



ATTORNEY CHECKLIST

DUTIES OF THE ATTORNEY UNDER A POWER OF ATTORNEY FOR PERSONAL CARE PURSUANT TO THE *SUBSTITUTE DECISIONS ACT, 1992* (the “SDA”)

An Attorney **MUST**...

- Be advised of the legislation applicable to the attorney acting under a Power of Attorney, including the *Substitute Decisions Act, 1992* (the “SDA”) and the *Health Care Consent Act, 1996*
- Be aware that an individual of 16 years of age is capable of giving or refusing consent of one’s own personal care
- Be aware that an individual may grant a written Power of Attorney authorizing personal care decisions be made on the grantor’s behalf
- Be aware that if the attorney is the Public Guardian and Trustee, their consent is required in writing prior to the execution of the Power of Attorney document for such appointment to be valid
- Not act as an attorney under a Power of Attorney if for compensation, the attorney is providing health care, residential, social, training or support services to the grantor, unless the attorney is a spouse, partner or relative of the grantor
- Act in accordance with the Power of Attorney document and be aware of the extent of the power or authority granted and the circumstances of such authority
 - Is the power to be exercised solely or jointly?
 - Is the power or instruction given in the Power of Attorney document consistent with relevant statutory requirements?
- Determine whether the grantor of the Power of Attorney has the requisite capacity to grant such a power
 - Does the grantor have the ability to understand and appreciate the role of the attorney and in particular the risks associated with the appointment?
 - Does the grantor have capacity to give instructions for decisions to be made as to personal care?
 - Is the grantor aware of the Power to revoke the Power of Attorney if capable?

- The grantor's capacity to give a power is **not** related to the incapability of the grantor's own personal care

- Recognize the validity of the Power of Attorney document and the statutory requirements regarding execution and witnessing

- Be aware that the Power of Attorney can be revoked and such revocation must be in writing and executed in the same manner as the Power of Attorney document itself

- Be aware of the rights and duties to make application to the court for directions if deemed necessary in exercising the attorney's role effectively and for lending effectiveness to the Power of Attorney document, which might otherwise be ineffective according to statutory provisions

- Be aware of applicable statutory requirements, which dictate the effectiveness of the authority given in the Power of Attorney document
 - The HCCA applies to certain decisions made by attorneys, and provides authority to the attorney to make certain decisions
 - The HCCA prescribes certain decisions which require the grantor of the Power of Attorney to be confirmed incapable of personal care prior to any decision being taken by the attorney
 - Review the required method of ascertaining capacity - is the method prescribed in the Power of Attorney document itself, or is it to be in the prescribed form pursuant to an assessor in accordance with the SDA?
 - What verbal or written instructions have been given by the grantor of the Power of Attorney in respect of either capacity, the assessment or the assessor?

- Be aware that special provisions exist in the SDA and the HCCA addressing conflicting requirements under the Power of Attorney document itself and the statutory requirements in relation to capacity assessments, assessors and the use of force, restraint and detention where required in reasonable circumstances in respect of the grantor's care and treatment

- Be aware that no liability will be assumed by the attorney arising from the use of force if used as prescribed under the SDA and the HCCA

- Arrange for a capacity assessment at the request of the grantor, except where there has been an assessment performed in the six months immediately previous

- Be aware the statutory requirements concerning resignation
 - Deliver the resignation to the grantor, the joint or alternate attorneys, or

- spouse/relatives, if applicable
- Notify persons previously being dealt with on the grantor's behalf

- Be aware that a Power of Attorney for personal care terminates on the death of the grantor

- Be aware of, and exercise, legal fiduciary duties diligently, honestly, with integrity, in good faith and in the best interests of the grantor while taking into account the grantor's well-being and personal care

- Explain to the grantor the attorney's powers and duties, and encourage the grantor's participation in decisions

- Act in accordance with the known wishes or instructions of the grantor or in the best interests of the grantor, and generally, considerations of quality of life and the benefits of actions taken on behalf of the grantor

- Keep records of all decisions made on the grantor's behalf

- Facilitate contact between the grantor, relatives and friends

- Consult with relatives, friends and other attorneys on behalf of the grantor

- Facilitate the grantor's independence

- Make decisions which are the least restrictive and intrusive to the grantor

- Not use or permit the use of confinement, monitoring devices, physical restraint by the use of drugs or otherwise except in so far as preventing serious harm to the grantor or another

- Not use or permit the use of electric shock treatment unless consent is obtained in accordance with the HCCA

- Maintain comprehensive records
 - A list of all decisions made regarding health care, safety and shelter
 - Keep all medical reports or documents
 - Record names, dates, reasons, consultations and details, including notes of the wishes of the grantor

- Give a copy of the records to the grantor, or other attorney, or the Public Guardian and Trustee as required

- Keep a copy of the Power of Attorney for personal care and all other court documents relating to the attorney's power or authority

- Keep accounts or records until the authority granted under the Power of Attorney for Personal Care ceases, or the grantor dies, or the attorney obtains a release, is discharged by court order, or the attorney is directed by the court to destroy or dispose of records

This checklist is intended for the purposes of providing information and guidance only. This memorandum/checklist is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive.

Kimberly A. Whaley, WEL PARTNERS

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