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25 February 2020

9(2)(a)

**RE Official information request CDHB 10267**

I refer to your phone call on 4 February 2020 to our Customer Services Facilitator, 9(2)(a) requesting the following information under the Official Information Act from Canterbury DHB.

**What processes and protocols have been put in place to ensure the validity of an enduring power of attorney before respecting their decision-making authority?**

The process for ensuring the validity of an Enduring Power of Attorney (EPOA) is set out in our Hospital HealthPathways platform, which provides online guidance for clinical teams at both Canterbury and West Coast District Health Boards.

The relevant section is set out below. This requires staff to check whether the EPOA has been 'activated' if they believe a person lacks capacity, and also that they sight a copy of the EPOA.

***Enduring power of attorney***

1. *An EPA is the legal authority arranged by a competent person (the donor) to allow decisions to be made on their behalf by another trusted person (the attorney).*
2. *An EPA can be active or inactive. It is activated by a formal assessment process, usually performed by a doctor.*
3. *It is important medico-legally to obtain a copy of an active EPA before assuming it exists.*
4. *A patient may have an EPA in place for decisions regarding their care and welfare, or for decisions regarding their property and finances, or for both.*
  - a. *A donor can choose to make the EPA for property active at the time it is set up. If this has been activated, the EPA document will state this.*
  - b. *An EPA for welfare is not active at the time it is set up.*
5. *The EPA attorney for care and welfare cannot refuse any standard medical treatment or procedure required to:*
  - a. *save the patient's life.*
  - b. *prevent serious damage to the patient's health.*

6. *An EPA for care and welfare can only be held by one person at a time, although the donor may nominate successors.*
7. *An EPA for property cannot make care and welfare decisions for a person unless they hold the care and welfare EPA as well.*
8. *An EPA for property may be held by one or more people.*
9. *Both EPAs may or may not be held by the same person.*

*See Management for further details about activating an EPA.*

Also attached as **Appendix 1**, is the Canterbury DHB policy on EPOA's. This policy is currently under review.

I trust that this satisfies your interest in this matter.

Please note that this response, or an edited version of this response, may be published on the Canterbury DHB website after your receipt of this response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carolyn Gullery', with a long, sweeping horizontal line extending to the right.

Carolyn Gullery  
**Executive Director**  
**Planning, Funding & Decision Support**

# 1. Power of Attorney

**Introduction** People aged 18 or over can formally appoint people to act on their behalf. The person who acts on the appointee's behalf is known as an "attorney". The form /document used to appoint the attorney is known as "power of attorney".

The two main forms of attorney at use in New Zealand:

- The enduring power of attorney in relation to property, and
- The enduring power of attorney in relation to personal care and welfare.

## Power of Attorney in Relation to Property

- This power of attorney gives the attorney authority to act in relation to person's property. This means operate cheque accounts, sign documents, etc.
- A power of attorney needs to be looked at closely, as it may restrict the ability of the attorney.
- A power of attorney ceases to have effect when a person has died.
- When someone produces a power of attorney, there is no way of knowing whether this has been revoked or replaced by another attorney. Therefore when a power of attorney is used, the attorney must complete a certificate of Non-revocation of the Power of Attorney (available from the Legal Office) certifying the power of attorney has not been revoked.
- A power of attorney may come into effect only if a person is mentally incapable - the document must be checked.

## Power of Attorney in Relation to Personal Care and Welfare

- The aim of this power of attorney is to give the person the right to act in relation to personal care or welfare if patient is mentally incapable. The attorney can make decisions in relation to consent of treatment.
- However the attorney cannot refuse consent to any standard medical treatment or procedure intended to save the person's life or prevent serious damage to a person's health.
- The attorney cannot:
  - Consent to the taking part in any medical experiments (Except for the purpose of saving the person's life or preventing serious damage to that person's health).
  - Consent to ECT treatment.
  - Consent to brain surgery to change behaviour.

- A personal care and welfare power of attorney can only be used in the event the donor is mentally incapable. (Remember children under 18 years of age cannot make people attorneys.)

### Procedure when relying on a Power of Attorney

1. The staff member should sight and copy the power of attorney.
2. The attorney should be examined to see if it is applicable i.e. A power of attorney for property does not give an attorney right in relation to care and welfare or vice versa.
3. Any restriction should be noted.
4. If there is doubt as to the validity or meaning of a power of attorney contact the Corporate Solicitor.
5. The attorney should be asked to sign a Certificate of Non-Revocation of Power of Attorney, confirming they are the attorney and that to their knowledge the attorney has not been revoked, each time the power of attorney is relied upon to make a decision (i.e. pick up valuables, etc). The signature should be checked against identification (driver's licence, etc.) and the signature on the power of Attorney.

<b>Policy Owner</b>	Legal Team
<b>Policy Authoriser</b>	Executive Management Team
<b>Date of Authorisation</b>	<del>1 January 2001</del> 20 April 2004 25 July 2006
<b>Date of last review</b>	July 2010