

By: Moody

H.B. No. 2180

A BILL TO BE ENTITLED

AN ACT

relating to the authority granted under and form of a medical power of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 166, Health and Safety Code, is amended by adding Section 166.1525 to read as follows:

Sec. 166.1525. DESIGNATION OF CO-AGENTS. (a) In this section, "co-agent" means an agent authorized under a medical power of attorney to make a health care decision concurrently with one or more other agents on behalf of the same principal. The term does not include an alternate agent who exercises authority if the designated agent is unwilling, unable, or ineligible to act.

(b) A medical power of attorney may designate two or more agents to act as co-agents. The co-agents have authority to act independently unless the medical power of attorney states otherwise.

(c) A health or residential care provider, who has actual knowledge of a disagreement between or who receives conflicting directives from two or more co-agents authorized to act independently under a medical power of attorney that does not designate a co-agent to make decisions in the event of a disagreement, may elect whether to follow the directive of any co-agent. If the provider elects not to follow the directive of any co-agent and the medical power of attorney designates one or more

1 alternate agents, the provider shall follow the directives of an  
2 alternate agent in the priority order in which the medical power of  
3 attorney lists the alternate agents.

4 (d) If two or more co-agents authorized to act jointly under  
5 a medical power of attorney are in disagreement or if one or more  
6 co-agents authorized to act jointly under a medical power of  
7 attorney are not present to make a joint decision, a health or  
8 residential care provider may elect whether to follow the directive  
9 of any co-agent. A provider who elects not to follow the directive  
10 of any co-agent for a medical power of attorney that designates one  
11 or more alternate agents shall follow the directives of an  
12 alternate agent in the priority order in which the medical power of  
13 attorney lists the alternate agents.

14 (e) A health or residential care provider is not civilly or  
15 criminally liable or subject to review or disciplinary action by  
16 the appropriate licensing authority for following or electing not  
17 to follow the directives of a co-agent in accordance with this  
18 section.

19 SECTION 2. Section 166.160(d), Health and Safety Code, is  
20 amended to read as follows:

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

25 (1) failure to act as required by the directive of an  
26 agent or a medical power of attorney if the physician, provider, or  
27 person was not provided with a copy of the medical power of attorney

1 or had no knowledge of a directive; [~~or~~]

2 (2) acting as required by an agent's directive if the  
3 medical power of attorney has expired or been revoked but the  
4 physician, provider, or person does not have knowledge of the  
5 expiration or revocation; or

6 (3) acting as required by an agent's directive if the  
7 medical power of attorney was not validly executed, provided the  
8 physician, provider, or person does not have actual knowledge of  
9 the medical power of attorney's invalid execution.

10 SECTION 3. Subchapter D, Chapter 166, Health and Safety  
11 Code, is amended by adding Section 166.163 to read as follows:

12 Sec. 166.163. PERMISSIBLE FORMS OF MEDICAL POWER OF  
13 ATTORNEY. A medical power of attorney may be in a form:

14 (1) described by Section 166.164;

15 (2) authorized under Section 166.005; or

16 (3) that:

17 (A) meets the requirements of this subchapter,  
18 including execution in accordance with Section 166.154;

19 (B) is in writing; and

20 (C) contains:

21 (i) the principal's name;

22 (ii) the designation of an agent; and

23 (iii) the date the medical power of  
24 attorney is executed.

25 SECTION 4. Section 166.164, Health and Safety Code, is  
26 amended to read as follows:

27 Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. A [~~The~~]

1 medical power of attorney may [~~must~~] be in [~~substantially~~] the  
2 following form:

3 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

4 I, \_\_\_\_\_ (insert your name) appoint:

5 Name: \_\_\_\_\_

6 Address: \_\_\_\_\_

7 Phone: \_\_\_\_\_

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

13 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE

14 AS FOLLOWS: \_\_\_\_\_

15 \_\_\_\_\_

16 DESIGNATION OF ALTERNATE AGENT.

17 (You are not required to designate an alternate agent but you  
18 may do so. An alternate agent may make the same health care  
19 decisions as the designated agent if the designated agent is unable  
20 or unwilling to act as your agent. If the agent designated is your  
21 spouse, the designation is automatically revoked by law if your  
22 marriage is dissolved, annulled, or declared void unless this  
23 document provides otherwise.)

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

1           A.   First Alternate Agent  
 2                Name: \_\_\_\_\_  
 3                Address: \_\_\_\_\_  
 4                Phone: \_\_\_\_\_

5           B.   Second Alternate Agent  
 6                Name: \_\_\_\_\_  
 7                Address: \_\_\_\_\_  
 8                Phone: \_\_\_\_\_

9           The original of this document is kept at:  
 10           \_\_\_\_\_  
 11           \_\_\_\_\_  
 12           \_\_\_\_\_

13           The following individuals or institutions have signed  
 14 copies:

15                Name: \_\_\_\_\_  
 16                Address: \_\_\_\_\_  
 17                \_\_\_\_\_

18                Name: \_\_\_\_\_  
 19                Address: \_\_\_\_\_  
 20                \_\_\_\_\_

21           DURATION.

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

1           (IF APPLICABLE) This power of attorney ends on the following  
2 date: \_\_\_\_\_

3           PRIOR DESIGNATIONS REVOKED.

4           I revoke any prior medical power of attorney.

5           DISCLOSURE STATEMENT.

6           THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL  
7 DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE  
8 IMPORTANT FACTS:

9           Except to the extent you state otherwise, this document gives  
10 the person you name as your agent the authority to make any and all  
11 health care decisions for you in accordance with your wishes,  
12 including your religious and moral beliefs, when you are unable to  
13 make the decisions for yourself. Because "health care" means any  
14 treatment, service, or procedure to maintain, diagnose, or treat  
15 your physical or mental condition, your agent has the power to make  
16 a broad range of health care decisions for you. Your agent may  
17 consent, refuse to consent, or withdraw consent to medical  
18 treatment and may make decisions about withdrawing or withholding  
19 life-sustaining treatment. Your agent may not consent to voluntary  
20 inpatient mental health services, convulsive treatment,  
21 psychosurgery, or abortion. A physician must comply with your  
22 agent's instructions or allow you to be transferred to another  
23 physician.

24           Your agent's authority is effective when your doctor  
25 certifies that you lack the competence to make health care  
26 decisions.

27           Your agent is obligated to follow your instructions when

1 making decisions on your behalf. Unless you state otherwise, your  
2 agent has the same authority to make decisions about your health  
3 care as you would have if you were able to make health care  
4 decisions for yourself.

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

14         The person you appoint as agent should be someone you know and  
15 trust. The person must be 18 years of age or older or a person under  
16 18 years of age who has had the disabilities of minority removed.  
17 If you appoint your health or residential care provider (e.g., your  
18 physician or an employee of a home health agency, hospital, nursing  
19 facility, or residential care facility, other than a relative),  
20 that person has to choose between acting as your agent or as your  
21 health or residential care provider; the law does not allow a person  
22 to serve as both at the same time.

23         You should inform the person you appoint that you want the  
24 person to be your health care agent. You should discuss this  
25 document with your agent and your physician and give each a signed  
26 copy. You should indicate on the document itself the people and  
27 institutions that you intend to have signed copies. Your agent is

1 not liable for health care decisions made in good faith on your  
2 behalf.

3       Once you have signed this document, you have the right to make  
4 health care decisions for yourself as long as you are able to make  
5 those decisions, and treatment cannot be given to you or stopped  
6 over your objection. You have the right to revoke the authority  
7 granted to your agent by informing your agent or your health or  
8 residential care provider orally or in writing or by your execution  
9 of a subsequent medical power of attorney. Unless you state  
10 otherwise in this document, your appointment of a spouse is revoked  
11 if your marriage is dissolved, annulled, or declared void.

12       This document may not be changed or modified. If you want to  
13 make changes in this document, you must execute a new medical power  
14 of attorney.

15       You may wish to designate an alternate agent in the event that  
16 your agent is unwilling, unable, or ineligible to act as your agent.  
17 If you designate an alternate agent, the alternate agent has the  
18 same authority as the agent to make health care decisions for you.

19       THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

20               (1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED  
21 BEFORE A NOTARY PUBLIC; OR

22               (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT  
23 WITNESSES.

24       THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

25               (1) the person you have designated as your agent;

26               (2) a person related to you by blood or marriage;

27               (3) a person entitled to any part of your estate after

1 your death under a will or codicil executed by you or by operation  
2 of law;

3 (4) your attending physician;

4 (5) an employee of your attending physician;

5 (6) an employee of a health care facility in which you  
6 are a patient if the employee is providing direct patient care to  
7 you or is an officer, director, partner, or business office  
8 employee of the health care facility or of any parent organization  
9 of the health care facility; or

10 (7) a person who, at the time this medical power of  
11 attorney is executed, has a claim against any part of your estate  
12 after your death.

13 By signing below, I acknowledge that I have read and  
14 understand the information contained in the above disclosure  
15 statement.

16 (YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN  
17 IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR  
18 YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

19 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

20 I sign my name to this medical power of attorney on \_\_\_\_\_  
21 day of \_\_\_\_\_ (month, year) at

22 \_\_\_\_\_

23 (City and State)

24 \_\_\_\_\_

25 (Signature)

26 \_\_\_\_\_

27 (Print Name)

1 State of Texas

2 County of \_\_\_\_\_

3 This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
4 \_\_\_\_\_ (name of person acknowledging).

5 \_\_\_\_\_

6 NOTARY PUBLIC, State of Texas

7 Notary's printed name:

8 \_\_\_\_\_

9 My commission expires:

10 \_\_\_\_\_

11 OR

12 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

13 I sign my name to this medical power of attorney on \_\_\_\_\_

14 day of \_\_\_\_\_ (month, year) at

15 \_\_\_\_\_

16 (City and State)

17 \_\_\_\_\_

18 (Signature)

19 \_\_\_\_\_

20 (Print Name)

21 STATEMENT OF FIRST WITNESS.

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

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

6 Signature:\_\_\_\_\_

7 Print Name:\_\_\_\_\_ Date: \_\_\_\_\_

8 Address:\_\_\_\_\_

9 SIGNATURE OF SECOND WITNESS.

10 Signature:\_\_\_\_\_

11 Print Name:\_\_\_\_\_ Date: \_\_\_\_\_

12 Address:\_\_\_\_\_

13 SECTION 5. Not later than December 1, 2021, the executive  
14 commissioner of the Health and Human Services Commission shall  
15 adopt the rules necessary to implement the changes in law made by  
16 this Act.

17 SECTION 6. The changes in law made by this Act apply only to  
18 a medical power of attorney executed on or after the effective date  
19 of this Act. A medical power of attorney executed before the  
20 effective date of this Act is governed by the law in effect  
21 immediately before the effective date of this Act, and the former  
22 law is continued in effect for that purpose.

23 SECTION 7. This Act takes effect September 1, 2021.