

**ADVANCE HEALTH CARE DIRECTIVE
CALIFORNIA POWER OF ATTORNEY FOR HEALTH CARE
(Appointing an Agent to Make Health Care Decisions)**

NOTE: COMPLETION OF THIS FORM IS ONLY THE FIRST STEP. YOU SHOULD DISCUSS YOUR WISHES IN DETAIL WITH YOUR DESIGNATED AGENT(S).

My name is: _____

My address is: _____

In this document, I appoint one or more agents to make health care decisions for me. **My agent's authority shall begin immediately, even though I currently have the mental capacity to make my own health care decisions. (If I check here____, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions).**

The following persons cannot be selected as your agent or alternate agent:

- Your primary physician.
- The operator of a community care facility or residential care facility where you receive care.
- An employee of the health care institution, community care facility or residential care facility where you receive care (unless you are related to that person, the person is your registered domestic partner, or you and the person are employed by the same facility or institution).

AGENT

Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

1ST ALTERNATE AGENT (If Agent is unavailable or unwilling to serve.)

Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

2ND ALTERNATE AGENT (If Agent and 1ST Alternate Agent are unavailable or unwilling to serve.)

Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

AGENT'S AUTHORITY

Except as limited by this document, my agent will have authority to make health care decisions for me to the extent that I now have authority to make my own health care decisions. This authority includes, but is not limited to, the authority 1) to accept or refuse treatment, nutrition and hydration, 2) to choose a particular physician or health care facility, and 3) to receive, or consent to the release of, medical information and records. **If I have the mental capacity to make my own health care decisions, my agent shall not have the authority to make any health care decision with which I disagree.**

Except as limited by this document, this authority includes the authority to authorize an autopsy, donate all or part of my body, and/or determine the disposition of my remains.

AGENT'S DUTIES

My agent shall make decisions for me in accordance with this power of attorney for health care, any written instructions I have provided to my agent and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

HEALTH CARE INSTRUCTIONS (OPTIONAL)

I make the following instructions to my agent:

(Attach additional pages if necessary. Sign and date any additional pages on the same day you sign this document, and state the number of attached pages here: _____.)

NOMINATION OF CONSERVATOR

If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

AUTHORITY UNDER HIPAA AND CMIA

My agent shall be a personal representative of mine under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As such, my agent has the same rights to inspect and obtain copies of any medical or other health information as I would have. My agent also has the right to authorize disclosure of my patient records and other medical or health information subject to and protected under HIPAA. Pursuant to the California Confidentiality of Medical Information Act (CMIA) and Section 4678 of the California Probate Code, my agent has the same rights to request, receive, examine, copy and consent to the disclosure of my medical or other health care information as I would have.

The above authority applies to any individually identifiable health or medical information, health care information or other medical records governed by HIPAA, CMIA or Section 4678 of the California Probate Code.

PERSONAL CARE DECISIONS

I authorize my agent to make decisions regarding my personal care, including decisions regarding where I will live, hiring household employees, furnishing transportation and meals, handling my mail and arranging recreation and entertainment on my behalf. If I initial here _____, I do not want my agent to have the authority provided by the preceding sentence.

DISAGREEMENT WITH OTHER AGENTS

In case of disagreement between my agent and an agent under any financial or other power of attorney of mine regarding payment for my health and/or personal care or regarding any other matters addressed under this power of attorney for health care, the decision of my agent under this power of attorney for health care shall control. If I initial here _____, I do not want my agent to have the authority provided by the preceding sentence.

REVOCACTION OF PREVIOUS DOCUMENTS

I revoke any previously-executed Power of Attorney for Health Care, Individual Health Care Instruction or Natural Death Act Declaration.

EFFECT OF COPY: A copy of this form has the same effect as the original.

SIGNATURE OF PRINCIPAL (PERSON APPOINTING THE AGENT)

Date: _____

Signature: _____

(If principal is not physically able to sign, he or she can instruct another person to sign the principal's name, if signature is done in the principal's presence.)

WITNESSES

This document must either be notarized or signed by two adult witnesses. If the principal (the person appointing the agent) currently resides in a nursing facility, this document also must be witnessed by a patient advocate or ombudsman designated by the California Department of Aging. If the two-witness method is chosen, the patient advocate or ombudsman may serve as one of the two witnesses, or may serve as a third witness. If the notarization method is chosen, the patient advocate or ombudsman serves as a separate witness.

Certain individuals cannot serve as witnesses. Those rules are set forth in the following witness statements.

I declare under penalty of perjury under the laws of California

- (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence,
- (2) that the individual signed or acknowledged this advance directive in my presence,
- (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence,
- (4) that I am not a person appointed as agent by this advance directive, and
- (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

First Witness: _____
Name (printed) Signature

Date: _____ Address: _____

Second Witness: _____
Name (printed) Signature

Date: _____ Address: _____

ONE OF THE PRECEDING WITNESSES ALSO MUST SIGN THE FOLLOWING DECLARATION:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

Date: _____ Signature: _____

DECLARATION OF PATIENT ADVOCATE OR OMBUDSMAN

(Required if person appointing the agent currently resides in a nursing facility)

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman designated by the California Department of Aging and that I am serving as a witness as required by Section 4675 of the California Probate Code.

Date: _____ Signature: _____

State of California County of _____)
On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.
Signature _____ (Seal)

WHAT MATTERS MOST TO YOU TODAY?



For each subject where you have a view, circle the number that best expresses its importance to you today. By doing so, you're telling your helpers what a "good life" means to you.

SUBJECT	IMPORTANCE (LOW - HIGH)		
Being in charge of			
• My money	1	2	3
• My care decisions	1	2	3
• My meal selections	1	2	3
• How I spend my time	1	2	3
• Being creative	1	2	3
• When I do things	1	2	3
• Where I live	1	2	3
• With whom I spend time	1	2	3
Enjoyment			
• Traveling	1	2	3
• Listening to music	1	2	3
• Reading	1	2	3
• Thinking	1	2	3
• Being creative	1	2	3
• Sexual experiences	1	2	3
• Watching television	1	2	3
• Theatre, movies	1	2	3
• Dancing	1	2	3
• Sports	1	2	3
• Singing	1	2	3
• Playing a musical instrument	1	2	3
• Playing games	1	2	3
• Having pets	1	2	3

SUBJECT	IMPORTANCE (LOW - HIGH)		
Religious Beliefs			
• Following my beliefs	1	2	3
• Attending services	1	2	3
• Meeting with my priest, minister, rabbi, advisor	1	2	3
Personal Needs			
• Preparing meals	1	2	3
• Feeding myself	1	2	3
• Controlling my bladder / bowels	1	2	3
• Dressing myself	1	2	3
• Bathing myself	1	2	3
• Moving about without help	1	2	3
Family and Friends			
• Communicating with them	1	2	3
• Recognizing them	1	2	3
• Not being a burden on them	1	2	3
• Being with them when I die	1	2	3
• Not leaving painful memories	1	2	3
• Leaving money to them	1	2	3

Use the following box to list additional matters that are very important to you.

POSSIBLE FUTURE SITUATION: INABILITY TO RECOGNIZE AND COMMUNICATE WITH PEOPLE



Assume you have become permanently unable to recognize and communicate with people. You are conscious (aware of surroundings, able to experience pain and suffering). Your life expectancy is uncertain. If this happened, what approach would you want? Select ONE and/or provide any added comments.

APPROACH	✓
I want to prolong my life, and to receive all medical care available to prolong my life.	<input type="checkbox"/> I Agree
I do not want to receive medical care that only prolongs my life, except that I do want to receive artificial nutrition and hydration (tube feeding).	<input type="checkbox"/> I Agree
I do not want to receive medical care (including artificial nutrition and hydration) that only prolongs my life.	<input type="checkbox"/> I Agree



Comments:



Added Facts: While in the above situation, you contract an additional illness (for example, pneumonia) that could be cured or reversed. The additional illness would cause your death if left untreated. If this happened, what approach would you want? Select ONE and/or provide any added comments.

APPROACH	✓
I want to receive all medical care that could possibly cure the additional illness.	<input type="checkbox"/> I Agree
If it's the only way to keep me comfortable, try to cure the illness.	<input type="checkbox"/> I Agree
Let me go. Do not try to cure the additional illness, even if it will cause me pain.	<input type="checkbox"/> I Agree




Comments:

POSSIBLE FUTURE SITUATION: PERMANENT UNCONSCIOUSNESS



Assume you have become unconscious (no awareness, no pain, no suffering). Medical testing indicates that your unconsciousness is permanent. Your life expectancy is uncertain. If this happened, what approach would you want? Select ONE and/or provide any added comments.

APPROACH	✓
I want to prolong my life, and to receive all medical care available to prolong my life.	<input type="checkbox"/> I Agree
I do not want to receive medical care that only prolongs my life, except that I do want to receive artificial nutrition and hydration (tube feeding).	<input type="checkbox"/> I Agree
I do not want to receive medical care (including artificial nutrition and hydration) that only prolongs my life.	<input type="checkbox"/> I Agree



Comments:



Added Facts: While in the above situation, you contract an additional illness (for example, pneumonia) that could be cured or reversed. The additional illness would cause your death if left untreated. If this happened, what approach would you want? Select ONE and/or provide any added comments.

APPROACH	✓
I want to receive all medical care that could possibly cure the additional illness.	<input type="checkbox"/> I Agree
If it's the only way to keep me comfortable, try to cure the illness.	<input type="checkbox"/> I Agree
Let me go. Do not try to cure the additional illness.	<input type="checkbox"/> I Agree



Comments:

Finding a Private Attorney In or Near the South Bay

H.E.L.P.

Healthcare and Elder Law Programs

H.E.L.P. provides this information as a public service. H.E.L.P. does not and will not refer any person to any private attorney or private law offices. Reference to any organization or person does not imply endorsement of that organization or person, and H.E.L.P. does not in any way warrant the services any organization or person may provide.

Step 1. Choose Specialty Area(s).

Attorneys have become very specialized. First, determine what specialty area(s) you need help with. Specialty areas include:

Banking	Employee Benefits	Malpractice – Medical
Bankruptcy	Environmental	Medi-Cal
Business	Estate Administration	Personal Injury
Business Litigation	Estate Planning	Probate
Conservatorships	Family or Divorce	Real Estate
Corporations	Government Benefits	Social Security
Criminal	Immigration	Taxation
Debtor-Creditor	Labor and Employment	Trust Administration
Domestic Violence	Landlord – Tenant	Wills and Trusts
Elder Law	Malpractice – Legal	Workers' Compensation

Step 2. Select a Referral Source.

Referral Services: Bar associations and other groups operate “referral services” – providing referrals to *participating* attorneys. Note: Not all qualified attorneys participate in referral services. Several referral services are described on the back of this sheet.

Other Referral Sources: Other organizations, friends, family, private attorneys, accountants, financial advisors, etc. can be a source for finding qualified attorneys.

Step 3. Finding a Private Attorney.

Contact the referral service or other referral source, and request the name, telephone number and available background information for an attorney in the specialty area(s). Call the attorney to discuss your needs and the initial consult arrangements. If you are satisfied, schedule an appointment.

Be a Smart Legal Service Consumer.

- Make sure that the attorney is experienced in the area(s) you need help with.
- Check out the attorney’s references and reputation.
- Tell the attorney what your problem is, and what you hope to accomplish.
- Bring all background information and documents to the initial consult.
- Avoid Surprises – before proceeding have a clear understanding (in writing) of the work to be done by the attorney, and the fee and other costs. Try to work out a fixed charge arrangement.

REFERRAL SERVICES (in alphabetical order)
For Private Attorneys in or Near the South Bay

Service Name (Attorney Location)	Telephone/ Website	Description of Service
California Advocates for Nursing Home Reform (CANHR) (Statewide)	(800) 474-1116 www.canhr.org *Referral by phone only	<ul style="list-style-type: none"> • Service has two attorney groups. One focuses on elder law, Medi-Cal and estate planning. The other focuses on elder abuse and related litigation. • Service will try to provide the name of an attorney, in the specialty area. No charge for referral. • Attorney charges for initial consults and additional work vary.
Long Beach Bar Association Referral Service (Long Beach, Los Angeles County)	(562) 988-1122 www.longbeachbar.org	<ul style="list-style-type: none"> • Service will try to provide the name of an attorney, in the specialty area. No charge for referral. • The attorney will provide a 30-minute initial consult, for a charge not exceeding \$40. • Attorney charges for additional work vary.
Los Angeles County Bar Association (Los Angeles County)	(213) 243-1525 www.smartlaw.org	<ul style="list-style-type: none"> • Service will try to provide the name of an attorney, in the specialty area. \$35 charge for up to three referrals (VISA, MasterCard, money order or check). • The attorney will provide a 30-minute initial consult, at no charge. • Attorney charges for additional work vary. • Some free services are available for common situations.
National Academy of Elder Law Attorneys, Inc. (NAELA) (National)	*(703) 942-5711 www.naela.org *Referral by internet only.	<ul style="list-style-type: none"> • Service will try to provide the name of an attorney in the specialty of elder law. No charge for the referral. • Only members of the Academy are referred, but referral does not constitute endorsement. Certifications are noted. No initial consult fee arrangement.
Orange County Bar Association (Orange County)	(949) 440-6700 www.ocbar.org	<ul style="list-style-type: none"> • Service will try to provide the name of an attorney, in the specialty area. \$25 charge for referral (VISA, MasterCard). • The attorney will provide a “brief” initial consult, over telephone or in office, at no charge. • Charges for additional work vary.
South Bay Bar Association (South Bay, Los Angeles County)	(310) 325-4200 www.southbaybar.org	<ul style="list-style-type: none"> • Service will try to provide the name of an attorney, in the specialty area. No charge for referral. • Attorney will provide an initial 30-minute consult, for a charge not exceeding \$50. • Attorney charges for additional work vary.

H.E.L.P.

Fact Sheet: Estate Planning

Transfers to Heirs

Several methods exist for directing who will inherit assets upon an owner's death.

- Joint tenancy ownership supersedes other arrangements, so assets a person holds as joint tenant, if any, will be transferred on death to the surviving joint tenant(s).
- Other assets for which a person has named a beneficiary or made a pay-on-death (or transfer-on-death) arrangement will be transferred to the surviving person(s) the person has named.
- If a person has a Living Trust, the assets owned by the Trust will be transferred according to the terms of the Trust. The main reason for having a Living Trust is to avoid probate with respect to real estate.
- A person's remaining assets will be transferred according to the terms of the person's will.
- If a person dies without a valid will, the person is "intestate." In that case, the person's remaining assets would be transferred according to the California intestacy laws.

Probate

Probate is a court proceeding to pass the **probate estate** of a deceased person to the deceased person's heirs. The probate estate consists of the person's assets that do not have joint tenancy, beneficiary naming, pay-on-death, transfer-on-death, living trust or other probate avoiding arrangements in place.

In some cases probate is not required, even though probate avoiders are not in place for all of the deceased person's assets. Probate is not required when the probate estate is going to a surviving spouse or when the value of the probate estate is \$100,000 or less. In each of these situations, simplified procedures are available for passing assets without probate. In some cases, a simplified court proceeding may be required.

Wills

A Will allows the person to name those who will receive the person's probate estate and to name an executor (the person who will manage and distribute the probate estate).

Assets for which probate avoiding arrangements are in place **are not included in the probate estate**, and thus not impacted by a Will.

Revocable Living Trusts (Living Trusts)

The primary reason to create a revocable living trust (Living Trust) is to avoid probate. There are different ways to avoid probate, depending on the nature of the assets under consideration; a Living Trust is particularly useful for real estate.

Among other things, a Living Trust allows a person to name those who will receive the person's **trust assets** upon the person's death, and to name the trustee (the person who will manage and distribute the **trust assets** upon the person's death and who will manage the trust assets if the person becomes unable to do so).

More on Trusts

- If possible, the Living Trust should name at least two successor trustees in sequential order.
- The Living Trust should include a trustee succession test that will work in the context of the laws regarding the privacy of health information (the federal Health Insurance Portability and Accountability Act, or "HIPAA," and the California Confidentiality of Medical Information Act).
- For married couples, where each spouse is a co-trustee, the Living Trust should provide that either co-trustee may act alone if the other is unavailable or incapacitated.
- The Living Trust should include a provision addressing the resignation of the initial trustee(s).
- For changes in the law, gifting and other purposes, consider including a provision in the Living Trust allowing the Agent under a durable power of attorney for financial matters the power to amend and revoke the Living Trust.
- For married couples with a Living Trust, after the death of the first spouse the surviving spouse should meet with an attorney regarding administration of the trust and estate.

About Will and Trust Contests

Estate planning arrangements can become the subject of challenges, commonly known as will and trust contests. To succeed, a challenge must show incapacity, undue influence or a failure to follow legal formalities in creating the will or trust. The job of an attorney preparing estate planning documents is to make sure that not only the formalities are followed, but that the plan for distribution of assets in the will and/or trust is the independent, knowing wish of the person.

Staying in Charge of Your Healthcare Decisions

A **Power of Attorney for Health Care (PAHC)** is a legal document that allows you to stay in charge of your care by selecting and naming who will make decisions for you if you become incapacitated. Care decisions include matters like:

- Selecting and removing health care providers and institutions,
- Consenting to or refusing diagnostic tests, medical treatment, services, procedures or medication programs,
- Giving instructions regarding whether to provide, withhold or withdraw all forms of treatment, including artificial nutrition and hydration (for example, tube feeding) and cardiopulmonary resuscitation (CPR), and
- Deciding on other matters affecting your mental or physical condition (for example, decisions concerning dietary selections).

The person who signs the PAHC is called the **Principal**; a person named to make care decisions on the Principal's behalf is called an **Agent**.

In addition to naming an Agent to make care decisions, the Principal may also include **individual health care instructions** in the PAHC. Individual health care instructions are the Principal's specific instructions regarding future care decisions. The Principal may limit the instructions so that they apply only if a particular condition occurs. California law also allows the Principal to communicate individual health care instructions to the Agent orally or in a document separate from the PAHC.

When Does a PAHC Begin?

A PAHC may be either **"immediate"** or **"springing."** An Agent's authority under an immediate PAHC begins at the time the document is signed. An Agent's authority under a springing PAHC begins only on the occurrence of a later event. Frequently, that event is a determination that the Principal lacks capacity.

About Capacity

In the PAHC context, "capacity" means that the Principal is able to understand a decision's nature and consequences, is able to make a decision and communicate a decision and, when considering proposed health care, is able to understand the significant risks, benefits and alternatives.

Unless the PAHC provides otherwise, the Principal's primary physician is the one who determines the Principal's capacity. If the Principal has not selected a primary physician, or the selected physician is unavailable or unwilling to act, the physician who has taken on primary responsibility makes the determination.

When Does a PAHC End?

Unless the PAHC states a specific termination time, it remains in effect until the Principal's death. However, the Agent's authority with respect to decisions regarding organ donation, authorizing an autopsy and disposing of the Principal's remains continues beyond the Principal's death.

Revoking a PAHC

The Principal must have capacity in order to revoke all or any part of a PAHC. To revoke the naming of an Agent, the Principal must either sign a written revocation or inform the supervising health care provider personally. To revoke an entire PAHC or any part (except for the naming of an Agent), the Principal may communicate the intent to revoke by any means and at any time. Although California law allows the Principal to revoke a PAHC orally, we recommend signing a written revocation (which can be included in a new PAHC).

If the Principal names his or her spouse as an Agent, and the marriage is later dissolved or annulled, the naming of the former spouse is automatically revoked.

Is a PAHC Required?

No health care provider, institution or insurance company can require you to sign or revoke a PAHC before providing you with care, admitting you to a facility, or providing you with health insurance. Neither can you be prohibited from signing or revoking a PAHC.

Preparing a PAHC

There are three principal types of PAHC documents:

- Pre-printed forms. H.E.L.P. offers a simplified pre-printed form.
- Attorney-drafted PAHCs.
- A statutory form. Section 4701 of the California Probate Code includes language that should be included in preparing your own PAHC.

You can obtain H.E.L.P.'s pre-printed PAHC form and the related wallet card, for free, by calling H.E.L.P. at (310) 533-1996.

Remember: Pre-printed and statutory forms are not suitable for every person or in every situation.

What Happens Without a PAHC or Surrogate?

If you are unable to make care decisions and have not signed a PAHC or individual health care instructions or named a surrogate (see **Naming a Temporary Surrogate**), the medical system will typically pay attention to the decisions of your closest family members. But what happens if there is disagreement among family members or between family members and medical providers? In that situation the courts may have to step in. California law does not include a statute that sets forth who has priority in making decisions for a person who has not named a decision-maker.

Legal Requirements

California PAHCs must meet each of the following requirements:

- The Principal must sign the document. Alternatively, another adult may sign the document in the Principal's name, at the Principal's direction, and in the Principal's presence.
- The Principal must have capacity at the time the document is signed.
- The document must include the date of signing.
- The document must be acknowledged before a notary public or signed by at least two adult witnesses. The witnesses must either (1) witness the Principal's signing of the document or (2)

witness the Principal's signing of an acknowledgement of the Principal's signature or of the PAHC. Each witness must sign a declaration that includes language required by California law. Further, a witness should not be related to the Principal by blood, marriage, or adoption or entitled to inherit from the Principal by operation of law or under any will existing at the time the PAHC is signed.

The following individuals may not witness a PAHC:

- The Principal's health care provider or an employee of the provider,
- A community care facility operator or employee,
- The operator or employee of a residential care facility for the elderly or
- An Agent named in the PAHC.

Special Witness Requirements for Nursing Home Residents

If the Principal is a resident in a skilled nursing facility, a patient advocate or ombudsman must witness the document being signed or, if the document is notarized, as a separate witness. The patient advocate or ombudsman must also sign a special declaration that he or she is serving as a witness as required by Section 4675 of the Probate Code.

Coordination With Other Powers of Attorney

Matters dealt with under the PAHC should be coordinated with provisions in any other power of attorney that relates to the same or similar matters, such as a **durable power of attorney for financial matters (DPAFM)**. We recommend that the documents state who has final authority in the case of disagreement. In addition, the Principal should consider including a provision in the Principal's DPAFM directing the agent under the DPAFM to pay for any costs incurred by the Agent under the PAHC.

Selecting Agents

The PAHC gives the Agent the power to make care decisions for the Principal, including the power to authorize, withhold or terminate life-sustaining treatment. The Principal should carefully select the Agent.

The following are important factors to consider:

- Most important, the Agent should be someone with whom the Principal communicates well.
- The Agent should be available when needed.
- The Agent should be someone who will make decisions in accordance with the Principal's wishes, even if the Agent disagrees with those wishes.
- The Agent should be someone who will stand up for the Principal and be able to deal with others (medical personnel, family members or friends) who disagree with the Principal's wishes.

At a minimum, the Agent should be an adult 18 years of age or older, clearheaded, and have the capacity to make decisions (**see About Capacity**).

We recommend that the Principal name a second and a third individual to serve as successor Agents in the event that the prior Agents are unavailable. We also recommend that the Principal give a copy of the completed and signed PAHC to the Agent and each successor Agent as well as to the Principal's physicians and close family members.

Naming Co-Agents

Generally, we recommend against naming Co-Agents (Agents who must act together). Naming Co-Agents can cause problems if the Co-Agents are unable to agree on decisions or if one of the Agents is not readily available. In this situation, the medical system could well operate as if the Principal had never named anyone to speak for him or her.

Ineligible Persons

Some individuals may not serve as an Agent:

- The Principal's supervising health care provider,
- The operator of a community care facility or residential care facility at which the Principal is a patient,
- An employee of a health care institution, community care facility or residential care facility at which the Principal is a patient, unless the employee is related to the Principal, is the Principal's registered domestic partner, or is employed by the same institution or facility as the Principal.

Agent-Selection Alternatives

If you do not know someone to name as an Agent:

- Consider banding together with a group of people who agree to serve as Agents for one another. You can name one group member as your initial Agent and two others as successor Agents. The group can replace members if they become unavailable.
- You can hire a professional care manager or professional fiduciary to act as your Agent. **The National Association of Professional Geriatric Care Managers**, a non-profit organization, lists names of professional care managers at (www.caremanager.org). Names of professional fiduciaries who serve as Agents are listed by the **Professional Fiduciary Association of California** at pfac-pro.org. Click on "**Referrals**" on the left side of the web page. Of course, you'll want to check the references of any professional you are considering to retain.

Alternatively, individuals with no one to name as an Agent may sign a document containing individual health care instructions. We recommend signing a PAHC, rather than only individual health care instructions, since an Agent has flexibility to deal with situations that may not have been anticipated.

Agent Duties and Authority

- The named Agent is not required to act under the PAHC, unless the named Agent has agreed in writing to act as Agent or has taken other action that indicates agreement.
- When acting, the Agent must act consistently with any written or oral instructions of the Principal and with any other known wishes of the Principal. If the Agent does not know the Principal's wishes, the Agent is required to act in the Principal's best interest, taking into account the Principal's personal values known to the Agent.
- If an Agent learns that the PAHC has been revoked, the Agent must promptly notify the supervising health care provider and any institution that is caring for the Principal.

Authority in General

An Agent has priority in making decisions for the Principal over any other person, unless the PAHC states otherwise or the Principal has named a temporary surrogate. It is important that everyone involved knows that the Agent is available.

The Agent has authority to choose the care that the Principal will or will not receive, including the authority to decide whether life-sustaining treatment will be provided. The Agent may not, however, consent to abortion, sterilization, mental health treatment facility commitment or placement, convulsive treatment or psychosurgery. In addition, the Agent is not authorized to make a decision to which the Principal objects, assuming that the Principal has capacity.

The Agent also has authority to make the following decisions that extend beyond the Principal's lifetime:

- Whether to make an anatomical gift under the Uniform Anatomical Gift Act,
- Whether to authorize an autopsy and
- How to dispose of the Principal's remains.

If the Principal does not want the Agent to have all of the above powers, the Principal may limit the Agent's powers in the PAHC.

Authority to Make Personal Care Decisions

In addition to the above powers, the Principal may give the Agent authority to make personal care decisions on the Principal's behalf. Personal care decisions may include decisions regarding:

- Living arrangements,
- Hiring household employees,
- Providing transportation and meals,
- Handling mail and
- Arranging recreation and entertainment.

The authority to make personal care decisions may be included in the PAHC, in a DPAFM or in a separate power of attorney.

Access to Health Information

Generally, under Federal law the Agent has the right to inspect and obtain a copy of the Principal's health information. The Agent also has the right to authorize disclosure of the Principal's health information to others. California law also gives the Agent the right to access the Principal's health information and to authorize disclosure.

Warning: A careful reading of California and Federal law suggests that, if the Principal has signed a "**springing**" PAHC, the Agent may not have the right to access the Principal's health information or to authorize disclosure until the PAHC has become effective.

Paying the Agent

Since Agents are often close family members or friends, Agents are frequently not compensated. If the Principal wants the Agent to be paid for performing his or her duties and/or reimbursed for



HEALTHCARE AND ELDER LAW PROGRAMS CORPORATION

is dedicated to empowering older adults and their families by providing impartial information, education and counseling on elder care, law, finances and consumer protection so they may lead lives with security and dignity.

reasonable expenses, include this expressly in the PAHC. A provision authorizing payment and/or reimbursement of the Agent should also be included in the Principal's DPAFM.

Communicating

If the Principal wants to ensure that his or her wishes are followed, it is imperative that the Principal and Agents discuss the Principal's desires, values and views about what makes life worth living for the Principal. Otherwise, the Agents may not have the information necessary to be able to make the decisions the Principal wants.

H.E.L.P. has created a free guide called ***Your Way: A Guide to Help You Stay in Charge***. Using this guide will:

- Help you think about what is important to you,
- Help you stay in charge of your care, even if you are unable to speak for yourself and
- Help you communicate your wishes to your Agents.
- You can obtain one free copy through this site.

In addition to the Agents, we recommend that the Principal communicate this information to physicians and close family members and friends so that these individuals will be aware that the Agent is following the Principal's instructions.

Summing Up

The legal and communication tools that allow you to control decisions about your care are readily available. You need to take two steps:

- Sign a PAHC naming one or more carefully-selected Agents.
- Sort out and communicate to your Agents and others your feelings on medical treatment, how you want to live and what makes life worth living for you.

Once you've done the paperwork:

- Give copies of the PAHC to your Agent, successor Agents, close family members and friends and medical providers. A copy has the same effect as the original.
- Complete a wallet card that notifies emergency medical personnel that you have signed a PAHC and includes the names and telephone numbers of your Agents. Keep it with your driver's license or other I.D.

Remember that things change. Periodically review your PAHC and communication documents to ensure that your designation of Agents is up-to-date and that your wishes are still accurately expressed.

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Staying in Charge - Life Planning Information Resources

Powers of Attorney

H.E.L.P. (Healthcare and Elder Law Programs)
Advance Health Care Directive
California Power of Attorney for Health Care

(310) 533-1996
www.help4srs.org

Superior Court – County of Los Angeles

[http://www.superiorcourtdocs.com/
power-of-attorney-los-angeles](http://www.superiorcourtdocs.com/power-of-attorney-los-angeles)

The State Bar of California
Consumer Information

www.calbar.ca.gov

California Advocates for Nursing Home Reform
(CANHR) - Consumer Information & Fact Sheets

(800) 474-1116
www.canhr.org

Choosing an Agent

H.E.L.P. (Healthcare and Elder Law Programs)
Who Will Manage My Finances If I Can't;
Nuts & Bolts Guides

(310) 533-1996
www.help4srs.org

Professional Fiduciaries Bureau –
CA Dept. of Consumer Affairs

(916) 574-7340
www.fiduciary.ca.gov

Professional Fiduciary Association of California

(844) 211-3151
www.pfac-pro.org

Aging Life Care Association
(Professional Care Managers)

www.aginglifecare.org

Advance Directives

H.E.L.P. (Healthcare and Elder Law Programs)
Your Way; Funeral and Burial Instructions;
Organ Donation Instructions

(310) 533-1996
www.help4srs.org

State of California Department of Justice –
Office of the Attorney General
Advance Health Care Directive

www.oag.ca.gov/consumers/general/care

Five Wishes
Advance Care Planning

(850) 681-2481
www.fivewishes.org

DNR and POLST

H.E.L.P. (Healthcare and Elder Law Programs)
Advance Health Care Directive
California Power of Attorney for Health Care

(310) 533-1996
www.help4srs.org

Coalition for Compassionate Care/POLST

(916) 489-2222
www.capolst.org; www.coalitionccc.org

California Healthcare Foundation

www.chcf.org/projects/2013/polst

Conservatorship

H.E.L.P. (Healthcare and Elder Law Programs)
Legal: Conservatorship Basics

(310) 533-1996
www.help4srs.org

Superior Court – County of Los Angeles
Where can I get help with a conservatorship?

www.lacourt.org/division/probate/PRO018.aspx

California Advocates for Nursing Home Reform
(CANHR) Consumer Information & Fact Sheet

(800) 474-1116
www.canhr.org

POLST: Physician Order for Life Sustaining Treatment

Health care planning lets you choose the kind of medical care you will-or will not-receive should you become incapacitated and unable to speak for yourself. A **power of attorney for health care (PAHC)** is a legal document that enables you to designate a health care spokesperson or agent. A properly executed PAHC provides the agent with the legal authority to act as your decision-maker in selecting appropriate treatment options. Physicians, nurses and other health care providers must respect the PAHC agent's treatment requests.

A **Physician Order for Life Sustaining Treatment (POLST)** is a particularly useful tool for people who are very frail or suffer from terminal illnesses. It complements the PAHC by converting a patient's wishes regarding resuscitation into a formal medical order. The three specific orders for life sustaining treatment choices address cardiopulmonary resuscitation (CPR); medical interventions for comfort and pain relief; and limitations on tube feeding when eating is no longer feasible or desired.

Emergency medical technicians (EMTs) include firefighters, law enforcement officers, and paramedics. When responding, they seldom have the time or ability to locate agents of terminally ill patients. As a result, EMTs usually commence immediate CPRs. For those who do not want to receive them, a POLST provides formal instructions that specified treatment options just should not be applied.

To be valid, the POLST must be completed after a health care provider and patient or PAHC agent have conferred about anticipated treatment options that may be confronted should issues of life support arise. The form must be signed by the treating physician, nurse practitioner, or physician assistance and the patient or PAHC agent. Although not required, it is usually prepared on pink cardboard-like paper that makes it quite noticeable to emergency medical and other health care providers.

People who reside at home should place the pink form where it can be immediately located either on the refrigerator door or a corner of the bed. Hospitals and skilled nursing facilities keep the bright pink POLST on the first page of the patient's medical file.

Preparation of a POLST form is completely voluntary, both in terms of being offered by a physician, nurse practitioner, or physician assistance or signed by a patient or PAHC agent. However, even if they refuse to offer individual patients the POLST option, physicians and other health care providers who receive a properly signed and endorsed POLST are legally required to respect it as an existing treatment order.

Each patient's POLST must be periodically reviewed by the current health care provider. Should the patient be transferred from one facility to another, should there be a significant change in the patient's health status (improvement or deterioration), or should the patient's treatment preferences change, the form must be amended, and may be voided at any future time.

For more information on the protections provided and procedures involved in obtaining a POLST, visit the **California Coalition for Compassionate Care** website at finalchoices.org. To obtain a free **Advanced Health Care Directive** form, call **H.E.L.P.** at **310-533-1996**

National POLST Form: A Portable Medical Order

Health care providers should complete this form only after a conversation with their patient or the patient's representative. The POLST decision-making process is for patients who are at risk for a life-threatening clinical event because they have a serious life-limiting medical condition, which may include advanced frailty (www.polst.org/guidance-appropriate-patients-pdf).

Patient Information. Having a POLST form is always voluntary.

This is a medical order, not an advance directive. For information about POLST and to understand this document, visit: www.polst.org/form

Patient First Name: _____
 Middle Name/Initial: _____ Preferred name: _____
 Last Name: _____ Suffix (Jr, Sr, etc): _____
 DOB (mm/dd/yyyy): ____/____/____ State where form was completed: _____
 Gender: M F X Social Security Number's last 4 digits (optional): xxx-xx-____

A. Cardiopulmonary Resuscitation Orders. Follow these orders if patient has no pulse and is not breathing.

Pick 1 **YES CPR: Attempt Resuscitation, including mechanical ventilation, defibrillation and cardioversion.** (Requires choosing Full Treatments in Section B) **NO CPR: Do Not Attempt Resuscitation.** (May choose any option in Section B)

B. Initial Treatment Orders. Follow these orders if patient has a pulse and/or is breathing.

Reassess and discuss interventions with patient or patient representative regularly to ensure treatments are meeting patient's care goals. Consider a time-trial of interventions based on goals and specific outcomes.

Pick 1 **Full Treatments (required if choose CPR in Section A).** Goal: Attempt to sustain life by all medically effective means. Provide appropriate medical and surgical treatments as indicated to attempt to prolong life, including intensive care.
 Selective Treatments. Goal: Attempt to restore function while avoiding intensive care and resuscitation efforts (ventilator, defibrillation and cardioversion). May use non-invasive positive airway pressure, antibiotics and IV fluids as indicated. Avoid intensive care. Transfer to hospital if treatment needs cannot be met in current location.
 Comfort-focused Treatments. Goal: Maximize comfort through symptom management; allow natural death. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Avoid treatments listed in full or select treatments unless consistent with comfort goal. Transfer to hospital **only** if comfort cannot be achieved in current setting.

C. Additional Orders or Instructions. These orders are in addition to those above (e.g., blood products, dialysis).
 [EMS protocols may limit emergency responder ability to act on orders in this section.]

D. Medically Assisted Nutrition (Offer food by mouth if desired by patient, safe and tolerated)

Pick 1 Provide feeding through new or existing surgically-placed tubes No artificial means of nutrition desired
 Trial period for artificial nutrition but no surgically-placed tubes Discussed but no decision made (standard of care provided)

E. SIGNATURE: Patient or Patient Representative (eSigned documents are valid)

I understand this form is voluntary. I have discussed my treatment options and goals of care with my provider. If signing as the patient's representative, the treatments are consistent with the patient's known wishes and in their best interest.

(required)
 If other than patient, print full name: _____ Authority: _____
 The most recently completed valid POLST form supersedes all previously completed POLST forms.

F. SIGNATURE: Health Care Provider (eSigned documents are valid) Verbal orders are acceptable with follow up signature.

I have discussed this order with the patient or his/her representative. The orders reflect the patient's known wishes, to the best of my knowledge. [Note: Only licensed health care providers authorized by law to sign POLST form in state where completed may sign this order]

(required) Date (mm/dd/yyyy): Required _____ Phone #: _____
 / /
 Printed Full Name: _____ License/Cert. #: _____
 Supervising physician signature: N/A License #: _____

Patient Full Name:

Contact Information (Optional but helpful)

Patient's Emergency Contact. (Note: Listing a person here does not grant them authority to be a legal representative. Only an advance directive or state law can grant that authority.)

Full Name:	<input type="checkbox"/> Legal Representative <input type="checkbox"/> Other emergency contact	Phone #: Day: () Night: ()
Primary Care Provider Name:	Phone: ()	
<input type="checkbox"/> Patient is enrolled in hospice	Name of Agency: Agency Phone: ()	

Form Completion Information (Optional but helpful)

Reviewed patient's advance directive to confirm no conflict with POLST orders: (A POLST form does not replace an advance directive or living will)	<input type="checkbox"/> Yes; date of the document reviewed: _____ <input type="checkbox"/> Conflict exists, notified patient (if patient lacks capacity, noted in chart) <input type="checkbox"/> Advance directive not available <input type="checkbox"/> No advance directive exists
Check everyone who participated in discussion:	<input type="checkbox"/> Patient with decision-making capacity <input type="checkbox"/> Court Appointed Guardian <input type="checkbox"/> Parent of Minor <input type="checkbox"/> Legal Surrogate / Health Care Agent <input type="checkbox"/> Other: _____
Professional Assisting Health Care Provider w/ Form Completion (if applicable): Full Name:	Date (mm/dd/yyyy): / / Phone #: ()

This individual is the patient's: Social Worker Nurse Clergy Other:

Form Information & Instructions

- **Completing a POLST form:**
 - Provider should document basis for this form in the patient's medical record notes.
 - Patient representative is determined by applicable state law and, in accordance with state law, may be able to execute or to void this POLST form only if the patient lacks decision-making capacity.
 - Only licensed health care providers authorized to sign POLST forms in their state or D.C. can sign this form. See www.polst.org/state-signature-requirements-pdf for who is authorized in each state and D.C.
 - Original (if available) is given to patient; provider keeps a copy in medical record.
 - Last 4 digits of SSN are optional but can help identify / match a patient to their form.
 - If a translated POLST form is used during conversation, attach the translation to the signed English form.
- **Using a POLST form:**
 - Any incomplete section of POLST creates no presumption about patient's preferences for treatment. Provide standard of care.
 - No defibrillator (including automated external defibrillators) or chest compressions should be used if "No CPR" is chosen.
 - For all options, use medication by any appropriate route, positioning, wound care and other measures to relieve pain and suffering.
- **Reviewing a POLST form:** This form does not expire but should be reviewed whenever the patient:
 - (1) is transferred from one care setting or level to another;
 - (2) has a substantial change in health status;
 - (3) changes primary provider; or
 - (4) changes his/her treatment preferences or goals of care.
- **Modifying a POLST form:** This form cannot be modified. If changes are needed, void form and complete a new POLST form.
- **Voiding a POLST form:**
 - **If a patient or patient representative (for patients lacking capacity) wants to void the form:** destroy paper form and contact patient's health care provider to void orders in patient's medical record (and POLST registry, if applicable). State law may limit patient representative authority to void.
 - **For health care providers:** destroy patient copy (if possible), note in patient record form is voided and notify registries (if applicable).
- **Additional Forms.** Can be obtained by going to www.polst.org/form
- As permitted by law, this form may be added to a secure electronic registry so health care providers can find it.

State Specific Info

For Barcodes / ID Sticker

Who Will Manage My Finances If I Can't?

Almost Everything You Ever Wanted to Know About Financial Powers of Attorney

Hopefully, you'll always be able to handle your own assets and finances. If, however, you became incapacitated, how would your assets and finances be managed? What about your home? Your IRA? Your bank accounts? Depositing your checks? Arranging and paying for home care? Paying your bills? Filing and paying your taxes?

For most people, a financial power of attorney can be a very important tool for answering these questions. Financial powers of attorney come with many different titles, like "general power of attorney" and "power of attorney for asset and property management." The title doesn't matter very much. We like to call it a "durable power of attorney for financial matters" (DPAFM). In this article, we share what we think are the most important things you should know about the DPAFM. This article reflects the powers of attorney provisions of the California statutes; the statutes allow individualized DPAFM language to override the statutes at times.

The Basics

A DPAFM is a legal document. In it, you name another person (usually a trusted family member or friend) to handle financial affairs on your behalf, if you become incapacitated.

The individual who signs the DPAFM is called the "Principal," and the individual authorized to

act on the Principal's behalf is called the "attorney-in-fact" or "Agent." Giving the Agent the power to act on the Principal's behalf does not take away the Principal's power to act. The Principal retains power over his or her assets as long as the Principal continues to have the mental capacity to handle his or her own affairs.

To use a power of attorney in incapacity planning, it must be made "durable." Being durable means that it will remain in effect if the Principal becomes incapacitated. To be durable, a financial power of attorney must include one of the following,

- The statement that "this power of attorney shall not be affected by subsequent incapacity of the principal" or
- The statement that "this power of attorney shall become effective upon the incapacity of the principal" or
- Similar language stating the Principal's intent that the Agent will have authority under the power of attorney even if the Principal becomes incapacitated.

If a power of attorney is not durable, the Agent's power to act for the Principal would end just at the time when the Principal is no longer able to manage his or her own affairs.

Powers Given to the Agent

A DPAFM can be general or limited. A general DPAFM gives

the Agent broad powers to act on the Principal's behalf; a limited DPAFM grants the Agent the power to act only in certain circumstances or for a certain period of time.

There are certain acts that an Agent may not take unless they are explicitly authorized in the DPAFM. For example, the Agent may not make gifts or make a loan to the Agent unless those powers are expressly stated in the DPAFM. The Agent may not amend or revoke the Principal's living trust, unless the DPAFM expressly states that power. The Principal should be sure that the DPAFM clearly grants all of the powers desired to be given to the Agent.

The DPAFM gives the Agent the right to deal with assets owned by the Principal at the time the power of attorney becomes effective, and (unless the DPAFM provides otherwise) with assets the Principal acquires in the future.

DPAFMs and Living Trusts

In general, a person who has a living trust should also have a DPAFM. If you create a living trust and become incapacitated, your successor trustee will manage the *trust assets* on your behalf. Assets not owned by the trust (for example, IRAs) would be managed under the DPAFM.

Note that, if you provide in your DPAFM that your Agent may amend or revoke your living

trust, you need to include a similar provision in your living trust.

Choosing Agents

A DPAFM can give the Agent extensive power over the Principal's assets. The Agent must be selected with care.

Factors to consider include:

- Whether the person can be trusted to handle the Principal's financial matters in the Principal's best interest; and
- Whether the person has good financial skills; and
- Whether the person will be available when needed.

We recommend that the Principal name a second and a third person to serve as successor Agents, to plan for the possibility that the Principal's prior choices are unable or unwilling to act.

Naming Co-Agents

The principal can name "Co-Agents" – two or more Agents authorized to act at the same time. In that case, unless the DPAFM states that Co-Agents may act independently, the Co-Agents must act unanimously.

We normally recommend against naming Co-Agents, because of practical and logistical problems, and potential disagreements among Co-Agents leading to inaction.

There are two exceptions to the unanimous action rule:

- If a Co-Agent is unable to serve due to absence, illness or other temporary incapacity, the remaining Co-Agent(s) may act if the action is required to fulfill the DPAFM's purposes or to avoid irreversible injury to the Principal.
- If a Co-Agent's position becomes vacant, the

remaining Co-Agent(s) may act.

The Agent's Rights

In general, an Agent is not required to take on the role of Agent under the DPAFM. An Agent may refuse to do so for any reason, unless the Agent has agreed in writing to act.

Further, the Agent may act on the Principal's behalf in some transactions, but refuse to act in others.

Unless the DPAFM provides otherwise, the Agent is entitled to pay himself or herself reasonable compensation for services performed on the Principal's behalf and to reimbursement for reasonable expenses. In many cases where Agents are family members or friends of the Principal, Agents are not compensated.

The Agent's Duties

The Agent has a number of duties that help ensure the Principal's interests are protected. These duties include:

- The Agent must act solely in the Principal's interest and avoid conflicts of interest.
- The Agent is required to keep the Principal's assets separate and distinct from the Agent's assets. This can be done by the Agent holding the Principal's assets in the Principal's name or in the Agent's name as "attorney-in-fact" for the Principal.
- The Agent is required to deal with the Principal's assets "prudently" (the way a prudent person would deal with the assets of another).
- An Agent who has special skills or expertise must observe an even higher

standard of care applicable to persons with those special skills or expertise.

- Once the Agent has begun a transaction on the Principal's behalf, the Agent is required to complete the transaction.
- To the extent reasonably practicable, the Agent must keep in regular contact with and communicate with the Principal, as well as follow the Principal's instructions. The Agent may disobey the Principal's instructions if the Agent receives court approval.
- The Agent must keep records of transactions made on the Principal's behalf and must provide the Principal with an accounting of transactions if the Principal requests one. There are additional circumstances when the Agent is required by law to provide an accounting.
- When the Agent's authority is terminated, the Agent must deliver the Principal's assets to appropriate persons (and, upon request, copies of records of transactions made on behalf of the Principal).

When Does a DPAFM Take Effect?

A DPAFM can be either "immediate" or "springing." An immediate DPAFM becomes effective at the time it is signed, while a springing DPAFM becomes effective on the happening of a specified event in the future (such as the Principal becoming incapacitated). An immediate DPAFM allows the Agent to act on the Principal's behalf without having to prove that the specified event has occurred.

Making a DPAFM effective

immediately, of course, also gives the Agent immediate power over the Principal's assets.

How Long Does a DPAFM Continue?

The DPAFM is a tool for dealing with incapacity during the Principal's lifetime. It terminates automatically at the Principal's death.

The DPAFM will last throughout the Principal's lifetime, unless the DPAFM limits its duration or the Principal terminates the DPAFM.

Although a DPAFM can remain in effect until the Principal's death, if the document was not recently executed some financial institutions and other third parties may be hesitant or unwilling to accept it. For example, a third party may be concerned about whether the DPAFM may have been revoked or whether the Principal may have died. Although there are legal steps an Agent can take to require the third party to accept the DPAFM, this can take time and added expense. For this reason, we suggest that the DPAFM be updated at least every three years.

Revoking a DPAFM

As long as the Principal has legal capacity, the Principal can revoke the DPAFM by a written document or by any other means stated in the DPAFM.

In practice, however, a DPAFM may be difficult to revoke. Written notice of the revocation should be given to all third parties who have received copies of the DPAFM. And the original and all copies should be retrieved from the Agent.

The revocation should also be recorded with the County Recorder where the original document was recorded and where the Principal owns real property.

If a Principal designates his or her spouse as an Agent, and the marriage is subsequently dissolved or annulled, the Principal's naming of the former spouse as Agent is automatically revoked.

Other Legal Requirements

In addition to the durability language, a DPAFM must meet the following requirements:

- At the time of signing, the Principal must have "capacity" (basically, must understand what the document does). In order for an Agent to be qualified, the Agent must also have capacity.
- The document must be in writing and must include the date of signing.
- The DPAFM must be signed by the Principal; or by another adult in the Principal's name, and at the Principal's direction, and in the Principal's presence.
- Generally, the DPAFM must either be acknowledged before a notary or be witnessed by at least two witnesses (neither of whom may be an Agent). If using the "Statutory Form," the Principal's signature must be acknowledged before a notary.

Document Forms

There are three principal DPAFM document forms:

- Attorney-drafted and customized documents.
- The "Statutory Form Power of Attorney," which copies the form set forth in Section

4401 of the California Probate Code.

- Other pre-printed forms often found in stationery and office supply stores, or in "do-it-yourself" software kits.

For bank accounts, you might want to execute your bank's financial power of attorney form, in addition to your broader DPAFM. The bank forms will apply to specified accounts within the same bank.

Practically speaking, many banks are easier for Agents to deal with when the Principal has used the bank's form of financial power of attorney.

The usability and quality of pre-printed and software forms varies. Because of frequent problems we see when people have created DPAFMs on their own, and the potentially great negative impact when a DPAFM is defective, we recommend that people use a knowledgeable attorney for preparation of their DPAFMs.

Wrapping Up

Creating a DPAFM is a valuable part of planning ahead for the possibility of incapacity. Once a person has become incapacitated, it is too late for them to create a DPAFM.

Great care should be taken in the selection of each Agent, because in the wrong hands a DPAFM is a "license to steal."

A well-prepared DPAFM can pave the way for careful management, and avoid the need for costly court intervention.

In other words:

- Do it carefully!
- Do it now! ◆

Do You Need a Professional Fiduciary?

A Professional Fiduciary manages a client's personal affairs, including daily care, housing and medical needs, and finances, ranging from paying bills to handling investments and trusts.

As of January 1, 2009, anyone who handles these duties for nonfamily members must be licensed, with a few exceptions.

The Professional Fiduciaries Bureau is a State agency created in 2006 under the Department of Consumer Affairs to license and regulate Professional Fiduciaries in California.

Who needs a Professional Fiduciary?

Someone who wants to hire a Professional Fiduciary to administer a trust, or someone with a mental and/or physical impairment who needs care and who:

- Doesn't want to burden family and friends.
- Doesn't have family or friends who can assist.
- Wants to avoid conflict among family members.

How do I find a licensed Professional Fiduciary?

The Bureau does not provide referrals, but has information to help consumers make informed choices. Contact the Bureau online at www.fiduciary.ca.gov or call (916) 574-7340 for the following information about a licensed Professional Fiduciary:

- License status.
- When the license was issued and when it expires.
- Address of public record.
- Any discipline imposed by the Bureau.
- Value of client assets managed by the fiduciary.
- Bankruptcy information.
- Case removal information.

Why is licensing of Professional Fiduciaries important?

Professional Fiduciaries work with clients who may be vulnerable to abuse or financial exploitation due to their mental or physical impairments.

Licensing and oversight by the Professional Fiduciaries Bureau provides a layer of protection for these clients and their families. Licensing ensures that Professional Fiduciaries have met education and experience requirements and have passed a competency exam and a criminal background check.

What if a licensed Professional Fiduciary violates the law?

The Bureau can take action against licensees who violate the law. Actions can include fines, sanctions, and license suspensions or revocations, or even referral to law enforcement authorities for criminal prosecution.

How do I report something to the Professional Fiduciaries Bureau?

To report unlicensed activity or to file a complaint about a fiduciary, go online to www.fiduciary.ca.gov (click on "[File a Complaint](#)") or call (800) 952-5210 to have a complaint form mailed to you.

Who is exempt from licensing?

- A conservator or guardian for one person.
- A trustee or agent under durable power of attorney for healthcare or finances for no more than three people.

Some professionals who perform fiduciary duties working within their scope of practice are also exempt from licensing. They include:

- Attorneys.
- Certified Public Accountants.
- Enrolled agents for the Internal Revenue Service.
- Broker-dealers and investment advisers.
- Employees of the following:
 - Trust companies.
 - Institutions insured by the Federal Deposit Insurance Corporation.
 - Corporations regulated by the Securities and Exchange Commission.
 - Public offices or public agencies.

Where can I find out more about fiduciaries?

To find out more about fiduciaries, contact the Bureau or one of these professional groups:

- [Professional Fiduciary Association of California](#)
(866) 886-7322
- [Center for Guardianship Certification](#)
(717) 238-4689
- [National Guardianship Association](#)
(877) 326-5992

How do I stay informed about Bureau activities?

Join the Bureau's interested party mailing list. Go online to www.fiduciary.ca.gov and click on "Sign up to Receive Advisories" under "Quick Hits."

Professional Fiduciaries Bureau
P.O. Box 989005
West Sacramento, CA 95798-9005
E-mail: fiduciary@dca.ca.gov
Phone: (916) 574-7340
Fax: (916) 574-8645

Professional Fiduciaries Bureau

Mission

To protect consumers through licensing, education, and enforcement by ensuring the competency and ethical standards of Professional Fiduciaries.

Vision

To protect, maintain, and enhance the quality of life for consumers by promoting the highest Professional Fiduciary standards.

DEPARTMENT OF CONSUMER AFFAIRS



PROFESSIONAL FIDUCIARIES BUREAU

PROFESSIONAL FIDUCIARIES BUREAU

1625 North Market Blvd., Suite S-209
Sacramento, CA 95834

Phone: (916) 574-7340

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E-mail: fiduciary@dca.ca.gov

Web site: www.fiduciary.ca.gov

Mailing Address:

Professional Fiduciaries Bureau

P.O. Box 989005

West Sacramento, CA 95798-9005



14-366

WHAT YOU SHOULD KNOW BEFORE HIRING A PROFESSIONAL FIDUCIARY



Before hiring a Professional Fiduciary, you should interview at least three licensed Professional Fiduciaries. The following are examples of interview questions to ask before becoming a client.

- What type of services do you provide?
- Are you insured for errors and omissions?
- What credentials do you have?
- What are your office and telephone hours?
- If there is an emergency after hours, how do I reach you or your staff?
- What are your internal controls like? How is my confidential information protected?
- What happens to me if something happens to you? What is your succession plan?
- Do you have a disaster recovery plan for my data?
- What fees do you charge and when?
- If you use other professionals (certified public accountant, attorney, caregiver, etc.), what are their fees?
- Do you work alone or have a staff?
- If you have a staff, what types of services do you delegate to them?
- What is the fee for services provided by your staff?
- How often will you provide me with an accounting?
- Can you provide me with references of past or current clients or other professionals you have worked with who I can contact?

Funeral and Burial Instructions

H.E.L.P.

Healthcare and Elder Law Programs

Funeral and Burial Instructions of _____

To Whom It May Concern:

I have completed this document to provide instructions concerning my funeral and burial arrangements and/or requests. I have checked the instructions that apply and have marked those that do not apply with "N/A" or left them blank.

I have made funeral and/or burial arrangements with:

Name: _____

Location of my signed agreement: _____

I have not made funeral and/or burial arrangements

I wish to have a funeral, and for the funeral request that:

The following person(s) make arrangements:

Name: _____

Address: _____ Telephone: _____

The funeral will be held at: _____

Address: _____ Telephone: _____

The following religious observances will be conducted: _____

My remains shall be embalmed

There be an open casket

There be a closed casket

A viewing or wake will be held at: _____

The casket should be placed at: _____

The type of casket will be: _____

My burial clothing will be: _____

The following jewelry should be handled as follows: _____

Flowers for my funeral will be: _____

The pallbearers will be: _____

I wish to have a burial, and for the burial request that:

The following person(s) make arrangements:

Name: _____

Address: _____ Telephone: _____

The following religious observances will be conducted: _____

I will be buried at:

Cemetery: _____

Address: _____

Telephone: _____

Flowers for my burial will be: _____

I wish to be cremated, and for the cremation I request that:

The following person(s) make arrangements:

Name: _____

Address: _____ Telephone: _____

My cremated remains be:

Placed in a columbarium or mausoleum:

Name: _____

Address: _____ Telephone: _____

Buried in a cemetery plot:

Name: _____

Address: _____ Telephone: _____

Retained at the home of: _____

Stored in a house of worship or religious shrine, if local zoning laws allow

My ashes are scattered, in accordance with local laws

The religious observances to be conducted will include: _____

I wish to have a:

Memorial, **Monument**, **Marker**, *and leave the following instructions:*

I wish that the following service(s) take place: **Funeral Service**, **Service at Casket Burial**, **Memorial Service**, **Service at Disposition of Cremated Remains**, *and request that:*

The following person(s) make service arrangements:

Name: _____

Address: _____ Telephone: _____

Service(s) will be conducted by:

Name: _____

Address: _____ Telephone: _____

Flowers for my service(s) will be: _____

Instead of flowers, people donate to the following charities or causes: _____

The following music be included in the service(s): _____

The following reading(s) or scripture(s) be included in the service(s): _____

The following person(s) speak publicly at the service(s): _____

The following person(s) not speak publicly at the service(s): _____

To be honored as a veteran by including: _____

To be honored as a member of _____ by including: _____

Transportation arrangements to the services will be: _____

The content, style, length and timing of my service(s) will also include _____

I would like the following persons to be notified as soon as possible after I pass away:

Name: _____

Address: _____ Telephone: _____

Name: _____

Address: _____ Telephone: _____

Name: _____

Address: _____ Telephone: _____

I have written my obituary, and it may be found at: _____

I have not written my obituary, but hope that it includes the following: _____

I would like the following newspapers and organizations to receive notice of upcoming services as soon as possible after I pass away :

Name: _____

Address: _____ Telephone: _____

Name: _____

Address: _____ Telephone: _____

Name: _____

Address: _____ Telephone: _____

Concerning the financial costs of my arrangements:

Arrangements referred to in this document have been prepaid to:

Name: _____

Address: _____ Telephone: _____

To pay for my arrangements, I have set up a joint or pay-on-death account at the following financial institution:

Name: _____

Address: _____ Telephone: _____

Final Instructions

Written instructions concerning donation of my organs and tissues may be found at: _____

The ethical will I have written that spells out my values and views about life may be found at: _____

My additional wishes or thoughts are: _____

I direct my chosen agents, family members and/or other responsible persons, to take all steps necessary to carry out the above instructions.

Dated:

Printed Name _____

Signature _____

Organ and Tissue Donation

Instructions

H.E.L.P.

Healthcare and Elder Law Programs

To Whom It May Concern: I have completed this document to provide instructions concerning organ and tissue donations at my death.

<input type="checkbox"/> Yes	1 I want to donate my body or part(s) of my body to others at my death. If I answer "Yes," I acknowledge that medical treatment may continue after I have been declared dead.	<input type="checkbox"/> No
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If you answered "Yes" to **1**
also answer **2**, **3** and **4**

If you answered "No" to **1**
stop here or go to **7**

<input type="checkbox"/> Yes	2 I want to donate my body or part(s) of my body to other individuals at my death.	<input type="checkbox"/> No
<input type="checkbox"/> Yes	3 I want to donate my body or parts(s) of my body to medical research at my death.	<input type="checkbox"/> No
<input type="checkbox"/> Yes	4 I want to donate my entire body at my death.	<input type="checkbox"/> No

If you answered "Yes" to **4**,
stop here or go to **7**

If you answered "No" to **4**,
also answer **5** or **6** or both

5 I want to donate the particular organs I have named in this box →	
6 I do not want to donate the particular organs I have named in this box →	

7 My Additional Thoughts:

Today's Date →	
My Name (Printed) →	
My Signature →	