4658 is drawn from Section 2(d) (advance directives) and part of Section 5(a) (surrogates) of the Uniform Health-Care Decisions Act (1993). This section also supersedes parts of the Natural Death Act relating to physician certification of the patient’s condition. See former Health & Safety Code §§ 7187.5, 7189. This section makes clear that capacity determinations need not be made by the courts. For provisions governing judicial determinations of capacity, see Sections 810-813 (Due Process in Capacity Determinations Act). See also Section 4766 (petitions concerning advance directives). For the primary physician’s duty to record capacity determinations, see Section 4732. See also Section 4766(a) (petition to review capacity determinations).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4609 (“capacity” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined), 4631 (“primary physician” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 2(d) provides that unless otherwise specified in a written advance health-care directive, a determination that a principal has lost or recovered capacity to make health-care decisions must be made by the primary physician. For example, a principal might specify that the determination of capacity is to be made by the agent in consultation with the primary physician. Or a principal, such as a member of the Christian Science faith who relies on a religious method of healing and who has no primary physician, might specify that capacity be determined by other means. In the event that multiple decision makers are specified and they cannot agree, it may be necessary to seek court instruction as authorized by Section 14 [see Prob. Code § 4766].

Section 2(d) also provides that unless otherwise specified in a written advance health-care directive, the existence of other conditions which affect an individual instruction or the authority of an agent must be determined by the primary physician. For example, an individual might

specify that an agent may withdraw or withhold treatment that keeps the individual alive only if the individual has an incurable and irreversible condition that will result in the individual's death within a relatively short time. In that event, unless otherwise specified in the advance health-care directive, the determination that the individual has that condition must be made by the primary physician.

[Adapted from Unif. Health-Care Decisions Act § 2(d) comment (1993).]

Prob. Code § 4659 (added). Limitations on who may act as agent or surrogate

Comment. Section 4659 restates former Section 4702 without substantive change, and extends its principles to cover surrogates. The terms “supervising health care provider” and “health care institution” have been substituted for “treating health care provider” as appropriate, for consistency with the terms used in this division. See Section 4641 (“supervising health care provider” defined).

Subdivisions (a) and (b) serve the same purpose as Section 2(b) (fourth sentence) and Section 5(i) of the Uniform Health-Care Decisions Act (1993). Subdivision (a) does not preclude a person from appointing, for example, a friend who is a physician as the agent under the person's power of attorney for health care, but if the physician becomes the person's “supervising health care provider,” the physician is precluded from acting as the agent under the power of attorney. See also Section 4675 (witnessing requirements in skilled nursing facilities).

Subdivision (b) provides a special exception to subdivision (a). This will, for example, permit a nurse to serve as agent for the nurse's spouse when the spouse is being treated at the hospital where the nurse is employed.

Subdivision (c) prescribes conditions that must be satisfied if a conservator is to be designated as the agent or surrogate for a conservatee under the Lanterman-Petris-Short Act. This subdivision has no application where a person other than the conservator is so designated.

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4611 (“community care facility” defined), 4613 (“conservator” defined), 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4625 (“patient” defined), 4629 (“power of attorney for health care” defined), 4637 (“residential care facility for the elderly” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Prob. Code § 4660 (added). Use of copies

Comment. Section 4660 provides a special rule permitting the use of copies under this division. It is the same as Section 12 of the Uniform Health-Care Decisions Act (1993). The rule under this section for powers of attorney for health care differs from the rule under the Power of Attorney Law. See Section 4307 (certified copy of power of attorney).

See also Sections 4605 (“advance health care directive” defined), 4643 (“surrogate” defined).

Background from Uniform Act. The need to rely on an advance health-care directive may arise at times when the original is inaccessible. For example, an individual may be receiving care from several health-care providers or may be receiving care at a location distant from that where the original is kept. To facilitate prompt and informed decision making, this section provides that a copy of a valid written advance health-care directive, revocation of an advance health-care directive, or designation or disqualification of a surrogate has the same effect as the original. [Adapted from Unif. Health-Care Decisions Act § 12 comment (1993).]

Prob. Code § 4665 (added). Application to existing advance directives and pending proceedings

Comment. Section 4665 serves the same purpose as Section 4054 in the Power of Attorney Law, but covers all advance health care directives, including powers of attorney, written or oral individual health care instructions, and surrogate designations.

Subdivision (a) provides the general rule that this division applies to all advance health care directives, regardless of when a written advance directive was executed or an oral individual

instruction was made. As provided in subdivision (d), however, nothing in this division invalidates any advance directive that was validly executed under prior law, and subdivision (e) protects individuals who happen to use an outdated printed form.

Subdivision (b) is a specific application of the general rule in subdivision (a). See Section 4750 *et seq.* (judicial proceedings). Subdivision (c) provides discretion to the court to resolve problems arising in proceedings commenced before the operative date.

See also Sections 4605 (“advance health care directive” defined), 4629 (“power of attorney for health care” defined).

Prob. Code § 4670 (added). Authority to give individual health care instruction

Comment. Section 4670 is drawn from Section 2(a) of the Uniform Health-Care Decisions Act (1993). This section supersedes part of former Health and Safety Code Section 7186.5 (Natural Death Act). “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

See also Sections 4615 (“health care” defined), 4623 (“individual health care instruction” defined).

Background from Uniform Act. The individual instruction authorized in Section 2(a) may but need not be limited to take effect in specified circumstances, such as if the individual is dying. An individual instruction may be either written or oral. [Adapted from Unif. Health-Care Decisions Act § 2(a) comment (1993).]

Prob. Code § 4671 (added). Authority to execute power of attorney for health care

Comment. Subdivision (a) of Section 4671 is drawn from the first and third sentences of Section 2(b) of the Uniform Health-Care Decisions Act (1993). The first sentence supersedes Section 4120 (who may execute power of attorney) to the extent it applied to powers of attorney for health care. “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

Subdivision (b), relating to personal care authority, is parallel to Section 4123(c) (personal care authority permissible in non-health care power of attorney). For powers of attorney generally, see the Power of Attorney Law, Section 4000 *et seq.* Personal care powers are not automatic. Under subdivision (b), the agent does not have personal care powers except to the extent that they are granted by the principal.

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4623 (“individual health care instruction” defined), 4629 (“power of attorney for health care” defined).

Background from Uniform Act. Section 2(b) authorizes a power of attorney for health care to include instructions regarding the principal’s health care. This provision has been included in order to validate the practice of designating an agent and giving individual instructions in one document instead of two. The authority of an agent falls within the discretion of the principal as expressed in the instrument creating the power and may extend to any health-care decision the principal could have made while having capacity.

Section 2(b) excludes the oral designation of an agent. Section 5(b) [Prob. Code § 4711] authorizes an individual to orally designate a surrogate by personally informing the supervising health-care provider. A power of attorney for health care, however, must be in writing and signed by the principal, although it need not be witnessed or acknowledged [except in certain circumstances].

[Adapted from Unif. Health-Care Decisions Act § 2(b) comment (1993).]

Prob. Code § 4672 (added). Nomination of conservator in written advance directive

Comment. Section 4672 continues Section 4126 without substantive change, insofar as that section applied to powers of attorney for health care, and expands the scope of the rule to apply to

other written advance health care directives. Subdivision (a) is the same in substance as Section 2(g) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4605 (“advance health care directive” defined), 4613 (“conservator” defined).

Prob. Code § 4673 (added). Formalities for executing written advance directive

Comment. Section 4673 continues the execution requirements in Section 4121 in the Power of Attorney Law to the extent it applied to powers of attorney for health care, and expands the execution requirements under former law to cover all written advance directives, not just powers of attorney. “Adult” has been substituted for “person” in subdivision (b). “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care). Sections 4674 and 4675 provide additional requirements applicable where the written advance directive is signed by witnesses, instead of being notarized.

See also Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined).

Prob. Code § 4674 (added). Requirements for witnesses

Comment. The introductory clause and subdivisions (a) and (b) of Section 4674 continue the witnessing requirements in Section 4122(a) and (c) in the Power of Attorney Law to the extent they applied to powers of attorney for health care, and expands these rules to cover all written advance directives, not just powers of attorney.

Subdivision (c)(1)-(3) continues former Section 4701(a) without substantive change. Subdivision (c)(4) continues Section 4122(b) to the extent it applied to powers of attorney for health care.

Subdivisions (d)-(f) continue former Section 4701(b)-(d) without substantive change and expands the rules to cover all written advance directives.

Subdivision (g) is a new provision making clear that the special rules and restrictions applicable to witnesses are not applicable to notaries. Notaries are subject to obligations under other law by virtue of office. See Gov’t Code § 8200 *et seq.*

See also Sections 4605 (“advance health care directive” defined), 4611 (“community care facility” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4637 (“residential care facility for the elderly” defined).

Prob. Code § 4675 (added). Witnessing required in skilled nursing facility

Comment. Subdivision (a) of Section 4675 continues former Section 4701(e) without substantive change. This section expands the witnessing rules under former law to cover all written advance directives executed in nursing homes, not just powers of attorney.

Subdivision (b) continues the substance of former Section 4751(c) (identity of patient in skilled nursing facility) and applies to all written advance directives covered by this section, not just powers of attorney for health care as under former law.

See also Sections 4605 (“advance health care directive” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4639 (“skilled nursing facility” defined).

Prob. Code § 4676 (added). Validity of written advance directive executed in another jurisdiction

Comment. Subdivision (a) of Section 4676 continues former Section 4653 without substantive change, and extends its principles to apply to all written advance health care directives, which include both powers of attorney for health care and written individual instructions. This subdivision also continues and generalizes former Health and Safety Code Section 7192.5 (Natural Death Act). This subdivision is consistent with Section 2(h) of the Uniform Health-Care Decisions Act (1993), as applied to instruments.

Subdivision (b) continues former Section 4752 without substantive change, and broadens the former rule for consistency with the scope of this division. This subdivision also continues and generalizes former Health and Safety Code Section 7192 (Natural Death Act).

See also Section 4605 (“advance health care directive” defined), 4621 (“health care provider” defined), 4627 (“physician” defined). For the rule applicable under the Power of Attorney Law, see Section 4053.

Background from Uniform Act. Section 2(h) validates advance health-care directives which conform to the Act, regardless of when or where executed or communicated. This includes an advance health-care directive which would be valid under the Act but which was made prior to the date of its enactment and failed to comply with the execution requirements then in effect. It also includes an advance health-care directive which was made in another jurisdiction but which does not comply with that jurisdiction’s execution or other requirements. [Adapted from Unif. Health-Care Decisions Act § 2(h) comment (1993).]

Prob. Code § 4677 (added). Restriction on requiring or prohibiting advance directive

Comment. Section 4677 continues and generalizes former Section 4725, and contains the substance of Section 7(h) of the Uniform Health-Care Decisions Act (1993). The former provision applied only to powers of attorney for health care. This section supersedes former Health and Safety Code Sections 7191(e)-(f) and 7191.5(c) (Natural Death Act). This section is intended to eliminate the possibility that duress might be used by a health care provider, insurer, plan, or other entity to cause the patient to execute or revoke an advance directive. The reference to a “health care service plan” is drawn from Health and Safety Code Section 1345(f) in the Knox-Keene Health Care Service Plan Act of 1975.

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined).

Background from Uniform Act. Section 7(h), forbidding a health-care provider or institution to condition provision of health care on execution, non-execution, or revocation of an advance health-care directive, tracks the provisions of the federal Patient Self-Determination Act. 42 U.S.C. §§ 1395cc(f)(1)(C) (Medicare), 1396a(w)(1)(C) (Medicaid). [Adapted from Unif. Health-Care Decisions Act § 7(h) comment (1993).]

Prob. Code § 4678 (added). Right to health care information

Comment. Section 4678 is drawn from Section 8 of the Uniform Health-Care Decisions Act (1993). This section continues former Section 4721 without substantive change, but is broader in scope since it covers all persons authorized to make health care decisions for a patient, not just agents. A power of attorney may limit the right of the agent, for example, by precluding examination of specified medical records or by providing that the examination of medical records is authorized only if the principal lacks the capacity to give informed consent. The right of the agent is subject to any limitations on the right of the patient to reach medical records. See Health & Safety Code §§ 1795.14 (denial of right to inspect mental health records), 1795.20 (providing summary of record rather than allowing access to entire record).

See also Sections 4605 (“advance health care directive” defined), 4617 (“health care decision” defined), 4625 (“patient” defined).

Background from Uniform Act. An agent, conservator, [guardian,] or surrogate stands in the shoes of the patient when making health-care decisions. To assure fully informed decisionmaking, this section provides that a person who is then authorized to make health-care decisions for a patient has the same right of access to health-care information as does the patient unless otherwise specified in the patient’s advance health-care directive. [Adapted from Unif. Health-Care Decisions Act § 8 comment (1993).]

Prob. Code § 4680 (added). Formalities for executing a power of attorney for health care

Comment. Section 4680 continues the general substance of former Section 4700(b)-(c). A power of attorney must be in writing. See Section 4629 (“power of attorney for health care” defined). A power of attorney that complies with this section and incorporated rules is legally sufficient as a grant of authority to an agent.

See also Section 4629 (“power of attorney for health care” defined).

Prob. Code § 4681 (added). Limitations expressed in power of attorney for health care

Comment. Section 4681 continues Section 4101, insofar as it applied to powers of attorney for health care, without substantive change. This section makes clear that many of the statutory rules provided in this division are subject to express or implicit limitations in the power of attorney. If a statutory rule is not subject to control by the power of attorney, this is stated explicitly, either in a particular section or as to a group of sections.

See also Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4682 (added). When agent’s authority effective

Comment. Section 4682 is drawn from Section 2(c) of the Uniform Health-Care Decisions Act (1993) and continues the substance of the last part of former Section 4720(a). See Sections 4657 (presumption of capacity), 4658 (determination of capacity and other medical conditions) & Comment. As under former law, the default rule is that the agent is not authorized to make health care decisions if the principal has the capacity to make health care decisions. The power of attorney may, however, give the agent authority to make health care decisions for the principal even though the principal does have capacity, but the power of attorney is always subject to Section 4695 (revocation of advance directive).

See also Sections 4607 (“agent” defined), 4609 (“capacity” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Background from Uniform Act. Section 2(c) provides that the authority of the agent to make health-care decisions ordinarily does not become effective until the principal is determined to lack capacity and ceases to be effective should the principal recover capacity. A principal may provide, however, that the authority of the agent becomes effective immediately or upon the happening of some event other than the loss of capacity but may do so only by an express provision in the power of attorney. For example, a mother who does not want to make her own health-care decisions but prefers that her daughter make them for her may specify that the daughter as agent is to have authority to make health-care decisions immediately. The mother in that circumstance retains the right to later revoke the power of attorney as provided in Section 3 [Prob. Code § 4696]. [Adapted from Unif. Health-Care Decisions Act § 2(c) comment (1993).]

Prob. Code § 4683 (added). Scope of agent’s authority

Comment. Section 4683 continues former Section 4720(b) without substantive change. Subdivision (a) is consistent with the last part of the first sentence of Section 2(b) of the Uniform Health-Care Decisions Act (1993). Technical revisions have made to conform to the language of this division. See Section 4658 (determination of capacity and other medical conditions). The agent’s authority is subject to Section 4652 which precludes consent to certain specified types of treatment. See also Section 4653 (impermissible acts and constructions). The principal is free to provide any limitations on types of treatment in the durable power of attorney that are desired. See also Section 4750 *et seq.* (judicial proceedings).

The description of certain post-death decisions in subdivision (b) is not intended to limit the authority to make such decisions under the governing statutes in the Health and Safety Code.

See also Sections 4607 (“agent” defined), 4609 (“capacity” defined), 4615 (“health care” defined), 4617 (“health care decision” defined), 4629 (“power of attorney for health care” defined), 4635 (“reasonably available” defined).

Prob. Code § 4684 (added). Standard governing agent’s health care decisions

Comment. Section 4684 continues the substance of former Section 4720(c) and is the same as Section 2(e) of the Uniform Health-Care Decisions Act (1993). Although the new wording of this fundamental rule is different, Section 4684 continues the principle of former law that, in exercising authority, the agent has the duty to act consistent with the principal’s desires if known or, if the principal’s desires are unknown, to act in the best interest of the principal. The agent’s authority is subject to Section 4652, which precludes consent to certain specified types of treatment. See also Section 4653 (mercy killing, assisted suicide, euthanasia not approved). The principal is free to provide any limitations on types of treatment in the power of attorney that are desired. See also Section 4750 *et seq.* (judicial proceedings).

See also Sections 4607 (“agent” defined), 4623 (“individual health care instruction” defined), 4633 (“principal” defined).

Background from Uniform Act. Section 2(e) requires the agent to follow the principal’s individual instructions and other expressed wishes to the extent known to the agent. To the extent such instructions or other wishes are unknown, the agent must act in the principal’s best interest. In determining the principal’s best interest, the agent is to consider the principal’s personal values to the extent known to the agent. The Act does not prescribe a detailed list of factors for determining the principal’s best interest but instead grants the agent discretion to ascertain and weigh the factors likely to be of importance to the principal. [Adapted from Unif. Health-Care Decisions Act § 2(e) comment (1993).]

Prob. Code § 4685 (added). Agent’s priority

Comment. Section 4685 continues without substantive change the first part of former Section 4720(a) and part of former Section 4652(a) relating to availability, willingness, and ability of agents. This section gives the agent priority over others, including a conservator or statutory surrogate, to make health care decisions if the agent is known to the health care provider to be available and willing to act. The power of attorney may vary this priority, as recognized in the introductory clause, and the rule of this section is subject to a contrary court order. See Section 4766. In part, this section serves the same purpose as Section 6(b) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4621 (“health care provider” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4635 (“reasonably available” defined).

Prob. Code § 4686 (added). Duration

Comment. Section 4686 continues Section 4127, insofar as it applied to powers of attorney for health care, without substantive change. This rule is the same in substance as the second sentence of the official text of Section 2 of the Uniform Durable Power of Attorney Act (1987), Uniform Probate Code Section 5-502 (1991). See Section 2(b) (construction of provisions drawn from uniform acts).

See also Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined).

Prob. Code § 4687 (added). Other authority of person named as agent not affected

Comment. Section 4687 continues former Section 4720(d) without substantive change, and supersedes part of former Section 4652(a). An agent may, without liability, decline to act under the power of attorney. For example, the agent may not be willing to follow the desires of the principal as stated in the power of attorney because of changed circumstances. This section makes

clear that, in such a case, the person may make or participate in making health care decisions for the principal without being bound by the stated desires of the principal to the extent that the person designated as the agent has the right under the applicable law apart from the power of attorney.

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4688 (added). Relation to general agency law

Comment. Section 4688 is analogous to Section 4051 in the Power of Attorney Law. Under this section, reference may be made to relevant agency principles set forth in case law and statutes. See, e.g., Civ. Code §§ 2019 *et seq.*, 2295 *et seq.*; Prob. Code § 4000 *et seq.* (Power of Attorney Law).

Prob. Code § 4689 (added). Principal’s objections

Comment. Section 4689 continues former Section 4724 without substantive change. Terminology has been revised for consistency with the language of the Health Care Decisions Law. See Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined), 4617 (“health care decision” defined), 4633 (“principal” defined). As under the former section, this section does not limit any right the agent may have apart from the authority under the power of attorney for health care. See Section 4687.

Prob. Code § 4690 (added). Consultation and disclosure

Comment. Section 4690 is drawn from Section 4235 in the Power of Attorney Law, and continues the substance of former law as applied to durable powers of attorney for health care under former law. As with Section 4235, this section does not provide anything inconsistent with permissible practice under former law, but is intended to recognize the desirability of consultation in appropriate circumstances and provide assurance to third persons that consultation with the agent is proper and does not contravene privacy rights.

See also Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4695 (added). Revocation of advance health care directive

Comment. Section 4695 is drawn from Section 3(a)-(b) of the Uniform Health-Care Decisions Act (1993). This section replaces former Section 4727(a) (revocation rules applicable to durable power of attorney for health care) and former Health and Safety Code Section 7188(a) (revocation under former Natural Death Act). This section also supersedes Sections 4150 and 4151 in the Power of Attorney Law to the extent they applied to powers of attorney for health care. The principal may revoke the designation or authority only if, at the time of revocation, the principal has sufficient capacity to make a power of attorney for health care. The burden of proof is on the person who seeks to establish that the principal did not have capacity to revoke the designation or authority. See Section 4657 (presumption of capacity). “Personally informing,” as used in subdivision (a), includes both oral and written communications.

See also Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined), 4629 (“power of attorney for health care” defined), 4641 (“supervising health care provider” defined).

Background from Uniform Act. Section 3(b) provides that an individual may revoke any portion of an advance health-care directive at any time and in any manner that communicates an intent to revoke. However, a more restrictive standard applies to the revocation of the portion of a power of attorney for health care relating to the designation of an agent. Section 3(a) provides that an individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider. This higher standard is justified by the risk of a

false revocation of an agent's designation or of a misinterpretation or miscommunication of a principal's statement communicated through a third party. For example, without this higher standard, an individual motivated by a desire to gain control over a patient might be able to assume authority to act as agent by falsely informing a health-care provider that the principal no longer wishes the previously designated agent to act but instead wishes to appoint the individual.

The section does not specifically address amendment of an advance health-care directive because such reference is not necessary. Section 3(b) specifically authorizes partial revocation, and Section 3(e) [Prob. Code § 4698] recognizes that an advance health-care directive may be modified by a later directive.

[Adapted from Unif. Health-Care Decisions Act § 3(a)-(b), (e) comment (1993).]

Prob. Code § 4696 (added). Duty to communicate revocation

Comment. Section 4696 is the same as Section 3(c) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4613 (“conservator” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 3(c) requires any health-care provider, agent, [conservator] or surrogate who is informed of a revocation to promptly communicate that fact to the supervising health-care provider and to any health-care institution at which the patient is receiving care. The communication triggers the Section 7(b) [Prob. Code § 4731] obligation of the supervising health-care provider to record the revocation in the patient's health-care record and reduces the risk that a health-care provider or agent, [conservator] or surrogate will rely on a health-care directive that is no longer valid. [Adapted from Unif. Health-Care Decisions Act § 3(c) comment (1993).]

Prob. Code § 4697 (added). Effect of dissolution or annulment

Comment. Section 4697 continues former Section 4727(e) without substantive change. Subdivision (a) is comparable to Section 3(d) of the Uniform Health-Care Decisions Act (1993), but does not revoke the designation of an agent on legal separation. For special rules applicable to a federal “absentee” (as defined in Section 1403), see Section 3722.

This section is subject to limitation by the power of attorney. See Section 4681 (limitations expressed in power of attorney for health care). See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4698 (added). Effect of later advance directive on earlier advance directive

Comment. Section 4698 is the same as Section 3(e) of the Uniform Health-Care Decisions Act (1993) and supersedes former Section 4727(d). This section is also consistent with former Health and Safety Code Section 7193 (Natural Death Act).

See also Section 4605 (“advance health care directive” defined).

Background from Uniform Act. Section 3(e) establishes a rule of construction permitting multiple advance health-care directives to be construed together in order to determine the individual's intent, with the later advance health-care directive superseding the former to the extent of any inconsistency. [Adapted from Unif. Health-Care Decisions Act § 3(e) comment (1993).]

Prob. Code § 4700 (repealed). Requirements for durable power of attorney for health care

Comment. Former Section 4700 is superseded by Section 4671 and related provisions. See Section 4671 Comment.

Prob. Code § 4700 (added). Authorization for statutory form of advance directive

Comment. Section 4700 is drawn from the introductory paragraph of Section 4 of the Uniform Health-Care Decisions Act (1993). This section supersedes former Section 4779 (use of other forms).

See also Section 4605 (“advance health care directive” defined).

Prob. Code § 4701 (repealed). Witnesses of durable power of attorney for health care

Comment. The introductory clause and subdivision (a) of former Section 4701 are continued in the introductory clause and subdivision (c) of Section 4674 without substantive change.

Subdivisions (b)-(d) are continued in Section 4674(d)-(f) without substantive change.

Subdivision (e) is continued in Section 4675(a) without substantive change.

Prob. Code § 4701 (added). Optional form of advance directive

Comment. Section 4701 provides the contents of the optional statutory form for the Advance Health Care Directive. Parts 1-5 of this form are largely drawn from Section 4 of the Uniform Health-Care Decisions Act (1993). This form supersedes the Statutory Form Durable Power of Attorney for Health Care in former Section 4771 and the related rules in former Sections 4772-4774, 4776-4778. Part 6 of this form continues a portion of the former statutory form applicable to patients in skilled nursing facilities.

Background from Uniform Act. The optional form set forth in this section incorporates the Section 2 [Prob. Code § 4670 *et seq.*] requirements applicable to advance health-care directives.... An individual may complete all or any [of the first four] parts of the form. Any part of the form left blank is not to be given effect. For example, an individual may complete the instructions for health care part of the form alone. Or an individual may complete the power of attorney for health care part of the form alone. Or an individual may complete both the instructions and power of attorney for health care parts of the form. An individual may also, but need not, complete the parts of the form pertaining to donation of bodily organs and tissue and the designation of a primary physician.

Part 1, the power of attorney for health care, appears first on the form in order to ensure to the extent possible that it will come to the attention of a casual reader. This reflects the reality that the appointment of an agent is a more comprehensive approach to the making of health-care decisions than is the giving of an individual instruction, which cannot possibly anticipate all future circumstances which might arise.

Part [1.1] of the power of attorney for health care form requires only the designation of a single agent, but with opportunity given to designate a single first alternate and a single second alternate, if the individual chooses. No provision is made in the form for the designation of co-agents in order not to encourage the practice. Designation of co-agents is discouraged because of the difficulties likely to be encountered if the co-agents are not all readily available or do not agree. If co-agents are appointed, the instrument should specify that either is authorized to act if the other is not reasonably available. It should also specify a method for resolving disagreements.

Part [1.2] of the power of attorney for health care form grants the agent authority to make all health-care decisions for the individual subject to any limitations which the individual may state in the form. Reference is made to artificial nutrition and hydration and other forms of treatment to keep an individual alive in order to ensure that the individual is aware that those are forms of health care that the agent would have the authority to withdraw or withhold absent specific limitation.

Part [1.3] of the power of attorney for health care form provides that the agent’s authority becomes effective upon a determination that the individual lacks capacity, but as authorized by Section 2(c) [Prob. Code § 4682] a box is provided for the individual to indicate that the authority of the agent takes effect immediately.

Part [1.4] of the power of attorney for health care form directs the agent to make health-care decisions in accordance with the power of attorney, any instructions given by the individual in

Part 2 of the form, and the individual's other wishes to the extent known to the agent. To the extent the individual's wishes in the matter are not known, the agent is to make health-care decisions based on what the agent determines to be in the individual's best interest. In determining the individual's best interest, the agent is to consider the individual's personal values to the extent known to the agent. Section 2(e) [Prob. Code § 4684] imposes this standard, whether or not it is included in the form, but its inclusion in the form will bring it to the attention of the individual granting the power, to the agent, to any [conservator] or surrogate, and to the individual's health-care providers.

[Part 1.5 implements Probate Code Section 4683.]

Part [1.6] of the power of attorney for health care form nominates the agent, if available, able, and willing to act, otherwise the alternate agents in order of priority stated, as [conservators] of the person for the individual. This provision is included in the form for two reasons. First, if an appointment of a [conservator] becomes necessary the agent is the one whom the individual would most likely want to serve in that role. Second, the nomination of the agent as [conservator] will reduce the possibility that someone other than the agent will be appointed as [conservator] who could use the position to thwart the agent's authority.

Because the variety of treatment decisions to which health-care instructions may relate is virtually unlimited, Part 2 of the form does not attempt to be comprehensive, but is directed at the types of treatment for which an individual is most likely to have special wishes. Part [2.1] of the form, entitled "End-of-Life Decisions," provides two alternative choices for the expression of wishes concerning the provision, withholding, or withdrawal of treatment. Under the first choice, the individual's life is not to be prolonged if the individual has an incurable and irreversible condition that will result in death within a relatively short time, if the individual becomes unconscious and, to a reasonable degree of medical certainty, will not regain consciousness, or if the likely risks and burdens of treatment would outweigh the expected benefits. Under the second choice, the individual's life is to be prolonged within the limits of generally accepted health-care standards.... Part [2.2] of the form provides space for an individual to specify any circumstance when the individual would prefer not to receive pain relief. Because the choices provided in Parts [2.1-2.2] do not cover all possible situations, Part [2.3] of the form provides space for the individual to write out his or her own instructions or to supplement the instructions given in the previous subparts of the form. Should the space be insufficient, the individual is free to add additional pages.

The health-care instructions given in Part 2 of the form are binding on the agent, any [conservator], any surrogate, and, subject to exceptions specified in Section 7(e)-(f) [Prob. Code §§ 4734-4735], on the individual's health-care providers. Pursuant to Section 7(d) [Prob. Code § 4733], a health-care provider must also comply with a reasonable interpretation of those instructions made by an authorized agent, [conservator], or surrogate.

Part 3 of the form provides the individual an opportunity to express an intention to donate bodily organs and tissues at death. The options provided are derived from a suggested form in the Comment to Section 2 of the Uniform Anatomical Gift Act (1987). [See Health & Safety Code § 7150 *et seq.*]

Part 4 of the form provides space for the individual to designate a primary physician should the individual choose to do so. Space is also provided for the designation of an alternate primary physician should the first designated physician not be available, able, or willing to act.

[Part 5.1] of the form conforms with the provisions of Section 12 [Prob. Code § 4660] by providing that a copy of the form has the same effect as the original....

The form does not require formal acceptance by an agent. Formal acceptance by an agent has been omitted not because it is an undesirable practice but because it would add another stage to executing an advance health-care directive, thereby further reducing the number of individuals who will follow through and create directives. However, practitioners who wish to adapt this form for use by their clients are strongly encouraged to add a formal acceptance. Designated agents have no duty to act until they accept the office either expressly or through their conduct. Consequently, requiring formal acceptance reduces the risk that a designated agent will decline to act when the need arises. Formal acceptance also makes it more likely that the agent will become

familiar with the principal's personal values and views on health care. While the form does not require formal acceptance, the explanation to the form does encourage principals to talk to the person they have named as agent to make certain that the designated agent understands their wishes and is willing to take the responsibility.

[Adapted from Unif. Health-Care Decisions Act § 4 comment (1993).]

Prob. Code § 4702 (repealed). Limitations on who may be attorney-in-fact

Comment. Former Section 4702 is continued in Section 4659(a)-(c) without substantive change. See Section 4659 Comment.

Prob. Code § 4703 (repealed). Printed form of durable power of attorney for health care

Comment. Former Section 4703 is not continued. See Section 4701 (optional form of advance health care directive).

Prob. Code § 4704 (repealed). Warnings not on printed form

Comment. Former Section 4704 is not continued. See Section 4701 (optional form of advance health care directive).

Prob. Code § 4711 (added). Patient's designation of surrogate

Comment. The first sentence of Section 4711 is drawn from Section 5(b) of the Uniform Health-Care Decisions Act (1993). Both the patient and the surrogate must be adults. See Sections 4625 ("patient" defined), 4643 ("surrogate" defined). "Adult" includes an emancipated minor. See Fam. Code § 7002 (emancipation). "Personally informing," as used in this section, includes both oral and written communications. The second sentence is intended to guard against the possibility of giving effect to obsolete oral statements entered in the patient's record.

See also Sections 4617 ("health care decision" defined), 4619 ("health care institution" defined), 4625 ("patient" defined), 4635 ("reasonably available" defined), 4641 ("supervising health care provider" defined), 4643 ("surrogate" defined).

Background from Uniform Act. While a designation of an agent in a written power of attorney for health care is preferred, situations may arise where an individual will not be in a position to execute a power of attorney for health care. In that event, subsection (b) affirms the principle of patient autonomy by allowing an individual to designate a surrogate by personally informing the supervising health-care provider. The supervising health-care provider would then, in accordance with Section 7(b) [Prob. Code § 4731], be obligated to promptly record the designation in the individual's health-care record. An oral designation of a surrogate made by a patient directly to the supervising health-care provider revokes a previous designation of an agent. See Section 3(a) [Prob. Code § 4695(a)]. [Adapted from Unif. Health-Care Decisions Act § 5(b) comments (1993).]

Prob. Code § 4714 (added). Standard governing surrogate's health care decisions

Comment. Section 4714 is drawn from Section 5(f) of the Uniform Health-Care Decisions Act (1993). This standard is consistent with the health care decisionmaking standard applicable to agents. See Section 4684.

See also Sections 4617 ("health care decision" defined), 4623 ("individual health care instruction" defined), 4625 ("patient" defined), 4643 ("surrogate" defined).

Background from Uniform Act. Section 5(f) imposes on surrogates the same standard for health-care decision making as is prescribed for agents in Section 2(e) [Prob. Code § 4684]. The surrogate must follow the patient's individual instructions and other expressed wishes to the extent known to the surrogate. To the extent such instructions or other wishes are unknown, the surrogate must act in the patient's best interest. In determining the patient's best interest, the

surrogate is to consider the patient's personal values to the extent known to the surrogate. [Adapted from Unif. Health-Care Decisions Act § 5(f) comment (1993).]

Prob. Code § 4715 (added). Disqualification of surrogate

Comment. Section 4715 is drawn from Section 5(h) of the Uniform Health-Care Decisions Act (1993). See Section 4731 (duty to record surrogate's disqualification). "Personally informing," as used in this section, includes both oral and written communications.

See also Sections 4625 ("patient" defined), 4641 ("supervising health care provider" defined), 4643 ("surrogate" defined).

Background from Uniform Act. Section 5(h) permits an individual to disqualify any family member or other individual from acting as the individual's surrogate, including disqualification of a surrogate who was orally designated. [Adapted from Unif. Health-Care Decisions Act § 5(h) comment (1993).]

Prob. Code § 4720 (repealed). Attorney-in-fact's authority to make health care decisions

Comment. Subdivision (a) of former Section 4720 is continued in Sections 4682 (when agent's authority effective) and 4685 (agent's priority) without substantive change.

Subdivision (b) is continued in Section 4683 without substantive change.

Subdivision (c) is continued in Section 4684 without substantive change.

Subdivision (d) is continued in Section 4687 without substantive change.

Prob. Code § 4721 (repealed). Availability of medical information to attorney-in-fact

Comment. Former Section 4721 is continued in Section 4678 without substantive change.

Prob. Code § 4722 (repealed). Limitations on attorney-in-fact's authority

Comment. Former Section 4722 is continued in Section 4652 without substantive change.

Prob. Code § 4723 (repealed). Unauthorized acts and omissions

Comment. The first sentence of former Section 4723 is continued in Section 4653 (mercy killing, assisted suicide, euthanasia not approved) without substantive change. The second sentence is continued in Section 4655(b) (impermissible constructions) without substantive change.

Prob. Code § 4724 (repealed). Principal's objections

Comment. Former Section 4724 is continued in Section 4689 without substantive change. See also Section 4695 (revocation of advance directive).

Prob. Code § 4725 (repealed). Restriction on execution of durable power of attorney for health care as condition for admission, treatment, or insurance

Comment. Former Section 4725 is continued in Section 4677 without substantive change.

Prob. Code § 4726 (repealed). Alteration or forging, or concealment or withholding knowledge of revocation of durable power of attorney for health care

Comment. Former Section 4726 is continued in Section 4743 without substantive change.

Prob. Code § 4727 (repealed). Revocation of durable power of attorney for health care

Comment. Subdivision (a) of former Section 4727 is superseded by Section 4695(a) (revocation of advance health care directive).

Subdivision (b) is continued in Section 4731 (duty of supervising health care provider to record relevant information) without substantive change.

Subdivision (c) is continued in Section 4657 (presumption of capacity) without substantive change.

Subdivision (d) is superseded by Section 4698 (effect of later advance directive on earlier advance directive).

Subdivision (e) is continued in Section 4697 (effect of dissolution or annulment) without substantive change.

Subdivision (f) is superseded by Section 4740 (immunities of health care provider and institution). See Section 4740 Comment.

Prob. Code § 4730 (added). Supervising health care provider’s duty to communicate

Comment. Section 4730 is drawn from Section 7(a) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4617 (“health care decision” defined), 4625 (“patient” defined), 4641 (“supervising health care provider” defined).

Background from Uniform Act. Section 7(a) further reinforces the Act’s respect for patient autonomy by requiring a supervising health-care provider, if possible, to promptly communicate to a patient, prior to implementation, a health-care decision made for the patient and the identity of the person making the decision. [Adapted from Unif. Health-Care Decisions Act § 7(a) comment (1993).]

Prob. Code § 4731 (added). Supervising health care provider’s duty to record relevant information

Comment. Subdivision (a) of Section 4731 is drawn from Section 7(b) of the Uniform Health-Care Decisions Act (1993). With respect to recording notice of revocation of a power of attorney for health care, this section continues the substance of part of former Section 4727(b). The recordkeeping duty continues part of former Health and Safety Code Sections 7186.5(c) and 7188 (Natural Death Act).

Subdivision (b) continues the substance of part of former Section 4727(b) and applies the same duty to surrogate disqualification.

See also Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined), 4629 (“power of attorney for health care” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Background from Uniform Act. The recording requirement in Section 7(b) reduces the risk that a health-care provider or institution, or agent, [conservator] or surrogate, will rely on an outdated individual instruction or the decision of an individual whose authority has been revoked. [Adapted from Unif. Health-Care Decisions Act § 7(b) comment (1993).]

Prob. Code § 4732 (added). Primary physician’s duty to record relevant information

Comment. Section 4732 is drawn from Section 7(c) of the Uniform Health-Care Decisions Act (1993). This duty generally continues recordkeeping duties in former Health and Safety Code Sections 7186.5(c), 7188, and 7189 (Natural Death Act).

See also Sections 4607 (“agent” defined), 4609 (“capacity” defined), 4613 (“conservator” defined), 4617 (“health care decision” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined), 4631 (“primary physician” defined).

Background from Uniform Act. Section 7(c) imposes recording and communication requirements relating to determinations that may trigger the authority of an agent, [conservator] or surrogate to make health-care decisions on an individual’s behalf. The determinations covered by these requirements are those specified in Section 2(c)-(d) [Prob. Code §§ 4658 & 4682 respectively]. [Adapted from Unif. Health-Care Decisions Act § 7(c) comment (1993).]

Prob. Code § 4733 (added). Duty of health care provider or institution to comply with health care instructions and decisions

Comment. Section 4733 is drawn from Section 7(d) of the Uniform Health-Care Decisions Act (1993). This section generalizes a duty to comply provided in former Health and Safety Code Section 7187.5 (2d sentence) (Natural Death Act).

See also Sections 4609 (“capacity” defined), 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined).

Background from Uniform Act. Section 7(d) requires health-care providers and institutions to comply with a patient’s individual instruction and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient. A health-care provider or institution must also comply with a health-care decision made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity. These requirements help to protect the patient’s rights to autonomy and self-determination and validate and seek to effectuate the substitute decision making authorized by the Act. [Adapted from Unif. Health-Care Decisions Act § 7(d) comment (1993).]

Prob. Code § 4734 (added). Right to decline for reasons of conscience or institutional policy

Comment. Section 4734 is drawn from Section 7(e) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4615 (“health care” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined).

Background from Uniform Act. Not all instructions or decisions must be honored, however. Section 7(e) [Prob. Code § 4734(a)] authorizes a health-care provider to decline to comply with an individual instruction or health-care decision for reasons of conscience. Section 7(e) also allows a health-care institution to decline to comply with a health-care instruction or decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to an individual then authorized to make health-care decisions for the patient. [Adapted from Unif. Health-Care Decisions Act § 7(e) comment (1993).]

Prob. Code § 4735 (added). Right to decline to provide ineffective care

Comment. Section 4735 is drawn from Section 7(f) of the Uniform Health-Care Decisions Act (1993). This section is a special application of the general rule in Section 4654.

See also Sections 4615 (“health care” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined).

Background from Uniform Act. Section 7(f) [Prob. Code § 4734(b)] further authorizes a health-care provider or institution to decline to comply with an instruction or decision that requires the provision of care which would be medically ineffective or contrary to generally accepted health-care standards applicable to the provider or institution. “Medically ineffective health care,” as used in this section, means treatment which would not offer the patient any significant benefit. [Adapted from Unif. Health-Care Decisions Act § 7(f) comment (1993).]

Prob. Code § 4736 (added). Duty of declining health care provider or institution

Comment. Section 4736 is drawn in part from Section 7(g) of the Uniform Health-Care Decisions Act (1993). This section applies to situations where the health care provider or institution declines to comply under Section 4734 or 4735. This section continues the duty to transfer provided in former Health and Safety Code Sections 7187.5 (2d sentence) and 7190

(Natural Death Act). Subdivision (c) continues statutory recognition of a duty to provide pain relief in former Health and Safety Code Section 7189.5(b). Nothing in this section requires administration of ineffective care. See Sections 4654, 4735.

See also Sections 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined).

Background from Uniform Act. Section 7(g) requires a health-care provider or institution that declines to comply with an individual instruction or health-care decision to promptly communicate the refusal to the patient, if possible, and to any person then authorized to make health-care decisions for the patient. The provider or institution also must provide continuing care to the patient until a transfer can be effected. In addition, unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, the health-care provider or institution must immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision. [Adapted from Unif. Health-Care Decisions Act § 7(g) comment (1993).]

Prob. Code § 4740 (added). Immunities of health care provider and institution

Comment. Section 4740 is drawn in part from Section 9(a) of the Uniform Health-Care Decisions Act (1993) and supersedes former Sections 4727(f) and 4750 (durable power of attorney for health care). This section also supersedes former Health and Safety Code Section 7190.5 (Natural Death Act). The major categories of actions listed in subdivisions (a)-(d) are given as examples and not by way of limitation on the general rule stated in the introductory paragraph.

The good faith standard of former law is continued in this section. Like former law, this section protects the health care provider who acts in good faith reliance on a health care decision made by an agent pursuant to this division. The reference to acting in accordance with generally accepted health care standards makes clear that a health care provider is not protected from liability for malpractice. The specific qualifications built into the rules provided in former Section 4750(a) are superseded by the good faith rule in this section and by the affirmative requirements of other provisions. See, e. g., Sections 4683(a) (scope of agent’s authority) (compare to second part of introductory language of former Section 4750(a)), 4684 (standard governing agent’s health care decisions) (compare to former Section 4750(a)(1)-(2)). See also Section 4733 (duty of health care provider or institution to comply with health care instructions and decisions), 4734 (health care provider’s or institution’s right to decline), 4736 (duty of declining health care provider or institution).

See also Sections 4605 (“advance health care directive” defined), 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4625 (“patient” defined).

Background from Uniform Act. Section 9 [Prob. Code §§ 4740-4741] grants broad protection from liability for actions taken in good faith. Section 9(a) permits a health-care provider or institution to comply with a health-care decision made by a person appearing to have authority to make health-care decisions for a patient; to decline to comply with a health-care decision made by a person believed to be without authority; and to assume the validity of and to comply with an advance health-care directive. Absent bad faith or actions taken that are not in accord with generally accepted health-care standards, a health-care provider or institution has no duty to investigate a claim of authority or the validity of an advance health-care directive. [Adapted from Unif. Health-Care Decisions Act § 9(a) comment (1993).]

Prob. Code § 4741 (added). Immunities of agent and surrogate

Comment. Section 4741 is drawn from Section 9(b) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 9(b) protects agents and surrogates acting in good faith from liability for making a health-care decision for a patient. Also protected from liability are individuals who mistakenly but in good faith believe they have the authority to make a health-care decision for a patient. For example, an individual who has been designated as agent in a power of attorney for health care might assume authority unaware that the power has been revoked. Or a family member might assume authority to act as surrogate unaware that a family member having a higher priority was reasonably available and authorized to act. [Adapted from Unif. Health-Care Decisions Act § 9(b) comment (1993).]

Prob. Code § 4742 (added). Statutory damages

Comment. Subdivisions (a) and (b) of Section 4742 are drawn from Section 10 of the Uniform Health-Care Decisions Act (1993) and supersede former Health and Safety Code Section 7191(a)-(b) (Natural Death Act).

Subdivision (c) continues the rule of former Health and Safety Code Section 7191(g) (Natural Death Act) and is consistent with the uniform act. See Unif. Health-Care Decisions Act § 10 comment (1993).

See also Sections 4605 (“advance health care directive” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined).

Background from Uniform Act. Conduct which intentionally violates the Act and which interferes with an individual’s autonomy to make health-care decisions, either personally or through others as provided under the Act, is subject to civil damages rather than criminal penalties out of a recognition that prosecutions are unlikely to occur. The legislature of an enacting state will have to determine the amount of damages which needs to be authorized in order to encourage the level of potential private enforcement actions necessary to effect compliance with the obligations and responsibilities imposed by the Act. The damages provided by this section do not supersede but are in addition to remedies available under other law. [Adapted from Unif. Health-Care Decisions Act § 10 comment (1993).]

Prob. Code § 4743 (added). Criminal penalties

Comment. Section 4743 continues former Section 4726 without substantive change and supersedes former Health and Safety Code Section 7191(c)-(d) (Natural Death Act). References to “principal” have been changed to “patient” to reflect the broader scope of this division, and some surplus language has been omitted. The former incorrect cross-reference to “Title 4” has been corrected.

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4625 (“patient” defined).

Prob. Code § 4750 (repealed). Immunities of health care provider

Comment. Former Section 4750 is superseded by Section 4740. See Section 4740 Comment.

Prob. Code § 4750 (added). Judicial intervention disfavored

Comment. This section makes clear that judicial involvement in health care decisionmaking is disfavored. See Section 4650(c) (legislative findings). Subdivision (a) of Section 4750 continues former Section 4900 to the extent it applied to powers of attorney for health care.

Subdivision (b) is drawn from Section 2(f) of the Uniform Health-Care Decisions Act (1993).

Subdivision (c) is drawn from Sections 2(f) and 5(g) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4617 (“health care decision” defined), 4625 (“patient” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 4751 (repealed). Convincing evidence of identity of principal

Comment. Subdivisions (a) and (b) of former Section 4751 are not continued. See Civ. Code § 1185 (evidence of identity for purposes of acknowledgment of instruments).

Subdivision (c) is continued in Section 4675(b) without substantive change.

Prob. Code § 4751 (added). Cumulative remedies

Comment. Section 4751 continues former Section 4901 to the extent it applied to powers of attorney for health care and supersedes Health & Safety Code Section 7191.5(h) (Natural Death Act) to the extent it applied to remedies.

Prob. Code § 4752 (repealed). Presumption concerning power executed in other jurisdiction

Comment. Former Section 4752 is continued in Section 4676(b) without substantive change.

Prob. Code § 4752 (added). Effect of provision in advance directive attempting to limit right to petition

Comment. Section 4752 continues former Section 4902 to the extent it applied to powers of attorney for health care.

See also Sections 4605 (“advance health care directive” defined), 4681 (general rule on limitations provided in power of attorney).

Prob. Code § 4753 (repealed). Request to forgo resuscitative measures

Comment. Former Section 4753 is continued in Part 4 (commencing with Section 4780) of Division 4.7 without substantive change. Subdivision (a) is continued in Section 4782 without substantive change.

Subdivision (b) is continued in Section 4780 without substantive change.

Subdivisions (c) and (d) are continued in Section 4783 without substantive change.

Subdivision (e) is continued in Section 4784 without change.

Subdivision (f) is continued in Section 4785 without substantive change.

Subdivision (g) is continued in Section 4781 without substantive change.

Subdivision (h) is continued in Section 4786 without substantive change.

Prob. Code § 4753 (added). Limitations on right to petition

Comment. Section 4753 continues former Section 4903 to the extent it applied to powers of attorney for health care. Subdivision (a) makes clear that a power of attorney may limit the applicability of this part only if it is executed with the advice and approval of the principal’s counsel. This limitation is designed to ensure that the execution of a power of attorney that restricts the remedies of this part is accomplished knowingly by the principal. The inclusion of a provision in the power of attorney making this part inapplicable does not affect the right to resort to any judicial remedies that may otherwise be available.

Subdivision (b) specifies the purposes for which a conservator of the person or an agent may petition the court under this part with respect to a power of attorney for health care. The rights provided in these paragraphs cannot be limited by a provision in an advance directive, but the advance directive may restrict or eliminate the right of any other persons to petition the court under this part if the individual executing the advance directive has the advice of legal counsel and the other requirements of subdivision (a) are met. See Section 4681 (effect of provision in power of attorney attempting to limit right to petition).

Under subdivision (b)(1), despite a contrary provision in the advance directive, the conservator of the person may obtain a determination of whether an advance directive is in effect or has terminated (Section 4766(b)) or whether the authority of an agent or surrogate is terminated (Section 4766(d)). See also Section 4766 Comment.

Under subdivision (b)(2), despite a contrary provision in the power of attorney, the agent may obtain a determination of whether the power of attorney for health care is in effect or has terminated (Section 4766(b)), or an order passing on the acts or proposed acts of the agent under the power of attorney (Section 4766(c)).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4613 (“conservator” defined), 4629 (“power of attorney for health care” defined).

Prob. Code § 4754 (added). Jury trial

Comment. Section 4754 continues former Section 4904 to the extent it applied to powers of attorney for health care. This section is consistent with the rule applicable to other fiduciaries. See Sections 1452 (guardianships and conservatorships), 4504 (powers of attorney generally), 7200 (decedents’ estates), 17006 (trusts).

Prob. Code § 4755 (added). Application of general procedural rules

Comment. Section 4755 continues former Section 4905 to the extent it applied to powers of attorney for health care. Like Section 4505, this section provides a cross-reference to the general procedural rules that apply to this division. See, e.g., Sections 1003 (guardian ad litem), 1021 (verification required), 1041 (clerk to set matters for hearing), 1046 (hearing and orders), 1203 (order shortening time for notice), 1215-1216 (service), 1260 (proof of service).

Prob. Code § 4760 (added). Jurisdiction and authority of court or judge

Comment. Section 4760 continues former Section 4920 to the extent it applied to powers of attorney for health care. Like Section 4520, this section is comparable to Section 7050 governing the jurisdiction and authority of the court in proceedings concerning administration of decedents’ estates. See Section 7050 Comment.

Prob. Code § 4761 (added). Basis of jurisdiction

Comment. Section 4761 continues former Section 4921 to the extent it applied to powers of attorney for health care. Like Section 4521, this section is comparable to Section 17004 (jurisdiction under Trust Law). This section recognizes that the court, in proceedings relating to powers of attorney under this division, may exercise jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. See generally Judicial Council Comment to Code Civ. Proc. § 410.10; Prob. Code § 17004 Comment (basis of jurisdiction under Trust Law).

Prob. Code § 4762 (added). Jurisdiction over agent or surrogate

Comment. Section 4762 continues former Section 4922 to the extent it applied to powers of attorney for health care, and extends its principles to cover surrogates. Like Section 4522, this section is comparable to Sections 3902(b) (jurisdiction over custodian under Uniform Transfers to Minors Act) and 17003(a) (jurisdiction over trustee). This section is intended to facilitate exercise of the court’s power under this part when the court’s jurisdiction is properly invoked. As recognized by the introductory clause, constitutional limitations on assertion of jurisdiction apply to the exercise of jurisdiction under this section. Consequently, appropriate notice must be given to an agent or surrogate as a condition of personal jurisdiction. *Cf.* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

See also Sections 4607 (“agent” defined), 4625 (“patient” defined), 4629 (“power of attorney for health care” defined), 4643 (“surrogate” defined).

Prob. Code § 4763 (added). Venue

Comment. Section 4763 continues former Section 4923 to the extent it applied to powers of attorney for health care.

See also Sections 4607 (“agent” defined), 4625 (“patient” defined), 4643 (“surrogate” defined).

Prob. Code § 4765 (added). Petitioners

Comment. Section 4765 continues former Section 4940 to the extent it applied to powers of attorney for health care, with some omissions and clarifications appropriate for the scope of this division. The purposes for which a person may file a petition under this part are limited by other rules. See Sections 4752 (effect of provision in advance directive attempting to limit right to petition), 4753 (limitations on right to petition), 4766 (petition with respect to advance directive). See also Section 4751 (other remedies not affected).

See also Sections 4607 (“agent” defined), 4613 (“conservator” defined), 4619 (“health care institution” defined), 4625 (“patient” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Prob. Code § 4766 (added). Purposes of petition

Comment. Section 4766 continues the substance of former Section 4942 to the extent it applied to powers of attorney for health care, and adds language relating to advance directives and surrogates for consistency with the scope of this division.

A determination of capacity under subdivision (a) is subject to the Due Process in Competency Determinations Act. See Sections 810-813.

Under subdivision (c), the patient’s desires as expressed in the power of attorney for health care, individual health care instructions, or otherwise made known to the court provide the standard for judging the acts of the agent or surrogate. See Section 4714 (standard governing surrogate’s health care decisions). Where it is not possible to use a standard based on the patient’s desires because they are not stated in an advance directive or otherwise known or are unclear, subdivision (c) provides that the “patient’s best interest” standard be used.

Subdivision (d) permits the court to terminate health care decisionmaking authority where an agent or surrogate is not complying with the duty to carry out the patient’s desires or act in the patient’s best interest. See Section 4714 (standard governing surrogate’s health care decisions). Subdivision (d) permits termination of authority under an advance health care directive not only where an agent, for example, is acting illegally or failing to perform the duties under a power of attorney or is acting contrary to the known desires of the principal, but also where the desires of the principal are unknown or unclear and the agent is acting in a manner that is clearly contrary to the patient’s best interest. The patient’s desires may become unclear as a result of developments in medical treatment techniques that have occurred since the patient’s desires were expressed, such developments having changed the nature or consequences of the treatment.

An advance health care directive may limit the authority to petition under this part. See Sections 4752 (effect of provision in advance directive attempting to limit right to petition), 4753 (limitations on right to petition).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4609 (“capacity” defined), 4613 (“conservator” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 4767 (added). Commencement of proceeding

Comment. Section 4767 continues former Section 4943 to the extent it applied to powers of attorney for health care.

See also Section 4605 (“advance health care directive” defined).

Prob. Code § 4768 (added). Dismissal of petition

Comment. Section 4768 is similar to Section 4944 in the Power of Attorney Law. Under this section, the court has authority to stay or dismiss a proceeding in this state if, in the interest of substantial justice, the proceeding should be heard in a forum outside this state. See Code Civ. Proc. § 410.30.

See also Section 4625 (“patient” defined).

Prob. Code § 4769 (added). Notice of hearing

Comment. Section 4769 continues former Section 4945 to the extent it applied to powers of attorney for health care and extends its principles to apply to surrogates. Subdivision (b) is generalized from former Section 4945(b) applicable to property powers of attorney.

See also Sections 4607 (“agent” defined), 4625 (“patient” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 4770 (repealed). Short title

Comment. Former Section 4770 is not continued. The statutory form durable power of attorney for health care is replaced by the optional form of an advance health care directive in Section 4701.

Prob. Code § 4770 (added). Temporary health care order

Comment. Section 4770 continues former Section 4946 to the extent it applied to powers of attorney for health care. This section is intended to make clear that the court has authority to provide, for example, for the continuance of treatment necessary to keep the patient alive pending the court’s action on the petition. See also Section 1046 (court authority to make appropriate orders).

See also Sections 4605 (“advance health care directive” defined), 4613 (“conservator” defined), 4615 (“health care” defined), 4625 (“patient” defined), 4633 (“principal” defined).

Prob. Code § 4771 (repealed). Statutory form durable power of attorney for health care

Comment. The statutory form set out in former Section 4771 is superseded by the optional advance health care directive form provided by Section 4701. See Section 4701 Comment. See also Section 4665 (application of Health Care Decisions Law to existing advance directives).

Prob. Code § 4771 (added). Award of attorney’s fees

Comment. Section 4771 continues part of former Section 4947 to the extent it applied to powers of attorney for health care.

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 4772 (repealed). Warning or lawyer’s certificate

Comment. Former Section 4772 is not continued. See Section 4701 (optional advance directive form) & Comment.

Prob. Code § 4773 (repealed). Formal requirements

Comment. Former Section 4773 is not continued. For execution requirements, see Section 4680. See also Sections 4700 (substantive rules applicable to form), 4701 (optional advance directive form) & Comment.

Prob. Code § 4774 (repealed). Requirements for statutory form

Comment. Former Section 4774 is not continued. For execution requirements, see Section 4680. See also Sections 4700 (substantive rules applicable to form), 4701 (optional advance directive form) & Comment.

Prob. Code § 4775 (repealed). Use of forms valid under prior law

Comment. Former Section 4775 is not continued. See Section 4665 (application of Health Care Decisions Law to existing advance directives).

Prob. Code § 4776 (repealed). Language conferring general authority

Comment. Former Section 4776 is not continued. See Section 4701 (optional advance directive form) & Comment.

Prob. Code § 4777 (repealed). Effect of documents executed by attorney-in-fact

Comment. Former Section 4777 is not continued. See Sections 4683 (scope of agent's authority), 4701 (optional advance directive form) & Comment.

Prob. Code § 4778 (repealed). Termination of authority, alternate attorney-in-fact

Comment. Former Section 4778 is not continued. See Section 4701 (optional advance directive form) & Comment.

Prob. Code § 4779 (repealed). Use of other forms

Comment. Former Section 4779 is superseded by Section 4700.

Prob. Code § 4780 (added). Request to forgo resuscitative measures

Comment. Section 4780 continues former Section 4753(b) without substantive change. The phrase "for the individual" has been added at the end of subdivision (a)(1) for clarity. The former reference to "physician and surgeon" has been changed to "physician" for clarity. See Section 4627 ("physician" defined). For rules governing "legally recognized surrogate health care decisionmakers," see Part 2 (commencing with Section 4670) (Uniform Health Care Decisions Act).

See also Section 4781 ("health care provider" defined), 4625 ("patient" defined).

Prob. Code § 4781 (added). Health care provider

Comment. Section 4781 continues former Section 4753(g) without substantive change.

Prob. Code § 4782 (added). Immunity for honoring request to forgo resuscitative measures

Comment. Section 4782 continues former Section 4753(a) without substantive change.

See also Sections 4617 ("health care decision" defined), 4780 ("request to forgo resuscitative measures" defined), 4781 ("health care provider" defined).

Prob. Code § 4783 (added). Forms for requests to forgo resuscitative measures

Comment. Section 4783 continues former Section 4753(c)-(d) without substantive change. For rules governing "legally recognized surrogate health care decisionmakers," see Part 2 (commencing with Section 4670) (Uniform Health Care Decisions Act).

See also Sections 4627 ("physician" defined), 4780 ("request to forgo resuscitative measures" defined), 4781 ("health care provider" defined).

Prob. Code § 4784 (added). Presumption of validity

Comment. Section 4784 continues former Section 4753(e) without change.

See also Sections 4780 (“request to forgo resuscitative measures” defined), 4781 (“health care provider” defined).

Prob. Code § 4785 (added). Application of part

Comment. Section 4785 continues former Section 4753(f) without substantive change.

See also Section 4619 (“health care institution” defined), 4780 (“request to forgo resuscitative measures” defined).

Prob. Code § 4786 (added). Relation to other law

Comment. Section 4786 restates former Section 4753(h) without substantive change. The references to the Durable Power of Attorney for Health Care and the Natural Death Act have been omitted as unnecessary. The reference to “current” laws had been eliminated as obsolete.

Prob. Code § 4800 (repealed). Registry system established by Secretary of State

Comment. Former Section 4800 is continued in new Section 4800 without substantive change. However, the registry provisions in Sections 4800-4806 of former law are revised to permit registration of individual health care instructions, as well as powers of attorney for health care in new Sections 4800-4805. See new Section 4800 Comment.

Prob. Code § 4800 (added). Registry system established by Secretary of State

Comment. Section 4800 continues former Section 4800 without substantive change as applied to powers of attorney for health care, and generalizes the former provision to apply to all written advance health care directives. Hence, in addition to powers of attorney for health care, this section as revised permits registration of individual health care instructions.

See Section 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4621 (“health care provider” defined).

Prob. Code § 4801 (repealed). Identity and fees

Comment. Former Section 4801 is continued in new Section 4801 without change.

Prob. Code § 4801 (added). Identity and fees

Comment. Section 4801 continues former Section 4801 without change.

See also Section 4621 (“health care provider” defined).

Prob. Code § 4802 (repealed). Notice

Comment. Former Section 4802 is continued in new Section 4802 without substantive change. See Section 4800 Comment.

Prob. Code § 4802 (added). Notice

Comment. Section 4802 continues former Section 4802 without substantive change as applied to powers of attorney for health care, and generalizes it to apply to all written advance health care directives. Hence, in addition to powers of attorney for health care, this section as revised permits registration of individual health care instructions.

See also Section 4605 (“advance health care directive” defined), 4621 (“health care provider” defined).

Prob. Code § 4803 (added). Effect of failure to register

Comment. Section 4803 continues former Section 4804 without substantive change as applied to powers of attorney for health care, and generalizes it to apply to all written advance health care directives instead of the more limited class of durable powers of attorney for health care.

See also Section 4605 (“advance health care directive” defined).

Prob. Code § 4804 (repealed). Effect of failure to register

Comment. Former Section 4804 is continued in Section 4803 without substantive change. See Section 4800 Comment.

Prob. Code § 4804 (added). Effect of registration on revocation and validity

Comment. Section 4804 continues former Section 4805 without substantive change as applied to powers of attorney for health care, and generalizes it to apply to all written advance health care directives. Hence, in addition to powers of attorney for health care, this section as revised permits registration of individual health care instructions.

See also Section 4605 (“advance health care directive” defined).

Prob. Code § 4805 (repealed). Effect of registration on revocation and validity

Comment. Former Section 4805 is continued in Section 4804 without substantive change. See Section 4800 Comment.

Prob. Code § 4805 (added). Effect on health care provider

Comment. Section 4805 continues former Section 4806 without substantive change as applied to powers of attorney for health care, and generalizes it to apply to all written advance health care directives. Hence, in addition to powers of attorney for health care, this section as revised permits registration of individual health care instructions.

See also Section 4605 (“advance health care directive” defined), 4621 (“health care provider” defined), 4625 (“patient” defined).

Prob. Code § 4806 (repealed). Effect on health care provider

Comment. Former Section 4806 is continued in Section 4805 without substantive change. See Section 4800 Comment.

Prob. Code §§ 4900-4947 (repealed). Judicial proceedings concerning powers of attorney

Comment. Sections 4900-4947 have been moved to a new Part 4 (commencing with Section 4500) as part of the reorganization related to enactment of the Health Care Decisions Law, Division 4.7 (commencing with Section 4600). With respect to powers of attorney for health care, this part of former law is replaced by a new Part 3 (commencing with Section 4750) in Division 4.7.

Prob. Code § 4900 (repealed). Power of attorney freely exercisable

Comment. Former Section 4900 is continued in Sections 4500 (property powers) and 4750 (health care powers) without substantive change.

Prob. Code § 4901 (repealed). Cumulative remedies

Comment. Former Section 4901 is continued in Sections 4501 (property powers) and 4751 (health care powers) without substantive change.

Prob. Code § 4902 (repealed). Effect of provision in power of attorney limiting right to petition

Comment. Former Section 4902 is continued in Sections 4502 (property powers) and 4752 (health care powers) without substantive change.

Prob. Code § 4903 (repealed). Limitations on right to petition

Comment. Former Section 4903 is continued in Sections 4503 (property powers) and 4753 (health care powers) without substantive change.

Prob. Code § 4904 (repealed). Jury trial

Comment. Former Section 4904 is continued in Sections 4504 (property powers) and 4754 (health care powers) without substantive change.

Prob. Code § 4905 (repealed). Application of general procedural rules

Comment. Former Section 4905 is continued in Sections 4505 (property powers) and 4755 (health care powers) without substantive change.

Prob. Code § 4920 (repealed). Jurisdiction and authority of court or judge

Comment. Former Section 4920 is continued in Sections 4520 (property powers) and 4760 (health care powers) without substantive change.

Prob. Code § 4921 (repealed). Basis of jurisdiction

Comment. Former Section 4921 is continued in Sections 4521 (property powers) and 4761 (health care powers) without substantive change.

Prob. Code § 4922 (repealed). Jurisdiction over attorney-in-fact

Comment. Former Section 4922 is continued in Sections 4522 (property powers) and 4762 (health care powers) without substantive change.

Prob. Code § 4923 (repealed). Venue

Comment. Former Section 4923 is continued in Sections 4523 (property powers) and 4763 (health care powers) without substantive change.

Prob. Code § 4940 (repealed). Petitioners

Comment. Former Section 4940 is continued in Section 4540 without change, except that the reference to the treating health care provider in subdivision (h) is omitted. Powers of attorney for health care are governed by Division 4.7 (commencing with Section 4600). As to health care powers, the former section is continued in Section 4765, with several changes. See Section 4765 Comment.

Prob. Code § 4941 (repealed). Petition as to powers of attorney other than for health care

Comment. As to property powers, former Section 4941 is continued in Section 4541 without change, except that the reference to powers of attorney for health care in the introductory paragraph is omitted. Powers of attorney for health care are governed by Division 4.7 (commencing with Section 4600).

Prob. Code § 4942 (repealed). Petition as to durable power of attorney for health care

Comment. Former Section 4942 is continued in Section 4766 with several changes. See Section 4766 & Comment.

Prob. Code § 4943 (repealed). Commencement of proceeding

Comment. Former Section 4943 is continued in Sections 4542 (property powers) and 4767 (health care powers) without substantive change.

Prob. Code § 4944 (repealed). Dismissal of petition

Comment. Former Section 4944 is continued in Sections 4543 (property powers) and 4768 (health care powers) without substantive change.

Prob. Code § 4945 (repealed). Notice of hearing

Comment. Former Section 4945 is continued in Sections 4544 (property powers) and 4769 (health care powers) without substantive change.

Prob. Code § 4946 (repealed). Temporary health care order

Comment. Former Section 4946 is continued in Section 4770 without several changes. See Section 4770 Comment.

Prob. Code § 4947 (repealed). Award of attorney's fees

Comment. Former Section 4947 is continued in Sections 4545 (property powers) and 4771 (health care powers) without substantive change.

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 14110.8 (amended). Admission to nursing facility

Comment. Subdivision (a)(4) of Section 14110.8 is amended to reflect the terminology of the Health Care Decisions Law (HCDL) (Prob. Code § 4600 *et seq.*) and to recognize that powers of attorney for health care are treated by a separate body of law from that governing other powers of attorney under the general Power of Attorney Law (PAL) (Prob. Code § 4000 *et seq.*). See, e.g., Prob. Code §§ 4014 (“attorney-in-fact” defined under PAL), 4018 (“durable power of attorney” defined under PAL), 4050 (scope of PAL), 4607 (“agent” defined under HCDL), 4629 (“power of attorney for health care” defined under HCDL), 4651 (scope of HCDL). Some additional technical, nonsubstantive revisions are made in subdivision (a)(4) for clarity and consistency with the governing language of the Probate Code.