

August 6, 2009.

To the Parliamentary Law Reform Committee

To whom it may concern,

Thank you for providing this opportunity to present my mother's case which is relevant to your inquiry, investigation and evaluation of the Power of Attorney.

Please find the following documents

- My sister, Althea Barr's letter outlining the day of my mother, Kristina Chmielowski's admission to Box Hill hospital
- My letter to the CEO of Box Hill hospital, dated 24/11/02
- A copy of my mother's Enduring Power of Attorney
- Two letters from the Public Advocate, Julian Gardner, dated 4/4/03 and 17/4/03
- A letter from the Minister for Health and Aging, through Mr. Kevin Andrews which is incorrectly dated 13/1/02 instead of 13/1/03. This was in response to my letter questioning the quality of the Accreditation process.
- My letter to the Minister for Health and Aging in response to the nursing home my mother had been in. This is dated 3/10/08.

My mother chose to ensure that what has happened to her over the past (nearly) 7 years would not happen. She nursed the elderly and was always critical of how the medical system put huge amount of resources into ensuring that old people didn't die even though they lost the capacity to do otherwise. She set the Enduring power of Attorney up so she could have a say in how she wanted to die – especially in rejecting medical treatment to prolong a vegetative life.

What has eventuated is a story of Man's inhumanity to Man. The sheer cruelty of her experience has been manifested by the fact that she has all her wits. This led to bouts of depression in the early stages of her incapacity, her frustration at not being able to communicate her pain, needs and whatever one has to have to enjoy the simple dignities of life.

I have included most of the correspondence so that you have a broader picture of the issues. Another concern is that as my mother has become a dependant, we as her adult children weren't privy to her medical records. We were completely ignored as far as any medical decision or consultation was made. At one point her medical information at the foot of her bed was removed because my sister Althea Barr, a trained nurse, who read these reports so we had some idea of what was going on, these were removed. When I wanted my mother's records I had to pay \$54 for FOI to have them released. This I think should be factored into your consideration of the Power Of Attorney. If this is going to be a valid piece of paper, then part of its 'power' should be access to the medical records.

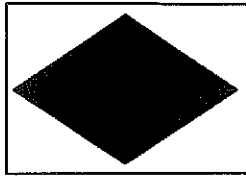
It is interesting to note that the Enduring Power of Attorney was never at any time questioned when we had to organise my mother's financial affairs. The banks were completely accepting of this paper. This enabled us to consolidate her finances to a manageable state, pay her nursing home expenses and pay for her private health insurance. So why the discrepancy?

I am questioning why I should bother with having a Power of Attorney after what my mother has gone through. There have been one or two cases brought out in the media about people committing suicide to avoid the lottery of their declining age. We usually are not surprised at those travelling overseas for their dose of Nembutal but healthy people using Nembutal? I know this is another issue but its connection however slim is about people having the right to voice what they want in their incapacity. I do not know of one person who says they cannot wait to go to a Nursing Home. I think Voluntary Euthanasia will eventually happen but it won't be for altruistic reasons (this will be the façade its legality) rather it will be for cost cutting reasons as we baby boomers age and the health care system will be unable to deal with its momentum. I know I sound very bitter but I am devastated at my mother's circumstances and the invalidity of her Enduring power of Attorney. For me if there was a validity to Power of Attorney, it would mean that the medical profession would be kept in check to their Hippocratic oath – do no harm.

Sincere regards in your inquiry,

Alex Pottage.

4 April 2003



OFFICE OF THE
PUBLIC ADVOCATE

Mr/Ms Alex Pottage

Dear Mr/Ms Pottage,

Thank you for your letter of March 30. I find the contents of your letter most distressing.

If you wish me to do so and if you authorise me I would like to pursue with the Box Hill Hospital the matters that you have raised and how it is that they allegedly administered medical treatment without consent.

It is not clear from your correspondence whether the Enduring Power of Attorney that your mother signed was an Enduring Power of Attorney for medical treatment or an Enduring Power of Attorney for financial matters. My letter to the Sunday Age to which you referred relates solely to powers for medical treatment. If the power signed by your mother was such a power then you would have had the right to sign a Refusal of Treatment Certificate. A doctor that provides treatment knowing that a valid Refusal of Treatment Certificate exists commits an offence.

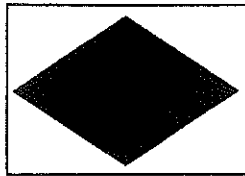
If on the other hand the Enduring Power of Attorney was one relating solely to financial matters then it would not have given you the authority to sign a Refusal of Treatment Certificate.

I should be pleased if you would advise whether you wish me to pursue the matters that you have raised with the Box Hill Hospital on your behalf.

Yours sincerely,

Julian Gardner
Public Advocate.

17 April 2003



Ms Alex Pottage

OFFICE OF THE
PUBLIC ADVOCATE

Dear Ms Pottage,

I acknowledge receipt of your letter of 14 April.

I thank you for enclosing a copy of the Power of Attorney as this makes it very much easier for me to advise you. You are correct in stating that the Power of Attorney states neither that it relates to medical nor financial matters. Unfortunately, however, you are not right in concluding that it therefore covers all types of decisions. The Power of Attorney is stated to be made "in pursuance of s114 of the *Instruments Act*". This means that it relates solely to financial matters. I appreciate that Parliament when creating this document could have been more user friendly by stating what types of powers the document covers. I note, incidentally, that I have made recommendations to the government to amend the legislation in a number of respects including changes that would clarify the effect of these documents. I expect the law to be changed.

There is a separate Power of Attorney for medical matters that is made under the *Medical Treatment Act*.

As a consequence, the hospital and its staff were not required to acknowledge the Enduring Power of Attorney as giving you authority to make decisions about medical treatment on behalf of your mother. On the other hand, it is correct that the Enduring Power of Attorney has been recognised for you to operate bank accounts, taxation matters etc.

However, this is not the end of the matter. Under the provisions of the *Guardianship and Administration Act* if a person has a disability that prevents them from providing consent for medical treatment then consent can be given to someone described as the "person responsible". If there is no-one holding an Enduring Power of Attorney or other written authority then generally the "person responsible", will be, in the absence of a spouse or domestic partner (and I note that your father is deceased) the eldest child. If you and your sister are the only children then the elder of the two of you would be the "person responsible".

I enclose for your attention a copy of a letter that I have sent to the Box Hill Hospital. If the matters set out in your letter are correct it would appear that the medical treatment was provided to your mother without consent. It would also appear that they should have been aware that you or your sister was the person responsible and that if they proposed to provide treatment contrary to your consent then they were required under the Act to give me a notice.

I will let you know when I receive a reply from the hospital.

Yours sincerely,

Julian Gardner
Public Advocate