State Bar of California
Estate Planning Probate & Trust Section
Preparing Effective Advance Health Care Directives
October 22, 2021

Introduction

The Surrogate, the Agent, and the Conversations. A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. The surrogate has priority over the agent named in an Advance Health Care Directive if the patient says so. See Probate Code Section 4711 (shown below). We recommend choosing a surrogate or agent who would make similar decisions for themselves and regular conversations with your loved ones and others about your goals.

Selected Probate Code Sections

Requirements: Sections 4673-4276
What is Not Permissible: Sections 4652, 4659, 4680, 4681
What Is Permissible: Sections 4670, 4671 & 4672
Health Care Surrogates: Sections 4711-4717
Rights of the Surrogate or Agent: Sections 4678, 4682-4690
Revocation of Advance Directives: Sections 4695-4698

4650. The Legislature finds the following:
(a) In recognition of the dignity and privacy a person has a right to expect, the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.
(b) Modern medical technology has made possible the artificial prolongation of human life beyond natural limits. In the interest of protecting individual autonomy, this prolongation of the process of dying for a person for whom continued health care does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.
(c) In the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life-sustaining treatment.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4651. (a) Except as otherwise provided, this division applies to health care decisions for adults who lack capacity to make health care decisions for themselves.
(b) This division does not affect any of the following:

(1) The right of an individual to make health care decisions while having the capacity to do so.
(2) The law governing health care in an emergency.
(3) The law governing health care for unemancipated minors.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4652. This division does not authorize consent to any of the following on behalf of a patient:
(a) Commitment to or placement in a mental health treatment facility.
(b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).
(c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).
(d) Sterilization.
(e) Abortion.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4653.
Nothing in this division shall be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia. This division is not intended to permit any affirmative or deliberate act or omission to end life other than withholding or withdrawing health care pursuant to an advance health care directive, by a surrogate, or as otherwise provided, so as to permit the natural process of dying.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4654.
This division does not authorize or require a health care provider or health care institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or health care institution.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4655.
(a) This division does not create a presumption concerning the intention of a patient who has not made or who has revoked an advance health care directive.
(b) In making health care decisions under this division, a patient's attempted suicide shall not be construed to indicate a desire of the patient that health care be restricted or inhibited.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4656.
Death resulting from withholding or withdrawing health care in accordance with this division does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4657.
A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate. This presumption is a presumption affecting the burden of proof.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4658.
Unless otherwise specified in a written advance health care directive, for the purposes of this division, a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual health care instruction or the authority of an agent or surrogate, shall be made by the primary physician.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4659.
(a) Except as provided in subdivision (b), none of the following persons may make health care decisions as an agent under a power of attorney for health care or a surrogate under this division:
(1) The supervising health care provider or an employee of the health care institution where the patient is receiving care.
(2) An operator or employee of a community care facility or residential care facility where the patient is receiving care.
(b) The prohibition in subdivision (a) does not apply to the following persons:
(1) An employee, other than the supervising health care provider, who is related to the patient by blood, marriage, or adoption, or is a registered domestic partner of the patient.
(2) An employee, other than the supervising health care provider, who is employed by the same health care institution, community care facility, or residential care facility for the elderly as the patient.
(c) A conservator under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) may not be designated as an agent or surrogate to make health care decisions by the conservatee, unless all of the following are satisfied:
(1) The advance health care directive is otherwise valid.
(2) The conservatee is represented by legal counsel.

(3) The lawyer representing the conservatee signs a certificate stating in substance: "I am a lawyer authorized to practice law in the state where this advance health care directive was executed, and the principal or patient was my client at the time this advance directive was executed. I have advised my client concerning his or her rights in connection with this advance directive and the applicable law and the consequences of signing or not signing this advance directive, and my client, after being so advised, has executed this advance directive."
(Amended by Stats. 2001, Ch. 230, Sec. 4. Effective January 1, 2002.)

4660.
A copy of a written advance health care directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4670.
An adult having capacity may give an individual health care instruction. The individual instruction may be oral or written. The individual instruction may be limited to take effect only if a specified condition arises.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4671.
(a) An adult having capacity may execute a power of attorney for health care, as provided in Article 2 (commencing with Section 4680). The power of attorney for health care may authorize the agent to make health care decisions and may also include individual health care instructions.

(b) The principal in a power of attorney for health care may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4672.
(a) A written advance health care directive may include the individual's nomination of a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the individual's person or estate are thereafter commenced.
(b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the

most recent writing executed in accordance with Section 1810, whether or not the writing is a written advance health care directive.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4673.
(a) A written advance health care directive is legally sufficient if all of the following requirements are satisfied:
(1) The advance directive contains the date of its execution.
(2) The advance directive is signed either by the patient or in the patient's name by another adult in the patient's presence and at the patient's direction.
(3) The advance directive is either acknowledged before a notary public or signed by at least two witnesses who satisfy the requirements of Sections 4674 and 4675.
(b) An electronic advance health care directive or power of attorney for health care is legally sufficient if the requirements in subdivision (a) are satisfied, except that for the purposes of paragraph (3) of subdivision (a), an acknowledgment before a notary public shall be required, and if a digital signature is used, it meets all of the following requirements:
(1) The digital signature either meets the requirements of Section 16.5 of the Government Code and Chapter 10 (commencing with Section 22000) of Division 7 of Title 2 of the California Code of Regulations or the digital signature uses an algorithm approved by the National Institute of Standards and Technology.
(2) The digital signature is unique to the person using it.
(3) The digital signature is capable of verification.
(4) The digital signature is under the sole control of the person using it.
(5) The digital signature is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
(6) The digital signature persists with the document and not by association in separate files.
(7) The digital signature is bound to a digital certificate.
(Amended by Stats. 2006, Ch. 579, Sec. 1. Effective September 28, 2006.)

4674.
If the written advance health care directive is signed by witnesses, as provided in Section 4673, the following requirements shall be satisfied:
(a) The witnesses shall be adults.
(b) Each witness signing the advance directive shall witness either the signing of the advance directive by the patient or the patient's acknowledgment of the signature or the advance directive.
(c) None of the following persons may act as a witness:
(1) The patient's health care provider or an employee of the patient's health care provider.
(2) The operator or an employee of a community care facility.

(3) The operator or an employee of a residential care facility for the elderly.
(4) The agent, where the advance directive is a power of attorney for health care.
(d) Each witness shall make the following declaration in substance:
"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."
(e) At least one of the witnesses shall be an individual who is neither related to the patient by blood, marriage, or adoption, nor entitled to any portion of the patient's estate upon the patient's death under a will existing when the advance directive is executed or by operation of law then existing.
(f) The witness satisfying the requirement of subdivision (e) shall also sign the following declaration in substance:

"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."
(g) The provisions of this section applicable to witnesses do not apply to a notary public before whom an advance health care directive is acknowledged.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4675.
(a) If an individual is a patient in a skilled nursing facility when a written advance health care directive is executed, the advance directive is not effective unless a patient advocate or ombudsman, as may be designated by the Department of Aging for this purpose pursuant to any other applicable provision of law, signs the advance directive as a witness, either as one of two witnesses or in addition to notarization. The patient advocate or ombudsman shall declare that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing an advance directive.
(b) A witness who is a patient advocate or ombudsman may rely on the representations of the administrators or staff of the skilled nursing facility, or of family members, as

convincing evidence of the identity of the patient if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the patient.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4676.
(a) A written advance health care directive or similar instrument executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction or of this state, is valid and enforceable in this state to the same extent as a written advance directive validly executed in this state.
(b) In the absence of knowledge to the contrary, a physician or other health care provider may presume that a written advance health care directive or similar instrument, whether executed in another state or jurisdiction or in this state, is valid.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4677.
A health care provider, health care service plan, health care institution, disability insurer, self-insured employee welfare plan, or nonprofit hospital plan or a similar insurance plan may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care, admission to a facility, or furnishing insurance.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4678.
Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

ARTICLE 2. Powers of Attorney for Health Care [4680 - 4691]
(Article 2 added by Stats. 1999, Ch. 658, Sec. 39.)
4680.
A power of attorney for health care is legally sufficient if it satisfies the requirements of Section 4673.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4681.
(a) Except as provided in subdivision (b), the principal may limit the application of any provision of this division by an express statement in the power of attorney for health care or by providing an inconsistent rule in the power of attorney.
(b) A power of attorney for health care may not limit either the application of a statute specifically providing that it is not subject to limitation in the power of attorney or a statute concerning any of the following:
(1) Statements required to be included in a power of attorney.
(2) Operative dates of statutory enactments or amendments.
(3) Formalities for execution of a power of attorney for health care.
(4) Qualifications of witnesses.
(5) Qualifications of agents.
(6) Protection of third persons from liability.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4682.
Unless otherwise provided in a power of attorney for health care, the authority of an agent becomes effective only on a determination that the principal lacks capacity, and ceases to be effective on a determination that the principal has recovered capacity.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4683.
Subject to any limitations in the power of attorney for health care:
(a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so.
(b) The agent may also make decisions that may be effective after the principal's death, including the following:
(1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).
(2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.
(3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.
(4) Authorizing the release of the records of the principal to the extent necessary for the agent to fulfill his or her duties as set forth in this division.
(Amended by Stats. 2006, Ch. 249, Sec. 2. Effective January 1, 2007.)

4684.
An agent shall make a health care decision in accordance with the principal's individual health care instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's

determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4685.
Unless the power of attorney for health care provides otherwise, the agent designated in the power of attorney who is known to the health care provider to be reasonably available and willing to make health care decisions has priority over any other person in making health care decisions for the principal.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4686.
Unless the power of attorney for health care provides a time of termination, the authority of the agent is exercisable notwithstanding any lapse of time since execution of the power of attorney.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4690.
(a) If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal, the agent may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the agent's duties from the principal's spouse, physician, supervising health care provider, attorney, a member of the principal's family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care.
(b) A person described in subdivision (a) from whom information is requested shall disclose information that the agent requires to carry out his or her duties. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.
(Amended by Stats. 2007, Ch. 130, Sec. 196. Effective January 1, 2008.)

4691.
If directed by the principal in a power of attorney for health care, an attorney-in-fact shall, upon the death of the principal, inform those individuals whose names are provided by the principal to the attorney-in-fact for that purpose.
(Added by Stats. 2015, Ch. 92, Sec. 4. (AB 1085) Effective January 1, 2016.)

ARTICLE 3. Revocation of Advance Directives [4695 - 4698]
(Article 3 added by Stats. 1999, Ch. 658, Sec. 39.)
4695.
(a) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
(b) A patient having capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4696.
A health care provider, agent, conservator, or surrogate who is informed of a revocation of an advance health care directive shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution where the patient is receiving care.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4697.
(a) If after executing a power of attorney for health care the principal's marriage to the agent is dissolved or annulled, the principal's designation of the former spouse as an agent to make health care decisions for the principal is revoked.
(b) If the agent's authority is revoked solely by subdivision (a), it is revived by the principal's remarriage to the agent.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4698.
An advance health care directive that conflicts with an earlier advance directive revokes the earlier advance directive to the extent of the conflict.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

CHAPTER 3. Health Care Surrogates [4711 - 4717]
(Chapter 3 added by Stats. 1999, Ch. 658, Sec. 39.)
4711.
(a) A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. The designation of a surrogate shall be promptly recorded in the patient's health care record.
(b) Unless the patient specifies a shorter period, a surrogate designation under subdivision (a) is effective only during the course of treatment or illness or during the

stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter.
(c) The expiration of a surrogate designation under subdivision (b) does not affect any role the person designated under subdivision (a) may have in making health care decisions for the patient under any other law or standards of practice.
(d) If the patient has designated an agent under a power of attorney for health care, the surrogate designated under subdivision (a) has priority over the agent for the period provided in subdivision (b), but the designation of a surrogate does not revoke the designation of an agent unless the patient communicates the intention to revoke in compliance with subdivision (a) of Section 4695.
(Amended by Stats. 2001, Ch. 230, Sec. 5. Effective January 1, 2002.)

4714.
A surrogate, including a person acting as a surrogate, shall make a health care decision in accordance with the patient's individual health care instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4715.
A patient having capacity at any time may disqualify another person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4716.
(a) If a patient lacks the capacity to make a health care decision, the patient's domestic partner shall have the same authority as a spouse has to make a health care decision for his or her incapacitated spouse. This section may not be construed to expand or restrict the ability of a spouse to make a health care decision for an incapacitated spouse.
(b) For the purposes of this section, the following definitions shall apply:
(1) "Capacity" has the same meaning as defined in Section 4609.
(2) "Health care" has the same meaning as defined in Section 4615.
(3) "Health care decision" has the same meaning as defined in Section 4617.
(4) "Domestic partner" has the same meaning as that term is used in Section 297 of the Family Code.
(Added by Stats. 2001, Ch. 893, Sec. 49. Effective January 1, 2002.)

4717.
(a) Notwithstanding any other provision of law, within 24 hours of the arrival in the emergency department of a general acute care hospital of a patient who is unconscious or otherwise incapable of communication, the hospital shall make reasonable efforts to contact the patient's agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient. A hospital shall be deemed to have made reasonable efforts, and to have discharged its duty under this section, if it does all of the following:
(1) Examines the personal effects, if any, accompanying the patient and any medical records regarding the patient in its possession, and reviews any verbal or written report made by emergency medical technicians or the police, to identify the name of any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.
(2) Contacts or attempts to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient, as identified in paragraph (1).
(3) Contacts the Secretary of State directly or indirectly, including by voice mail or facsimile, to inquire whether the patient has registered an advance health care directive with the Advance Health Care Directive Registry, if the hospital finds evidence of the patient's Advance Health Care Directive Registry identification card either from the patient or from the patient's family or authorized agent.
(b) The hospital shall document in the patient's medical record all efforts made to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.
(c) Application of this section shall be suspended during any period in which the hospital implements its disaster and mass casualty program, or its fire and internal disaster program.
(Added by renumbering Section 4716 (as added by Stats. 2001, Ch. 329) by Stats. 2004, Ch. 882, Sec. 2. Effective January 1, 2005.)

CHAPTER 4. Duties of Health Care Providers [4730 - 4736]
(Chapter 4 added by Stats. 1999, Ch. 658, Sec. 39.)
4730.
Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4731.
(a) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health

care record and, if it is in writing, shall request a copy. If a copy is furnished, the supervising health care provider shall arrange for its maintenance in the patient's health care record.
(b) A supervising health care provider who knows of a revocation of a power of attorney for health care or a disqualification of a surrogate shall make a reasonable effort to notify the agent or surrogate of the revocation or disqualification.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4732.
A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists affecting an individual health care instruction or the authority of an agent, conservator of the person, or surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to a person then authorized to make health care decisions for the patient.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4733.
Except as provided in Sections 4734 and 4735, a health care provider or health care institution providing care to a patient shall do the following:
(a) Comply with an individual health care instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient.
(b) Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4734.
(a) A health care provider may decline to comply with an individual health care instruction or health care decision for reasons of conscience.
(b) A health care institution may decline to comply with an individual health care instruction or health care decision if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4735.
A health care provider or health care institution may decline to comply with an individual health care instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4736.
A health care provider or health care institution that declines to comply with an individual health care instruction or health care decision shall do all of the following:
(a) Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient.
(b) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.
(c) Provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care shall be continued.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

CHAPTER 5. Immunities and Liabilities [4740 - 4743]
(Chapter 5 added by Stats. 1999, Ch. 658, Sec. 39.)
4740.
A health care provider or health care institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for any actions in compliance with this division, including, but not limited to, any of the following conduct:
(a) Complying with a health care decision of a person that the health care provider or health care institution believes in good faith has the authority to make a health care decision for a patient, including a decision to withhold or withdraw health care.
(b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority.
(c) Complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated.
(d) Declining to comply with an individual health care instruction or health care decision, in accordance with Sections 4734 to 4736, inclusive.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4741.
A person acting as agent or surrogate under this part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4742.
(a) A health care provider or health care institution that intentionally violates this part is subject to liability to the aggrieved individual for damages of two thousand five hundred dollars ($2,500) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.
(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health care directive, is subject to liability to that individual for damages of ten thousand dollars ($10,000) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.
(c) The damages provided in this section are cumulative and not exclusive of any other remedies provided by law.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

4743.
Any person who alters or forges a written advance health care directive of another, or willfully conceals or withholds personal knowledge of a revocation of an advance directive, with the intent to cause a withholding or withdrawal of health care necessary to keep the patient alive contrary to the desires of the patient, and thereby directly causes health care necessary to keep the patient alive to be withheld or withdrawn and the death of the patient thereby to be hastened, is subject to prosecution for unlawful homicide as provided in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code.
(Added by Stats. 1999, Ch. 658, Sec. 39. Effective January 1, 2000. Operative July 1, 2000, by Sec. 43 of Ch. 658.)

Some Tips for Working the Edge of Denial

1. Start gently with generalities. Eg, it sounds like you need to make some changes. Do you want to work on those goals now or is there something else you'd like to talk about first?
2. Emphasize the future, not past, while you honor the past. Where would you like to be six months from now? If all else fails, take ownership of the process and

say “I’d like to spend the rest of our time today talking about where we go from here.”
3. A variation on future focusing is hypo solutions to relieve the party of ownership. The “in principle” technique. Some people do x.
4. Convert positions to interests.
5. Lead brainstorming. Any ideas about how you might resolve this? Would you like to propose that idea/objection as a solution?
6. Give ‘em a paradox. Remind them that it is ok not to resolve it.

Selected Case Summaries

What, Me Worry? The One Thing You Need for the Young Risk-Takers in Your Life

It’s not just older adults who need to think about putting their wishes in writing. Young people are known for their risk-taking, with motorcycle riding, reckless driving, outdoor adventures, and campus antics. So it’s never too early to think about what may come if the unimaginable happens to them—particularly for those age 18 or older.

Why 18? At that age, a parent or guardian loses their legal right to speak with their child’s doctor, make medical decisions for them, or access their health-care records without their consent.

It’s one reason why some parents insist their family’s young adults have an Advance Health Care Directive. With an Advance Health Care Directive, a young adult can stipulate that their parent—or another adult agent who they trust—can take control for them without court approval in the event that disaster strikes.

Think of it as a smart high-school graduation gift. An estate-planning professional can help the whole family prepare an Advance Health Care Directive together—and lead the grown-up conversations necessary to answer the difficult questions everyone could one day face if the unthinkable happens. http://makeitbetter.net/family/education/why-every-college-student-needs-power-of-attorney/

Humboldt County Pays for Bogus Challenge to Advance Health Care Directive

Dick Magney knew that drawing up an advance health care directive was the best way to protect his desire for a natural death with minimal discomfort. He named his wife Judith to see that his wishes were carried out. This should have allowed him to die in peace, but when a Humboldt County Adult Protective Services (“Humboldt”) nurse questioned the Magneys’ physician-supported decision to proceed with palliative care only, Humboldt challenged Dick’s advance directive on an ex parte (expedited) basis without notice. The same day, the trial court temporarily forced unwanted medical treatment on Dick. Judith

employed counsel and filed a petition contesting the merits and seeking dismissal, and for statutory attorney fees. Humboldt immediately withdrew its petition and the court vacated the treatment order, but denied Judith's request for attorney fees.

Claiming neglect by Judith, Humboldt then filed a petition to take over as Dick's conservator. More legal battles followed, and Dick even testified against Humboldt. He lived, perhaps longer than he wished, to see his wife's legal efforts partially vindicated. More than a year after Dick's death, Judith received poetic justice in the form of a scathing appellate opinion in her favor. The appellate court concluded that Humboldt "knowingly and deliberately misrepresented both the law and the facts to the trial court." While Judith surely would have preferred to spend her husband's final days differently, her dedication to justice has paid off. She will finally recoup her attorney fees. The decision confirms the fundamental right of competent adults to control decisions concerning their own health care with an Advance Health Care Directive. Is yours up to date? Humboldt County Adult Protective Services v. Superior Court, 4 Cal. App. 5th 548 (2016).

Pulling the Plug in Canada

Since a failed brain surgery in 2010, Hassan Rasouli, 61, of Toronto, has been kept alive by a ventilator and a feeding tube. Citing the lack of hope for a positive outcome and an inevitable worsening of Mr. Rasouli's medical condition as his body deteriorates, doctors at Sunnybrook hospital wanted to remove life support. Rasouli's wife has not lost hope, believing that her husband has some minimal level of consciousness. The Supreme Court of Canada backed her up, calling this case a "tragic, yet increasingly common conflict." The Court noted that "Wherever one draws the line, it is inevitable that physicians will face ethical conflicts regarding the withdrawal of life support.....No legal principle can avoid every ethical dilemma."

An Advance Health Care Directive can save your loved ones from wrenching end of life decisions and possible litigation. Your written instructions, supported by your thoughtful conversation with your named agents and loved ones about your view of quality of life and natural dying will ensure that your wishes will be honored when it matters most.

Court Champions Elder Rights Over Hospital Wrongs

On February 1, 2012, St. Mary's Medical Center of San Bernardino County admitted Anthony Carter, 78, into its care. Confused, Carter communicated only with grunts and mumbles and had gaps in his heartbeat. Maxine Stewart, a licensed nurse and Carter's lawful health care agent, refused to consent when Carter's doctor wanted to insert a gastronomy tube. The hospital ethics committee approved the surgery which occurred without Stewart's knowledge or consent on February 22. Later that day, Carter went into

cardiac arrest, causing brain damage. He required acute nursing care until passing on April 15, 2013.

Stewart sued. The trial court dismissed her claims that the hospital committed elder abuse, medical battery, and fraudulent concealment. The Court of Appeal reinstated these claims. The Court's recitation of the facts froths with indignation and scorn for the Catholic hospital's defenses. It said that Carter exercised his fundamental and autonomous right to refuse surgery through Stewart, his lawfully designated surrogate. On these facts, it said, a jury certainly could find the hospital committed elder abuse and medical battery against Carter and cloaked its wrongful conduct in fraudulent concealment.

While the true motivations of this particular hospital are not clear, even religiously inspired, California healthcare providers are not above the law. Take care of your loved ones and set a good example for them. Sign a thoughtful Advance Health Care Directive every few years and verify that your chosen medical providers' religious values won't sabotage your health care decision-making rights. Stewart v. Superior Court (Cal. Ct. App. - Oct. 12, 2017)

Movies to Consider

End of Life Health Care
Harold and Maude
The Farewell
Supernova (2021)

Money and Rivalry is Often in the Background
Mommy Dearest
1000 Acres
Cat on a Hot Tin Roof
Zorba the Greek
Auntie Maime
Body Heat
Being There
Lion in Winter
The Darjeeling Limited
Breaking Bad
Grand Torino
Knives Out
The Descendants
Succession (on Netflix)

About the Presenters: Dawn Gross, MD, Ph.D. & John O'Grady

Dawn Gross, MD, PhD, is a Hospice & Palliative medicine physician and end of life care thought leader. Co-founder and CEO of *Dyalogues*, her public benefit company offers direct guidance for people of all ages navigating the landscapes of serious illness and grief, creating permission and support that illuminates what matters most. Dr. Gross completed her undergraduate education at USC, her medical, graduate and internal medicine training at Tufts University School of Medicine and her fellowship in hematology and bone marrow transplant at Stanford with post-doctoral training at UCSF. She transitioned to the field of hospice after her father died in 2006. She subsequently was invited to join the UCSF Palliative Care team and recently became the medical director of ANX Hospice. An internationally invited speaker, educator and consultant, Dr. Gross explores the topics of life, death and the glue of grief. She is the creator and host of the first-of-its-kind, live, call-in radio program, *Dying to Talk.* Her writing has appeared in *The New York Times, JAMA, Science* and *Annals of Internal* Medicine with her first book of non-fiction forth-coming. Gratefully married for over a quarter of a century, she has yet to be awarded her master's in parenting from her 3 children. www.dyalogues.com dawn@dyalogues.com

John O'Grady leads a full-service estate & trust law firm in San Francisco. He dedicates his work to promoting conversations about the unspeakable before and after the death of a loved one. He works with the firm's clients to navigate our legal system as it faces the mysteries of life, death, and dying. John served as the 2012 Chair of The Estate Planning, Trust & Probate Section of the Bar Association of San Francisco. john@ogradylaw.com www.ogradylaw.com