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Tuesday, 5 February 2019

James Lucas Harper
44 Park Street
Belconnen, ACT 2617
Australia

Your Medical Power of Attorney – Enduring Power of Guardianship

Dear James,

Thank you for building your Australian Capital Territory (“**ACT**”) Medical Power of Attorney (also known as a Enduring Power of Guardianship).

When you are satisfied that the document is according to your instructions please print out two copies and arrange for all parties to sign and date all copies of the document.

What is a Medical Power of Attorney?

This document is designed to empower you to decide how your future personal, lifestyle and healthcare decisions are made, if you become unable to make those decisions yourself.

Wouldn't my spouse make my decisions for me?

The Medical Power of Attorney gives greater rights. If you have a partner, children or others you choose to make your decisions, then you should name them as your guardian. If you do not, name them instead.

When does the document come into effect?

This document **ONLY** comes into effect when you have lost capacity for yourself such as being in an accident. There are no other uses. It can be used while you are still able to make reasonable decisions. It is covered by this document.

Each state has it's own Medical Power of Attorney. They are generally called Enduring Power of Guardianship. This is a sample document of the Australian Capital Territory Enduring Power of Guardianship. When you select another jurisdiction, the document will be build for that state. We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

Get a Doctor's Certificate to say you are of sound mind.

Get a Doctor's Certificate to say you are of sound mind. You must have full legal capacity to sign this document. Ask your doctor to give you a written note to say you are of sound mind. Keep the Doctor's note with the Medical Power of Attorney. Without a Doctor's note your Medical Power of Attorney may not be valid.

What decisions can the person receiving my Medical Power of Attorney make?

The person or persons you have appointed can make care decisions.

Some of these decisions can include:

- where you live, whether permanently or temporarily
- who you live with
- whether you work and under what circumstances
- consent to or refuse any medical, surgical or dental treatment or other health care – this includes palliative care and life-sustaining measures
- what education and training you receive

Build this legal document at legalconsolidated.com.au – telephone us if you have any concern, we can help you complete the questions.

Adjunct Professor, Dr Brett Davies - Partner

What are the duties of my Attorney?

Your Attorney must exercise their power to protect your interests. This is to ensure that you enjoy a good standard of living. Your Attorney preserves accurate records and accounts of all dealings and transactions made under the POA.

Does my Medical Power of Attorney work outside the ACT?

This Medical Power of Attorney only works in ACT. If there are assets in another State, then build and sign Medical Power of Attorneys for that State as well.

Who can witness my POA?

The 2 witnesses must be present in the room when you sign your Medical Power of Attorney. The steps are:

1. Find someone that is authorised to witness affidavits (see the attached list). They are your first witness.
2. Next, find your second witness. This can be a person who is: over 18 years of age, of sound mind and (if possible) have an address in Australia. The witness can't be related to you or have any chance of being related to you (eg it can't be your son's girlfriend because your son could marry that person and then you would be related to the witness). Obviously, the witness can't be one of your Attorneys. The best witnesses are 'strangers' or the 'next door neighbour'.
3. Attorneys you have appointed must leave the room.
4. Get your 2 witnesses and yourselves in a room with at least 2 identical blue pens. Lock all the doors so that none of you leave the room. If you or either of your witnesses leave the room during the signing process then tear up the POA and print out another copy of the POA and start the POA signing process again.
5. If you or either of your witnesses need reading glasses, then don't sign the POA until you or your witnesses put on those glasses.

6. With a blue pen you sign your POAs. After you have signed your POA both witnesses (WITH THE SAME BLUE PEN) sign the POA. If you signed with different coloured pens (eg a dark blue and a light blue) then tear up the POAs. Print out new POAs and start the process again.
7. Date the POA the date the POA is signed.
8. If you have issues reading English, then let me know. An interpreter may be required.

Who needs a copy of my Medical Power of Attorney?

Don't let the original Medical Power of Attorney out of your hands. Ask whoever needs it to take a copy. You should provide a copy to:

- your guardian(s),
- your care providers, and
- to your medical practitioner.

They can then "certify" (confirm it is a true copy) the document and keep the copy on file. Get your original document back.

Can the person receiving my Medical Power of Attorney override my wishes?

By law it can only be used for your best interests. It can't be used to benefit anyone else. It is in place to protect you. If you lose confidence in your guardian then you need to revoke the Medical Power of Attorney, if you are still of sound mind.

Can I revoke this document?

While you are of sound mind you can revoke this document at any time. If you are of unsound mind then, obviously, you can't make any such decisions. While you are of unsound mind you can't revoke a legal document such as this one. Your document is revoked at death. Conversely, your Will only takes effect at death. The court system can also revoke this document.

How do I revoke this document?

Firstly, tear up as many copies (originals and photocopies) as you can get your hands on.

Build a Revocation of a Power of Attorney and letter at our website. You then complete and sign the letter and send it registered mail to your Guardian telling them that the Power of Attorney is revoked and ask for all copies to be posted back to you (if any). It is then illegal if they use your Medical Power of Attorney.

What happens if I separate, divorce or get married?

Changing your status does not affect the Medical Power of Attorney.

Can the person receiving my Medical Power of Attorney resign?

Yes they can, but only if you are still of sound mind. If you are of unsound mind then it is too late for them to resign.

If I can further clarify the above, you are welcome to contact me on my direct telephone number 1800 141 612.

Yours sincerely,

A handwritten signature in black ink that reads "Brett Davies". The signature is written in a cursive style with a horizontal line underneath.

Adjunct Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
Legal Consolidated Barristers & Solicitors

Persons who may witness statutory declarations

Who can witness a Australian Capital Territory (“ACT”) Power of Attorney?

Two witnesses are required. Both must be 18 years of age or older. One must be someone authorised to witness statutory declarations. Under *Statutory Declarations Act 1959*, the list of persons who may witness statutory declarations includes:

<ol style="list-style-type: none"> 1. a person who is currently licensed or registered under a law to practise in one of the following occupations <ol style="list-style-type: none"> a. Chiropractor b. Dentist c. Legal practitioner d. Medical practitioner e. Nurse f. Optometrist g. Patent attorney h. Pharmacist i. Physiotherapist j. Psychologist k. Trade marks attorney l. Veterinary surgeon 	<ol style="list-style-type: none"> 2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
<ol style="list-style-type: none"> 3. person who is in the following list; <ol style="list-style-type: none"> a. Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public; b. Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955); c. Bailiff; d. Bank officer with 5 or more continuous years of service; e. Building society officer with 5 or more years of continuous service; f. Chief executive officer of a Commonwealth court; g. Clerk of a court; h. Commissioner for Affidavits; i. Commissioner for Declarations; j. Credit union officer with 5 or more years of continuous service ; k. Employee of the Australian Trade Commission who is: <ul style="list-style-type: none"> • in a country or place outside Australia; AND • authorised under paragraph 3 (d) of the <i>Consular Fees Act 1955</i>; AND • exercising his or her function in that place; l. Employee of the Commonwealth who is: <ul style="list-style-type: none"> • in a country or place outside Australia; AND • authorised under paragraph 3 (c) of the <i>Consular Fees Act 1955</i>; AND • exercising his or her function in that place; m. Fellow of the National Tax Accountants' Association; n. Finance company officer with 5 or more years of continuous service; o. Holder of a statutory office not specified in another item in this list; p. Judge of a court; q. Justice of the Peace; r. Magistrate; s. Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961; t. Master of a court; u. Member of Chartered Secretaries Australia; v. Member of Engineers Australia, other than at the grade of student; w. Member of the Association of Taxation and Management Accountants; x. Member of the Australian Defence Force who is: <ul style="list-style-type: none"> • an officer; OR • a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; OR • a warrant officer within the meaning of that Act; y. Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants; z. Member of Parliament of the Commonwealth; aa. Member of Parliament of a State; bb. Member of a Territory legislature; cc. Member of a local government authority of a State or Territory; dd. Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961; ee. Notary public 	

ENDURING POWER OF ATTORNEY

Powers of Attorney Act 2006

1) APPOINTOR AND ATTORNEY

I,

Appointer (Principal)	James Lucas Harper
	44 Park Street, Belconnen, Australian Capital Territory (ACT) 2617 Australia

appoint the following as my attorneys:

Attorney	Simone Trey Powers
	2 Green Street Narrabundah Australian Capital Territory (ACT) 2604 Australia

AND

Attorney	Greg Flower Pittard
	10 Simon Place Kambah Australian Capital Territory (ACT) 2902 Australia

2) MULTIPLE ATTORNEYS

I appoint my attorneys to act:

- together
- separately

If this option Initial

3) AUTHORITY TO SOMEONE ELSE

My attorneys must not authorise anyone else to exercise my attorneys' powers

4) FUNCTIONS

I authorise my attorneys to do, on my behalf, anything that I can lawfully do

- personal care matters initial here [.....]
- health care matters initial here [.....]

5) DIRECTIONS, LIMITATIONS AND CONDITIONS

Not Applicable. James Lucas Harper Initial here [.....]

An Enduring Power of Guardianship – otherwise more commonly known as a 'Medical Power of Attorney' allows a person to appoint someone to make their personal, lifestyle and medical decisions.

The Medical Power of Attorney is about your body, lifestyle and medical choices. All states have a Medical POA. Choose which state you live in. If you live in two states, then you need two Medical POAs, one for each state.

6) REFUSAL OR WITHDRAWAL OF MEDICAL TREATMENT

Not Applicable. James Lucas Harper Initial here [.....]

7) COMMENCEMENT

My attorney's/attorneys' power comes into effect only when I become a person with impaired decision-making capacity.

8) MARRIAGE, CIVIL UNION OR CIVIL PARTNERSHIP

Not Applicable. James Lucas Harper Initial here [.....]

9) STATEMENT OF UNDERSTANDING AND SIGNATURE

I fully understand that, by making this enduring power of attorney, I authorise my attorneys to act on my behalf in accordance with the terms set out in this enduring power of attorney. I also understand the nature and effect of making an enduring power of attorney as set out in the Schedule 2 to this document.

<i>Signature of James Lucas Harper</i>	
<i>Date</i>	

10) CERTIFICATE OF WITNESSES

(Note 1: only one witness can be a relative of the principal or of a person appointed as an attorney under this enduring power of attorney.

Note 2: witness 1 must be a person authorised to witness the signing of

Note 3: the witnesses must sign in the presence of each other and the principal

WITNESS 1

I, witness 1 described below:

- (i) am an adult;
- (ii) am authorised to witness the signing of a statutory declaration;
- (iii) am not appointed as attorney under this enduring power of attorney; and
- (iv) did not sign this enduring power of attorney for the principal.

I certify that:

- a) the principal signed this enduring power of attorney voluntarily in my presence; and
- b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 2 to this document.

Signature of witness 1	
Name	
Qualification	
Address	
Date	

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Adjunct Professor, Dr Brett Davies- Partner

How you witness the document is set out in our Letter of Advice which comes with the document you are building.

WITNESS 2

I, witness 2 described below:

- (i) am an adult;
- (ii) am not appointed as attorney under this enduring power of attorney; and
- (iii) did not sign this enduring power of attorney for the principal.

I certify that:

- a) the principal signed this enduring power of attorney voluntarily in my presence; and

- b) at the time the principal signed this enduring power of attorney, the principal appeared to me to understand the nature and effect of making it as set out in Schedule 2 to this enduring power of attorney.

Signature of witness 2	
Name	
Qualification	
Address	
Date	

11) ACCEPTANCE BY ATTORNEY OF APPOINTMENT

I have read this enduring power of attorney which appoints me as attorney for the principal. I understand that by signing this acceptance of my appointment, I undertake the responsibility of exercising the powers which I have been given, including the responsibilities and obligations set out in Schedule 2 to this document.

I accept my appointment as attorney

Name of Attorney	Simone Trey Powers
Signature of Attorney 1	
Date	

AND

Name of Attorney	Greg Flower Pittard
Signature of Attorney 2	
Date	

SCHEDULE 1: TO THE ENDURING POWER OF ATTORNEY

OBLIGATIONS OF THE ATTORNEY UNDER AN ENDURING POWER OF ATTORNEY

PART 1

Your obligations as attorney include the following:

1. Unless expressly authorised by this enduring power of attorney, you must avoid transactions which result, or may result, in conflict between your duty to the principal; and either the interests of you, or your relative, business associate or close friend of the attorney; or another duty you may have.
2. You must notify other attorneys when you resign as attorney and anyone who has had dealings with you, a court or guardianship tribunal matter that has effect on your duties as attorney. *You can appoint 1, 2 or 3 people as your enduring guardians. However, it is best practice to appoint only two people.*
3. If the principal's decision-making capacity is impaired:
 - a. you must, to the maximum extent possible, comply with Schedule 1 to the *Powers of Attorney Act 2006* (an extract of which is included in this document). *They are required to act together, separately or together and separately depending on what the appointor chooses.*
 - b. if you are an attorney for property matters, you must:
 - i. keep accurate records and accounts of all dealings and transactions made under this power of attorney, and
 - ii. keep the principal's property separate from yours, unless the property is owned jointly by you and the principal;
 - c. if you are an attorney for medical research matters, you must make decisions about medical research matters in accordance with part 4.3A of the *Powers of Attorney Act 2006*; and
 - d. you must not ask for medical treatment *to be withheld or withdrawn from the principal, unless you have been expressly authorised to consent to the withholding or withdrawal of treatment under this enduring power of attorney, and you have consulted a doctor about the nature of the principal's illness, any alternative forms of treatment available, and the consequences of the principal remaining untreated. Your decision should be on the basis of what the principal would ask for if the principal could make a rational judgment, and were to give serious consideration to the principal's own health and wellbeing.*

(In the event that the principal's decision-making capacity becomes impaired, you have the right to all the information that the principal would have been entitled to if the principal had decision-making capacity. If you are in doubt about your responsibilities as attorney you may seek advice or assistance from Public Trustee and Guardian.)

PART 2

General principles for enduring powers of attorney

(Schedule 1 to the *Powers of Attorney Act 2006* (section 44))

1.1 Access to family members and relatives

- (1) An individual's wish and need to have access to family members and relatives, and for them to have access to the individual, must be recognised and taken into account.
- (2) An individual's wish to involve family members and relatives in decisions affecting the individual's life, property, health and finance must be recognised and taken into account.

1.2 Human worth and dignity

An individual with impaired decision-making capacity has an inherent right to respect for the individual's human worth and dignity as an individual.

1.3 Role as a member of society

- (1) An individual has a right to be a valued member of society.
- (2) Because of this right, it is important to encourage and support the individual to perform social roles valued in society.

1.4 Participation in community life

It is important to encourage and support an individual to live a life in the general community, and to take part in activities enjoyed by the community.

1.5 Quality of life

An individual's need and wish to have a reasonable quality of life must be recognised and taken into account.

1.6 Participation in decision-making

- (1) An individual has a right to take part in decisions affecting the individual's life to the greatest extent practicable.
- (2) Without limiting subsection (1), an individual also has a right to take part in decisions affecting the individual's property and finance to the greatest extent practicable.
- (3) The right of the individual to make the individual's own decisions must be preserved to the greatest extent practicable.

Examples of preserving individual's right to make own decisions

- 1 *The individual must be given any necessary support, and access to any necessary information, to allow the individual to take part in decisions affecting the individual's life to the greatest extent practicable.*
- 2 *To the greatest extent practicable, the individual's views and wishes must be sought and taken into account before exercising power in relation to the individual.*
- 3 *Power in relation to the individual must be exercised in the way that is least restrictive of the individual's rights.*

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If an individual's wishes or needs cannot be expressed by the individual, the person exercising power in relation to the individual must try to work out, as far as possible, from the individual's past actions, what the individual's wishes and needs would be if the individual could express them and take those wishes and needs into account.
- (5) However, a person exercising a function in relation to an individual must do so in a way consistent with the individual's proper care and protection.
- (6) An individual's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

1.7 Individual taken to be able to make decisions

An individual must not be treated as unable to take part in making a decision only because the individual makes unwise decisions.

1.8 Maintenance of existing supportive relationships

The importance of maintaining an individual's existing supportive relationships must be taken into account.

1.9 Maintenance of environment and values

(1) The importance of maintaining an individual's cultural and linguistic environment, and set of values (including any religious beliefs) must be taken into account.

(2) For an individual who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the individual's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values (including Aboriginal tradition or Island custom).

(3) In this section:

Aboriginal tradition—

(a) means the body of traditions, observances, customs and beliefs of an individual, or a community or group of Aboriginal people; and

(b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

Island custom, known in the Torres Strait as A

(a) means the body of customs, traditions, observances and beliefs of an individual, or a community or group of Torres Strait Islanders; and

(b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

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1.10 Confidentiality

An individual's right to confidentiality of information about the individual must be respected.

1.11 Health care and medical research

(1) An individual is entitled to have decisions about a health care matter or a medical research matter made by an attorney—

(a) in the way least restrictive of the individual's rights and freedom of action; and

(b) only if the exercise of power—

(i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the individual's health and wellbeing; or

(ii) is, in all the circumstances, in the individual's best interests.

(2) An individual's wishes in relation to a health care matter or a medical research matter, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter or a medical research matter.

SCHEDULE 2: TO THE ENDURING POWER OF ATTORNEY

UNDERSTANDING NATURE AND EFFECT OF MAKING POWERS OF ATTORNEY

(Powers of Attorney Act 2006, section 17)

Understanding the nature and effect of making a power of attorney includes understanding:

1. that the principal may, in the power of attorney, state or limit the power to be given to an attorney;
2. that the principal may, in the power of attorney, instruct the attorney about the exercise of the power;
3. when the power under the power of attorney can be exercised;
4. that, if the power under a power of attorney can be exercised for a matter, the attorney has the power to make decisions in relation to, and will have full control over, the matter subject to terms or information about exercising the power that are included in the power of attorney;
5. that the principal may revoke the power of attorney at any time the principal is capable of making the power of attorney;
6. for enduring powers of attorney only—
 - a. that the power given by the principal continues even if the principal becomes a person with impaired decision-making capacity; and
 - b. that, at any time the principal is not capable of revoking the power of attorney, the principal cannot effectively oversee the use of the power.

(A person has decision-making capacity if the person can make decisions in relation to the person's affairs and understands the nature and effect of the decisions (see Powers of Attorney Act 2006, s 9 (1).)