

InfoSheet:

Responsibilities of an Enduring Guardian

An enduring guardian makes health and lifestyle decisions for someone who has lost the capacity to make those decisions for themselves.

Your role as an enduring guardian

You can act in accordance with your appointment as an enduring guardian only during any period that the person who appointed you as guardian (the appointor) is totally or partially incapacitated.

You should ensure you understand:

- the functions the appointor has given you
- the directions the appointor has made to you
- you must only act in the appointor's best interests.

If you have doubts or concerns you can seek directions from the NSW Trustee & Guardian regarding the exercise of any of the functions granted to you. We also suggest you seek legal advice.

Lifestyle decisions

As an enduring guardian you may be appointed to make the following decisions (if necessary):

- where the appointor lives (e.g. nursing home)
- what health care the appointor receives (e.g. choosing a doctor)
- what other services the appointor needs (e.g. home care).

Consent to medical or dental treatment

One of the most important areas in which you may be involved will be giving consent to medical or dental treatment.

A doctor or dentist must get consent from you to carry out minor or major medical or dental treatment on the appointor. However, a doctor is not required to obtain that consent if the treatment is necessary, as a matter of urgency to:

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

Additionally, minor treatment may be carried out without consent if you cannot be contacted or are unable or unwilling to make a decision.

A doctor's request for your consent to minor treatment must be in writing unless:

- it is not practical to make the request in writing
- you do not require it to be made in writing.

A request for consent to major treatment must be in writing unless it is not practical because of the need to provide treatment urgently. The doctor must later provide written confirmation if the consent relates to major treatment or if you require the written confirmation.

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Medical records

Despite the *Privacy and Personal Information Protection Act 1998* you are entitled to medical records and information relating to the appointor, to the extent that it is necessary to assist you in carrying out your functions.

Cancelling an appointment of enduring guardian

Your appointment as an enduring guardian will be cancelled if:

- it is revoked by the appointor
- you no longer want to act as guardian
- the NSW Trustee & Guardian makes an order
- the appointor marries after the appointment is made.

A revocation or resignation must be in the prescribed form and must be signed by the person making the revocation or resignation. It must also be witnessed by an eligible witness (e.g. solicitor or barrister).

Family Discussion

If you have been appointed as a guardian for a family member or friend, take the opportunity to discuss the appointor's beliefs, wishes and directions.

You may be asked to make serious decisions on behalf of the appointor and it will be easier if you are aware of the appointor's wishes.

You must remember that your decisions may be contrary to your own beliefs but you have been given the trust and responsibility to make decisions that you believe the appointor would have made if he/she had capacity.

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