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**Personal Directives Regulations**  
**made under Section 32 of the**  
***Personal Directives Act***  
**S.N.S. 2008, c. 8**  
**O.I.C. 2010-71 (February 16, 2010), N.S. Reg. 31/2010**

**Citation**

- 1 These regulations may be cited as the *Personal Directives Regulations*.

**Definitions for Act and regulations**

- 2 (1) In these regulations,

“Act” means the *Personal Directives Act*;

“physician” means an individual registered as a medical practitioner under the *Medical Act*.

- (2) In the Act and these regulations,

“health care” means any examination, procedure, service or treatment that is done for a therapeutic, preventative, palliative, diagnostic or other health-related purpose, and includes a course of health care or a care plan;

“guardian” means a person appointed to be a guardian by a court in a province of Canada;

“person represented” means a person on whose behalf decisions are made by a statutory decision maker, but for the purposes of subsection 10(2) of the Act means an individual.

- (3) In Section 8 of the Act, “remuneration” does not include reimbursement for reasonable out-of-pocket expenses incurred by a delegate in exercising their authority under a personal directive.

**Service of notice of application to court**

- 3** In addition to the persons listed in subsection 30(1) of the Act, a notice of an application to a court under Section 29 of the Act must be served on all of the following persons:
- (a) the legal representative of the maker or person represented;
  - (b) the nearest relative of the maker or person represented;
  - (c) if the maker or person represented resides in a continuing-care home or a hospital, the manager or person in charge of the continuing-care home or the hospital.

**Assessment of capacity under Section 10, 11 or 13 of the Act**

- 4** Only a physician may conduct the following assessments of capacity:
- (a) an assessment or reassessment of capacity of a maker or person represented for the purposes of Section 10 of the Act;
  - (b) an assessment of capacity of a maker for the purposes of Section 11 of the Act after the maker has been prevented from leaving the Province;
  - (c) an assessment of capacity of a delegate to make personal-care decisions on behalf of a maker for the purposes of clause 13(a) of the Act.

**Form used for assessment**

- 5** (1) A physician conducting an assessment or reassessment of capacity listed in Section 4 must complete *Form 1: Assessment of Capacity to Make Decisions about a Personal Care Matter*.
- (2) A person conducting an assessment of capacity other than those listed in Section 4 is not required to complete *Form 1: Assessment of Capacity to Make Decisions about a Personal Care Matter*.

**Factors to be considered when deciding best interests**

- 6** A delegate or a statutory decision-maker who is deciding under clause 15(2)(c) of the Act what is in the best interests of a maker or person represented must consider all of the following:
- (a) whether the maker's or person represented's condition or well-being is likely to be improved by the proposed care or will not deteriorate because of it;
  - (b) whether the maker's or person represented's condition or well-being is likely to improve without the proposed care or is not likely to deteriorate without it;

- (c) whether the benefit the maker or person represented is expected to obtain from the proposed care is greater than the risk of harm or other negative consequences;
- (d) whether the benefit of a less restrictive or less intrusive form of available care is greater than the risk of harm or other negative consequences.

**Form 1: Assessment of Capacity to make Decisions about a Personal Care Matter**  
(assessing capacity for Sections 10, 11 and 13 of the *Personal Directives Act*)

I, \_\_\_\_\_ (*full name and professional designation*), a physician, assessed \_\_\_\_\_ (*full name of person being assessed*) of \_\_\_\_\_ (*address of person*) on \_\_\_\_/\_\_\_\_/\_\_\_\_ (*dd/mm/yyyy*) at \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_ (*location of assessment*).

If the assessment is of a person delegated under a personal directive to make personal-care decisions for another, then skip items 1 and 2.

1) Personal directive made:

Check one:

- I am aware that \_\_\_\_\_ (*full name of person being assessed*) has made a personal directive.
- I do not know if \_\_\_\_\_ (*full name of person being assessed*) has made a personal directive.

2) Consultation under personal directive:

Subsection 10(1) of the *Personal Directives Act* states that a personal directive may name a person – by name, title, or position – with whom the person making an assessment of capacity of the maker is to consult in making the assessment.

Check one:

- I consulted with \_\_\_\_\_ (*full name of person named in personal directive*) in making this assessment of capacity.
- I have made reasonable efforts to consult with \_\_\_\_\_ (*full name of person named in personal directive*) in making this assessment of capacity.

I am not aware that anyone has been named for consultation.

3) Capacity explained:

“Capacity” is defined in the *Personal Directives Act* to mean the ability to understand information that is relevant to the making of a personal-care decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.

Before conducting the assessment of capacity, I explained to \_\_\_\_\_ (*full name of person being assessed*) the purpose of the assessment, the significance and effect of a finding of capacity or incapacity, and their right to refuse to be assessed.

4) Physician’s opinion

It is my opinion that \_\_\_\_\_ (*full name of person being assessed*) has the capacity to make a personal-care decision regarding the following:

	<u>Personal Care Decision</u>	<u>Capacity</u>
• Health care	_____	YesNo <input type="checkbox"/> <input type="checkbox"/>
(“health care” is defined for the <i>Personal Directives Act</i> to mean any examination, procedure, service or treatment for an individual that is done for a therapeutic, preventative, palliative, diagnostic or other health-related purpose, and includes a course of health care or a care plan)		
• Placement in a continuing-care home		YesNo <input type="checkbox"/> <input type="checkbox"/>
• Provision of home-care services		YesNo <input type="checkbox"/> <input type="checkbox"/>
• Leaving the Province		YesNo <input type="checkbox"/> <input type="checkbox"/>
• Other personal care		YesNo <input type="checkbox"/> <input type="checkbox"/>

(“personal care” is defined in the *Personal Directives Act* to include, but is not limited to, health care, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities, support services and any other personal matter that is prescribed by the regulations)

5) Supporting information:

The following information supports my opinion:

A) Observations from my assessment of the person being assessed:

\_\_\_\_\_

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B) Information from other sources (please specify sources of information):

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Is there any additional supporting information or reports attached? Yes  No

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(date of signature)

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(signature)

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(printed name)

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**Notes:**

- 1) This form must be completed by a physician. (s. 5 of *Personal Directives Regulations*)
- 2) This form is to be used
  - A) if any of the following request an assessment of the capacity of a person who has made a personal directive or a person on whose behalf personal care decisions will be made:
    - the person who made the personal directive or on whose behalf personal care decisions will be made
    - a delegate named in the personal directive
    - a statutory decision-maker
    - the nearest relative (as defined in the *Personal Directive Regulations*)
    - a health-care provider
    - a person in charge of the home-care services provider or continuing-care home where the person who made the personal directive or on whose behalf the personal care decisions will be made resides.  
(s. 10(2) and (3) of *Personal Directives Act*)
  - B) for the assessment of capacity of a person who has made a personal directive after they have been prevented from leaving the Province (s. 11 of *Personal Directives Act*)
  - C) for the assessment of capacity of a person delegated under a personal directive to make personal-care decisions (s. 13 of *Personal Directives Act*)
- 3) An assessment made under s. 11 of the Act after a person has been prevented from leaving the Province must be completed as soon as practicable. (s. 11(2) of *Personal Directives Act*)