**IN THE SUPREME COURT OF VICTORIA**

**IN ITS PROBATE JURISDICTION**

S PRB [*Application No.*]

|  |  |
| --- | --- |
| In the matter of the deceased estate of *[name]* | |
|  |  |
| Application by: |  |
| *[Plaintiff’s name]* | Plaintiff(s) |

# AFFIDAVIT OF TESTAMENTARY CAPACITY

Date of document:

Filed on behalf of the Plaintiff

Prepared by: *[name and*

*address of lodging party]* Ref: *[solicitors only]*

CODE: *[solicitors only]*

Tel: *[number]* E-mail: *[e-mail address]*

I, *[insert name and address of medical practitioner], [occupation]* affirm/make oath and say that:

1. I am a duly qualified medical practitioner working as a *[type of medical practitioner]* at *[organisation]*.
2. I am informed by the *[solicitor for the plaintiff/plaintiff]* that *[deceased’s name]* (‘the deceased’) who died on *[date]* made a will which was executed by them on *[date].*
3. The deceasedwas a patient of mine from *[Date]* until *[Date]*.
4. I am informed by the *[solicitor for the plaintiff/plaintiff]* that the Registrar of Probates has requested medical evidence with respect of the testamentary capacity of the deceased at the time of making their will.
5. [*Delete if not applicable*]I am informed by the *[solicitor for the plaintiff/plaintiff]* that medical evidence was requested as the death certificate indicates the deceased was suffering from *[name of illness/condition]* at the time of executing their will. According to records, the deceased was first diagnosed with *[name of illness/condition]* on *[date].*
6. I am further informed by the *[solicitor for the plaintiff/plaintiff]* that the test for whether the deceased had testamentary capacity at the time of making their will is that the deceased:
   1. would have understood the nature and effect of making a will;
   2. would have been aware of the general nature and value of their property;
   3. would have been aware of those persons who would have a natural claim to their estate;
   4. would have been able to evaluate and discriminate between such claims; and
   5. was not suffering from a mental illness or disorder that would have impacted on their capacity to make a will.
7. I have reviewed the medical records of the deceased and in my opinion, giving consideration to the matters above, I believe the deceased would have had full testamentary capacity at the date of executing their will. *[include any further matters relevant to this conclusion]*

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn/affirmed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

the deponent

at  *[place]*

on *[date]*

Before me: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness Full Name

Address

Qualification

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018*to take an affidavit.