

Representation Agreement with Section 7 Standard Powers

"My mom may make a Representation Agreement even though she has dementia and cannot make a Power of Attorney."



Please also read the fact sheet *Representation Agreement Overview*.

This fact sheet is about a Representation Agreement with Section 7 standard powers made on or after September 1, 2011. For information on documents made before this date, see the Nidus fact sheet on *Amendments and Representation Agreements made before Sept. 1st*.

What is a Representation Agreement with Section 7 standard powers?

A Representation Agreement with Section 7 standard powers is a legal document for personal planning that is available to adults who need help today because their mental capability/competency may be in question.

This type of Agreement is also a document of choice for other situations. For example, adults who:

- Need immediate help with their financial affairs and/or health matters due to 'physical' incapability.
- Want to use a Representation Agreement to cover financial and legal affairs instead of an Enduring Power of Attorney to plan for their future.
- Want to apply to the Choice in Supports for Independent Living (CSIL) Program (and need to cover at least financial affairs and personal care).

Having a Representation Agreement does not remove decision making rights from the adult. A Representation Agreement also does not replace the informal support that families and friends provide; it gives legal status to the adult's personal supporters when informal help is not enough.

What areas of authority can be included under Section 7 standard powers?

There are four areas of authority that you can include in a Representation Agreement with Section 7 standard powers. These four areas are



Minor and major health care, which includes medications, tests, surgery, any treatment requiring a general anaesthetic, dental care, end-of-life comfort care.



Personal care, such as, living arrangements, diet, exercise, taking part in activities, personal safety issues.



Legal affairs, which include obtaining legal services and instructing a lawyer, settling an insurance claim, going to small claims court.



Routine management of financial affairs, such as banking, government benefits, Revenue Canada, managing investments.

Who may make an Agreement under Section 7?

To make a Representation Agreement with Section 7 standard powers you must be an adult, 19 years of age or older. As previously mentioned, this type of Agreement can apply to many situations. The examples in this fact sheet focus on adults who need help today.

The Representation Agreement Act says that an adult may make a Representation Agreement with Section 7 standard powers even if they cannot manage their own affairs or make decisions independently or sign a traditional contract.

For example, Mei is a senior who has been diagnosed with dementia. She needs help with most daily living activities and is being assessed for facility care. Her sons help her with meals, taking her medications, and following directions from her physiotherapist. Mei's sons can provide her with informal support but, they require legal authority to help Mei for certain situations. For instance, they noticed that Mei was forgetting to pay her bills; the bank would not speak to Mei's sons about setting up direct bill payment from her account unless they had legal authority.

The bank mentioned the Enduring Power of Attorney as a legal document that gives authority for financial affairs. Mei had made an Enduring Power of Attorney with the help of a notary public 10 years ago, naming only her husband, but he died last year. When Mei's sons brought her to the same notary public, they were told that he did not find that she could meet the capability requirements for making an Enduring Power of Attorney.

Fortunately, the Representation Agreement Act looks at capability differently than the Power of Attorney Act does (for the Enduring Power of Attorney).

Before the Representation Agreement Act was in place, the only way Mei's sons could get legal authority to help her was to apply to court to become Mei's committee/guardian. In some cases, the Public Trustee—a government official—would become the committee.

If someone became committee for Mei, she would lose her civil rights and be considered a non-person under the law. With a Representation Agreement, Mei maintains her rights and her person-hood status, while receiving the help she needs. A Representation Agreement is a legal alternative to adult guardianship.

The Representation Agreement Act also says the way an adult communicates is not a factor in determining whether the adult may make a Representation Agreement. The law recognizes that some people do not communicate in a traditional way. Some adults communicate non-verbally using gestures, body language, and/or behaviours.

Who IS making a Representation Agreement with Section 7 standard powers?

Some other common examples of people who make Representation Agreements with Section 7 standard powers include: Shaun, a young adult with a developmental disability who communicates by vocalizing and gesturing. Shaun's parents want to help Shaun set up a bank account and a Registered Disability Savings Plan but they will need legal authority to do this. Shaun could make a Representation Agreement and appoint his parents as representatives, who would then have the legal authority to assist him when he needs it.

Cherry, a woman whose speech and memory has been affected by a brain injury, has the Public Guardian and Trustee managing her financial and legal affairs but nothing in place for health and personal care. Cherry may make a Representation Agreement and appoint her sister to help her with health care and personal care decisions, such as decisions about rehabilitation, occupational therapy, and where to live.

Kam recently suffered a stroke and has no legal documents in place. He needs someone to arrange payment of the care facility bills from his bank account. With his nephew's help, Kam may make a Representation Agreement that includes authority for routine management of financial affairs, which would give Kam's nephew the authority to pay Kam's bills from his bank account.

What makes a Representation Agreement with Section 7 standard powers unique?

As you have learned, the Representation Agreement Act supports a different view of capability compared to the capability requirements of the Power of Attorney Act or Wills Act. This means Mei, Shaun, Kam and Cherry may be considered incapable of making a Will or a Power of Attorney, yet be capable of making a Representation Agreement with standard powers.

In addition, unless your representative is also your spouse, an extra safeguard is required if the Agreement includes authority for the routine management of financial affairs. The safeguard requirement can be met by either appointing two or more representatives to act jointly for finances or by appointing someone as a monitor. The monitor is a particularly special role. The monitor is there to ensure your representative is following their duties. The law says that no one can prevent the monitor from having contact with the adult. See the Nidus fact sheet on the *Role of the Monitor*.

What is not covered under Section 7?

An Agreement under Section 7 does not include certain financial authorities such as dealing with real estate, arranging for the temporary financial care of minor children, or acting on the adult's behalf as a director or officer of a company. These can be covered using an Enduring Power of Attorney; see the Nidus fact sheet on *Enduring Power of Attorney*.

There are certain non-standard broader health and personal care powers not covered under Section 7. For example, the absolute authority to refuse life support. Instead, under standard powers, refusing life support would require the consensus of the medical team and your family members.

Examples of other broader powers are: consent to treatments with no known benefit, consent to physical restraints, and making arrangements for the temporary care and education of your minor children. Non-standard broader powers can be covered using a Representation Agreement with Section 9 broader powers. For details see the Nidus fact sheet on *Section 9 Broader Powers*.

How do I make an Agreement under Section 7?

You are not required to consult a legal professional to make a Representation Agreement. Nidus has produced basic forms for a Representation Agreement Section 7. Nidus can also provide a customized form if the basic forms do not fit. See *Making RA7*

Enduring Power of Attorney

Planning for Financial and Legal Affairs



"We thought we had everything covered with our Will and joint ownership."

This fact sheet is about an Enduring Power of Attorney made on or after September 1, 2011. For information on documents made before this date, see the Nidus fact sheet on *Amendments and Enduring Power of Attorney made before Sept. 1st*.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is a legal document under the Power of Attorney Act. It is a way to appoint someone to act on your behalf for financial and legal affairs in case you become mentally incapable. It can also be effective when you are capable.

For example, John and Mary want to plan for the future in case they need help managing their financial and legal affairs due to an illness, injury or disability that affects their mental OR physical capability.

A 'general' EPA covers all financial and legal affairs. An EPA may be 'limited' to dealing with specific matters, such as managing a specific bank account. It may also be limited to a specific time period, such as the dates John and Mary are away.

What is a Bank Power of Attorney?

Banks and Credit Unions may provide EPA forms you can use to cover financial affairs specific to that institution. This may be convenient for banking matters, but is not sufficient for other kinds of matters. For example, if Mary signs a form at her financial institution, it will let John deal with her account, but not with Canada Revenue Agency if he needs to help Mary with her taxes.

What is not covered by an EPA?

An EPA only covers financial and legal affairs, *not* health care or personal care matters. A Representation Agreement is the *only* way in B.C. to appoint someone to act on your behalf for health care and personal care matters. See the Nidus fact sheet on *Representation Agreements*.

Who can make an EPA?

You may make an EPA if you are an adult (19 years of age or older), unless you are incapable according to the requirements of the Power of Attorney Act.

The Power of Attorney Act says that until it is shown otherwise, you are presumed capable of understanding the nature and consequences of making an EPA. The Act also says that the way you communicate is not a factor in determining whether you are incapable of making an EPA.

The Power of Attorney Act says you must understand the nature and consequences of all of the following six factors, or you are considered incapable of making an EPA:

1. the property you have and its approximate value;
2. the obligations you owe to your dependants;
3. that your attorney will be able to do on your behalf anything in respect of property that you could do if capable, except make a Will, subject to the conditions and restrictions set out in the EPA;
4. that, unless the attorney manages your business and property prudently, their value may decline;
5. that the attorney might misuse their authority; and
6. that you may, if capable, revoke the EPA.

For example, if due to dementia, Mary is not able to recall or understand what she owns (bank accounts, investments, vehicles, real estate, etc.) she would be considered incapable of making an EPA. However, she may make a Representation Agreement under Section 7 to cover routine finances and legal affairs because the Representation Agreement Act has a different requirement for incapability. See the Nidus fact sheet on *Representation Agreement with Section 7 Standard Powers*.

When should I make an EPA?

It is important to make an EPA before a crisis happens. This could be when you turn 19 years old, the age of majority in B.C. – when parental rights end. As an adult, no one, not even a spouse, has legal authority over your financial or legal affairs.

Owning real estate or a motor vehicle jointly with your spouse or anyone else is an estate planning tool for when an owner dies. It does not apply if an owner becomes incapable. For example, if John and Mary are named jointly on a motor home, and Mary becomes mentally incapable, John would not have the legal authority to sell their motor home on his own. If Mary made an EPA or a Representation Agreement with routine finances, John would have legal authority to sell the motor home.

Who should I appoint in my EPA?

There are two roles within an Enduring Power of Attorney: 1) attorney, and 2) alternate attorney. The term 'attorney' does not refer to a lawyer. People usually appoint a spouse, family member or friend. The people you appoint do not have to live in B.C. It is common for spouses to appoint each other, but they will want to appoint someone else as a back-up. For example, John and Mary can appoint each other, but they may also want to each appoint their daughter Anna as an alternate.

The law has some restrictions. You cannot appoint: 1) someone who is compensated to provide health or personal care services to you (e.g. a paid caregiver); or 2) an employee of a facility where you live if the facility provides health or personal care services to you. These restrictions do not apply if the person is your spouse, parent or child.

Sometimes people appoint a Trust Company, a Credit Union, or a professional. These parties will charge a fee for their services and special wording is required in the EPA to cover this.

What are the duties of an attorney?

An attorney must act honestly and in good faith. They must act within the authority given in the EPA and follow any directions you included. There are a number of other responsibilities required by law. See the Nidus fact sheet on the *Role of an Attorney*.

Does my attorney get paid?

Unless you state it in your EPA, an attorney must not receive any personal benefit from acting as your attorney; this includes taking a fee or borrowing your money. An attorney can be reimbursed for reasonable out-of-pocket expenses. They must keep records and receipts of any claims.

When does an EPA take effect?

Enduring Powers of Attorney are called 'enduring' because they are effective even when you are mentally incapable. You can also say that your EPA will be in effect while you are capable. This does not prevent you from continuing to manage your own affairs for as long as you are capable.

Why would you want it to be in effect while you are capable? It is important to realize that mental incapability is not 'all or nothing.' It can be gradual, such as with dementia. There are other conditions where you are capable, but may want help because an illness or injury is affecting your energy or concentration. You may also need assistance because you are physically unable to manage your financial affairs such as when you are on vacation or in hospital with a broken leg.

To be effective, an EPA must also meet specific signing and witnessing requirements. You, the adult, must sign the EPA, and your signature must be witnessed. Only one witness is required if the witness is a notary public or lawyer. Each attorney you appoint must also sign the EPA before they can act, and their signature must be witnessed. You and the attorney do not have to sign at the same time.

When does an EPA end?

An Enduring Power of Attorney ends when you die; then your Will takes over. It also ends if you revoke it or if someone is appointed to be your legal guardian (i.e. Committee of Estate) through the B.C. Supreme Court or if the Public Guardian and Trustee takes over your affairs. See the Nidus fact sheet on *Lifespan of an Enduring Power of Attorney*.

Can I revoke my EPA?

Yes. If you are capable of making an EPA, you are capable of revoking it. Making a new EPA does *not* automatically cancel your previous one. The Power of Attorney Act outlines specific requirements for revoking. For more details, see the Nidus fact sheet on *Revoking an Enduring Power of Attorney*.

How do I make an EPA?

Most people will go to a notary public or a lawyer to make an EPA. To find a lawyer, call the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919. To locate a notary public near you, contact the Society of Notaries Public of B.C. at 604.681.4516 or 1.800.663.0343 or search at www.notaries.bc.ca.

See *Making EPA* under Self-Help for tips to help you prepare for the meeting.

Representation Agreement with Section 9 Broader Powers

"Making a Representation Agreement is about quality-of-life to the end-of-life. It gives us peace of mind."



Please also read the fact sheet *Representation Agreement Overview*.

This fact sheet is about a Representation Agreement with Section 9 broader powers made on or after September 1, 2011. For information on documents made before this date, see the Nidus fact sheet on *Amendments and Representation Agreements made before Sept. 1st*.

What is a Representation Agreement with Section 9 broader powers?

A Representation Agreement with Section 9 broader powers is a legal document for personal planning is available to adults who want to plan for their future in case they need assistance making health care and/or personal care decisions due to illness, injury or disability.

For example, Geraldine was recently diagnosed with Alzheimer Disease and is concerned about her ability to make decisions and manage her affairs in the future. She recently learned about Representation Agreements through her support group and decided to make one with Section 9 broader powers.

Geraldine decided to appoint her husband, Hank, and daughter, Sara, as her representatives. Geraldine feels better about her future, knowing that she has put legally enforceable arrangements in place so the people she trusts and who know her best will be able to help her manage her affairs and, if necessary, make decisions on her behalf.

What areas of authority are covered under Section 9 broader powers?

An Agreement with Section 9 broader powers is the most comprehensive legal document for health and personal care matters. It can also cover the special legal authority to make arrangements for the care and education of minor children or other dependants if you are incapable.

In order to make an Agreement with Section 9 broader powers, you must meet the specific capability requirement; this is discussed on the next page.

A Representation Agreement Section 9 can cover:

- **Minor and major health care**, which includes decisions about medications, tests, surgery, any treatment requiring a general anaesthetic, dental and eye care, radiation and chemotherapy, dialysis, end-of-life comfort care, and taking part in an approved medical research program; and
- **Personal care**, such as, living arrangements, diet, dress, exercise, taking part in activities, obtaining licenses and permits, and personal safety issues.

These health and personal care authorities are also included under Section 7 standard powers, which is a type of Representation Agreement that adults may make if they are incapable of meeting the requirements for making an Agreement under Section 9.

There are **broader or non-standard authorities** you can add under Section 9, depending on your circumstances and your planning goals. For example, you can authorize your representative to refuse health care necessary to preserve life (life support) and/or consent to less common medical procedures, which are described in the Regulation that accompanies health care consent legislation. These procedures are:

- electroconvulsive 'shock' therapy (ECT),
- abortion,
- experimental treatments with no known benefit,
- psychosurgery,
- removal of tissue for implantation or medical education or research,
- participation in a health care or medical research program not approved in B.C., or
- any treatment, procedure, or therapy that uses negative stimuli to produce a change in behavior (for example, exposing you to your fear).

Giving your representative broader authorities does not mean they will act on them; rather, it ensures that someone you trust will have legal authority to carry out your wishes if you are incapable of giving or refusing consent.

You can use Section 9 to authorize your representative to consent to health care you wanted when well but which you later refuse because, for example, an illness has affected your perception and judgment. This is sometimes called the **Ulysses clause**, a term used by people who suffer from episodic mental illnesses. This authority may also be relevant to other conditions such as dementia.

You can also authorize your representative to physically restrain, move, or manage you, or authorize others to do so when necessary, despite your objections. This is often used along with the Ulysses clause as a proactive measure to prevent involuntary commitment under the Mental Health Act, which would override your representative's authority with respect to treatment and care of the 'mental disorder.'

For example, Geraldine includes all of the above-mentioned authorities in her Agreement because she knows how important it is for her quality-of-life that someone who knows her well has the legal authority to make all types of decisions, especially if she has to go into a facility, but may object at the time.

If you want allow your representative to make a decision that might interfere with your religious practices, you must state this in your Agreement.

What is not covered in a Section 9 Agreement?

A Representation Agreement with Section 9 broader powers cannot authorize your representative to do anything that is prohibited by law, such as euthanasia or assisted suicide. You also cannot authorize your representative to consent to consultation, treatment or care related to your sterilization for non-therapeutic purposes.

Who may make a Section 9 Agreement?

To make an Agreement with Section 9 broader powers, you must be 19 years of age or older (an adult). You must also be capable of understanding the types of authorities under Section 9 and the consequences of giving these authorities to a representative.

If someone does not have the understanding required for making a Representation Agreement with Section 9 broader powers, they may make a Representation Agreement with Section 7 standard powers to cover most health care and personal care matters. See the Nidus fact sheet on *Section 7 Standard Powers*.

Some common examples of people who make a Representation Agreement with Section 9 broader powers include Michael, a man who has an inoperable brain tumour. Michael made a Representation Agreement with Section 9 broader powers and appointed his friend, Gustav, as his representative.

Although Michael took part in experimental therapy at an earlier stage of his illness, he has decided he does not want further treatments, however promising, and he wants to be sure Gustav can refuse these if he becomes mentally incapable even if the doctors believe it could extend his life.

Tammy is a single mom with sole custody of her two young sons and was recently diagnosed with breast cancer. She is about to have surgery and wants to prepare for various situations that may arise. Tammy will be leaving her sons in the care of her partner Sandra but wants to ensure that Sandra has the legal authority to look after their well-being. Tammy learned that a Representation Agreement with Section 9 broader powers can include the authority to make arrangements for the temporary care and education of an adult's minor children. Tammy decided that she would make a Representation Agreement with Section 9 broader powers and appoint Sandra as her representative. She also made an Enduring Power of Attorney in case Sandra needs to use Tammy's money to cover the financial needs of her sons.

Do I include wishes in my Representation Agreement?

You may include instructions and wishes in your Representation Agreement to guide or instruct your representative if he or she has to make a decision on your behalf. Some people might want to make an Advance Directive as well. For more details, see the Nidus fact sheet on *Advance Directive*.

How do I make a Section 9 Agreement?

You do not have to consult a legal professional to make an Agreement with Section 9 broader powers. Nidus has produced a basic form for a Section 9. Nidus can also provide a customized form if the basic form does not fit. Details are at *Making RA9*.

What do I use to cover financial and legal affairs?

A Representation Agreement with Section 9 broader does not cover financial affairs. Adults planning for the future can make a separate legal document to cover their financial and legal affairs – either an Enduring Power of Attorney OR a Representation Agreement with Section 7 routine finances.

The document you choose will depend on what coverage you need and your preferences. For example, making an Enduring Power of Attorney is important if you own real estate property, as routine financial affairs under the Representation Agreement does not include dealing with real estate.

For more details, see the Nidus fact sheet on *EPA or RA7 for Financial and Legal Affairs*.

Advance Directive

Instructions for health care matters

"When I could not get my Representation Agreement completed in time for my surgery, I used the Advance Directive to address the worst case scenario."



What is an Advance Directive?

An Advance Directive is a new legal document in British Columbia as of September 1, 2011, when the Health Care Consent and Care Facility Admission Act was amended.

An Advance Directive is written instructions about what health care you do or do not want in the future if you become incapable and a health care decision needs to be made. An Advance Directive does not appoint a person to act on your behalf.

If you made a document with instructions for health care prior to September 1, 2011, it is only recognized as an Advance Directive if it meets the legal requirements as of September 1, 2011.

An Advance Directive is voluntary. You do not have to make one. The law says that no one can require you to have an Advance Directive in order to receive services.

A word about Health Care Consent

In B.C., if you are determined incapable of giving or refusing consent for health care, a health care provider must get consent from another authority.

A representative appointed in your Representation Agreement is an example of another authority for health care consent. An Advance Directive could also act as an authority.

If there is no Representation Agreement or Advance Directive that applies to the health care decision, the health care provider will select someone to be your Temporary Substitute Decision Maker. (TSDM) See the Nidus fact sheet for more detail, go to www.nidus.ca—Information—Health Care Consent—Fact Sheet.

Who may make an Advance Directive?

You must be 19 years or older (an adult) in order to make an Advance Directive. You must also meet the capability requirements.

What are the capability requirements to make an Advance Directive?

You must be capable of understanding the type of health care your instruction deals with and the consequences of giving or refusing consent to it. You must also understand that if you make an Advance Directive and your instruction applies to the specific health care offered when you are incapable, a health care provider will only follow the instruction. They will not select someone to be a TSDM.

What does an Advance Directive cover?

An Advance Directive only applies to health care.

An Advance Directive cannot include instructions about the types of health care listed in the Health Care Consent Regulation, which are also restricted for a TSDM. See the fact sheet on Restrictions on the Authority of a Temporary Substitute Decision Maker.

How do I make an Advance Directive?

You do not need a legal professional in order to make an Advance Directive. However, there are legal requirements such as who can be a witness as well as statements you must include. These requirements are discussed on page 4.

How do I write an instruction?

The essence of an Advance Directive is the written instruction(s) giving or refusing consent to specific health care. However, the law does not provide any examples of wording to use for an effective instruction.

The law does provide some general rules:

- An instruction can only cover health care.
- You cannot write an instruction that is against the law. If you do, it is not valid and must be separated or put aside from the Advance Directive. In particular, you cannot write an instruction giving consent to something that is against the law (e.g. euthanasia). You also

cannot write an instruction refusing consent to something that is required by law (e.g. use of the Mental Health Act if you are a danger to yourself or others).

Most importantly, an instruction must be clear that it gives or refuses consent to the specific health care decision. This means it must apply to the health care that is offered at the time you are incapable.

Some tips:

- You must write your instruction while you are capable, but the instruction needs to be about the health care you think you might be offered in the future if you are determined incapable.
- Be as specific as possible about the circumstances related to a treatment or intervention. Health care is defined more broadly than a specific type of treatment. What is the purpose of the health care? What problem does it address? An instruction such as "I give consent to surgery" or "I refuse consent to surgery" is likely not specific enough. See the example below.
- Avoid wording that requires judgment about your values or quality-of-life such as "If I am no longer able to communicate with my family and friends..." or "If my quality of life is severely limited..." These statements are not specific and may be interpreted differently by different people. These are better suited for a representative (someone you appoint in a Representation Agreement) than for a health care provider who does not know you.

For example, you might write in an Advance Directive: "I refuse consent for surgery" because you are thinking that you would not want surgery to treat your terminal cancer. However, you might find yourself in need of surgery due to a broken leg or severe cut following a car accident. If you are not able to consent at the time, because you are in shock or unconscious or confused, the refusal of surgery in your Advance Directive will be difficult for the health care provider to follow. Did you mean you would not want your broken leg set and you would risk amputation if the leg is not repaired and gets infected? There is not enough information in your Advance Directive to determine whether your instruction applies to that specific health care decision or the circumstance you intended. When a health care provider cannot tell if your Advance Directive applies, they will set it aside and look to another authority.

Does the health care provider have to follow my Advance Directive?

A health care provider will consider a number of issues with regard to following an Advance Directive. They first have to be of the opinion that you need health care. Then they have to determine you are incapable of consent.

The law says a health care provider *may* follow an instruction in an Advance Directive giving consent to specific health care; they *must* follow an instruction that refuses consent to specific health care.

The law also says that if treatment has been started before the health care provider locates your Advance Directive, and it includes an instruction refusing consent to the specific health care being offered, the health care provider must stop or withdraw the health care.

However, even if your Advance Directive has clear instructions, a health care provider must not follow your Advance Directive if:

- You have a Representation Agreement that covers health care, unless you included a statement in the Agreement to say otherwise.
- The instruction does not apply to the specific health care decision.
- The health care provider has evidence that your wishes, values and beliefs have significantly changed since you made the Advance Directive, unless this is accounted for in the Advance Directive.
- There have been significant changes in medical knowledge, practice or technology since you made the Advance Directive and these might substantially benefit you in relation to the health care instruction in your Advance Directive, unless you included a statement that you want your instructions followed despite any such changes.

An Advance Directive cannot address all possible health care decisions that may arise for you in the future and a health care provider could reject your instructions for one of a number of reasons. What steps can you take to make a strong plan?

A strong plan needs to be comprehensive in its authority. A Representation Agreement Section 9 can cover more health care matters than an Advance Directive and carries more authority because it gives a person or people the authority to carry out your wishes, even if a health care provider is unsure your instruction applies.

For example, an instruction such as "I refuse blood transfusions in any and all circumstances" would appear to be clear and specific. However, even though people of the Jehovah Witness faith have won the right to make this decision through various court cases, some still worry that a health care provider might be convinced by someone else that they have changed their mind and their values. In such a case, a health care provider will not follow the instruction.

Making a Representation Agreement is a way you can take the responsibility off the health care provider and put it in the hands of someone you trust - your representative. It is also a good idea to name an alternate, in case your representative is not available. You could also appoint a monitor to strengthen the Agreement and your wishes. Read more about Representation Agreement Section 9 at www.nidus.ca—Information—Representation Agreement. Also see Gwen's story at [Your News—Stories](#).

How does an Advance Directive fit with a Representation Agreement?

If you have a Representation Agreement and an Advance Directive (it does not matter which you made first), the Representation Agreement takes priority. Your representative(s) must follow any instructions or wishes you expressed verbally and/or in writing, including in an Advance Directive.

You have the option of including a statement in your Representation Agreement that a health care provider does not have to involve your representative in the specific health care decision(s) covered by your Advance Directive. This will give the Advance Directive priority.

How does an Advance Directive fit with a Living Will?

An Advance Directive is a legal document to give specific instructions about health care. A Living Will is not a legal document. Since there is no specific law for Living Wills in B.C., you can include preferences and statements about your values and beliefs, not only about health care but also about other life areas such as personal care.

Even though a Living Will has no legal effect on its own, the law says your representative (appointed in a Representation Agreement) must follow any instructions, wishes, preferences and values you express verbally or in writing such as in a Living Will.

A Living Will may also be useful to guide a TSDM, however you cannot be certain who will be selected as a TSDM when the time comes. A Representation Agreement provides comprehensive coverage as well as certainty and continuity about who may act on your behalf.

Cynthia was in the process of making a Representation Agreement Section 9 for health care and personal care. She was going to appoint her friend Albert as her representative and ask her sister to be the alternate. However, before she was able to complete her Agreement, she learned that she needed surgery to remove a benign tumour. Cynthia did not have time to get all her affairs in order before the scheduled surgery. In discussion with her surgeon, Cynthia became concerned about the possible risks, in particular the remote possibility she could end up in a coma. Cynthia asked her family doctor for help but he said that it was best to consult the surgeon as he did not know enough about the specifics. The surgeon agreed to help Cynthia write a specific instruction that she could include in an Advance Directive. Together they arrived at wording the surgeon felt able to follow if the remote possibility arose. However, the surgeon told Cynthia she should also go over the instruction with the anesthesiologist who might have a role to play if the worst case scenario should occur.

The surgery was successful and Cynthia destroyed her Advance Directive because it could only apply to the previous circumstance. She set about making a Representation Agreement to ensure any future situation could be addressed by her representatives - people she trusts and who know her.

What happens if my Advance Directive cannot be followed?

You may have a Representation Agreement that includes a statement that the health care provider does not have to get consent from your representative for matters addressed in your Advance Directive. However, if your Advance Directive cannot be followed, then the health care provider would get consent from your representative.

If a health care provider cannot follow your Advance Directive, and you do not have a Representation Agreement, they must select someone to act as your TSDM to give or refuse consent on your behalf.

What must be included in my Advance Directive?

The law says your Advance Directive must include a statement indicating you know that:

- A health care provider may not provide any health care for which you refused consent in the Advance Directive, and
- A person may not be chosen to make decisions on your behalf in respect of any health care for which you have given or refused consent in the Advance Directive.

What are the signing requirements for an Advance Directive?

If you make an Advance Directive, you and two witnesses must sign and date it in front of each other. You only need one witness if the witness is a notary public or a lawyer.

Someone may sign on your behalf if you are unable to sign/make a mark, due to physical reasons. You must still meet the capability requirements and you will have to direct someone else to sign on your behalf.

If someone signs on your behalf, they must be 19 years or older. They cannot also be a witness or someone who cannot act as a witness (see below). The signature of the person signing on your behalf must be witnessed in the same way as your signature.

Who can be a witness to an Advance Directive?

A witness to your Advance Directive must be an adult (19 years or older) who understands your type of communication, unless they receive interpretive assistance to understand.

A witness to your signature on an Advance Directive must NOT be:

- A person who provides personal care, health care or financial services to you for compensation, other than a lawyer or a member in good standing of the Society of Notaries Public of British Columbia; or
- A spouse, child, parent, employee or agent of a person listed at the first bullet above.

Are there forms for an Advance Directive?

There is no required form for an Advance Directive. The Ministry of Health has produced an optional form for an Advance Directive. They do not make it available on its own.

You can obtain the form inside the My Voice Advance Care Planning Guide

You can view the form at pages 50 and 51. To print the form, select pages 53 and 54.

Can I change or cancel my Advance Directive?

You must be capable of understanding the consequences of changing or revoking (canceling) your Advance Directive in order to do so.

You may revoke your Advance Directive by making another one and stating in the new one that you are revoking any previous Advance Directives. You can also revoke your Advance Directive by deliberately destroying it.

To make a change to your Advance Directive you must do it in writing and it must be signed and witnessed according to the same requirements for making an Advance Directive.

How do I register my Advance Directive?

You can register your Advance Directive with the Nidus Personal Planning Registry so it is available when needed. You can also register a Revocation of a previous Advance Directive and various other planning documents. For more details, go to www.nidus.ca/registry.

Where can I get more information?

New to personal planning? Read the Nidus Personal Planning Guide. Go to www.nidus.ca—Self-Help—Planning Guide.

To learn more about Representation Agreements, go to www.nidus.ca—Information—Representation Agreement—Fact Sheets.

To learn more about Health Care Consent, go to www.nidus.ca—Information—Health Care Consent.