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# Doctor's action allows impaired woman to become separated from her family



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A woman's rights were breached when a doctor provided documents that enabled her partner to take over her decision-making

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A doctor's confusion over enduring powers of attorney enabled a man to take over decision-making for his partner and move her away from her family, against their wishes.

Health and disability commissioner Morag McDowell says the doctor's actions breach the woman's rights under the Code of Health and Disability Services Consumers' Rights.

The doctor says she was not aware of family discontent over who should have control of the woman's affairs, and felt pressured into providing the documents as requested by the woman's partner.

The woman, in her 70s, had been seeing the doctor at a medical centre for two years and had a history of asthma, glaucoma, hypertension and dementia. The doctor is overseas qualified and is not a vocationally registered GP.

## Ongoing care needed

On 2 February 2018, the woman arrived at the medical centre with her partner and daughter to discuss ongoing care.

The partner had been providing her care but was having his own health issues, and it was agreed she should be referred for a needs assessment to get additional help. The doctor says enduring power of attorney was not raised at the time.

Six days later, the woman underwent a Montreal Cognitive Assessment as part of the Needs Assessment and Service Coordination service referral, and scored seven out of 30 indicating severe impairment.

On 12 February, the daughter emailed her mother's partner to suggest he become joint enduring power of attorney with her brother. She told HDC her mother had begun wandering and was almost run over crossing a road, and the partner could not go after her as he had problems with his hip and knees.

The partner and daughter returned to the medical centre three days later, and the doctor completed a “Health Practitioner’s certificate of mental incapacity for enduring power of attorney in relation to property”, which is used to activate an enduring power of attorney where one has already been appointed.

The man returned that afternoon saying the incorrect form had been completed; the doctor then provided a certificate stating the woman did not have the mental capacity to make decisions on her medical care. The certificate said the woman had been “comfortable” with the care her partner had been providing.

### **Confused and pressured**

The man returned again the following day, saying the certificate was still incorrect. After calling the man's solicitor, the doctor completed a document titled "Health Practitioner's certificate of mental incapacity for EPOA", which said the woman had the mental capacity to appoint her own enduring power of attorney.

No assessment of the woman's ability to make such a decision was undertaken, and the doctor has told HDC she was "confused as to what was required". But she told HDC she believed the woman would have wanted her partner as carer as "[he] had clearly always taken good care of her and had always had her best interests at heart".

"I was not aware of family discontent. I assumed it was a formality in order for [him] to be able to get something done for [his partner]."

A letter from the solicitor to the daughter's lawyer says he requested a certificate of mental capacity because of doubts the woman understood what was happening. He writes: "The certificate was then presented to me on 16 February 2018 with the request that I do the powers of attorney on the spot which I did after speaking to [the doctor]...I only prepared and witnessed the powers of attorney in reliance on the certificate from [the doctor] and after discussing it with her..."

## **Partner takes control**

Shortly after receiving the certificate, the man had his partner sign an enduring power of attorney naming him sole attorney. Once it was activated, he moved her to a resthome, ignoring the wishes of her family, before moving her again to a more distant resthome without consulting or advising the family.

The doctor says she deeply regrets her actions and has no reservation in apologising to the woman's family: "At the time, I felt pressured and uncomfortable at what was being asked and recognised that I lacked knowledge in this area. I was unaware of how to perform a mental capacity assessment and the documentation required."

After noting the doctor has undertaken further education, Ms McDowell has recommended she arrange a peer review of the next three mental-capacity documents she signs, and write a letter of apology.



The medical centre was not found to have breached the code, but the commissioner has requested evidence of further staff training and recommended it develop an information booklet on the process, to be placed on its patient management system. She has recommended a similar resource be developed by the DHB.

#### Sidenotes

Case 20HDC00126

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