

# ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

THIS ENDURING POWER OF ATTORNEY is given on the

..... day of ....., 20 .....

*Print date here*

*Print month here*

*Year*

by .....

*Print your full name here*

of .....

*Print your address here*

under Section 5A of the *Medical Treatment Act 1988*.

*Cross out the following option if you also wish to appoint an alternate agent.*

1. I APPOINT .....

*Print the full name of your agent here*

of .....

*Print your agent's address here*

to be my agent.

~~OR, Cross out the following option if you do not wish to appoint an alternate agent.~~

1. I APPOINT .....

*Print the full name of your agent here*

of .....

*Print your agent's address here*

to be my agent

and .....

*Print the full name of your alternate agent here*

of .....

*Print your alternate agent's address here*

to be my alternate agent.

2 I AUTHORISE my agent or, if applicable, my alternate agent, to make decisions about medical treatment on my behalf.

3 I REVOKE all other enduring powers of attorney (medical treatment) previously given by me.

SIGNED, SEALED AND  
DELIVERED by:

.....

*Sign your name here*

We .....

*Print your witnesses' names here*

each believe that .....

*Print your name here*

in making this enduring power of attorney (medical treatment) is of sound mind and understands the import of this document. WITNESSED by:

.....

*Witnesses sign here*

**Person authorised to witness  
statutory declarations**

.....

*Name of witness*

.....

*Address of witness*

.....

*Witnesses sign here*

**Other witness**

.....

*Name of witness*

.....

*Address of witness*

# Medical decision making

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## Medical consent

Doctors and dentists need a patient's consent (agreement) before performing medical or dental treatment.

If a patient is incapacitated, consent is not needed where there are reasonable grounds that emergency treatment is necessary to:

- save the patient's life
- prevent serious damage to the patient's health
- prevent suffering from significant pain or distress.

If a patient is incapacitated consent is also not needed for:

- providing first aid
- administering a prescribed drug within recommended dosages
- a non-intrusive examination such as a visual examination.

A patient who is 18 years of age or older can consent if they are able to understand, retain, evaluate and weigh up information about the general nature and effect of the proposed procedure and can communicate their decision.

If a patient is unable to consent to treatment, there is a hierarchy of people who can make medical and dental treatment decisions on behalf of the patient. The person highest on this list is known as the **person responsible**.

Whoever is first on the following list is the **person responsible** and can consent to medical treatment for the patient.

## The person responsible

1. A medical agent appointed by the patient under an **enduring power of attorney (medical treatment)**
2. A person appointed by the Victorian Civil and Administrative Tribunal (VCAT) to make decisions about the proposed treatment
3. A guardian appointed by VCAT to make medical/dental decisions for the person
4. A person appointed by the patient on or after 1 September 2015 as an attorney for personal matters under an **enduring power of attorney** or before 1 September 2015 as an enduring guardian with health care powers under an enduring power of guardianship
5. A person appointed by the patient in writing to make decisions about their medical/dental treatment including the proposed treatment
6. The patient's spouse or partner
7. The patient's primary carer (cannot be a paid professional carer)
8. The patient's nearest relative, who is 18 years of age or older, in the following order: a. child, b. parent, c. sibling (including adopted and half siblings), d. grandparent, e. grandchild, f. uncle or aunt, g. nephew or niece.

When there are two relatives in the same position (for example, a brother and sister) the elder person is the person responsible, regardless of gender.

## Role of the 'person responsible'

The person responsible can decide on behalf of the patient whether to consent to medical treatment and must make decisions that are in the best interests of the patient. This means considering:

- the wishes of the patient and their family
- the consequence to the patient if the treatment is not carried out
- any alternative treatment available
- the nature and degree of any significant risks associated with the treatment or any alternative treatment
- whether the treatment to be carried out is only to promote and maintain the health and wellbeing of the patient.

## Decisions they cannot make

If the patient's inability to consent is likely to be temporary, the person responsible can only consent if the treatment is not against the patient's wishes and if failure to treat would result in a significant deterioration of the patient's condition.

The person responsible cannot consent to special procedures, including the termination of pregnancy, removal of tissue for transplant or procedures that are reasonably likely to lead to the patient's permanent infertility. In these cases, an application for consent must be made to VCAT.

The person responsible cannot refuse treatment on the patient's behalf.

The person responsible cannot consent to psychiatric treatment on behalf of a patient who is unable to make their own decisions about psychiatric treatment, including electroconvulsive therapy (ECT).

If the patient is a compulsory patient under the *Mental Health Act 2014* and cannot consent to non-psychiatric medical treatment, there is a different list of people who can provide consent.

## Refusal of medical treatment

The *Medical Treatment Act 1988* lists those who can refuse treatment on a patient's behalf. Only a person appointed as a medical agent under a medical enduring power of attorney or a guardian appointed by VCAT with medical treatment decision making powers can refuse medical treatment on behalf of a patient who cannot consent.

To do this, the medical agent or guardian must sign and have witnessed a *Refusal of Treatment Certificate: Agent or Guardian of Incompetent Person* form. More information and the form is available on OPA's website.

To sign, a medical agent or guardian must:

- have been given sufficient information about the patient's condition
- understand this information
- understand what they are doing by signing the certificate
- make the decision voluntarily (advice can be given, but they must not be coerced)
- believe that either the medical treatment would cause the patient unreasonable distress, or that there are reasonable grounds for believing the patient would, after serious consideration, have considered the treatment unwarranted.

A medical agent or guardian can't refuse palliative care such as pain relief, and food and water while the patient is still able to eat and drink.

OPA's website has more information about medical consent, including consenting to medical research. Visit: [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

Or call OPA's Advice Service 1300 309 337 for more information.