

Personal Directives Act

A guide for LPNs

These guidelines have been developed to assist licensed practical nurses in understanding their role in relation to the Personal Directives Act so that they may practice in accordance with their Standards of Practice and Code of Ethics. This document is designed to be used in conjunction with other applicable college guidelines, statements, interpretative documents, and tools found on the college website (www.clpnns.ca).

Background

The Personal Directives Act enables Nova Scotians to document their wishes with respect to the nature and type of personal care decisions that are to be made in the event that they are incapacitated and are unable to make these decisions themselves. Under the act, an individual appoints a delegate to make these decisions when the time comes. Personal care decisions include those related to health care, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities, and support services.

The Personal Directive Act

The Personal Directives Act enables three things:

- 1 It allows individuals to set out instructions or general principles (personal directive) about what or how personal care decisions should be made when they are unable to make the decisions themselves.
- 2 It allows individuals to appoint a delegate to enact the personal directive and make personal care decisions on their behalf should they become incapable of making the decision.
- 3 It provides for a hierarchy of statutory substitute decision-makers to make decisions regarding healthcare, placement in a continuing care home, and home care where the individual has not prepared a personal directive in relation to those decisions.



The act applies to individuals in hospitals, nursing homes, and custodial care facilities in concert with other statutes in Nova Scotia that address the issues of capacity assessments (i.e., such as the Hospitals Act, which addresses the assessment of capacity in a hospital setting, the Involuntary Psychiatric Treatment Act which addresses issues of capacity assessments in psychiatric settings), and the Adult Capacity and Decision-making Act which addresses the issue of adults who do not have the capacity to make decisions for themselves.

Suite 302, Starlite Gallery
7071 Bayers Road
Halifax, Nova Scotia B3L 2C2

Phone (902) 423-8517
Fax (902) 425-6811
Toll Free in NS 1-800-718-8517

info@clpnns.ca
www.clpnns.ca

Personal Directive

A personal directive is a set of instructions about how personal care decisions are to be made for an individual when that individual is no longer mentally capable of making their own decisions. A personal directive is intended to address issues of personal care, and does not extend to financial issues. In Nova Scotia, the only way to appoint a person to act on behalf of another person in regard to financial matters (outside the court appointment of a guardian) is through the use of an enduring power of attorney. The act allows the personal directive and power of attorney to be combined into one document to address both personal care and financial issues.

A personal directive can be made by a capable individual, including a mature minor. It must be signed, dated, and witnessed. The witness cannot be a delegate; spouse of a delegate; or person who signs on behalf of the maker or spouse of same. A personal directive is a legal document as long as these criteria are met. The directive only takes effect when the person who created it becomes incapacitated. A personal directive made outside the province will be honoured in Nova Scotia provided that the document was made in the form required by the legislation of the jurisdiction where the document was created or the jurisdiction where the client resided.

Statutory (Substitute) Decision-Maker

If an individual has not made a personal directive, the act enables the appointment of a statutory or substitute decision-maker. The substitute decision-maker makes decisions pertaining to health care, placement in a continuing care home, and home care services. The substitute decision-maker is the nearest relative who has capacity and willingness to make decisions. (See Appendix A for the ranking of statutory decision-makers.) Where no such relative exists, the Nova Scotia Public Trustee acts as the substitute decision-maker.

Capacity Assessment

Capacity includes both the elements of understanding information relevant to decisions, and the ability to appreciate the reasonably foreseeable consequences of decisions or a failure to make decisions.

The common law presumption of a person having capacity to consent is to assume the person has capacity unless there is information to suggest otherwise. A person may have various levels of capacity depending on the nature of the decision making required. Decisions that are associated with greater risk to a person require a higher level of capacity. In other words, at any given time a person may have the capacity to make some decisions (e.g., having a flu shot) and not others (e.g., having a high-risk surgery).

Day-to-Day Capacity Assessment

Licensed practical nurses (LPNs) and other healthcare professionals must ensure that clients have given an informed consent for any service they are to receive. Capacity is an essential element of informed consent. At the most basic level, capacity assessments in relation to the provision of day-to-day services refer to the ability of a client to consent to specific activities or treatment (e.g., to have breakfast, to have a morning bath, take prescribed medications, have a dressing done, start oxygen, intravenous therapy, etc.). This basic capacity assessment of day-to-day services falls within the scope of practice of many healthcare providers, including LPNs.

Capacity Assessment by a Physician and Other Providers

Currently, assessments of an individual's overall capacity beyond the understanding of day-to-day activities must be performed by a physician. However, on December 28, 2017 the new *Adult Capacity and Decision-making Act and Regulations* came in to effect authorizing a number of health care providers to perform capacity assessments once they have completed the necessary additional education.¹

There are a variety of situations in which a physician should be consulted to perform a capacity assessment, such as when:

- an LPN, delegate, substitute decision-maker, nearest relative, health care provider, person in charge of a home care services, or person in charge of a continuing care home in which a client resides, suspects a client is no longer able to make decisions about care beyond the day-to-day services;
- there is a disagreement between the client and the delegate/substitute decision-maker with regard to personal care decisions.
- other circumstances prescribed by the act (e.g., the individual intends to leave the province).

Clients may request a reassessment of their capacity if they feel that their status has changed.

The Role of Licensed Practical Nurses

- Determine if the client has a personal directive. If so, place a copy of it on the client's record, communicate to the team that a copy has been placed on file and document.
- Determine, as part of the ongoing client assessment, if the client has the capacity to make decisions about their daily care. If the licensed practical nurse believes the client has capacity, the licensed practical nurse obtains consent for the service or treatment from the client.
- Consult the appropriate person* if there is a change in the client's level of capacity or if there is a question about the client's ability to understand and appreciate information relevant to a care decision or the consequences of such a decision.
- Where the client's capacity cannot be determined, or where a determination has been made by a physician that the client does not have capacity, ensure that decisions are made by the appropriate delegate or substitute decision maker.
- Follow agency policy in terms of contacting delegates or statutory decision-makers.
- Act as leaders and advocate for, and participate in the development of appropriate agency policy with respect to capacity assessments, personal directives, or substitute decision-makers.

* Licensed practical nurses can consult or collaborate with any care provider who has an established relationship with the client (the nature and intensity of the established relationship is defined by the context, e.g. on-call, supervisor, or remote), and has the capacity to provide consultation or direction. For the purposes of this document, the assumption is that the LPN's first collaborative partner is the RN.

The Role of Employers

The college suggests that employers provide education and support to LPNs to assist them in understanding their responsibilities under the Personal Directives Act and other relevant legislation such as the *Adult Capacity and Decision-making Act and Regulations*. It is suggested the policy address the consultative process to follow when client capacity cannot be determined, or there is disagreement about capacity, or when requested by a delegate, statutory decision-maker, or others as outlined above.

Conclusion

Licensed practical nurses are expected to provide safe, competent, ethical, and compassionate nursing services. Understanding the Personal Directive Act ensures that the LPN will have the necessary knowledge, skill and judgment to make safe and effective nursing decisions.

¹ Education begins in mid-2018. Refer to employer policies to determine which care providers are authorized to perform capacity assessments.

Appendix A

Ranking of Statutory Decision-Makers

Applies to those individuals without personal directive and who lack capacity to make decisions related to healthcare; placement in continuing care home; or home care services decisions.

Personal Directives Act Hierarchy (Personal Directives Act Sections 2(i) and 14)

- 1 Guardian (e.g., court appointed) with authority to make such decisions
- 2 Nearest relative (who, except in the case of a minor spouse, is 19 years of age or older)
- 3 Spouse
- 4 Child
- 5 Parent
- 6 Person standing in loco parentis
- 7 Sibling
- 8 Grandparent
- 9 Grandchild
- 10 Aunt or uncle
- 11 Niece or nephew
- 12 Other relative
- 13 Public Trustee

Appendix B

Additional Resources

Nova Scotia Government Website
<http://novascotia.ca/just/pda>

Information for Health Care Providers

http://novascotia.ca/just/pda/_docs/PDA_Web_Info_Health%20Care%20providers.pdf

Personal Directives in Nova Scotia

http://novascotia.ca/just/pda/_docs/PersonalDirective_Booklet.pdf

Personal Directive Act

http://novascotia.ca/just/pda/_docs/PersonalDirective_Booklet.pdf

Personal Directive Regulations

<http://www.novascotia.ca/just/regulations/regs/pdpersdir.htm>

Adult Capacity and Decision-making Act and Regulations

<https://novascotia.ca/just/pto/adult-capacity-decision.asp>



Suite 302, Starlite Gallery
7071 Bayers Road
Halifax, Nova Scotia B3L 2C2

Phone (902) 423-8517
Fax (902) 425-6811
Toll Free in NS 1-800-718-8517

info@clpns.ca
www.clpns.ca