

Form 4

Health practitioner's certificate of mental incapacity for enduring power of attorney in relation to property

*Sections 97(5) and 99D, Protection of Personal and Property Rights Act 1988*

I, *[full name, address, registration number of health practitioner]*, a health practitioner, certify that—

- 1 I am a health practitioner registered, or deemed to be registered, with *[specify responsible registration authority appointed by or under the [Health Practitioners Competence Assurance Act 2003](#)]* as a practitioner of *[state particular health profession]*.
- 2 For this paragraph—
  - • *select Statement A if the donor has not specified in the enduring power of attorney that his or her mental capacity be assessed by a health practitioner with a specified scope of practice; or*
  - • *select Statement B if the donor has specified in the enduring power of attorney that his or her mental capacity be assessed by a health practitioner with a specified scope of practice.*

*Statement A*

My scope of practice includes the assessment of a person's mental capacity.

*Statement B*

My scope of practice—

- • includes the assessment of a person's mental capacity; and
- • is the same as that specified in the enduring power of attorney.
- 3 On *[date]* I examined/assessed\* *[full name of donor]*, the donor of the enduring power of attorney in relation to property dated *[date enduring power of attorney was signed]*, to ascertain his/her\* mental capacity.

\*Select one.

- 4 In my opinion, the donor is mentally incapable because he/she\* is not wholly competent to manage his/her\* own affairs in relation to his/her\* property.

\*Select one.

- 5 The reasons for my opinion are: *[specify]*.

Date:

Signature of health practitioner:

# Guidelines for health practitioners completing certificate of mental incapacity (enduring power of attorney in relation to property)

Please note—

- this form must be used if the certificate of mental incapacity is issued in New Zealand;
- if the certificate of mental incapacity is issued outside New Zealand, the certificate must be in a form acceptable to the competent authority of the country concerned;
- these guidelines are intended to help health practitioners complete the certificate of mental incapacity for an enduring power of attorney in relation to property.

## 1 Purpose of assessment and certificate

- The purpose of the health practitioner certificate is to record the opinion of an appropriate health practitioner about the mental capacity of a person (a **donor**) who has set up an enduring power of attorney (**EPA**) under the [Protection of Personal and Property Rights Act 1988](#) (the **Act**).

An attorney appointed under an EPA in relation to property cannot act unless—

- • a relevant health practitioner has certified that the donor is mentally incapable; or
- • a Family Court has determined that the donor is mentally incapable; or
- • the EPA was set up in a form that authorised the attorney to act immediately after it was signed.

## 2 Who can complete the assessment and certificate?

- The certificate of mental incapacity must be completed by a relevant health practitioner. A **relevant health practitioner** is a person—
  - • who is, or is deemed to be, registered with a registration authority appointed by or under the [Health Practitioners Competence Assurance Act 2003](#) as a practitioner of a particular health profession; and
  - • whose scope of practice enables him or her to assess a person's mental capacity; and
  - • who is competent to undertake an assessment of that kind.

In the case of a certificate of mental incapacity issued outside New Zealand, a relevant health practitioner is a person registered as a medical practitioner by the competent authority of the country concerned and whose scope of practice includes the assessment of a person's mental capacity.

A donor may specify in an enduring power of attorney that an assessment of his or her mental capacity be undertaken by a health practitioner with a specified scope of practice (for example, a medical practitioner registered with a general scope of practice, or a nurse whose registered scope of practice is nurse practitioner). Provided that health practitioners who have that scope of practice are able to assess a person's mental capacity, then only a health practitioner with the scope of practice specified by the donor and who is

competent to do so may assess the donor's mental capacity and complete the certificate.

### 3 Definition of mentally incapable

- The donor of an enduring power of attorney is **mentally incapable** in relation to property if the donor is not wholly competent to manage his or her own affairs in relation to his or her property.

#### *Presumption of competence*

In assessing a donor's mental capacity, a health practitioner must have regard to the presumption of competence in [section 93B](#) of the Act. This states that, for the purposes of [Part 9](#) of the Act, every person is presumed, until the contrary is shown, to be competent to manage his or her own affairs in relation to his or her property.

#### *Imprudent behaviour*

A person must not be presumed to lack competence just because the person manages or intends to manage his or her own affairs in relation to his or her property in a way that a person exercising ordinary prudence would not do in the same circumstances.

#### *People subject to Mental Health (Compulsory Assessment and Treatment) Act 1992*

A person must not be presumed to lack competence just because that person is subject to compulsory treatment or has special patient status under the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#).

### 4 Reasons for opinion

- Although there is no prescribed method of assessing incapacity for the purpose of this certificate, it is important that the practitioner records the reasons for his or her opinion in case it is challenged.

### 5 Further certificates

- Where a donor has given written notice to an attorney that the attorney's power is suspended, the attorney cannot act under the enduring power of attorney unless a further certificate is obtained from a relevant health practitioner, or the Court determines that the donor is mentally incapable.

### 6 Request for certificate, payment, etc

- An assessment for the purpose of issuing a certificate can be requested—
  - by the attorney (or the successor attorney) for the donor's property; or
  - by any other person who is seeking the assessment and certificate for the purpose of authorising the attorney to act and who intends to pass the certificate on to the attorney.

The health practitioner should provide the completed certificate to the person who requests the assessment and certificate.

It is the responsibility of the person who requests the assessment and certificate to arrange payment for the assessment and certificate. This payment is recoverable by the person who requests the assessment and certificate as a debt from the donor's property.

## **7 More information about enduring powers of attorney**

- You can find more information about enduring powers of attorney on the New Zealand Law Society website ([www.lawsociety.org.nz](http://www.lawsociety.org.nz)) and on the Ministry of Justice website ([www.justice.govt.nz](http://www.justice.govt.nz)).

The law on enduring powers of attorney is set out in [Part 9](#) of the Protection of Personal and Property Rights Act 1988. A copy of this Act can be found on the New Zealand legislation website at [www.legislation.govt.nz](http://www.legislation.govt.nz).

## Form 5

### Health practitioner's certificate of mental incapacity for enduring power of attorney in relation to personal care and welfare

*Sections 98(3) and 99D, Protection of Personal and Property Rights Act 1988*

I, [full name, address, registration number of health practitioner], a health practitioner, certify that—

- 1 I am a health practitioner registered, or deemed to be registered, with [specify responsible registration authority appointed by or under the [Health Practitioners Competence Assurance Act 2003](#)] as a practitioner of [state particular health profession].
- 2 For this paragraph—
  - • select Statement A if the donor has not specified in the enduring power of attorney that his or her mental capacity be assessed by a health practitioner with a specified scope of practice; or
  - • select Statement B if the donor has specified in the enduring power of attorney that his or her mental capacity be assessed by a health practitioner with a specified scope of practice.

#### *Statement A*

My scope of practice includes the assessment of a person's mental capacity.

#### *Statement B*

My scope of practice—

- • includes the assessment of a person's mental capacity; and
- • is the same as that specified in the enduring power of attorney.
- 3 On [date] I examined/assessed\* [full name of donor], the donor of the enduring power of attorney in relation to personal care and welfare dated [date enduring power of attorney was signed], to ascertain his/her\* mental capacity.

\*Select one.

- 4 For this paragraph select the statement(s) that apply.

#### *Statement A*

In my opinion, the donor is mentally incapable as he/she\* lacks the capacity to make a decision about [specify matter relating to donor's personal care and welfare in respect of which a decision is being made, or is proposed to be made].

\*Select one.

#### *Statement B*

In my opinion, the donor is mentally incapable as he/she\* lacks the capacity to understand the nature of decisions about [specify matter relating to donor's personal care and welfare in respect of which a decision is being made, or is proposed to be made].

\*Select one.

#### *Statement C*

In my opinion, the donor is mentally incapable as he/she\* lacks the capacity to foresee the consequences of decisions about [specify matter relating to

*donor's personal care and welfare in respect of which a decision is being made, or is proposed to be made*], or to foresee the consequences of any failure to make such decisions.

\*Select one.

*Statement D*

In my opinion, the donor is mentally incapable as he/she\* lacks the capacity to communicate decisions about [*specify matter relating to donor's personal care and welfare in respect of which a decision is being made, or is proposed to be made*].

\*Select one.

- 5 For this paragraph select the statement that applies.

*Statement A*

The donor's mental incapacity is due to a health condition that is likely to continue for a period of [*number*] of months/years\*.

\*Select one.

*Statement B*

The donor's mental incapacity is due to a health condition that is likely to continue indefinitely.

*Statement C*

The donor's mental incapacity is due to a health condition the duration of which I am unable to determine.

- 6 The reasons for my opinion are: [*specify*].

Date:

Signature of health practitioner:

# Guidelines for health practitioners completing certificate of mental incapacity (enduring power of attorney in relation to personal care and welfare)

Please note—

- this form must be used if the certificate of mental incapacity is issued in New Zealand;
- if the certificate of mental incapacity is issued outside New Zealand, the certificate must be in a form acceptable to the competent authority of the country concerned;
- these guidelines are intended to help health practitioners complete the certificate of mental incapacity for an enduring power of attorney in relation to personal care and welfare.

## 1 Purpose of assessment and certificate

- The purpose of the health practitioner certificate is to record the opinion of an appropriate health practitioner about the mental capacity of a person (a **donor**) who has set up an enduring power of attorney (**EPA**) under the [Protection of Personal and Property Rights Act 1988](#) (the **Act**).

An attorney appointed under an EPA in relation to personal care and welfare cannot act on a significant matter relating to the donor's personal care and welfare (*see* paragraph 4 below) unless a relevant health practitioner has certified that the donor is mentally incapable, or a Family Court determines that the donor is mentally incapable.

## 2 Who can complete the assessment and certificate?

- The certificate of mental incapacity must be completed by a relevant health practitioner. A **relevant health practitioner** is a person—
  - who is, or is deemed to be, registered with a registration authority appointed by or under the [Health Practitioners Competence Assurance Act 2003](#) as a practitioner of a particular health profession; and
  - whose scope of practice enables him or her to assess a person's mental capacity; and
  - who is competent to undertake an assessment of that kind.

In the case of a certificate of mental incapacity issued outside New Zealand, a relevant health practitioner is a person registered as a medical practitioner by the competent authority of the country concerned and whose scope of practice includes the assessment of a person's mental capacity.

A donor may specify in an enduring power of attorney that an assessment of his or her mental capacity be undertaken by a health practitioner with a specified scope of practice (for example, a medical practitioner registered with a general scope of practice, or a nurse whose registered scope of practice is nurse practitioner). Provided that health practitioners who have that scope of practice are able to assess a person's mental capacity, then only a health practitioner with the scope of practice specified by the donor and who is competent to do so may assess the donor's mental capacity and complete the certificate.

### 3 Definition of mentally incapable

- The donor of an enduring power of attorney is **mentally incapable** in relation to personal care and welfare if the donor—
  - (a) lacks the capacity—
    - (i) to make a decision about a matter relating to his or her personal care and welfare; or
    - (ii) to understand the nature of decisions about matters relating to his or her personal care and welfare; or
    - (iii) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; or
  - (b) lacks the capacity to communicate decisions about matters relating to his or her personal care and welfare.

A donor's mental capacity is determined at the time a decision about a significant personal care and welfare matter is being, or is proposed to be, made, and is determined in relation to that matter.

#### *Presumption of competence*

In assessing a donor's mental capacity, a health practitioner must have regard to the presumption of competence in [section 93B](#) of the Act. This states that, for the purposes of [Part 9](#) of the Act, every person is presumed, until the contrary, is shown to have the capacity—

- (a) to understand the nature of decisions about matters relating to his or her personal care and welfare; and
- (b) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; and
- (c) to communicate decisions about such matters.

#### *Imprudent behaviour*

A person must not be presumed to lack mental capacity just because that person makes or intends to make a decision about his or her personal care and welfare that a person exercising ordinary prudence would not make in the same circumstances.

#### *People subject to Mental Health (Compulsory Assessment and Treatment) Act 1992*

A person must not be presumed to lack mental capacity just because that person is subject to compulsory treatment or has special patient status under the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#).

### 4 Definition of significant matter

- The term a **significant matter related to the donor's personal care and welfare** means a matter that has, or is likely to have, a significant effect on the health, well-being, or enjoyment of life of the donor (for example, a permanent change in the donor's residence, entering residential care, or undergoing a major medical procedure). Note that the health practitioner completing the certificate is not certifying that the matter is a significant matter. The attorney is able to act in relation to personal care and welfare matters that are not significant ones if the attorney believes on reasonable grounds that the donor is mentally incapable. The attorney requires the

certificate in order to act in relation to a significant matter. The health practitioner can therefore rely on the attorney's judgement that the matter is a significant one.

The assessment and certificate relates to a particular significant matter. If and when another significant matter arises, a further assessment and certificate may be required (*see* paragraph 6 below).

## **5 Reasons for opinion**

- Although there is no prescribed method of assessing incapacity for the purpose of this certificate, it is important that the practitioner records the reasons for his or her opinion in case it is challenged.

## **6 Further certificates**

- Further certificates will be required whenever a decision needs to be made about a significant matter relating to the donor's personal care and welfare. However, if the health practitioner certifies that the donor is mentally incapable because of a health condition that is likely to continue for a period stated in the certificate, no further certificates will be required during the stated period unless the donor suspends the attorney's power to act. If the health practitioner certifies that the donor is mentally incapable because of a health condition that is likely to continue indefinitely, no further certificates as to the donor's incapacity are required unless the donor suspends the attorney's power to act.

Where a donor has given written notice to an attorney that the attorney's power is suspended, the attorney cannot act under the enduring power of attorney unless a further certificate is obtained from a relevant health practitioner, or the Court determines that the donor is mentally incapable.

## **7 Request for certificate, payment, etc**

- An assessment for the purpose of issuing a certificate can be requested by—
  - the attorney (or the successor attorney) for the donor's personal care and welfare; or
  - by any other person who is seeking the assessment and certificate for the purpose of authorising the attorney to act and who intends to pass the certificate on to the attorney.

The health practitioner should provide the completed certificate to the person who requests the assessment and certificate.

It is the responsibility of the person who requests the assessment and certificate to arrange payment for the assessment and certificate. This payment is recoverable by the person who requests the assessment and certificate as a debt from the donor's property.

## **8 More information about enduring powers of attorney**

- You can find more information about enduring powers of attorney on the New Zealand Law Society website ([www.lawsociety.org.nz](http://www.lawsociety.org.nz)) and on the Ministry of Justice website ([www.justice.govt.nz](http://www.justice.govt.nz)).

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