

## Health Care Agents

Under California Law, a person is given the opportunity to name a person who will be responsible for making his or her health care decisions if the individual loses the ability to do so. This agent might also be called a durable power of attorney, a surrogate decision maker or a health proxy.

It is *not* necessary to name a Health Care Agent when executing an Advance Directive. The provider must follow the specific wishes identified in the instructions section of the document whether or not there is an agent acting for the client.

If an agent is named, the agent must follow the specific wishes written in the Advance Directive.

### Limiting the Agent's Power

If an agent is named, the person still has the right to limit the agent's power, i.e., to allow the agent to make only certain decisions on the individual's behalf.

If the individual does *not* limit the agent's powers, then the agent has the authority to:

1. Consent or refuse to any care, treatment, service or procedure to maintain, diagnose, or otherwise affect a physical or mental health condition.
2. Select or discharge health care providers and institutions.
3. Approve or disapprove diagnostic tests, surgical procedures and programs of medication.
4. Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care including cardiopulmonary resuscitation.

If the agent is called upon to make any of these decisions, the agent must make them the way the person himself/herself would have done. This is referred to as "Substituted Judgment".

### Limitations within the Law

- An agent *cannot* authorize treatment over the person's objection.
- An agent *cannot* authorize placement in a mental health facility or authorize ECT.

### When does an agent's power go into effect?

Only when the person is determined to lack the capacity to make health care decisions, unless the person has specified "immediately" (not the usual case).

### Who cannot be an agent?

The following individuals are prohibited by law from acting as Health Care Agents:

- The person's primary health care provider(s)
- An employee of a health care institution where the person is receiving care
- An operator or employee of a community care or residential care facility where the person receives care.

Unless the employee is related to the person by blood, marriage or adoption, or is the person's registered domestic partner; or unless the employee is employed by the same health care or community care facility as the client (i.e., a co-worker of the client).

### What if a person already has a conservator?

A conserved individual may still be competent to make health care decisions. In that case, the individual may name a person other than the conservator to serve as his or her agent. However, the conservator is usually given the authorization to consent to treatment of the conservatee's grave disability condition and routine medical conditions. A conservatee does not have the capacity to enter into contracts.