

LEGAL EAGLE



WITH BETHANY SYMONDS

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Appointing a nearest relative

If you're a patient in hospital and you're detained under the Mental Health Act, you will have a nearest relative who has the right to be informed about your care and potentially make decisions about the future of your treatment.

The law decides who will be your nearest relative, but you can apply to change your nearest relative to someone else. This is known as 'displacing' your nearest relative.

However, you can only apply to displace your nearest relative in certain circumstances.

For example, if your nearest relative cannot act because they are unwell themselves you can apply to have someone else act as your nearest relative.

You can also apply if your nearest relative has unreason-

ably objected to you receiving treatment under Section 3 of the Mental Health Act, has tried to discharge you without considering all of the circumstances, or if there is any other reason why you consider them to be unsuitable for the job.

If your nearest relative agrees to the change, they can simply write a letter to the hospital confirming that they give up their role as nearest relative and would like to appoint someone else.

They should name the person they are appointing in their absence, and the new nearest relative must agree to take up the role.

The nearest relative could appoint another friend or family member, or could appoint a professional to act for



you in this role. It's important to remember that your original nearest relative can take back their powers at any time by confirming this in writing to the hospital.

If you're nearest relative doesn't agree to the change, you can apply to the county court for your nearest rela-

tive to be changed.

To do this, you will need to fill in an application form and explain to the court why you are making the application.

Your nearest relative will then be notified of your application, and will be given the chance to tell the court they disagree with your applica-

tion. If you are in receipt of benefits or on a low income, you may be eligible for free legal aid which means that a solicitor could make the application for you at no cost to you.

A solicitor can also give you detailed advice about the process and represent you at the court hearings.

You should also remember that, in certain circumstances, an approved mental health professional may apply to displace your nearest relative.

In my experience, the most common reason for hospitals applying to displace a nearest relative is because the relative is trying to discharge the patient, and the hospital thinks that this is not in the patient's best interests.

The hospital, therefore, applies to displace them as

the nearest relative, so that they no longer have the power to object to your treatment.

If this happens, your nearest relative should get legal advice and may be entitled to legal aid so that they can dispute the hospital's application in court.

Bethany Symonds is a trainee solicitor at David Gray Solicitors LLP. You can call for an appointment with Bethany or any member of the Court of Protection team on 0191 243 8160 or Chat Live 24/7 by visiting the website.

David Gray Solicitors is running a free seminar for businesses on Wednesday, February 24. For more information or to book a place contact Jayne.hart@HRdept.co.uk

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