



Steps for Witnessing - Advance Health Directives

The following is the sequence recommended specifically for witnessing Advance Health Directives, along with explanations for each of the steps. It must be remembered that, in addition to the sequence listed, you should always keep in mind all the general tips about witnessing documents discussed in chapter 4. At the end of this chapter, these steps have been outlined in a flowchart, which can be used as a “ready reckoner” when witnessing. Also, an AHD checklist developed by the QJA has been included.

1. Ensure that you are not excluded as an eligible witness.	The witnessing exclusions are as for an Enduring Power of Attorney and not a beneficiary under the principal’s will. See the table later in this chapter.
2. Satisfy yourself as to the identity of the principal and check that this is their AHD.	
3. Check that the document is in the approved form.	
4. Ask the principal whether any other eligible witness has refused to witness the document.	This may help alert you to any potential problems.
5. Before you go through the entire AHD with the principal, check that section 5 has been completed, signed, and dated by a doctor.	If this has not been done, advise the principal that you cannot witness the AHD until this has taken place.
6. Read the document with the principal. Clarify any points that have not been clearly outlined.	The principal should have completed sections 1 to 4 (and section 6 if an attorney has not already been appointed for personal/health matters).
7. Check for blank spacing and questions not answered.	These must have lines drawn through them or be completed. Large blank spaces must be Z out and initialled by both you (the JP) and the principal
8. Check the document for alterations.	These must be initialled by both the JP/C. Dec and the principal.

<p>9. Establish that the principal has the capacity to sign the document.</p>	<p>This is more than just asking if the person understands the contents of the document. This means interviewing the principal. This can be done by asking ‘open-ended’ questions covering the definition of capacity mentioned in section 41 of the <i>Powers of Attorney Act</i>. (see the advice in the Background Information section on the next page). To do this, you should explain to the principal that:</p> <p>(a) You must be satisfied that they have the capacity necessary to make the document.</p> <p>(b) To establish capacity, you, as the witness, must be satisfied that the nature and effect of the document being made is understood and that the document is being made freely and voluntarily</p> <p>(c) They are encouraged to participate in the process, and that notes will be taken.</p> <p>(d) A decision will be made about capacity at the end of the process, and if you are satisfied that capacity exists, you will witness the signing of the document. If you are not satisfied, you will not witness the document.</p> <p>(e) If they disagree with the outcome, they may seek a second opinion from a medical professional or seek a finding from a tribunal that they do have capacity to make an Advance Health Directive.</p>
<p>10. Ensure that the AHD is signed in front of you (section 7, page 11). If it has already been signed, get the principal to sign it again. Make sure that the date shown on the document is the date of signing.</p>	<p>Recording the correct date is critical, as any disputes about the operation of the document will refer to the date it was signed.</p>
<p>11. Complete and sign the Witness Certificate (section 7, page 12) by placing your signature in the appropriate place. Use a blue or black pen, affix your seal of office and insert your registration number. The seal can be used where the principal’s signature is witnessed and on the Witness Certificate.</p>	<p>Do not place the seal over your signature or sign over your seal.</p>
<p>12. Above your signature on the witness certificate, insert the total number of pages in the document, including any added pages (form 8).</p>	
<p>13. Note in your logbook the document’s details, including all the questions asked and all action taken.</p>	



Background Information – Advance Health Directives

As stated earlier in this chapter, an Advance Health Directive (AHD) is made to make your wishes known if you become seriously ill, unconscious, or unable to communicate health

care wishes in a critical health situation. The AHD comes into effect only if you are unable to make your own decisions. An Advance Health Directive for Mental Health is put in place to make your wishes known about future healthcare you would like to receive for a mental illness.

An Advance Health Directive is the recommended way for all persons to communicate their wishes about health matters in impaired capacity situations. Section 66 of the *Guardianship and Administration Act 2000* (Qld) recognises an Advance Health Directive as the most important document relating to decision making regarding health matters.

If an AHD has not been completed, or if an Enduring Power of Attorney has not been appointed for personal/health matters or if a guardian has not previously been appointed by the Office of the Public Guardian, then the statutory health attorney provisions of the *Powers of Attorney Act 1998* apply. These provisions allocate decision making powers in the following order:

1. A spouse of the adult if the relationship between the adult and the spouse is close and continuing.
2. A person who is 18 years or more and who has the care of the adult and is not a paid carer for the adult.
3. A person who is 18 years or more and is a close friend or relative of the adult and is not a paid carer for the adult.
4. The Public Guardian.

Relying on these statutory health attorney provisions can be problematic, mainly when there are family disputes about whether relationships are “close and continuing” or about who has “care of the adult.” Also, some decisions cannot be made by a statutory health attorney and require the appointment of a guardian and/or approval by the Public Guardian, for example, tissue donation, sterilisation, pregnancy termination, the use of some restrictive practices. As such, an Advance Health Directive can eliminate a lot of this confusion.

Advance Health Directives are witnessed in much the same way as Enduring Powers of Attorney, except with the following differences:

- ✓ there are additional restrictions as to who can be a witness. All the eligibility criteria that apply to an EPA apply to an AHD, however additionally, the witness cannot be a beneficiary under the principal’s will; and
- ✓ as required by section 44(6) of the *Powers of Attorney Act 1998*, a medical practitioner must have signed and dated the doctor’s certificate (found in section 5 of the AHD or section 7 of the AHD for Mental Health) stating that at the time of making the AHD, the principal appeared to have the necessary capacity to understand and make the directive.

It is important to understand that the onus on the doctor to certify capacity does not replace the onus on you to ask all the questions that should be asked to establish capacity at the time of witnessing. As with an Enduring Power of Attorney, all JPs and C. Dec should ask a range of questions to determine the existence of capacity. If any doubt exists, the doctor who has signed the document should be contacted as part of the process used in reaching your decision regarding the principal’s capacity.

The time that elapses between the certificate having been signed by the doctor and the AHD being witnessed by the JP should ideally be short. The reason for this is that capacity can change quickly. If the time between obtaining the medical practitioner's signatures and the JP is a short one, then the chance that the principal’s capacity will be challenged in a court will be reduced.