

ACT 208

H.B. NO. 1930

A Bill for an Act Relating to Power of Attorney.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that all competent adults have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, continued, withheld, or withdrawn. In order that these rights may be respected after a person is no longer able to participate actively in decisions about their medical care and treatment, the legislature hereby declares that the laws of the State recognize the right of an adult person to make a durable power of attorney empowering an attorney-in-fact ("agent") to make decisions on whether to provide, continue, withhold, or withdraw life-sustaining procedures.

SECTION 2. Chapter 551D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§551D- Durable power of attorney for health care decisions. (a)

A competent person who has attained the age of majority may execute a durable power of attorney authorizing an agent to make any lawful health care decisions that could have been made by the principal at the time of election.

(b) The durable power of attorney made pursuant to this section:

- (1) Shall be in writing;
- (2) Shall be signed by the principal, or by another person in the principal's presence and at the principal's expressed direction;
- (3) Shall be dated;
- (4) Shall be signed in the presence of two or more witnesses who:
 - (A) Are at least 18 years of age;
 - (B) Are not related to the principal by blood, marriage, or adoption; and
 - (C) Are not, at the time that the durable power of attorney is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the principal is a patient; and
- (5) Shall have all signatures notarized at the same time.

(c) A durable power of attorney for health care decisions shall be presumed not to grant authority to decide that the principal's life should not be prolonged through surgery, resuscitation, life sustaining medicine or procedures or the provision of nutrition or hydration, unless such authority is explicitly stated.

(d) A durable power of attorney for health care decisions shall only be effective during the period of incapacity of the principal as determined by a licensed physician.

(e) No person shall serve as both the treating physician and attorney-in-fact for any principal for matters relating to health care decisions.”

SECTION 3. Chapter 551D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§551D- **Durable. power of attorney sample form.** The following sample form may be copied and used by filling in the blanks or may be changed to add more individualized instructions; or an entirely different format may be used to provide health care instructions.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

A. Statement of Principal

Declaration made this _____ day of _____ (month, year).
I, _____, being of sound mind, and understanding that I have the right to request that my life be prolonged to the greatest extent possible, wilfully and voluntarily make known my desire that my attorney-in-fact (“agent”) shall be authorized as set forth below and do hereby declare:

My instructions shall prevail even if they create a conflict with the desires of my relatives, hospital policies, or the principles of those providing my care.

CHECKLIST

I have considered the extent of the authority I want my agent to have with respect to health care decisions if I should develop a terminal condition or a permanent loss of the ability to communicate concerning medical treatment decisions with no reasonable chance of regaining this ability. I want my agent to request care, including medicine and procedures, for the purpose of providing comfort and pain relief. I have also considered whether my agent should have the authority to decide whether or not my life should be prolonged, and have selected one of the following provisions by putting a mark in the space provided:

- () My agent is authorized to decide whether my life should be prolonged through surgery, resuscitation, life sustaining medicine or procedures, and tube or other artificial feeding or provisions of fluids by a tube.
- () My agent is authorized to decide whether my life should be prolonged through tube or other artificial feeding or provisions of fluids by a tube.

If neither provision is selected, it shall be presumed that my agent shall have only the power to request care, including medicine and procedures, for the purpose of providing comfort and pain relief.

This durable power of attorney shall control in all circumstances. I understand that my physician may not act as my agent under this durable power of attorney.

I understand the full meaning of this durable power of attorney and I am emotionally and mentally competent to make this declaration.

Signed _____

Address _____

B. Statement of Witnesses

I am at least 18 years of age and
-not related to the principal by blood, marriage, or adoption; and
-not currently the attending physician, an employee of the attending physi-
cian, or an employee of the health care facility in which the principal is a
patient.

The principal is personally known to me and I believe the principal to be of sound
mind.

Witness _____

Address _____

Witness _____

Address _____

C. Statement of Agent

I am at least 18 years of age, I accept the appointment under this durable
power of attorney as the attorney-in-fact (“agent”) of the principal, and I am not
the physician of the principal. The principal is personally known to me and I
believe the principal to be of sound mind.

Agent _____

Address _____

D. Notarization

Subscribed, sworn to and acknowledged before me by _____,
the principal, and subscribed and sworn to before me by _____ and
_____, witnesses, this ____ day of _____, 19__.

(SEAL)

Signed _____

(Official capacity of officer) ”

SECTION 4. A durable power of attorney for health care decisions exe-
cuted prior to the effective date of this Act that substantially complies with the
requirements of chapter 551D shall be considered valid provided that the powers
relating to the health care decisions granted in the power of attorney have not
been previously revoked by the principal or otherwise terminated.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.