



WILLS and ESTATES

Information about Medical Treatment Powers of Attorney

www.flemingmuntz.com.au



Fleming Muntz
Solicitors



Solicitors for New South Wales
and Victoria

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

fmlaw@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804
Telephone (02) 6021 2222

WHAT IS AN APPOINTMENT OF ENDURING GUARDIAN, OR ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)?

An appointment of enduring guardian (NSW) or enduring power of attorney (medical treatment) (VIC) is a legal document that enables you to appoint another person or persons to make medical treatment and lifestyle decisions on your behalf.

The person you appoint is called your enduring guardian, or medical attorney. The power is “enduring” because it continues to be effective even if you later lose legal capacity.

WHY SHOULD YOU APPOINT AN ENDURING GUARDIAN OR MEDICAL ATTORNEY?

You should appoint an enduring guardian or medical attorney (collectively, a “medical attorney”) to ensure that your wishes concerning your medical treatment and/or lifestyle decisions are carried out if you are unable to make the necessary decisions yourself.

Advances in medical science now enable health professionals to keep ill patients alive for extended periods. Sometimes, however, the methods of doing so by the use of life support technology are not desirable for everyone.

Health professionals can face a dilemma in some instances by wishing to sustain life on the one hand, yet preserve some quality of life on the other. Whilst a health professional can consult family or friends of a patient in relation to

these issues, there may not always be in agreement between those family or friends about the most appropriate course.

By appointing a medical attorney you are nominating a person or persons to make decisions about your medical treatment, even a decision to terminate treatment. This gives you the opportunity to entrust your wishes to someone who can ensure your wishes are carried out.

It is now common practice for hospitals, nursing homes and retirement villages to request that patients and residents have appointed a medical attorney.

HOW TO APPOINT A MEDICAL ATTORNEY?

To appoint a medical attorney you must be over 18 years of age and you must have capacity - that is, you must understand what you are doing by granting a medical power of attorney.

You will need to decide whether you wish to appoint one, or more than one, medical attorney. If you decide to appoint more than one, you need to decide whether they are to act jointly, so that they make decisions unanimously, or whether they may act severally, meaning that any one of them can make a decision on your behalf.

You give the power by signing a prescribed form in the presence of two adult witnesses, one of whom must be authorised to witness statutory declarations. The witnesses must believe that you understand the nature and effect of the document and, in particular, that you understand that your medical attorney can refuse to consent to medical treatment on your behalf. They must also be satisfied that you are of sound mind.

In New South Wales, a solicitor must give a certificate certifying, amongst other things, that he or she explained the effect of the power before it was signed and that you appeared to understand the effect of the document.

Your medical attorney(s) must then sign an acceptance of the appointment in front of a solicitor, who then gives a further certificate, certifying that he or she witnessed the attorney executing the document, that they did so voluntarily and that they appeared to understand the document.

DECISIONS YOUR MEDICAL ATTORNEY CAN MAKE

Your medical attorney can agree to medical treatment and can elect treatment options. Your medical attorney can refuse medical treatment if he or she believes:

- The treatment would cause you unreasonable distress, or
- You would consider the treatment unwarranted.

Your medical attorney can also make lifestyle decisions on your behalf, such as decisions as to where you will live, what health care you receive and what personal services you receive.

Your medical attorney cannot make decisions about your finances and assets. These decisions need to be made by a person appointed under an enduring power of attorney.

CANCELLATION OF THE APPOINTMENT

To cancel your appointment of medical attorney you must sign a revocation deed, and give written notice of the revocation to your medical attorney.

If you lose legal capacity you cannot cancel the appointment. The Guardianship Tribunal (NSW) or Victorian Civil & Administrative Tribunal (VIC) could cancel the appointment in those circumstances, if it believed it was in your best interests to do so.

QUESTIONS

If you or your medical attorney have any questions in relation to an appointment of enduring guardian, or enduring power of attorney (medical treatment), Fleming Muntz can provide specialist advice.

DISCLAIMER

This document is a guide only. It is not legal advice. You should consult Fleming Muntz Solicitors about appointing a medical attorney.