



POWERS OF ATTORNEY

ETHICAL ISSUES IN THE CREATION & EXECUTION

OVERVIEW

- General introduction to POAs & the legislative context
- Continuing POA-Property
- POA-Personal Care
- Common Questions
- Breakout Table Top Discussion: Case Study



The background features a large blue trapezoidal shape on the right side, and a green area on the left composed of two overlapping triangles: a larger one with a fine grid pattern and a smaller, solid one in front of it.

POWERS OF ATTORNEY

INTRODUCTION & GENERAL OVERVIEW

INTRODUCTION

Guardians:

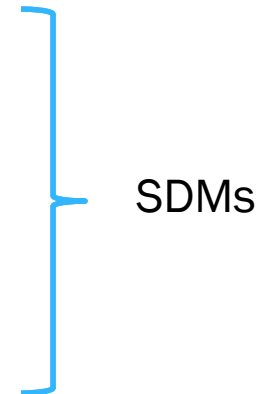
- Appointed by Court to make decisions on behalf of an incapable individual

Powers of Attorney:

- Attorneys take care of an individual's affairs when they are alive
- Appointed by grantor while capable

Wills:

- Estate Trustees implement an individual's last Will & Testament following their death



POWERS OF ATTORNEY

- Legal document that gives someone else the right to act on your behalf
- Making a POA is voluntary
- Lawyer not required → can be helpful
- No mandatory format or template → requirements for validity
- The term “attorney” refers to the person or persons you have chosen to act on your behalf.



POWERS OF ATTORNEY...

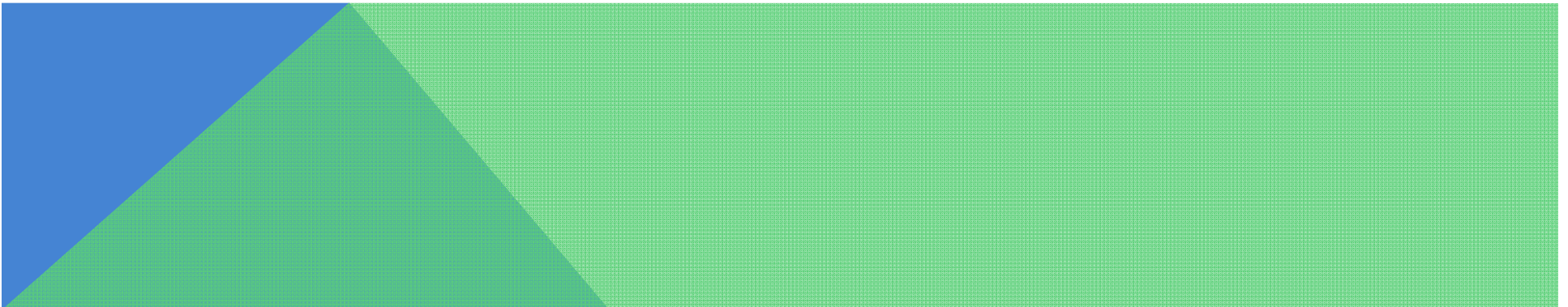
Kinds of POAs in Ontario:

- Continuing Power of Attorney for Property (CPOA-P)
 - Covers financial affairs & continues in event grantor becomes mentally incapable
- Non-Continuing Power of Attorney for Property (NCPOA-P)
 - Covers financial affairs
 - Cannot be used if grantor becomes incapable
- Power of Attorney for Personal Care (POA-PC)
 - Personal & health care decisions



LEGISLATIVE FRAMEWORK

- Substitute Decisions Act (SDA)
 - Provides for appointment of Power of Attorney(s) – by capable individuals
 - Defines types of decision Attorney(s) has authority to make
- Operates in conjunction with decision-specific legislation, including:
 - Health Care Consent Act (HCCA)
 - Mental Health Act
 - Personal Health Information Protection Act (PHIPA)
 - Long-Term Care Homes Act



LEGISLATIVE FRAMEWORK...

- Capable vs. incapable
 - Capacity depends on the decision
 - Generally, dependent on ability to:
 - (1) understand the information relevant to making the decision &
 - (2) appreciate the consequences thereof
- Who decides?
 - HCCA (s.20), PHIPA (s.23,26), LTCHA, MHA - establish specific rules re. determining capacity & identifying SDM(s)



CASE STUDY: SO SOMEONE SAYS THEY HAVE POA...

- Mr. Maurice , 82 yrs, widower, 4 children – 1 in town, 3 out of town
- Admitted to the unit early evening after being found on the kitchen floor at home by a personal support worker
- He was taken by ambulance to the hospital
- Diagnosis Hip fracture accompanied by some confusion & delirium, suspected UTI
- His neighbor (listed as a contact through the CCAC) is the first to arrive at the hospital
 - Indicates he has POA
 - Does not have a copy with him
- Who should we look to if treatment decisions need to be made?



SO SOMEONE SAYS THEY HAVE POA...

- Individuals can temporarily rely on the statement that an individual is SDM/has authority to make a decision, provided it is reasonable to do so:
 - Understand statutory framework & obligations (provider & attorney)
 - Inquire
 - Request & review supporting documentation ASAP !!! → include in pt/client chart
- What to look for:
 1. Validity of document
 2. Who is/are authorized – under what conditions?
 3. Scope of authority – does it include this decision?
 4. Wishes or directions relevant to the decision (e.g: advance directive, living will)



COMMON QUESTIONS

What happens if I lose capacity and don't have a POA?

- HCCA – hierarchy for substitute decision making
- Family or close friend can apply for guardianship
- OPGT acts only in situations where no other suitable person is available, able & willing

Is a POA the same as a Living will/advance directive?

- No
- POA legal document that names person(s) to act on your behalf
- Living will addresses your tx & personal care wishes – doesn't need to be written
- Can include tx wishes in POA-PC



COMMON QUESTIONS...

Is my POA valid outside Ontario?

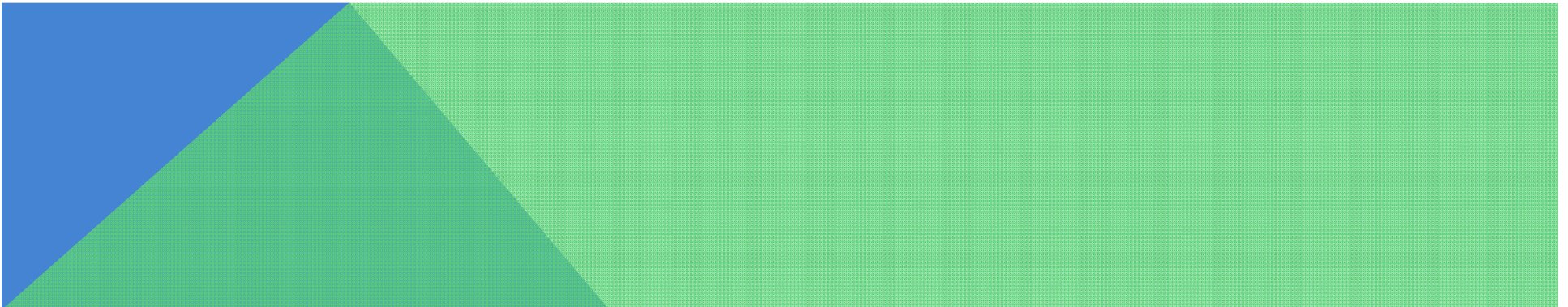
- It depends → consider checking with a lawyer if you are moving

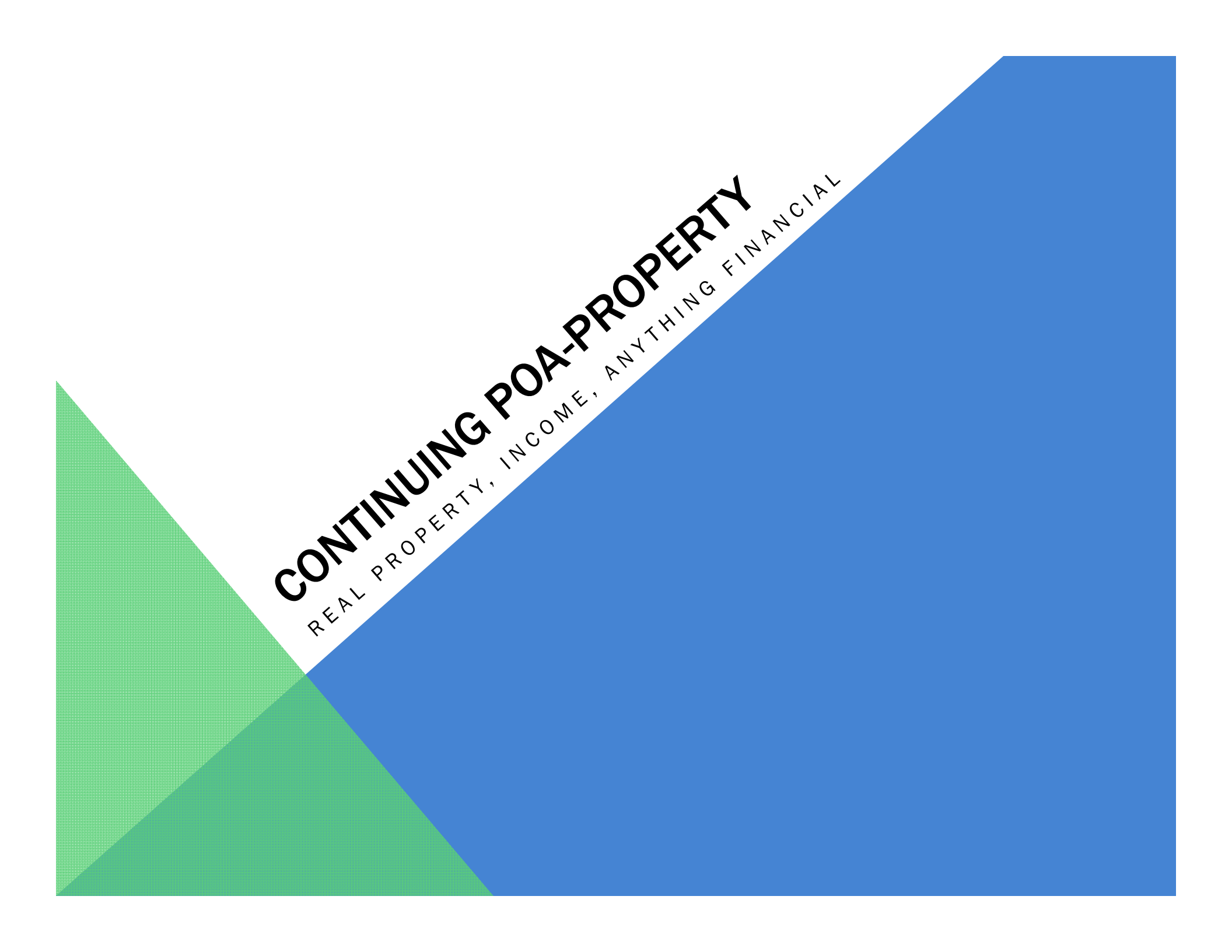
Do I have to register my POA with the government?

- No

Where can I get POA forms/templates?

- Government of Ontario – Office of Public Guardian & trustee website
- Speak up campaign website





CONTINUING POA-PROPERTY

REAL PROPERTY, INCOME, ANYTHING FINANCIAL

CONTINUING POWER OF ATTORNEY - PROPERTY

A valid a Continuing Power of Attorney for Property document *MUST*:

1. Be called a Continuing Power of Attorney for Property & allow attorney to continue acting if you become incapable
2. Name 1 or more persons (18+) to act as your attorney
3. Be 'signed' & dated - can sign with a mark
4. Be signed by 2 witnesses * (NB: POAs made before 1995 law change with 1 witness still valid)
 - 18+
 - NOT the attorney, attorney's spouse*, grantor's spouse*, grantor's child, guardian of property or person



CONTINUING POWER OF ATTORNEY - PROPERTY

To be valid the grantor of a Continuing Power of Attorney for Property *MUST*:

1. 18 +
2. Have the necessary level of mental capacity to make a CPOA-P
 - Know what property you have & approximate value
 - Aware of your obligations to financial dependents
 - Know what you are giving your attorney authority to do
 - Know that your attorney is required to account for the decisions he/she makes about your property
 - know you can revoke the POA (as long as capable)
 - Understand that if your attorney doesn't manage your property well, its value may decrease
 - Understand someone could misuse his/her authority



CONTINUING POWER OF ATTORNEY - PROPERTY

- **What is the Role of an attorney for property?**
 - Unless otherwise restricted, allows the attorney to do anything related to property, assets, or finances, that the grantor, if capable, could do – except make a Will or give a new CPOA on your behalf
- **What are the responsibilities?**
 - Account to the grantor
 - Use reasonable care in acting
 - Not act in conflict with the grantor's interests or expressed wishes
 - Not benefit personally
 - Entitled to compensation as directed or legislated rates
- **When does it take effect?**
 - Upon signing, unless the CPOA-P states otherwise





POA - PERSONAL CARE
PERSONAL CARE & HEALTH CARE

POWER OF ATTORNEY – PERSONAL CARE

- Appoints an Attorney to make decisions for the grantor regarding “personal care”
 - Covers health care, nutrition, shelter, clothing, hygiene, safety
- Subject to conditions in the HCCA, the POA for Personal Care places the attorney ahead of all the grantor’s relatives for purposes of giving or withholding consent for a treatment
- In effect only when the grantor is NOT capable of making the required decision
- Who determines capacity?
 - Medical treatment (HCCA) or LTC decision – Registered HCP proposing tx/POC/LTC or their designate
 - Personal care decision – Attorney unless otherwise stated



POWER OF ATTORNEY – PERSONAL CARE

A valid a Power of Attorney for Personal Care document *MUST*:

1. Name 1 or more persons to act as your attorney for personal care in the event you are incapable
 - 16+
 - CANNOT provide health care, residential/social/training/support services for compensation – unless a relative
2. Be 'signed' & dated - can sign with a mark
3. Be signed by 2 witnesses * (NB: POAs made before 1995 law change with 1 witness still valid)
 - 18+
 - NOT the attorney, attorney's spouse*, grantor's spouse*, grantor's child, guardian of property or person



POWER OF ATTORNEY – PERSONAL CARE

To be valid the grantor of a Power of Attorney for Personal Care *MUST*:

1. 16+

2. Have the necessary level of mental capacity to make a POA-PC

- Understand whether the person you name is truly concerned with your well-being
- Understand that you may need this person to make decisions for you



POA VS. 'ADVANCE DIRECTIVE'

Not a “legal” term in Ontario - expression of “wishes”

- Provides guidance or direction to SDM
- Can be laid out in POA or a separate document
- No required template

- SDA, HCCA require that SDM(s) make decisions accordance with:
 - most recent prior expressed wishes (verbal or written) made while capable that are applicable to circumstances
 - If none, then “best interests”





COMMON QUESTIONS...

CASE STUDY: CHANGING A POA

- Danny has been a patient of yours for 15 years
- Schizophrenia & depression
- Commonly cycles through periods of health & illness
- POA-PC – brother who lives 2 hours outside of town
- Last time you saw Danny he looked more disheveled than usual & his thoughts were more disorganized than previously, though he was still managing at home & was able to carry on a productive, although facilitated, conversation regarding his health.
- During this visit Danny indicated that he no longer wanted his brother contacted regarding health care matters and wanted James, his long time neighbor, to make decisions for him if he becomes incapable. Danny asked that your office make the necessary changes to its records.



COMMON QUESTIONS...

Can a patient “verbally” appoint an attorney for property/personal care?

- SDA requires that POA must be in writing, signed & witnessed
- Must be capable to grant POA (but not necessarily capable to make decisions)

What if there is more than one document?

- Clarify nature of decision, scope of document & authority
- Guardianship prevails over POA
- Can have both a POA for property & POA for Personal Care with different ppl appointed
- More recent document prevails
 - “POA is terminated when the grantor executes a new POA, unless the grantor provides there shall be multiple POAs” (SDA s.12, ss.53)
 - Person is capable to revoke a POA if they are capable of granting one



CASE STUDY: DISAGREEMENT BETWEEN POAs

- Mrs. Louis has advanced Alzheimer's dementia she wishes to stay at home and to die at home if possible
- Mrs. Louis has 4 adult children – appointed jointly & severally as POAs for personal care
- Her advanced directive indicates no heroic measures and that she wishes to be kept comfortable.
 - 2 of the daughters state that she more recently indicated that she would want some aggressive measures.
 - The 3rd daughter disagrees with this statement – indicating it is incorrect
 - The 4th daughter is unsure about which statement is accurate
- Mrs. Louis is having increasing difficulty swallowing & the possibility of a feeding tube is discussed
- 3 of the adult children are in favour of having a tube inserted, 1 of the children is against it . How does the health care team proceed?



COMMON QUESTIONS...

If a POA appoints more than one Attorney, is the consent of one attorney sufficient?

- If document states Jointly or is otherwise silent on the matter = must act together
- Jointly & Severally = Must generally act together but may act independently if other(s) are unable or unwilling
- *Does majority rule?*
- Multiple attorneys of equal rank vs. alternate or substitute attorneys

What if my POA can't act for me for some reason?



CASE STUDY: BEST INTERESTS?

- Mrs. Jones 70yrs, admitted to ICU for acute sepsis resulting from mismanaged wound care
- POA-PC: Husband
- History of intimate partner violence between spouses
- Mrs. J Indicated a strong desire to return home at last admission (6mos ago) despite risks of physical & social environment
- Advance directive indicates a desire for treatment if MD believes there is a likelihood of recovery or return to an acceptable & sustainable quality of life.
- Husband called ambulance but is now saying no to treatment.



CASE STUDY: ALIGNMENT OF WISHES

- Mrs. Jones, 75yrs, has been a patient in your office 25+ years
- Married with 2 children
- POA-PC: Husband
- Diagnosis of dementia 7 years ago
- Since then have had multiple conversations regarding decision making & preferences regarding treatment & QOL with her in your office, with and without husband present
- Consistently indicated no desire for invasive treatments, including antibiotics past the stage of moderate dementia
- You are made aware that Mrs. Jones was admitted to the hospital last night with pneumonia. You speak with the POA who indicates he would like the pneumonia aggressively treated. Given your previous conversations with the patient you don't believe this is what she would have wanted, given her recent cognitive decline.
- What do you do?



COMMON QUESTIONS...

If guardian/attorney is making poor decisions, can I revoke their authority?

- Care providers cannot “revoke” a guardianship or POA
- Guardianship can only be revoked by Court
- POA can only be revoked by grantor capable of revoking POA
- Can “challenge” HC decisions → application to Consent and Capacity Board
- Report cases of suspected abuse to OPGT for investigation

What if I, or someone else, discover that my attorney is mismanaging or stealing my money?

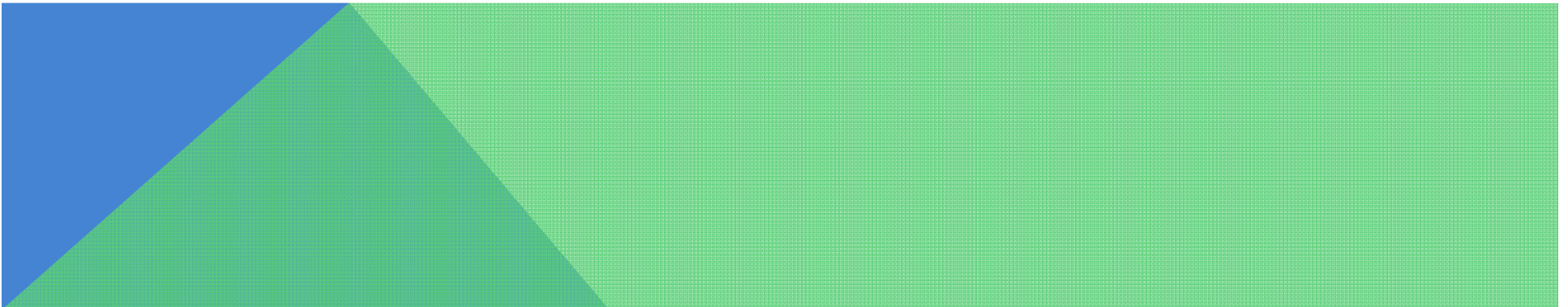
- Capable → revoke CPOA-P, demand a full accounting review & making a claim for lost funds, if theft report to the police
- If someone else has evidence of mismanagement, financial risk, or theft & believes you are mentally incapable → report matter to OPGT for investigation, “passing of accounts” process



COMMON QUESTIONS

An Attorney/Guardian has requested a copy of health record for a deceased patient – can I provide it to him/her?

- Authority of POA (or guardianship) terminates on death
- PHIPA “If individual is deceased, the deceased’s estate trustee, or the person who has assumed responsibility for the administration of the deceased’s estate, if the estate does not have an estate trustee” . . . may give or refuse consent (s.23(1))



MEET MURIEL...

- Muriel, 89yr/old - widowed with 2 children
- Experienced a stroke 3 wks ago & admitted to hospital
- Prior to admission Muriel lived at home with her adult son
- Limited mobility & difficult communicating wishes, dementia present
- Health care team concerned about ability to function at home safely – LTC recommended
- Xple POA documents:
 - POA-PC: (1) Son ; (2) Son & daughter (jointly & severally – reported by daughter)
 - CPOA-P: Son
- Son:
 - unemployed, adamant about discharge home – states it's what mom wants. Argues sister has no authority in making decision. Refuses to pay for LTC.
- Daughter:
 - out of town, in favor of LTC – states LTC is in mom's best interests. Had concerns about mom's safety & well being during previous visit. Wonders about financial irregularities.
- Health care team:
 - suspect son is not using allocated resources to support his mom. Unsure re. patient wishes. Wonder how to proceed.



THANK YOU

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Slide content adapted from:

- OPGT – Powers of Attorney & living wills document
- Miler Thompson – Understanding legal documents for Guardianship, POAs & Estates