

POWERS OF ATTORNEY FOR PERSONAL CARE

What is a Power of Attorney for Personal Care

A power of attorney is a legal document in which you give someone the right to act on your behalf. In order to be effective a power of attorney must be properly drawn up, executed and witnessed. You can make two types of powers of attorney in Ontario, a power of attorney for property, and a power of attorney for personal care.

A power of attorney for personal care allows someone to make decisions on your behalf regarding your personal care, which includes health care and medical treatment, diet, housing, clothing, hygiene, and safety.

Your Attorney for Personal Care

The person who acts on your behalf using the authority of a power of attorney for personal care is called your attorney for personal care, or sometimes just your attorney. This is not to be confused with a lawyer, sometimes also called an attorney.

Who Can Be an Attorney for Personal Care

Anyone who is over the age of 16 years and is mentally capable can be an attorney for personal care. However, a person who provides you with paid health care or residential, social, training or support services (such as your doctor, home worker or landlord) cannot act as your attorney for personal care, unless they are also your spouse, partner or relative.

You can name two or more people to act as your attorneys for personal care, and you can specify that they make decisions jointly or allow them to make decisions independently. You can also name the Public Guardian and Trustee as your attorney for personal care, if you obtain their prior written consent to the appointment.

When a Power of Attorney for Personal Care Becomes Effective

You are incapable of making a decision regarding personal care if you are not able to understand information that is relevant to making a decision regarding your health care, nutrition, shelter, clothing, hygiene or safety, or are not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision regarding these matters.

Decisions regarding health and medical treatments, admission to a long-term care facility, and personal assistance services (such as help with bathing or eating) while you are in a long-term care facility, can only be made on your behalf by your attorney for personal care after a doctor or other evaluator determines that you are incapable of making decisions regarding such matters.

All other personal care decisions can be made on your behalf by your attorney for personal care when your attorney has reasonable grounds to believe that you are incapable of making these decisions.

You can be capable of making decisions regarding certain aspects of your personal care but be incapable of making decisions regarding other aspects of your personal care.

Why Have a Power of Attorney for Personal Care

Many people believe that if they are incapacitated, their families will be able to step in and make decisions, but this is not always true. Under Ontario law, a spouse or partner, child or parent, brother or sister, or other relative (in this order of importance) can make decisions on your behalf regarding health and medical treatments, admission to a long-term care facility, and your need for personal assistance services (such as bathing and eating) while you are in a long-term care facility, without being appointed as your attorney for personal care, but there are no statutory provisions allowing them to make decisions on your behalf regarding other aspects of your personal care. If decisions regarding aspects of your personal care other than those listed above need to be made for you, and you do not have a power of attorney for personal care, a court application to appoint someone to make these decisions may be necessary.

Making a power of attorney for personal care will ensure that the person you want to make decisions regarding your personal care has the right and power to do so.

If you have specific wishes regarding your personal care, for example, if you do not want certain medical treatments if you become seriously ill, you can specify such wishes in your power of attorney for personal care and know that these wishes will be respected. You can also specify when your attorney for personal care can start making decisions on your behalf, and how this will be determined.

Finally, you can appoint a substitute attorney for personal care, who can act on your behalf if your primary attorney for personal care is unable or unwilling to act on your behalf when the time comes.

This memorandum is not intended to be legal advice, but rather to assist you in understanding powers of attorney for personal care. If you have specific questions, please feel free to consult us at 416-361-3231 or by email at mail@odonohue.ca.

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