

A Guide to Powers of Attorney for Personal Care (POAPC)

A 75 year-old single man is admitted to hospital with a serious heart attack. He is at risk of further heart problems. He could at some time point in the future lose the ability to make his own decisions.

In order to ensure that he receives the kind of care he wants, the healthcare team suggests that he consider completing a Power of Attorney for Personal Care.

What is a Power of Attorney for Personal Care (POAPC)?

A POAPC is a legal document. It allows one person to give another person(s) the authority to make personal care decisions on their behalf, **if they become incapable**. The appointed person(s) is called an “attorney.”

Incapable means that an individual is not able to understand the information relevant to making a decision or appreciate the consequences of making a decision.

Completing a POAPC provides a person with control over who will make decisions on their behalf and what decisions will be made.

An attorney(s) may make decisions about the following: healthcare/treatment, shelter, nutrition, clothing, hygiene, and safety.

A POA for Property is not the same as a POA for Personal Care. A POA for Property names a person(s) to make decisions regarding finances, including property. The attorney(s) for property and personal care may be the same or different persons.

Is completion of a POAPC mandatory?

No. Completing a POAPC is voluntary. If there is no POAPC, a substitute decision-maker will be determined according to the hierarchy outlined in the Health Care Consent Act (HCCA). The hierarchy includes “next of kin” (see A Guide to Substitute Decision-Making Brochure for more information).

Why should someone consider completing a POAPC?

It is especially important to complete a POAPC if a person does not have any relatives or wants to name someone other than the person who is highest in the HCCA hierarchy to make decisions for them.

At the time of completing a POAPC, a person must be:

- 16 years of age or older;
- Able to understand the purpose of a POAPC; and
- Able to appreciate that the attorney named will make decisions for them if they become incapable.

Who can be appointed as an attorney for personal care?

An attorney for personal care must be 16 years of age or older. The person appointed should be someone who the individual knows well and trusts.

Certain persons cannot be appointed as an attorney including persons who are paid to provide services to an individual such as healthcare providers, landlords, and homemakers, unless they are also a relative.

When coming to the hospital for care, patients are encouraged to bring a copy of their Power of Attorney for Personal Care document with them.

Can a POAPC include directions for the attorney to follow?

Yes. Guidelines or instructions for making decisions can be included. An attorney(s) is required to act in accordance with the patient’s most recently expressed capable wishes (written, verbal or any other manner), which may include those recorded in a POAPC document. It is important that the person discuss with their attorney(s) their wishes, values, and beliefs to ensure clarity.

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Can you have more than one attorney?

Yes. One person may be appointed as primary attorney and a second as alternate. The alternate acts only if the first is unavailable or no longer meets the criteria to be an attorney.

Alternatively two or more persons can be named to act together (jointly) and/or independently (severally).

Lastly, particular types of decisions may be assigned to different attorneys (e.g., one attorney may be assigned to make healthcare/ treatment decisions and hygiene and another to make decisions about shelter, nutrition, clothing, and safety).

When is a POAPC used?

A POAPC is used only when an individual becomes incapable of making a personal care decision. A POA for Property, on the other hand, can be used immediately upon signing, unless the document specifies otherwise.

Is there a specific POAPC form to complete? Is a lawyer needed?

No. Completion of a POAPC does not require a specific form to be completed or the involvement of a lawyer.

However, there are certain legal requirements needed for the document to be valid. It must be signed, dated, and witnessed by two people. The following individuals cannot act as witnesses: the person's spouse, partner or child; the attorney or his or her spouse or partner; anyone under the age of 18 years; or an individual who is under guardianship.

A person may at a future date revoke their POAPC by creating a new POAPC or completing a letter of revocation that is signed, dated, and witnessed as above.

What are the responsibilities of an attorney for personal care?

Attorneys are required to:

- Make treatment decisions based on the patient's prior expressed capable wishes or best interests, if wishes are unknown.
- Act diligently and in good faith
- Foster the person's independence
- Choose the least restrictive and intrusive course of action
- Encourage the person to participate in decision-making to the extent they are able
- Foster regular personal contact between the person and family members/friends
- Consult from time to time with supportive family and friends who provide personal care for the person

Additional Resources:

Powers of Attorney Booklet (Ministry of Attorney General) – includes templates for Powers of Attorney for Personal Care and Property documents

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf>

Health Care Consent Act

<https://www.ontario.ca/laws/statute/96h02>

Substitute Decisions Act

<https://www.ontario.ca/laws/statute/92s30>

A Guide to the Substitute Decisions Act (Queen's Printer)

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/pgtsda.pdf>

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