



Public Legal Education
and Information Service
of New Brunswick

Powers of Attorney for Personal Care



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization. Its goal is to provide New Brunswickers with information on the law.

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This pamphlet does not contain a complete statement of the law in this area. Laws change from time to time. For advice on your legal situation, you should consult a lawyer.

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Powers of Attorney for Personal Care

What is a power of attorney for personal care?

The purpose of this booklet is to explain what a **power of attorney for personal care** is, what are some of the advantages of having one, and how to set one up.

What is a power of attorney?

A power of attorney is a written document. In it you give someone the authority to act for you in relation to your property, financial affairs and/or personal care.

Who are the parties to a power of attorney?

The person who **gives** the power of attorney is called the **donor** or the **principal**. The person who **receives** the power is called the **attorney, donee** or **agent**.

What is a power of attorney for personal care?

It is a power of attorney in which a donor names another person(s) to make some or all personal care decisions on his or her behalf. An amendment to New Brunswick's **Infirm Persons Act** in 2000 made it possible to create a **power of attorney for personal care** in this province.

Who can give a power of attorney for personal care?

Any mentally competent person at least 19 years old can give a power of attorney.

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To whom can I give a power of attorney?

You can give a power of attorney to any person who is mentally competent. However, some people may be reluctant to deal with a minor. You may wish to use an attorney at least 19 years old. You should name someone who understands and acknowledges your personal care wishes.

What are some reasons to have a power of attorney for personal care?

When you are no longer able to make your own decisions, a power of attorney for personal care can allow the attorney to make decisions about things like:

- health care
- consent to medical treatment
- nutrition
- shelter
- clothing
- personal safety

What are the advantages of a power of attorney for personal care?

- It can avoid the delay, inconvenience and costs of going to court. If you become incapacitated or mentally incompetent and you do not have a power of attorney for personal care, it may be necessary for someone, usually a family member, to apply to the court to be appointed to make personal care decisions on your behalf. This can cause disputes in your family.
- You can choose the person you wish to become the attorney. If the court is asked to appoint an official or person to make your personal care decisions, it may not be someone that you would have chosen. The person appointed by the court may not know about your personal wishes.

Do I need to have separate powers of attorney to deal with financial matters and personal care decisions?

No. You can create two separate powers of attorney if you wish. Or, you can create one power of attorney that deals with both your financial matters and personal care. Either way, you can appoint the same person to handle both your personal and financial matters, or you can name different persons to handle each.

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When does a power of attorney for personal care take effect?

Generally, a power of attorney for personal care takes effect when you (the donor) are unable to participate in the decision-making process. You can set out in the power of attorney the circumstances under which the attorney would begin to make personal care decisions on your behalf. For example, you can state whether or not you wish to have a mental competency assessment before the attorney could act on your behalf.

Can I give the attorney specific directions about my personal care?

Yes, you may give the attorney specific instructions such as the medical procedures that you want, or do not want, if you are terminally ill. Or you can give general directions that empower the attorney to make all personal care decisions in your best interests.

Your attorney would begin to make decisions on your behalf when you are no longer able. At that time, the attorney would have the authority to make the personal care decisions that you have directed him or her to make.

Is anything special required to create a power of attorney for personal care?

Yes. You must sign a power of attorney for personal care in front of an adult witness. Also, the document must be created under seal. You should consider using a lawyer.

What if I already had a power of attorney dealing with personal care matters before the amendments to the Infirm Persons Act?

If you had a power of attorney dealing with personal care matters, it would be valid as long as it was properly prepared according to the **Act**.

If I include personal care and property matters in the same power of attorney, what will happen if I become mentally incompetent?

If your power of attorney does not include an enduring clause, the sections dealing with your property matters would end when you become incompetent. However, mental incompetency does not affect the authority of the attorney for personal care.

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What is the difference between a power of attorney for personal care and a living will?

In a power of attorney for personal care you can appoint somebody to make a wide range of personal care decisions on your behalf when you are not able to do so yourself. In New Brunswick a power of attorney for personal care is provided for by legislation.

In a living will you set out detailed written instructions about your health care treatment, generally in anticipation of a terminal illness. Living wills are also referred to as *advance medical directives*. New Brunswick does not have any legislation dealing with living wills. This means that New Brunswick does not recognize a living will as a legal document. However, a living will does give your doctor and family a strong statement of your wishes and if the health care professionals know of your specific written instructions, they may follow your wishes.