

***General Manager's Office
Letterkenny University Hospital, Letterkenny,
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23rd September 2022

Deputy Doherty,
Dáil Éireann,
Leinster House,
Kildare Street,
Dublin 2.

PQ: 46426.22 To ask the Minister for Health the policy of Letterkenny University Hospital, on establishing a patient's next of kin; and if he will make a statement on the matter. – Pearse Doherty

Dear Deputy,

The Health Service Executive has been requested to reply directly to you in the context of the above Parliamentary Question/Public Representation which you submitted to the Minister for Health for response. I have examined the matter and the following outlines the position.

In answer to your question I received this response from the National Patient Advocacy Service.

Next of Kin does not provide any legal standing or give legal authority to anyone to give or withhold consent for their medical treatment. Capacity should always be presumed and if not there are procedures to assess capacity. Pending commencement of the Assisted Decision Making (Capacity) Act 2015 the following applies and is within the HSE National Consent Policy:

6.3 Is there someone with the legal authority to make the decision on behalf of the person?

6.3.1 Who has legal authority to make the decision? No other person such as a family member, next of kin, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult person who lacks capacity to consent unless they have specific legal authority to do so. (This is not widely known, and family members, for example, may assume that they can provide or refuse consent when a person lacks capacity to make a decision).

Under current Irish law:

An attorney who has been expressly given this power may make certain personal care decisions on behalf of the person under an Enduring Power of Attorney made under the Power of Attorney Act 1996 (i.e. the current legislation governing powers of attorney). These do not include healthcare decisions.

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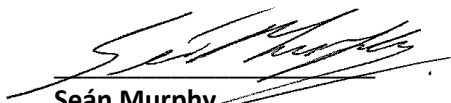
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Where a person has been admitted to Wardship, a Committee of a Ward of Court has the power to make some decisions, but generally not to consent to medical treatment (unless there is specific provision in the Court order to allow for consent to medical treatment) on behalf of the person and any request for an intervention (in the absence of any power given in a Court order) must be made to the Office of the Wards of Court (Part One, Section 6.3.2).

Although a statutory framework is not currently in force for advance healthcare directives, a person may have authorised another to make such decisions on their behalf in an advance healthcare directive which applies to the circumstances which arise. The legal effect of this is discussed in Part One, Section 7.2.

I trust this information is of assistance to you but should you have any further queries please contact me.

Yours Sincerely,



Seán Murphy
General Manager
Letterkenny General Hospital