



ACTING AS POA FOR PERSONAL CARE

A Power of Attorney for Personal Care allows a person (the “grantor”) to appoint someone else (the attorney) to act on his or her behalf. It can be used for decisions about medical treatment, but also for decisions about other important personal matters, such as where the person lives and decisions about nutrition, hygiene, and safety.

A person may appoint more than one attorney. Where there are two or more attorneys appointed in the same document, or at the same time, they must act jointly, unless they are joint and several, in which case either one of them may act independently.

A person who does not have an attorney for personal care can still have decisions about medical treatment made for them by the following people, in the order listed:

- A spouse or partner, including a common law and same-sex spouse, but not including a spouse from whom the person is separated;
- A parent or child of the person, but not including a parent who has only access rights;
- An access parent;
- A brother or sister of the person; and
- Any other relative.

When Do I Have to Act?

As long as the grantor is capable, he or she will make his or her own decisions. Only if the grantor is no longer able to understand information relevant to his or her own health care, nutrition, shelter, clothing, or safety, or is unable to appreciate the consequences of a decision about these matters will you be called upon as attorney to make substitute decisions. If the grantor recovers capacity, you are no longer empowered to make decisions.

What are my Duties?

Your obligation as attorney for personal care is to make decisions on behalf of the person, not necessarily to provide the personal care yourself. If you are called upon to make a decision as an attorney, you must consider any wishes the person may have expressed while capable – for example in a “living will”, or in discussions with you about the matter.

You should make reasonable efforts to ascertain what the person’s wishes were, and also whether those wishes changed, since a later wish trumps an earlier one. The best interests of the person need to be referred to *only* if you are not able to determine what his or her wishes would be.

Cunningham Swan offers a broad range of legal services to individual and corporate clients in the private and public sectors in Kingston and Southeastern Ontario. We welcome your inquiry: Cunningham Swan Carty Little & Bonham LLP, 1473 John Couter Blvd., City Place II, Suite 201, Kingston, ON, K7M 8Z6; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: info@cswan.com. This factsheet does not constitute legal advice.

Best interests are determined by considering:

- The person's known values and beliefs;
- The person's current wishes, if they can be determined;
- Factors such as improving the person's quality of life, or preventing or reducing deterioration in their quality of life; and
- The balance of the benefit from a given decision against the harm of the alternative.

As an attorney for personal care, you must:

- Keep careful records of all decisions you make on behalf of the person while acting;
- Encourage the person to participate in taking decisions about his or her own care;
- Encourage contact with supportive family and friends; and
- Consult with supportive family and friends, as well as any caregivers.

Can I be Compensated for Acting?

Unlike a Power of Attorney for Property, there is no regulation providing for payment for an attorney for personal care. You will be entitled to be reimbursed for any out-of-pocket expenses, and if the Power of Attorney itself allows for reimbursement, you may be paid according to those provisions.

Termination of Authority

A Power of Attorney for Personal Care ends when:

- the grantor dies;
- the attorney dies or becomes mentally incapable;
- the grantor signs a new Power of Attorney for Personal Care (unless there are to be multiple powers);
- the grantor revokes the Power of Attorney for Personal Care;

As attorney for personal care, you can resign but the resignation will not be effective until you have given notice to the grantor, the alternate attorney (if any), and the grantor's spouse and family. You should also give notice to anyone you have dealt with in making decisions.

If there is no attorney under a Power of Attorney for Personal Care, no one is empowered to make decisions about health care, nutrition, shelter, clothing, hygiene, and safety for an incapable person. Someone will have to make an application to the court to be appointed as Guardian of the Person.