

## Representation Agreement with Section 9 Broader Powers



*“Making a Representation Agreement is about quality-of-life to the end-of-life. It gives us peace of mind.”*

Please also read the fact sheet *Representation Agreement Overview*.

This fact sheet is about a Representation Agreement with Section 9 broader powers made on or after September 1, 2011. For information on documents made before this date, see the Nidus fact sheet on *Amendments and Representation Agreements made before Sept. 1st*.

### What is a Representation Agreement with Section 9 broader powers?

A Representation Agreement with Section 9 broader powers is a legal document for personal planning is available to adults who want to plan for their future in case they need assistance making health care and/or personal care decisions due to illness, injury or disability.

For example, Geraldine was recently diagnosed with Alzheimer Disease and is concerned about her ability to make decisions and manage her affairs in the future. She recently learned about Representation Agreements through her support group and decided to make one with Section 9 broader powers.

Geraldine decided to appoint her husband, Hank, and daughter, Sara, as her representatives. Geraldine feels better about her future, knowing that she has put legally enforceable arrangements in place so the people she trusts and who know her best will be able to help her manage her affairs and, if necessary, make decisions on her behalf.

### What areas of authority are covered under Section 9 broader powers?

An Agreement with Section 9 broader powers is the most comprehensive legal document for health and personal care matters. It can also cover the special legal authority to make arrangements for the care and education of minor children or other dependants if you are incapable.

In order to make an Agreement with Section 9 broader powers, you must meet the specific capability requirement; this is discussed on the next page.

A Representation Agreement Section 9 can cover:

- **Minor and major health care**, which includes decisions about medications, tests, surgery, any treatment requiring a general anaesthetic, dental and eye care, radiation and chemotherapy, dialysis, end-of-life comfort care, and taking part in an approved medical research program; and
- **Personal care**, such as, living arrangements, diet, dress, exercise, taking part in activities, obtaining licenses and permits, and personal safety issues.

These health and personal care authorities are also included under Section 7 standard powers, which is a type of Representation Agreement that adults may make if they are incapable of meeting the requirements for making an Agreement under Section 9.

There are **broader or non-standard authorities** you can add under Section 9, depending on your circumstances and your planning goals. For example, you can authorize your representative to refuse health care necessary to preserve life (life support) and/or consent to less common medical procedures, which are described in the Regulation that accompanies health care consent legislation. These procedures are:

- electroconvulsive ‘shock’ therapy (ECT),
- abortion,
- experimental treatments with no known benefit,
- psychosurgery,
- removal of tissue for implantation or medical education or research,
- participation in a health care or medical research program not approved in B.C., or
- any treatment, procedure, or therapy that uses negative stimuli to produce a change in behavior (for example, exposing you to your fear).

Giving your representative broader authorities does not mean they will act on them; rather, it ensures that someone you trust will have legal authority to carry out your wishes if you are incapable of giving or refusing consent.

You can use Section 9 to authorize your representative to consent to health care you wanted when well but which you later refuse because, for example, an illness has affected your perception and judgment. This is sometimes called the **Ulysses clause**, a term used by people who suffer from episodic mental illnesses. This authority may also be relevant to other conditions such as dementia.

You can also authorize your representative to physically restrain, move, or manage you, or authorize others to do so when necessary, despite your objections. This is often used along with the Ulysses clause as a proactive measure to prevent involuntary commitment under the Mental Health Act, which would override your representative's authority with respect to treatment and care of the 'mental disorder.'

For example, Geraldine includes all of the above-mentioned authorities in her Agreement because she knows how important it is for her quality-of-life that someone who knows her well has the legal authority to make all types of decisions, especially if she has to go into a facility, but may object at the time.

If you want allow your representative to make a decision that might interfere with your religious practices, you must state this in your Agreement.

### What is not covered in a Section 9 Agreement?

A Representation Agreement with Section 9 broader powers cannot authorize your representative to do anything that is prohibited by law, such as euthanasia or assisted suicide. You also cannot authorize your representative to consent to consultation, treatment or care related to your sterilization for non-therapeutic purposes.

### Who may make a Section 9 Agreement?

To make an Agreement with Section 9 broader powers, you must be 19 years of age or older (an adult). You must also be capable of understanding the types of authorities under Section 9 and the consequences of giving these authorities to a representative.

If someone does not have the understanding required for making a Representation Agreement with Section 9 broader powers, they may make a Representation Agreement with Section 7 standard powers to cover most health care and personal care matters. See the Nidus fact sheet on *Section 7 Standard Powers*.

Some common examples of people who make a Representation Agreement with Section 9 broader powers include Michael, a man who has an inoperable brain tumour. Michael made a Representation Agreement with Section 9 broader powers and appointed his friend, Gustav, as his representative.

Although Michael took part in experimental therapy at an earlier stage of his illness, he has decided he does not want further treatments, however promising, and he wants to be sure Gustav can refuse these if he becomes mentally incapable even if the doctors believe it could extend his life.

Tammy is a single mom with sole custody of her two young sons and was recently diagnosed with breast cancer. She is about to have surgery and wants to prepare for various situations that may arise. Tammy will be leaving her sons in the care of her partner Sandra but wants to ensure that Sandra has the legal authority to look after their well-being. Tammy learned that a Representation Agreement with Section 9 broader powers can include the authority to make arrangements for the temporary care and education of an adult's minor children. Tammy decided that she would make a Representation Agreement with Section 9 broader powers and appoint Sandra as her representative. She also made an Enduring Power of Attorney in case Sandra needs to use Tammy's money to cover the financial needs of her sons.

### Do I include wishes in my Representation Agreement?

You may include instructions and wishes in your Representation Agreement to guide or instruct your representative if he or she has to make a decision on your behalf. Some people might want to make an Advance Directive as well. For more details, see the Nidus fact sheet on *Advance Directive*.

### How do I make a Section 9 Agreement?

You do not have to consult a legal professional to make an Agreement with Section 9 broader powers. Nidus has produced a basic form for a Section 9. Nidus can also provide a customized form if the basic form does not fit. Details are at *Making RA9*.

### What do I use to cover financial and legal affairs?

A Representation Agreement with Section 9 broader does not cover financial affairs. Adults planning for the future can make a separate legal document to cover their financial and legal affairs – either an Enduring Power of Attorney OR a Representation Agreement with Section 7 routine finances.

The document you choose will depend on what coverage you need and your preferences. For example, making an Enduring Power of Attorney is important if you own real estate property, as routine financial affairs under the Representation Agreement does not include dealing with real estate.

For more details, see the Nidus fact sheet on *EPA or RA7 for Financial and Legal Affairs*.