

By: Bhojani

H.B. No. 4989

A BILL TO BE ENTITLED

AN ACT

relating to the permissible forms 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 166.163 to read as follows:

Sec. 166.163. PERMISSIBLE FORMS OF MEDICAL POWER OF ATTORNEY. (a) A medical power of attorney may be in:

(1) a form designated by the executive commissioner in accordance with Subsection (b), provided the document is executed in the manner required by Section 166.154; or

(2) the form prescribed by Section 166.164.

(b) The executive commissioner by rule shall review and designate documents to be recognized in this state as a written and validly executed medical power of attorney. Any document designated by the executive commissioner must:

(1) be promulgated by a national nonprofit organization or the Commission on Law and Aging, American Bar Association;

(2) be written in plain language;

(3) allow a principal to provide a health care instruction;

(4) designate a primary agent who is at least 18 years of age to make health care decisions for the principal when the principal lacks the capacity to make the decisions;

1 (5) allow the principal to name an alternate agent who
2 is at least 18 years of age to make health care decisions for the
3 principal if the primary agent is unable or unwilling to make the
4 decisions;

5 (6) allow the principal to specify or limit the health
6 care decisions an agent may make for the principal;

7 (7) require the principal to:

8 (A) sign and date the medical power of attorney
9 in the presence of two witnesses who qualify under Section 166.003,
10 at least one of whom qualifies under Section 166.003(2); or

11 (B) sign the document and have the signature
12 acknowledge before a notary public; and

13 (8) be accepted as a validly executed medical power of
14 attorney in at least 40 other states of the United States.

15 (c) The commission shall post on the commission's Internet
16 website a link to each document designated under Subsection (b).

17 SECTION 2. Section 166.164, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 166.164. PERMISSIBLE FORM OF MEDICAL POWER OF
20 ATTORNEY. A [~~The~~] medical power of attorney may [~~must~~] be in
21 [~~substantially~~] the following form:

22 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

23 I, _____ (insert your name) appoint:

24 Name: _____

25 Address: _____

26 Phone:

27 as my agent to make any and all health care decisions for me,

1 except to the extent I state otherwise in this document. This
2 medical power of attorney takes effect if I become unable to make my
3 own health care decisions and this fact is certified in writing by
4 my physician.

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

8 DESIGNATION OF ALTERNATE AGENT.

9 (You are not required to designate an alternate agent but you
10 may do so. An alternate agent may make the same health care
11 decisions as the designated agent if the designated agent is unable
12 or unwilling to act as your agent. If the agent designated is your
13 spouse, the designation is automatically revoked by law if your
14 marriage is dissolved, annulled, or declared void unless this
15 document provides otherwise.)

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

20 A. First Alternate Agent

21 Name:_____

22 Address:_____

23 Phone:

24 B. Second Alternate Agent

25 Name:_____

26 Address:_____

27 Phone:

1 The original of this document is kept at:
2 _____
3 _____
4 _____

5 The following individuals or institutions have signed
6 copies:

7 Name: _____

8 Address: _____

9 _____

10 Name: _____

11 Address: _____

12 _____

13 DURATION.

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

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

22 PRIOR DESIGNATIONS REVOKED.

23 I revoke any prior medical power of attorney.

24 DISCLOSURE STATEMENT.

25 THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL
26 DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE
27 IMPORTANT FACTS:

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

16 Your agent's authority is effective when your doctor
17 certifies that you lack the competence to make health care
18 decisions.

19 Your agent is obligated to follow your instructions when
20 making decisions on your behalf. Unless you state otherwise, your
21 agent has the same authority to make decisions about your health
22 care as you would have if you were able to make health care
23 decisions for yourself.

24 It is important that you discuss this document with your
25 physician or other health care provider before you sign the
26 document to ensure that you understand the nature and range of
27 decisions that may be made on your behalf. If you do not have a

1 physician, you should talk with someone else who is knowledgeable
2 about these issues and can answer your questions. You do not need a
3 lawyer's assistance to complete this document, but if there is
4 anything in this document that you do not understand, you should ask
5 a lawyer to explain it to you.

6 The person you appoint as agent should be someone you know and
7 trust. The person must be 18 years of age or older or a person under
8 18 years of age who has had the disabilities of minority removed.
9 If you appoint your health or residential care provider (e.g., your
10 physician or an employee of a home health agency, hospital, nursing
11 facility, or residential care facility, other than a relative),
12 that person has to choose between acting as your agent or as your
13 health or residential care provider; the law does not allow a person
14 to serve as both at the same time.

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

22 Once you have signed this document, you have the right to make
23 health care decisions for yourself as long as you are able to make
24 those decisions, and treatment cannot be given to you or stopped
25 over your objection. You have the right to revoke the authority
26 granted to your agent by informing your agent or your health or
27 residential care provider orally or in writing or by your execution

1 of a subsequent medical power of attorney. Unless you state
2 otherwise in this document, your appointment of a spouse is revoked
3 if your marriage is dissolved, annulled, or declared void.

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

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

11 THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

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

14 (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT
15 WITNESSES.

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

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

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

19 (3) a person entitled to any part of your estate after
20 your death under a will or codicil executed by you or by operation
21 of law;

22 (4) your attending physician;

23 (5) an employee of your attending physician;

24 (6) an employee of a health care facility in which you
25 are a patient if the employee is providing direct patient care to
26 you or is an officer, director, partner, or business office
27 employee of the health care facility or of any parent organization

1 of the health care facility; or

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

5 By signing below, I acknowledge that I have read and
6 understand the information contained in the above disclosure
7 statement.

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

11 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

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

14 _____
15 (City and State)

16 _____
17 (Signature)

18 _____
19 (Print Name)

20 State of Texas

21 County of _____

22 This instrument was acknowledged before me on _____ (date) by
23 _____ (name of person acknowledging).

24 _____

25 NOTARY PUBLIC, State of Texas

26 Notary's printed name:

27 _____

1 My commission expires:

2 _____

3 OR

4 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

5 I sign my name to this medical power of attorney on _____

6 day of _____ (month, year) at

7 _____

8 (City and State)

9 _____

10 (Signature)

11 _____

12 (Print Name)

13 STATEMENT OF FIRST WITNESS.

14 I am not the person appointed as agent by this document. I am
15 not related to the principal by blood or marriage. I would not be
16 entitled to any portion of the principal's estate on the principal's
17 death. I am not the attending physician of the principal or an
18 employee of the attending physician. I have no claim against any
19 portion of the principal's estate on the principal's
20 death. Furthermore, if I am an employee of a health care facility
21 in which the principal is a patient, I am not involved in providing
22 direct patient care to the principal and am not an officer,
23 director, partner, or business office employee of the health care
24 facility or of any parent organization of the health care facility.

25 Signature: _____

26 Print Name: _____ Date: _____

27 Address: _____

1 SIGNATURE OF SECOND WITNESS.

2 Signature:_____

3 Print Name:_____ Date:_____

4 Address:_____

5 SECTION 3. Not later than December 1, 2023, the executive
6 commissioner of the Health and Human Services Commission shall by
7 rule designate a document as required by Section 166.163, Health
8 and Safety Code, as added by this Act.

9 SECTION 4. The changes in law made by this Act apply only to
10 a medical power of attorney executed on or after the effective date
11 of this Act. A medical power of attorney executed before the
12 effective date of this Act is governed by the law in effect
13 immediately before the effective date of this Act, and the former
14 law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2023.