

High Court Directions: Enduring Powers of Attorney (EPAs) and Wardship Applications

The President of the High Court issued new practice directions that came into effect in October and November 2020 relevant to doctors preparing medical affidavits / certificates / reports in relation to the registration of an Enduring Power of Attorney and in Wardship Proceedings.

While the requirements for what must be included in the above medical documents are similar in respect of both processes, there are subtle differences and we have set out the full list of requirements from each practice direction so that you can clearly see the specifics of what must be included, depending on the application.

Enduring Powers of Attorney

An EPA is a legal document used to allow a person (known as the donor) with full capacity the opportunity to plan for their future. The donor nominates a person (the attorney) to take control of their assets in the event that they lose capacity. The control assigned to the attorney can also include (or can be limited to) personal care decisions.

A registered medical practitioner is involved in the process at the execution stage where a statement is required by a doctor verifying that in their opinion the donor had the mental capacity at the time the EPA was executed to understand the effect of creating the power. A doctor will also be called on when the EPA is being registered as a medical certificate is required confirming that the donor is now incapable of managing their affairs. The EPA can only come into force when it has been registered, following an application to the High Court.

As of 16 November 2020, any certificate or medical report relied upon as a certificate, for the purposes of an application to register the EPA **must** include the following information:

1. The date, place, duration and circumstances in which the medical examination was carried out.
2. The nature and duration of any prior relationship between the medical practitioner and the respondent.
3. The nature of the examination carried out and details of the test and / or capacity tools deployed for the purpose of concluding whether the donor (the person who created the EPA) is or is becoming incapable of managing his or her affairs.
4. Whether in the opinion of the registered medical practitioner, the donor is or is becoming incapable of managing his or her affairs.
5. Where the medical practitioner is of the opinion that the donor is or is becoming incapable of managing his or her affairs he/she should state:
 - i. the nature of the respondent's illness / condition;
 - ii. the likely date of onset of that illness / condition;
 - iii. the symptoms pertaining to that illness / condition;
 - iv. the evidence relied upon in making their diagnosis; and
 - v. whether the illness/condition is permanent or likely to improve.

It is important that all of the above information is included in the certificate / medical report to ensure that it is accepted and the EPA can be registered.

Wardship Proceedings

Wardship is an application that can be made to the High Court if a person becomes mentally incapacitated, meaning that they can no longer make decisions for themselves because they have lost the ability to do so by illness or otherwise, and the only option is to apply to the High Court to make the person a Ward of Court.

In October 2020, the President of the High Court issued a direction confirming that the following information **must** be included in the affidavit and / or medical report of any registered medical practitioner whose evidence is to be relied upon in support of a Wardship petition:

1. The date, place, duration and circumstances in which the medical examination was carried out. (The examination should have been carried out within three months of the presentation of the petition).
2. The nature and duration of any prior relationship between the medical practitioner and the respondent.
3. The nature of the examination carried out and details of the test and / or capacity tools deployed for the purpose of concluding whether the respondent is or is not of unsound mind **and** incapable of managing their affairs.
4. Whether in the opinion of the registered medical practitioner, the respondent is or is not of unsound mind **and** incapable of managing their affairs.
5. Where the medical practitioner is of the opinion that the respondent is of unsound mind and incapable of managing their affairs i.e. lacks capacity, he / she should state:
 - i. the nature of the respondent's illness / condition;
 - ii. the likely date of onset of that illness / condition;
 - iii. the symptoms pertaining to that illness / condition;
 - iv. the evidence relied upon in making their diagnosis; and
 - v. whether the illness / condition is permanent or likely to improve.
6. Where a medical report is prepared containing the above information, any verifying affidavit sworn by the medical practitioner need only affirm the content of the medical report; there is no requirement to include in the verifying affidavit the specific information contained in the report.
7. Any such medical affidavit must be sworn within one month of the date on which the medical examination was carried out.

Please click [here](#) to view our factsheet on this topic or if you have any queries regarding the completion of a certificate / affidavit / report in the context of the registration of an EPA or in Wardship proceedings, please do not hesitate to contact us for specific advice.

“This article was originally published in our Medzine on 26 February 2021. The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice”.