

By: _____

No. _____

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 Sec. 166.1525. CO-AGENTS.

8 (a) In this section, "co-agent" means an agent who may
9 exercise authority to make health care decisions concurrently with
10 one or more other agents, on behalf of the same principal. The
11 term does not include an alternate agent whom a principal
12 authorizes to exercise authority to make health care decisions on
13 behalf of the principal in the event the principal's designated
14 agent is unwilling, unable, or ineligible to act as the agent. If
15 a medical power of attorney provides for co-agents but does not
16 specify the manner in which the co-agents can act, it shall be
17 presumed that each co-agent may act independently of any other co-
18 agent.

19 (b) If a medical power of attorney provides or is
20 presumed to provide that each co-agent may act independently of
21 any other co-agent and the medical power of attorney is otherwise
22 valid or presumed to be valid, then a health care provider or

1 residential care provider shall follow the directive of any one
2 co-agent, unless a health care provider or residential care
3 provider has actual knowledge of a disagreement between or among
4 co-agents or receives conflicting instructions from two or more
5 co-agents and if the medical power of attorney does not designate
6 which co-agent's directive controls, in which case a health care
7 provider or residential care provider may refuse to follow the
8 directive of any co-agent. If a health care provider or residential
9 care provider refuses to follow the directive of any co-agent, the
10 health care provider or residential care provider shall, if the
11 medical power of attorney also provides for an alternate agent,
12 follow a directive of an alternate agent in accordance with the
13 succession provided in the medical power of attorney, subject to
14 Section 166.158.

15 (c) If a medical power of attorney provides that co-
16 agents must act by joint agreement and the medical power of
17 attorney is otherwise valid or presumed to be valid, a health care
18 provider or residential care provider may follow or refuse to
19 follow the directive of any co-agent if the co-agents disagree or
20 if the co-agents are not all available. If a health care provider
21 or residential care provider refuses to follow the directive of
22 all co-agents, the health care provider or residential care
23 provider shall, if the medical power of attorney also provides for
24 an alternate agent, follow a directive of an alternate agent in

1 accordance with the succession provided in the medical power of
2 attorney, subject to Section 166.158.

3 (d) A health care provider or a residential care
4 provider is not subject to criminal or civil liability or
5 disciplinary review or action by the appropriate regulatory agency
6 for following or failing to follow the directive of any co-agent
7 in accordance with Subsections (b) and (c).

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

10 (d) An attending physician, health or residential care
11 provider, or person acting as an agent for or under the physician's
12 or provider's control has not engaged in unprofessional conduct
13 for:

14 (1) failure to act as required by the directive of an
15 agent or a medical power of attorney if the physician, provider,
16 or person was not provided with a copy of the medical power of
17 attorney or had no knowledge of a directive; ~~[or]~~

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

22 (3) acting as required by an agent's directive if the
23 medical power of attorney was not validly executed, provided the

1 physician, provider, or person does not have actual knowledge of
2 the medical power of attorney's invalid execution.

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

5 Sec. 166.163. PERMISSIBLE FORMS OF MEDICAL POWER OF ATTORNEY.

6 A medical power of attorney may be in a form:

7 (1) described by Section 166.164;

8 (2) authorized under Section 166.005; or

9 (3) that:

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

12 (B) is in writing; and

13 (C) contains:

14 (i) the principal's name;

15 (ii) the designation of an agent; and

16 (iii) the date the medical power of attorney
17 is executed.

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

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

23 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

24 I, _____ (insert your name) appoint:

1 Name: _____

2 Address: _____

3 Phone : _____

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

9 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE
10 AS FOLLOWS: _____

11 _____

12 DESIGNATION OF ALTERNATE AGENT.

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

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

24 A. First Alternate Agent

1 Name: _____

2 Address: _____

3 Phone: _____

4 B. Second Alternate Agent

5 Name: _____

6 Address: _____

7 Phone: _____

8 The original of this document is kept at:

9 _____

10 _____

11 _____

12 The following individuals or institutions have signed

13 copies:

14 Name: _____

15 Address: _____

16 _____

17 Name: _____

18 Address: _____

19 _____

20 DURATION.

21 I understand that this power of attorney exists indefinitely from

22 the date I execute this document unless I establish a shorter time

23 or revoke the power of attorney. If I am unable to make health

24 care decisions for myself when this power of attorney expires, the

1 authority I have granted my agent continues to exist until the
2 time I become able to make health care decisions for myself.

3 (IF APPLICABLE) This power of attorney ends on the following
4 date: _____

5 PRIOR DESIGNATIONS REVOKED.

6 I revoke any prior medical power of attorney.

7 DISCLOSURE STATEMENT.

8 THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT.

9 BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT
10 FACTS:

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

1 agent's instructions or allow you to be transferred to another
2 physician.

3 Your agent's authority is effective when your doctor
4 certifies that you lack the competence to make health care
5 decisions.

6 Your agent is obligated to follow your instructions when
7 making decisions on your behalf. Unless you state otherwise, your
8 agent has the same authority to make decisions about your health
9 care as you would have if you were able to make health care
10 decisions for yourself.

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

20 The person you appoint as agent should be someone you know
21 and trust. The person must be 18 years of age or older or a person
22 under 18 years of age who has had the disabilities of minority
23 removed. If you appoint your health or residential care provider
24 (e.g., your physician or an employee of a home health agency,

1 hospital, nursing facility, or residential care facility, other
2 than a relative), that person has to choose between acting as your
3 agent or as your health or residential care provider; the law does
4 not allow a person to serve as both at the same time.

5 You should inform the person you appoint that you want the
6 person to be your health care agent. You should discuss this
7 document with your agent and your physician and give each a signed
8 copy. You should indicate on the document itself the people and
9 institutions that you intend to have signed copies. Your agent is
10 not liable for health care decisions made in good faith on your
11 behalf.

12 Once you have signed this document, you have the right to
13 make health care decisions for yourself as long as you are able to
14 make those decisions, and treatment cannot be given to you or
15 stopped over your objection. You have the right to revoke the
16 authority granted to your agent by informing your agent or your
17 health or residential care provider orally or in writing or by
18 your execution of a subsequent medical power of attorney. Unless
19 you state otherwise in this document, your appointment of a spouse
20 is revoked if your marriage is dissolved, annulled, or declared
21 void.

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

1 You may wish to designate an alternate agent in the event
2 that your agent is unwilling, unable, or ineligible to act as your
3 agent. If you designate an alternate agent, the alternate agent
4 has the same authority as the agent to make health care decisions
5 for you.

6 THIS POWER OF ATTORNEY IS NOT VALID UNLESS: (1) YOU SIGN
7 IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR
8 (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT
9 WITNESSES.

10 THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:
11 (1) the person you have designated as your agent;
12 (2) a person related to you by blood or marriage;
13 (3) a person entitled to any part of your estate after
14 your death under a will or codicil executed by you or by operation
15 of law;
16 (4) your attending physician;
17 (5) an employee of your attending physician;
18 (6) an employee of a health care facility in which you
19 are a patient if the employee is providing direct patient care to
20 you or is an officer, director, partner, or business office
21 employee of the health care facility or of any parent organization
22 of the health care facility; or

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

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

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

10 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

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

13 _____
14 (City and State)

15 _____
16 (Signature)

17 _____
18 (Print Name)

19 State of Texas

20 County of _____

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

23 _____
24 NOTARY PUBLIC, State of Texas

1 Notary's printed name:

2 _____

3 My commission expires:

4 _____

5 OR

6 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

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

8 day of _____ (month, year) at

9 _____

10 (City and State)

11 _____

12 (Signature)

13 _____

14 (Print Name)

15 STATEMENT OF FIRST WITNESS.

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

1 not an officer, director, partner, or business office employee of
2 the health care facility or of any parent organization of the
3 health care facility.

4 Signature: _____

5 Print Name: _____ Date: _____

6 Address: _____

7 SIGNATURE OF SECOND WITNESS.

8 Signature: _____

9 Print Name: _____ Date: _____

10 Address: _____

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

15 SECTION 6. This Act takes effect September 1, 2021