

SUBCHAPTER D. MEDICAL POWER OF ATTORNEY

§ 166.151. *DEFINITIONS.* In this subchapter:

- (1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.
 - (2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.
 - (3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.
 - (4) "Principal" means an adult who has executed a medical power of attorney.
 - (5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.
- Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.001 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.152. *SCOPE AND DURATION OF AUTHORITY.*

- (a) Subject to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.
- (b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.
- (c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:
 - (1) a medical power of attorney is in effect; or
 - (2) the principal is competent.
- (d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.
- (e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:
 - (1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or
 - (2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.
- (f) Notwithstanding any other provision of this subchapter, an agent may not consent to:
 - (1) voluntary inpatient mental health services;
 - (2) convulsive treatment;
 - (3) psychosurgery;
 - (4) abortion; or
 - (5) neglect of the principal through the omission of

care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.002 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT.

A person may not exercise the authority of an agent while the person serves as:

- (1) the principal's health care provider;
- (2) an employee of the principal's health care provider unless the person is a relative of the principal;
- (3) the principal's residential care provider; or
- (4) an employee of the principal's residential care provider unless the person is a relative of the principal. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.003 by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.154. EXECUTION AND WITNESSES.

(a) The medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.

(b) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express direction. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.004 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.155. REVOCATION.

(a) A medical power of attorney is revoked by:

- (1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state;
- (2) execution by the principal of a subsequent medical power of attorney; or
- (3) the divorce of the principal and spouse, if the spouse is the principal's agent, unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record

the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.005 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.156. APPOINTMENT OF GUARDIAN.

(a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.006 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.157. DISCLOSURE OF MEDICAL INFORMATION.

Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.007 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER.

(a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and

166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.008 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.159. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY.

A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical power of attorney;

(2) require a person to execute a medical power of attorney before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.009 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.160. LIMITATION ON LIABILITY.

(a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised in the community.

(d) An attending physician, health or residential careprovider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

- (1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or
- (2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26,1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code§ 135.010 and amended by Acts 1999, 76th Leg., ch. 450, §1.05, eff. Sept. 1, 1999

§ 166.161. LIABILITY FOR HEALTH CARE COSTS.

Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision. Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26,1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code§ 135.011 by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.162. DISCLOSURE STATEMENT.

A medical power of attorney is not effective unless the principal, before executing the medical power of attorney, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26,1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code§ 135.014 and amended by Acts 1999, 76th Leg., ch. 450, §1.05, eff. Sept. 1, 1999.

§ 166.163. FORM OF DISCLOSURE STATEMENT.

The disclosure statement must be in substantially the following form:

**INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS
DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding

life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one. You may wish to designate an alternate agent in the event that

your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS

MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.015 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable

or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone _____

The original of this document is kept at:

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical power of attorney on _____
day of _____ (month, year) at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death.

Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____

Print Name: _____ Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____

Print Name: _____ Date: _____

Address: _____

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.016 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.165. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action in district court to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or

(2) was under duress, fraud, or undue influence.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the district court orders otherwise.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.017 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.

§ 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Added by Acts 1991, 72nd Leg., ch. 16, § 3.02(a), eff. Aug. 26, 1991. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 135.018 and amended by Acts 1999, 76th Leg., ch. 450, § 1.05, eff. Sept. 1, 1999.