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# Information to persons appointing enduring powers 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 you to appoint a person to make decisions about your medical treatment on your behalf.

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

## **Why you should appoint a medical attorney**

You should appoint a medical attorney to ensure that your wishes concerning your medical treatment 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 always 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. They can consult family or friends of a patient in relation to these issues who may not always be in agreement about the most appropriate course.

No one is authorised to give any instructions to health professionals on behalf of a patient unless a medical attorney has been appointed.

By appointing a medical attorney you are nominating one person 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 you 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 the medical power of attorney. You can only appoint one person as your medical attorney, although you can appoint an alternative medical attorney if the first person you appoint dies or becomes unable to act through illness or absence. You cannot appoint two persons to act together.

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 consent to medical treatment on your behalf. They must also be satisfied that you are of sound mind.

### Decisions your medical attorney can make

Your medical attorney can agree to medical treatment and can elect between 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 cannot refuse treatment given to alleviate pain or suffering if you are under palliative care, that is, if you are dying.

You cannot limit your medical attorney's powers in the document or impose conditions.

Your medical attorney cannot make decisions about lifestyle or personal issues, nor about your finances and assets. These decisions need to be made by a person appointed under an enduring power of attorney in respect of personal matters and financial matters, respectively.

There is some overlap between a person appointed under an enduring power of attorney in respect of personal matters and a medical attorney. The enduring attorney (personal matters) can make some decisions about medical treatment but cannot refuse treatment. A medical attorney's authority in relation to issues concerning medical treatment overrides an attorney appointed in respect of personal matters.

### Cancellation of the appointment

To cancel your appointment of a medical attorney you must tell your medical attorney that the power is cancelled. You should also sign a prescribed form revoking the power and a copy of this form should be given to your medical attorney. Destruction of the original appointment and any copies is recommended.

If you sign a new medical enduring power of attorney, any earlier appointment is automatically cancelled.

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

### Important

This document is a guide only. It is not comprehensive legal advice. You should consult Sladen Legal about appointing a medical attorney.

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