



COLLEGE OF  
**LICENSED PRACTICAL NURSES**  
OF ALBERTA

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# Interpretive Document

## LPN Role in Bringing a Personal Directive Into Effect

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Revised: January 2020



**This document is linked to legislation:**

[Health Professions Act](#)  
[Licensed Practical Nurses Profession Regulation](#)  
[Personal Directives \(Ministerial\) Regulation](#)  
[Adult Guardian and Trusteeship Act](#)

**This document is linked to other documents that direct expectations of professional behaviour or requirements for practice:**

[Standards of Practice](#)  
[Code of Ethics](#)

**This document is linked to related supportive documents:**

N/A

**REVISIONS and UPDATES**

Editorial Update January 2020

*The legislative mandate of the College of Licensed Practical Nurses of Alberta (CLPNA) is to serve and protect the public by ensuring its members deliver safe, competent and ethical nursing care. Interpretive documents promote clarity and understanding of legislation, regulation and by-laws which can be difficult to interpret and apply to practice. Interpretive documents directly support and are linked to legislative documents. They can also link to documents that outline expectations of behavior such as the Standards of Practice, Code of Ethics or practice policies of the CLPNA and to other supportive documents.*

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**INTRODUCTION** In Alberta, the *Personal Directives Act*<sup>1</sup> and the *Personal Directives (Ministerial) Regulation*<sup>2</sup> allow individuals over the age of 18 to make a personal directive. A personal directive enables individuals to name someone they trust to make personal decisions for them if they become incapacitated and unable to make their own personal decisions. Licensed Practical Nurses (LPNs) may be asked by employers to participate in bringing a client's personal directive into effect i.e., when a personal directive comes into effect, another individual is legally authorized to make personal decisions on behalf of the client.

If an LPN is asked to complete a capacity assessment, it is important to clarify the type of capacity assessment being asked to complete. LPNs have the competence to conduct a capacity assessment under the *Personal Directives Act* however, as will be presented in this document, LPNs are not recognized capacity assessors under the *Adult Guardian and Trusteeship Act*.<sup>3</sup>

As with all aspects of nursing practice the LPN is reminded to apply the LPN profession's Standard of Practice and Code of Ethics, and work within the competencies outlined in the Competency Profile for LPNs.

**PURPOSE** The purpose of this interpretive document is to provide guidance to the LPN involved in the care of a client with a personal directive and clarify the role of the LPN in bringing a personal directive into effect.

**INTERPRETATION** In situations where a client's capacity is in question, it is imperative for healthcare professionals to understand their professional and legal responsibilities. LPNs may encounter personal directives in a variety of care settings and it is important to have a clear understanding of the LPN role and responsibilities related to capacity assessments and the specific steps required by legislation.

### What is a personal directive?

A personal directive is written by a person as a way to plan for the personal (but non-financial) decisions they may be asked to make in the future. A personal directive comes into effect if the person (the "maker") is found to lack the capacity to make their own personal care decisions.

### Who is the 'Maker' or 'Agent' in a Personal Directive?

The person who makes the personal directive is referred to as the 'maker'. The person who the maker names to make personal decisions for the maker is called the 'agent'. When a personal directive is in effect, unless the personal directive provides otherwise, the agent has authority to make decisions on all personal matters of the maker, except for financial matters and decisions about medical assistance in dying.

It is important to note that individuals may also choose to create a personal directive that leaves instructions but does not designate an agent.

As champions of client-centered care, the LPN respects and advocates for a care-plan that respects the decisions in a client's personal directive.

### What Types of Personal Decisions Can an Agent Make for the Maker?

Under the *Personal Directives Act*, the agent can make personal decisions for the maker of a non-financial nature including, the health care they receive, where they live, who can visit them, participation in social activities and legal matters. The agent must only make decisions that the maker cannot make themselves. For instance, the maker may be able to make their own decisions about day-to-day matters but not be capable of making major health care decisions.<sup>4</sup>

A personal directive does not authorize the agent to make financial decisions for the maker. The maker would need to prepare another legal document called an Enduring Power of Attorney for someone to make financial decisions on their behalf.<sup>5</sup>

### A Short Guide to Understanding the LPN role in Bringing a Client's Personal Directive in Effect

Are you worried about a client's capacity to make personal decisions? Or have you been asked to perform a capacity assessment?

Check the client's chart to see if there is a personal directive and if it has already been activated.

If the client does not have a personal directive the LPN should follow up with the client's physician or most responsible care provider for next steps.

If a personal directive is in place it must be brought into effect before it can be used to guide care decisions.

The LPN may perform a capacity assessment for the purpose of activating a personal directive.

LPNs are not authorized capacity assessors for the purpose of assessing capacity under the Adult Guardian and Trusteeship Act.

**When Can a Personal Directive Be Brought into Effect?** If a maker has a serious illness or injury and becomes unable to make personal decisions, either temporarily or long-term, a personal directive gives the maker's agent the legal authority to make personal decisions for the individual. LPNs may see personal directives in all practice settings but more so may become aware of a client's personal directive when providing nursing care in home care, supportive living and long-term care settings.

**What is "Capacity" under the *Personal Directives Act*?** *The Personal Directives Act* defines "capacity" as "the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the reasonably foreseeable consequences of the decision."<sup>6</sup> In other words, having capacity means that a maker understands what could happen if they choose one thing over another.

Under the *Personal Directives Act*, a capacity assessment is used to evaluate whether a maker is capable of making personal decisions. A capacity assessment should only be initiated if there is reason to believe an individual is unable to understand the information needed to make personal decisions and the consequences of those decisions. For more information about capacity assessments under the *Personal Directives Act*, visit the following link:

<http://www.humanservices.alberta.ca/documents/oppg-personal-directives-publication-opg1642.pdf>

**The LPN Role in Declaring a Client's Incapacity to Make Personal Decisions** When the maker is incapable of making personal decisions a personal directive may come into effect in two ways. A physician or psychologist will play a central role in both ways of assessing the maker's capacity. Other service providers, including LPNs, can also play a role in activating a client's personal directive. The two ways are:

1. The maker of a personal directive may designate a specific individual to make a determination of lack of capacity. This could be a friend, family member or even a service provider. A physician or psychologist must also assess the maker's capacity before the individual makes a written declaration that the maker lacks capacity; or
2. When the maker of a personal directive does not designate a specific person to determine capacity, two service providers may do so. In this situation, one of the service providers must be a physician or psychologist; the other service provider may be an LPN or other health service provider.

**What the LPN Needs to Do** *The Personal Directives (Ministerial) Regulation* provides a number of forms called 'Schedules'. The Schedules include the steps and considerations that need to be followed when making the determination of lack of capacity to make personal decisions. A summary of the Schedules is available in **Appendix 1**.



It is important that the LPN follow these steps and considerations. For instance, the LPN must be able to specify the areas where the maker lacks capacity and the reasons leading to that decision and document this in the appropriate Schedule.

Prior to completing the appropriate Schedule, the LPN must also meet with the maker to explain that the maker's capacity is being assessed, that the maker has a right to refuse the assessment, and that a finding of lack of capacity will bring the maker's personal directive into effect.

After making a declaration of lack of capacity, the LPN must provide a copy of the declaration to the maker, the maker's agent, if any, and any other person designated in the maker's personal directive, advising them that a determination of lack of capacity has been made and that the maker may make an application to the Court for a review of the determination.

**Determining Regained Capacity** The LPN may be involved in determining and documenting when a maker has regained the capacity to make decisions about personal matters. This may occur when the agent and/or a service provider notices a significant change in the individual and agrees that the individual may have regained capacity over personal matters where incapacity was previously designated.

In making an assessment of regained capacity the LPN must again complete the appropriate Schedule. The Schedule will set out the steps to be taken when making an assessment of regained capacity. All LPNs who may be involved in determining a maker's lack of capacity or regained capacity are encouraged to read the *Personal Directives Act* and the *Personal Directives (Ministerial) Regulation*. For more information on personal directives and specific information on capacity assessments visit the following link:

<http://www.humanservices.alberta.ca/guardianship-trusteeship/personal-directives-how-it-works.html>.

**Capacity Assessments under the *Adult Guardian and Trusteeship Act*** It is important for LPNs to know that capacity assessments under the *Adult Guardian*

*and Trusteeship Act* are different and more complex than capacity assessments under the *Personal Directives Act*. LPNs are not authorized capacity assessors for the purposes of capacity assessments under the *Adult Guardian and Trusteeship Act*.

Under the *Adult Guardian and Trusteeship Act*, an individual's capacity is determined by the Courts. These capacity assessments are clinical opinions provided to the Courts by trained and government approved capacity assessors. A determination of capacity under the *Adult Guardian and Trusteeship Act* is a legal decision made by the Court based on evidence from the capacity assessment report. The *Adult Guardian and Trusteeship Act* lists physicians, psychologists, social workers, occupational therapists, registered nurses and registered psychiatric nurses as authorized capacity assessors once they have met certain eligibility requirements, such as additional education and training which are set out in Regulations.<sup>7</sup>

Under the *Adult Guardian and Trusteeship Act*, if the client does not have a personal directive and they lose the capacity to make personal decisions, a friend or family member may apply to the court to become the client's legal guardian. Applying for guardianship is a complex and potentially lengthy process through the Court system. The client does not initiate this process.

**Making Decisions in Time-Sensitive Situations** The LPN should be aware that in some cases where an adult client has lost the capacity to make personal decisions and they do not have a legal guardian or a personal directive, a physician, nurse practitioner or dentist providing care may choose a specific decision-maker from a ranked list of the client's relatives to make a one-time, time-sensitive decision about the client's health care and/or temporary admission to or discharge from a residential care facility. For more information on specific decision-making please visit:

<http://www.humanservices.alberta.ca/guardianship-trusteeship/specific-decision-making-how-it-works.html>

If after reading this document you have questions about the LPN's role in activating a client's personal

directive please contact a CLPNA Practice Consultant at [practice@clpna.com](mailto:practice@clpna.com), 780-484-8886 or 1-800-661-5877 (toll free in Alberta).

Please be aware that this document is not a substitute for legal advice in any specific situation.

### The LPN's Duties and Obligations in Bringing a Personal Directive into Effect

The LPN should:

- ✓ Determine if the client has a personal directive.
- ✓ Obtain a copy of the client's personal directive or a copy of the Declaration of Incapacity, if there is one.
- ✓ Place a copy of it on the client's chart and document.
- ✓ As part of ongoing client assessment, determine whether the client has capacity to make decisions about their daily care; if so, obtain consent for the service or treatment from the client.
- ✓ Consult with a supervisor and collaborative team members if there is any reason to be unsure of a client's capacity.
- ✓ Meet with the client to explain the purpose of the assessment, the right to refuse to be assessed, and document the reasons for performing the capacity assessment.
- ✓ Assess for lack of capacity under the *Personal Directives Act*. The LPN should consult with their supervisor about selecting the appropriate Schedule to complete.
- ✓ Complete the appropriate Schedule.
- ✓ Ensure a physician or psychologist has assessed the client and completed their portion of the appropriate Schedule. A second capacity assessment is required before a client's personal directive can be brought into effect. Provide a copy of the declaration to the maker, the maker's agent, if any, and any other person designated in the maker's personal directive, advising them that a determination of lack of capacity has been made and that the maker may make an application to the Court for a review of the determination.
- ✓ Recognize that individuals can fluctuate in and out of capacity; so capacity should be assessed at all times. The LPN may need to complete a declaration of regained capacity.
- ✓ Be familiar with the *Personal Directives Act*, applicable competencies, and sections of the Code of Ethics and Standards of Practice that may impact this area of practice.
- ✓ Be aware of any existing regulatory and agency policies related to this topic.



## Appendix 1: Summary of Schedules under the *Personal Directives Act*

### Assessing for Incapacity

**Schedule 1:** Personal Directive Template

**Schedule 2:** Declaration of Incapacity to Make Decisions about a Personal Matter

- **Completed by the person named by the maker in the personal directive** to assess the maker's capacity; and
- Completed by a **physician or psychologist**.

**Schedule 3:** Declaration of Incapacity to Make Decisions about a Personal Matter

- used when **the maker does not specifically name someone** to assess their capacity
- Completed by a **physician or psychologist; and**
- Completed by **another service provider (i.e., LPN)**

### Assessing for Regained Capacity

**Schedule 4:** Determination of Regained Capacity

- Used when **an agent notices** a significant change in the maker's capacity and the service provider agrees that the maker has regained capacity to make personal decisions

**Schedule 5:** Determination of Regained Capacity

- Used when a **service provider notices** a significant change in the maker's capacity to make personal decisions

**Schedule 6:** Determination of Regained Capacity

Used when the **agent and a service provider disagree** that the maker has regained the capacity to make personal decisions; to be completed by 2 service providers, one of who is a physician or psychologist.



## OTHER RESOURCES

N/A

## REFERENCES

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<sup>1</sup> *Personal Directives Act*, RSA 2000, c P-6.

<sup>2</sup> *Personal Directives (Ministerial) Regulation*, Alta Reg 26/98.

<sup>3</sup> *Adult Guardian and Trusteeship Act*, SA 2008, c A-4.2

<sup>4</sup> Centre for Public Legal Education Alberta, *Making a Personal Directive in Alberta* (2014), <http://www.cplea.ca/wp-content/uploads/2015/12/MakingAPersonalDirective.pdf>.

<sup>5</sup> Government of Alberta, *Understanding Personal Directives* (2009), <http://www.humanservices.alberta.ca/documents/opg-personal-directives-publication-opg1646.pdf>.

<sup>6</sup> *Personal Directives Act*, s 1(b).

<sup>7</sup> Government of Alberta, Office of the Public Guardian, *Guide for Capacity Assessors* (2015) 9, <http://www.humanservices.alberta.ca/documents/opg-guardianship-publication-opg5630.pdf>.