

The
California Department of Public Health
Office of AIDS
AIDS Drug Assistance Program
Special Power of Attorney

2016



Special Power of Attorney

Introduction

The ***AIDS Drug Assistance Program (ADAP) Special Power of Attorney*** is specifically designed for ADAP-related activities. For the purpose of this document, the term “ADAP” is used to refer to all California Department of Public Health (CDPH), Office of AIDS (OA), ADAP programs including the prescription drug assistance program, OA Health Insurance Premium Payment Program, and Medicare Part D Premium Payment Program. The ADAP Special Power of Attorney allows you to authorize your designated agent (the person you elect as your attorney-in-fact) to handle your ADAP-related affairs only as outlined in this document. The ADAP Special Power of Attorney contains a durability clause that specifically permits your agent to conduct your ADAP-related activities even in the event you are deemed incapacitated. With an ADAP Special Power of Attorney form on file, your designated agent can begin to take care of your ADAP-related activities immediately, even if you are not incapacitated, unless you specify that the power of attorney will not take effect until you become incapacitated or until some future date or event occurs.

Appointing someone as your agent under the ADAP Special Power of Attorney extends your authority to that agent; it does not replace it. When you sign the ADAP Special Power of Attorney document, you may also continue to act on your own behalf regarding ADAP-related matters as long as you are competent, but now your designated agent has certain enumerated powers, as detailed in this document. Having this ADAP Special Power of Attorney on file with ADAP ensures that your designated agent will be able to perform important ADAP duties should you become unable to act on your own behalf.

Please note that this document is not intended to replace or be a substitute for an Advanced Health Care Directive or a General Power of Attorney document. Those documents are intended to authorize an agent to act on your behalf in performing daily living activities on a much broader scale than this ADAP Special Power of Attorney, whose powers are limited **only to ADAP-related activities**. If you have already executed an Advanced Health Care Directive and/or a General Power of Attorney document, in addition to other powers, it may already provide the requisite authority for your agent to act on your behalf on ADAP-related matters.

Please review this document carefully. If you have any questions after reading this material, you should consult an attorney before signing the form.

Changing your ADAP Special Power of Attorney

If you would like to make a change to your ADAP Special Power of Attorney you must:

1. Complete a new ADAP Special Power of Attorney form.
2. Inform those who have a copy of the old form that it is no longer valid and ask that copies of the old form be returned to you so you can shred them.
3. Submit a new ADAP Special Power of Attorney to Office of AIDS.
4. Give copies of the new form to your agent(s).

Terminating your ADAP Special Power of Attorney

If you would like to revoke or terminate your ADAP Special Power of Attorney, you must submit the Revocation of ADAP Special Power of Attorney form to Office of AIDS or submit a revocation via your own written statement. Your written statement must include the date of the original power of attorney, your name, the agent's name, and a statement indicating you are revoking the powers you had granted to your agent. You must include your signature. We recommend that you shred the canceled POA after it has been revoked.

You may submit a new ADAP Special Power of Attorney form at any time.

Mail Executed Form to:

Office of AIDS, MS 7700, P.O. Box 997426, Sacramento, CA 95899-7426

Section 1: Creation of Durable Power of Attorney for ADAP-Related Activities

By this document I intend to create a durable power of attorney by appointing the person(s) named in Section 2 to make ADAP-related decisions for me as allowed by the California Probate Code. This power is expressly limited to decisions relating to ADAP benefits with the California Department of Public Health (CDPH), Office of AIDS (OA), ADAP programs.

For the purpose of this document, the "principal" is defined as a person who authorizes another (the attorney-in-fact as specified in Section 2) to act as a representative on their behalf.

Name of Principal (*First Name, Middle Initial, Last Name*): _____

Birth Date (*mm/dd/yy*): _____

ADAP Client ID Number: _____

Address: _____

City, State, Zip: _____

Section 2: Designation of Agent

Name of Agent (*First Name, Middle Initial, Last Name*): _____

Birth Date (*mm/dd/yy*): _____

Address: _____

City, State, Zip: _____

Daytime Phone: _____

Please designate an alternate agent who can act as the attorney-in-fact in the event the agent named above is unavailable or unwilling to serve.

Name of Alternate Agent (*First Name, Middle Initial, Last Name*): _____

Birth Date (*mm/dd/yy*): _____

Address: _____

City, State, Zip: _____

Daytime Phone: _____

Section 3: Statement of Authority Granted

By signing this form, I hereby grant to my agent full power and authority to transact matters on my behalf relating to ADAP. This power is expressly limited to:

The authority to meet and/or talk with CDPH, OA, ADAP Analysts, CDPH, OA, ADAP contractors, and local ADAP Enrollment Workers and the authority to complete and/or submit ADAP applications and required forms on my behalf regarding any of the following matters:

- ▶ Client eligibility, enrollment, and disenrollment in ADAP.
- ▶ Client application/enrollment status, payment status, missing documentation, re-enrollment and recertification, and;
- ▶ Any incidental, necessary, or proper actions related to ADAP administration.

Section 4: Duration of Power of Attorney

You may choose when you want your power of attorney to commence or terminate. You must select one option by initialing in the box:

- This special **durable** power of attorney is to commence immediately upon signing and remain in effect for my lifetime or until I specifically cancel it. This grant of authority shall continue to be effective even if I become disabled, incapacitated, or incompetent.
- This special **limited** power of attorney is to commence on _____ and terminate on _____.
- This special **contingent** power of attorney is to commence only upon a determination that I am incapacitated and/or unable to handle my own ADAP affairs. The determination of whether I am incapacitated and/or unable to handle my own ADAP affairs shall be made by _____.
(name and title of person to make the determination)
- This special **general** power of attorney is to take effect immediately upon signing but shall terminate in its entirety if I become incapacitated.

My attorney-in-fact is hereby instructed to notify ADAP in writing of my incapacity immediately upon its occurrence.

Section 5: Acknowledgement and Execution

I am of sound mind and I am executing this legal document under my own free will.

Date Executed: _____

City/State: _____

Signature of Principal: _____

Print Name of Principal: _____

ADAP Client ID Number: _____

Section 6: Witness Information

I am an adult of at least 18 years of age and have witnessed the principal's signature or the principal's acknowledgment of the signature designating power of attorney. I attest to the fact that the individual signed or acknowledged this power of attorney in my presence, that the individual appears to be of sound mind, and that I am not the agent designated in this power of attorney.

Signature of Witness 1: _____

Print Name of Witness 1: _____

Address: _____

City, State, Zip: _____

Signature of Witness 2: _____

Print Name of Witness 2: _____

Address: _____

City, State, Zip: _____

Section 7: Notary Public Acknowledgement

This section does not need to be completed if you have two witnesses in Section 6.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California, County of _____ .

On *[date]* _____ before me *[Print Name of Notary Public]* _____ ,

personally appeared *[Name of Principal]* _____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to me on the basis of satisfactory evidence that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Notary Seal:

Print Name: _____

REQUIRED Probate Code Statements

THE AUTHORITY GRANTED BY THE ADAP SPECIAL POWER OF ATTORNEY FORM IS LIMITED ONLY TO MATTERS RELATING TO CDPH, OA, ADAP-RELATED ACTIVITIES. THE PERSON DESIGNATED AS YOUR ATTORNEY-IN-FACT DOES NOT HAVE ANY AUTHORITY OVER YOUR OTHER REAL OR PERSONAL PROPERTY UNDER THIS FORM. IF YOU WISH THAT YOUR ATTORNEY-IN-FACT HAVE AUTHORITY OVER YOUR REAL AND/OR PERSONAL PROPERTY, IT IS RECOMMENDED THAT YOU SEEK LEGAL COUNSEL.

YOU MAY NOTICE THAT THE LANGUAGE CONTAINED IN THE FOLLOWING STATEMENTS REFERS TO MORE EXTENSIVE AUTHORITY THAN GRANTED BY THE ADAP SPECIAL POWER OF ATTORNEY. THE “NOTICE TO PERSON EXECUTING DURABLE POWER OF ATTORNEY” AND “NOTICE TO PERSON ACCEPTING THE APPOINTMENT AS ATTORNEY-IN-FACT” STATEMENTS ARE REQUIRED BY CALIFORNIA PROBATE CODE SECTION 4128 AND MUST BE INCLUDED IN ALL PREPRINTED DURABLE POWER OF ATTORNEY FORMS. THIS ADAP SPECIAL POWER OF ATTORNEY DOES NOT AUTHORIZE YOUR ATTORNEY-IN-FACT TO DO MANY OF THE THINGS MENTIONED IN THE FOLLOWING (WARNING) STATEMENT. IF YOU ARE CONCERNED WITH THESE STATEMENTS OR THE EXTENT OF THE AUTHORITY BEING GRANTED BY THE ADAP SPECIAL POWER OF ATTORNEY FORM, WE AGAIN URGE YOU TO CONSULT WITH AN ATTORNEY.

(California Probate Code Section 4128(a)) (Warning): Notice to Person Executing Durable Power of Attorney

A durable power of attorney is an important legal document. By signing a durable power of attorney, you are authorizing another person to act for you, the principal. Before you sign this durable power of attorney, you should know these important facts:

- ▶ Your agent (attorney-in-fact) has no duty to act unless you and your agent agree otherwise in writing.
- ▶ This document gives your agent the powers to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf. This document does not give your agent the power to accept or receive any of your property, in trust or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift.
- ▶ Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you state otherwise in this power of attorney.
- ▶ The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions regarding the management of your property.
- ▶ You can amend or change this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this power of attorney at any time as long as you are competent.
- ▶ This durable power of attorney must be dated and must be acknowledged before a notary public or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the principal's signing of the power of attorney or (2) the principal's acknowledgement of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it can easily be recorded.
- ▶ You should read this durable power of attorney carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. This durable power of attorney is important to you. If you do not understand the durable power of attorney or any provision of it, you should obtain the assistance of an attorney or other qualified person.

[Initials of Principal]

Notice to Person Accepting the Appointment as Attorney-in-Fact

By acting or agreeing to act as the agent (attorney-in-fact) under this power of attorney you assume the fiduciary and other legal responsibilities of an agent.

These responsibilities include:

1. The legal duty to act solely in the interest of the principal and to avoid conflicts of interest.
2. The legal duty to keep the principal's property separate and distinct from any other property owned or controlled by you.

You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney specifically authorizes you to transfer property to yourself or accept a gift of the principal's property. If you transfer the principal's property to yourself without specific authorization in the power of attorney, you may be prosecuted for fraud and/or embezzlement. If the principal is 65 years of age or older at the time that the property is transferred to you without authority, you may also be prosecuted for elder abuse under Penal Code Section 368. In addition to criminal prosecution, you may also be sued in civil court.

I have read the foregoing notice and I understand the legal and fiduciary duties that I assume by acting or agreeing to act as the agent (attorney-in-fact) under the terms of this power of attorney.

Signature of Agent: _____

Print Name of Agent: _____

Date: _____