



# Wills and Estates

## Information for Attorneys under an Enduring Power of Attorney (Medical Treatment)

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### WHAT IS AN ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)?

An enduring power of attorney (medical treatment) is a legal document which enables someone (the donor) to appoint a person (the medical attorney) to make decisions about their medical treatment on their behalf.

### COMMENCEMENT OF THE POWER

Although the enduring power of attorney (medical) has been signed by the donor the power given to you does not commence unless and until the donor becomes legally incapable of providing directions concerning his or her medical treatment.

The donor could lose legal capacity as a result of the onset of some disabling condition, such as dementia, or as a result of an episode, such as a stroke. The incapacity need not be permanent. Therefore the power for you to act could come into effect for a limited period whilst the donor was incapable. Alternatively, the donor's condition might be such that his or her capacity is unlikely to ever be recovered.

### DECISIONS YOU CAN MAKE UNDER THE POWER OF ATTORNEY (MEDICAL)

Once the power commences you have the power to make decisions about medical treatment on behalf of the donor. You can agree to, or refuse, medical treatment. You can also make decisions on behalf of the donor in relation to medical research.

Your power to refuse treatment on behalf of the donor is subject to some conditions. Firstly, a registered medical practitioner and another person must

both be satisfied that you have been given sufficient information about the donor's condition to enable you to make a decision about whether or not to refuse treatment. Secondly, you may only refuse treatment if:

- ▶ The medical treatment would cause unreasonable distress to the donor; or
- ▶ There are reasonable grounds for believing that the donor, if competent, and after giving serious consideration to his or her health and wellbeing, would consider that the medical treatment is unwarranted.

To establish the reasonable grounds for a belief that the donor would think the treatment is unwarranted it would be useful if the donor recorded in writing for you his or her views about what treatment the donor considered unwarranted. You should at least discuss this issue with the donor so that you are aware of his or her views about particular treatments, particularly life support treatments.

If you refuse treatment in the above circumstances you must sign a form taken from schedule 3 of the Medical Treatment Act called a 'Refusal of Treatment Certificate - Agent or Guardian of Incompetent Person'.

Your power under the enduring power of attorney (medical) cannot be used to make financial, legal or guardianship decisions. These decisions need to be made by an enduring power of attorney (financial) or a person appointed under an enduring power of guardianship respectively.

If the donor has appointed a guardian under an enduring power of guardianship, that person will generally also have power to make decisions about health care on behalf of the donor. This will enable the enduring guardian to consent, or withhold consent, to medical or dental treatment on behalf of the donor. However the enduring guardian cannot consent to procedures for the purposes of medical research and cannot refuse medical treatment on behalf of the donor. Your decisions under the enduring power of attorney (medical) will have priority over any decisions made by any enduring guardian in relation to medical treatment.

### **ALTERNATE AGENTS**

An enduring power of attorney (medical) can only appoint one person to act as agent, although an alternate agent can be appointed in case the first appointed agent has died or become incompetent or cannot be contacted, or their whereabouts is unknown.

Before an alternate agent can act, the alternate agent must, not more than seven days before making the decision, complete a statutory declaration stating that the first agent is dead, incompetent or cannot be contacted or his or her whereabouts are unknown. The alternate agent must also give details of the inquiries or information which forms the basis for that statement.

The statutory declaration must be given to any person involved in the treatment of the donor who needs to be satisfied that the alternate agent has been given sufficient information about the

donor's condition to enable that person to make a decision about medical treatment.

### **SUSPENSION OR REVOCATION OF YOUR POWER**

The donor may revoke the power given to you at any time by written notice. If that occurs your power is obviously terminated.

The Victorian Civil & Administrative Tribunal may also suspend or revoke your power.

The tribunal can, upon application being made to it, also decide whether an alternate agent has authority to make a particular decision.

If you are uncertain about whether you have power to make a particular decision or about the power more broadly, you can always apply to the tribunal for assistance.

### **CERTIFIED COPIES OF THE ENDURING POWER OF ATTORNEY (MEDICAL)**

If you need to exercise your powers under the appointment you will need certified copies of the document. These are available upon request to the manager of our deed register at Harwood Andrews Lawyers, subject to you providing appropriate identification.

### **CAUTION**

This document is a guide only. It is not comprehensive legal advice.