

New Brunswick

Enduring Powers of Attorney Act, 2019

Mental Health Act, 1973



What documents can I use for Advance Care Planning and what can I include in them?

You can use an **Enduring Power of Attorney for Personal Care** to:

- Name one or more Attorneys (and alternate Attorneys) who may make decisions about your personal care, in the event you cannot make those decisions on your own;
- Express your instructions regarding decisions relating to your personal care (including but not limited to health care decisions)
- Share general statements about your beliefs, values and wishes; and/or
- State who should be notified when your Attorney begins to act on your behalf.

You can also use a **Health Care Directive** to:

- Give instructions to health care providers, with respect to health care decisions to be made in the event of incapacity



What if I have completed documents outside of New Brunswick before moving to New Brunswick?

A document made outside of New Brunswick is deemed to be a valid **Enduring Power of Attorney for Personal Care**, if it meets all three of the following criteria:

- The document gives another person(s) the authority to act in relation to personal care;
- The person(s) to whom the authority is given may exercise the authority when you (i.e. the Grantor) lacks capacity; and
- The document is valid according to the law(s) in the place where it was made.



When can I prepare an Enduring Power of Attorney for Personal Care?

You can make an Enduring Power of Attorney for Personal Care as long as:

- You are 19 years of age or older; and
- You have legal capacity to make an Enduring Power of Attorney for Personal Care (i.e. it is not determined that you lack capacity).



How do I prepare an Enduring Power of Attorney for Personal Care and/or a Health Care Directive?

An **Enduring Power of Attorney for Personal Care** is valid if it meets all of the following criteria:

- It must be in writing;
- It must be signed and dated by you (i.e. the Grantor) or, *if you are physically unable to sign*, it may be signed and dated on your behalf, by an (adult) person (who is not the attorney, spouse, common-law partner or child of the Attorney), acting at your direction and in your presence; and
- It must be signed and dated by you (or on your behalf) in the presence of:
 - » A lawyer who is a practising member of the Law Society of New Brunswick (and be accompanied by the lawyer's declaration); or
 - » Two (2) witnesses, both of whom are 19 years of age or older and are not the spouse, common-law partner or child of the Attorney (and be signed by both witnesses)

A **Health Care Directive** must be in writing but is not required to be in any particular form.

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**When will my Enduring Power of Attorney for Personal Care be used?**

An Enduring Power of Attorney for Personal Care and/or a Health Care Directive is used if and when you lose capacity, and only for so long as you continue to lack capacity.

**What does it mean to have capacity to make decisions about my personal care?**

You have capacity to make a decisions about your personal care if:

- You understand the information that is relevant to decisions that have to be made; and
- You appreciate the reasonably foreseeable consequences of the decisions

A person is presumed to have capacity unless it is determined otherwise.

**How are decisions made about my personal matters if I do not have capacity to make my own decisions?**

If you have named an Attorney in an **Enduring Power of Attorney for Personal Care**, the named Attorney(s) may make decisions about your personal care.

If you have made a **Health Care Directive**, your health care providers may follow the Health Care Directive if it is relevant and specific to the health care you are receiving.

If you have **both** an Enduring Power of Attorney for Personal Care and a Health Care Directive and there is an inconsistency between the provisions of the two documents, the most recent document will apply.

If you have not named an Attorney in Enduring Power of Attorney for Personal Care, someone may be chosen from a default list of nearest relatives, for the purposes of substitute consent to medical treatment that is not routine clinical medical treatment or other psychiatric treatment. The default list of nearest relatives is based on hospital policy.

**Who can I choose as my Attorney?**

You should choose an Attorney who is:

- 19 years of age or older; and
- Available, willing and capable of making decisions about your personal care.

The following persons *cannot* act as your Attorney:

- A person who has been convicted of an offence involving dishonesty, *unless* the Enduring Power of Attorney for Personal Care states that you are aware of the conviction; or
- A person who provides health care services or support services to you (i.e. the grantor) for compensation, unless the person is a spouse, common-law partner or relative.

If you name an Attorney that is not 19 years of age or older, they can only act when they reach 19 years of age.

**What decisions can my Attorney make?**

In an Enduring Power of Attorney for Personal Care, you can give your Attorney authority with respect to all matters or specified matters relating to your personal care.

- Personal care means any matters relating to your well-being, including your *health care*, diet, clothing, accommodations, support services, education, employment, recreational and social activities.
- Health care decisions include consent, refusal, or withdrawal of consent to any therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose (including course of treatment).

When making a decision on your behalf, your Attorney(s) must consult with you (if it is reasonable to do so), and:

- Make the decision in accordance with any relevant instructions given by you (the Grantor) when you had capacity (including instructions left in your Enduring Power of Attorney for Personal Care).
- In the absence of any instructions, your Attorney must make the decision in accordance with your current wishes (if they are reasonable).

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- If they are unable to determine what decision you would make, your Attorney must make the decision that they believe is in your best interest.
- If your wishes cannot be determined or are unreasonable, your Attorney must make the decision that they believe you would make if you had capacity to make the decision, taking into consideration your values and beliefs.



What is my Attorney *not* able to do?

Your Attorney does not have the authority to:

- Do anything that is prohibited by law or omit to do anything required by law

Unless specified in the Enduring Power of Attorney, your Attorney cannot:

- Delegate their authority to another person; or
- Be compensated for acting as Attorney (but is entitled to be reimbursed for reasonable expenses incurred).



Who is on the default list of nearest relatives?

If you have not named an Attorney in an Enduring Power of Attorney for Personal Care, or if your Attorney is unable or unwilling to act/continue to act, health care providers may refer to a default list of nearest relatives, in order to identify someone to provide substitute consent for non-routine treatment. The list is based on Hospital Policy.

Where do I go for more information about Advance Care Planning?

Public Legal Education and Information Service of New Brunswick:

Powers of Attorney: www.legal-info-legale.nb.ca/en/powers_of_attorney

New Brunswick Legal Aid Services Commission:

Public Trustee Services: www.legalaid-aidejuridique-nb.ca/public-trustee-services/getting-help/

