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**THE MEDICAL
POWER OF ATTORNEY**

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The Texas Legislature passed a law permitting you to sign a Medical Power of Attorney. This medical power of attorney allows you to designate someone else, who is called your "agent" to make health care decisions if you become incapable of making those decisions. Your agent could be your spouse or some other adult in whom you have confidence.

What are some examples of health care decisions which might need to be made if I become incapable of making them? Practically any kind of medical diagnostic or treatment decision could be made. Examples would include the decisions as to whether or not to consent to surgery or whether or not to use chemotherapy. The enabling legislation defines "Health Care or Treatment Decision" as "consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or procedure to maintain, diagnose or treat an individual's physical or mental condition". Your agent also would have the power, unless you stated otherwise, to make decisions about withdrawing or withholding life sustaining treatment.

Are there any restrictions or limitations on my agent? Yes. First, your agent cannot act at all unless and until your attending physician certifies in writing that you lack the capacity to make health care decisions for yourself. Secondly, if you object to your agent's decisions and your physician knows of your objection, your physician must not implement the treatment specified by your agent. Finally, your agent, in making decisions for you is required to make them according to his knowledge of your wishes including your religious and moral beliefs. And in any event, your agent may not consent to: voluntary inpatient mental health service; convulsive treatment; psychosurgery; abortion; or the omission of care intended for your comfort.

Several technical requirements must be met for the Medical Power of Attorney to be effective. There are restrictions as to who can serve as your agent. For example, your physician could not be your agent. Before signing the Medical Power of Attorney you must sign a Disclosure Statement. Your signature on the Medical Power of Attorney must be witnessed by two (2) persons who must meet certain criteria.

What is HIPAA and does my Medical Power of Attorney need to reflect this law? HIPAA is the Health Insurance Portability and Accountability Act of 1996 and it requires health care providers to be very careful how they release health care information. Adding "HIPAA language" to the power of attorney should make it easier for your agent to deal with your doctor and other health care providers.

Once I sign the Medical Power of Attorney, can I later change my mind? Yes. The law allows you to revoke it at any time.

What about the Living Will — doesn't the Medical Power of Attorney overlap with my Living Will? Perhaps it may, but not necessarily. The "Living Will" (Advanced Directive under the "Advanced Directives Act") is a document which you sign that directs your physician not to use life support systems if you have been diagnosed as having a terminal condition and where death is imminent. However, the Medical Power of Attorney is designed to permit your agent to make health care decisions whether or not you are suffering from a terminal condition.

Perhaps a person is suffering from Alzheimer's Disease, but death is not imminent. In this case the Living Will would not apply. Nevertheless, health care decisions would need to be made, and the Medical Power of Attorney would allow the agent to make those decisions.

I already have a Durable Power of Attorney — won't that be sufficient? No. The "regular" durable power of attorney is primarily designed to enable someone else to make decisions about property; not to make health care decisions. Furthermore, the Legislature has specifically prescribed the only method for creating a Medical Power of Attorney. The Legislature has also specified the particular type of Disclosure Statement that must be executed in order for it to be valid

In addition to the Medical Power of Attorney, is there any need for a "HIPAA Release"? Yes, we recommend that one execute a separate HIPAA Release, which will allow the person you designate to confer with your doctor or other health care provider about your medical condition.

Whom should I see about the "Medical Power of Attorney" and "HIPAA Release"? You should consult an attorney knowledgeable about Estate planning.

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