**Will Making in Public Health**

**Summary**
The Information Bulletin provides information to NSW Health staff in health facilities where patients wish to make a last Will and Testimony.

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Not applicable

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Active

**Functional group**
Personnel/Workforce - Conduct and ethics

**Applies to**

**Distributed to**
Divisions of General Practice, Environmental Health Officers of Local Councils, Government Medical Officers, Ministry of Health, NSW Ambulance Service, Public Health System

**Audience**
All staff

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**Secretary, NSW Health**
This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is mandatory for NSW Health and is a condition of subsidy for public health organisations.
WILL MAKING IN PUBLIC HEALTH FACILITIES

PURPOSE
This Information Bulletin provides information to NSW Health staff in health facilities where patients wish to make a last Will and Testament.

KEY INFORMATION
Generally, the issue of the making of a Will may be raised by a patient or relative, particularly where the patient is elderly, has been hospitalised for a long period of time, or is facing death.

Staff should not generally canvass the issue of Wills except in extreme circumstances.

Under no circumstances should a staff member be involved in the preparation of a patient's Will or attempt to exert influence in regard to the terms of a patient's Will.

If nominated as the executor of a Will, a staff member must decline the appointment.

Staff involvement in this process overall is to be minimal as in accordance with the following requirements:

1. Where a patient in a public health facility wishes to make a Will, determine if the patient's affairs are managed by the NSW Trustee & Guardian.

2. If the patient's affairs are managed by the NSW Trustee & Guardian, further inquiries and actions should be handled by the responsible estate manager / guardian via the NSW Trustee & Guardian, with the appropriate consent of the patient and/or their guardian or “authorised representative”, as defined in the Health Records and Information Privacy Act 2002 (and documented in the health record).

3. Where the patient's affairs are not managed by the NSW Trustee & Guardian, staff should make inquiries as to whether there is a Will already in existence. This may be done by asking the patient, checking the patient health record and/or contacting family members with the patient's consent, as appropriate.

4. If a Will exists then contact should be made with the solicitor holding the Will and the matter handed over to that person with the patient's consent as appropriate.

5. Where a patient's affairs are not managed by the NSW Trustee & Guardian and there is no knowledge of an existing Will, the patient should be advised or assisted to contact his/her family solicitor of a solicitor of their choice.

6. If there is no solicitor known to the patient, the staff member can assist the patient in contacting the NSW Trustee & Guardian. The NSW Trustee and Guardian provides professional and independent trustee services writing Wills, acting as Executor in deceased estates, administering trusts and Powers of Attorney and delivering
financial management services; or

7. The Law Society of NSW can provide a list of local solicitors for the particular geographical area, experienced in the field of the making of Wills and for providing legal advice, from which the patient may then choose a solicitor.

It is not the role of staff to recommend a specific solicitor to the patient.

8. Once a solicitor has been nominated or chosen by the patient further inquiries and procedures relating to the making of the Will are to be handled by the nominated solicitor.

9. All staff contact with the NSW Trustee and Guardian, the patient’s guardian, solicitors or family members regarding a patient’s Will, should be documented in the patient’s health record.

10. It is not the role of staff to establish testamentary capacity. However, where there is a reasonable likelihood that a patient’s treatment or condition may impact on their testamentary capacity and where the patient (or where necessary, the patient’s authorised representative) provides written consent, staff may provide relevant health information to the patient’s nominated solicitor.

11. In circumstances where a staff member is aware that a patient has a Will being managed by the NSW Trustee and Guardian and the patient wants to make another Will without consulting the NSW Trustee and Guardian, the staff member should consider contacting the patient’s manager/guardian at the Office of the NSW Trustee and Guardian. If a decision is made to contact the Office of the NSW Trustee and Guardian, this should be done in consultation with the patient and the Nursing Unit Manager and/or treating clinician and appropriately documented in the patient’s health record.

CONTACT DETAILS

NSW Trustee & Guardian

Phone: 1300 364 103 – Trustee Services
1300 360 466 – Managed Clients

The Law Society of NSW

Phone: (02) 9926 0300 or 1800 422 713 – Outside Sydney

ATTACHMENTS

1. NSW Trustee & Guardian - Trustee and Managed Client Services


2. The Law Society of NSW – Finding a solicitor: