



# Refusal of Medical Treatment

Medical treatment for a current medical condition can be refused by signing a *Refusal of Treatment Certificate* (the certificate).

The certificate cannot be used to refuse palliative care: that is, reasonable pain relief, and food and water while the patient is still able to eat and drink.

## 1. Signing as a competent person

A certificate can be signed by a patient over 18 years of age who has the capacity to understand the decision they are making.

### How does it work?

- A doctor and another person sign a *Refusal of Treatment Certificate: Competent Person* form saying that the patient is refusing treatment.
- The patient can sign the form as well to verify that they are refusing treatment.
- The certificate specifies the type of treatment they wish to refuse.
- The treating doctor can only provide treatment according to the terms of the certificate.

### Requirements

The patient making the certificate must:

- have been given sufficient information about their condition

- understand this information
- understand what they are doing by refusing treatment
- make the decision voluntarily (advice can be given, but they must not be coerced).

The doctor and the other person must be satisfied that these requirements have been met.

## 2. Having an agent or guardian sign the certificate

Someone appointed to represent the patient can refuse medical treatment on the patient's behalf. This can be:

- an agent, appointed by the patient under an enduring power of attorney (medical treatment) or
- a guardian, appointed to make decisions about medical treatment by the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT).

### How does it work?

- The agent or guardian signs and has witnessed a *Refusal of Treatment Certificate: Agent or Guardian of Incompetent Person* form.
- They specify the type of treatment they wish to refuse.
- The treating doctor can only provide treatment according to the terms of the certificate.

### Requirements

To sign, an agent or guardian must:

- have been given sufficient information about the patient's condition
- understand this information
- understand what they are doing by signing the certificate
- make the decision voluntarily (advice can be given, but they must not be coerced)
- be convinced that either –
  - the medical treatment would cause the patient unreasonable distress, or
  - there are reasonable grounds for believing the patient would, after serious consideration, have considered the treatment unwarranted.

### Where to get Refusal of Treatment Certificates

Certificates can be downloaded from the Office of the Public Advocate (OPA) website [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au).

### Notification of Refusal of Treatment Certificates

Most certificates will be signed in hospitals or other institutions, but they can also be signed at home.

The doctor who witnesses the certificate, or the manager of



the hospital or institution, must give a copy of the certificate to VCAT within seven days.

### Can the patient change their mind?

If the patient is competent, the certificate can easily be cancelled at any time by the patient clearly expressing or indicating that they want to cancel it. It would be helpful if the person put this in writing, but this is not legally required.

### Safeguards

Anyone who has a genuine interest in the patient's welfare can ask VCAT to consider the actions of the agent or guardian. VCAT can suspend or cancel an enduring power of attorney (medical treatment) or a guardianship order if an agent or guardian is not acting in the patient's best interests.

If this happens, then any certificate signed by the agent or guardian is also cancelled. VCAT will send a written notice confirming this to the hospital or nursing home. If the patient is not a patient at a facility, VCAT will also notify the treating doctor.

Any beneficiary of the patient's will or estate, who uses undue influence or acts deceptively to obtain a certificate, will lose their entitlements under the patient's will.

### Medical practitioners

It is illegal for medical practitioners to continue to treat a patient if they know there is a valid certificate in force.

A medical practitioner who, in good faith, refuses to provide treatment in accordance with a certificate is protected from legal action.

### Further information

For further information visit [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au) or contact the OPA Advice Service on 1300 309 337.

The Office of the Public Advocate is an independent statutory body established by the Victorian State Government. It promotes the interests, rights and dignity of Victorians with a disability. It provides advice about advocacy, guardianship, powers of attorney, and consent to medical and dental treatment.

The Office of the Public Advocate manages three volunteer programs: the Community Visitors Program, the Independent Third Persons Program and the Community Guardianship Program. Community Visitors monitor the quality of disability services in order to safeguard the rights of vulnerable people. Independent Third Persons support people with a cognitive disability or mental illness who have contact with the police. Community Guardians are appointed guardians for Victorians with a cognitive disability who are unable to make decisions for themselves.

For more information visit: [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au) or call our Advice Service on 1300 309 337 (local call cost).