



COLLEGE OF
LICENSED PRACTICAL NURSES
OF ALBERTA



Interpretive Document

Incapacity under the HPA

Revised: January 6, 2020



This document is linked to legislation:

[Health Professions Act](#)
[Licensed Practical Nurses Profession Regulation](#)

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

[Standards of Practice](#)
[Code of Ethics](#)
[Professional Responsibility and Accountability](#)

This document is linked to related supportive documents:

[Duty to Report](#)

REVISIONS and UPDATES

Editorial Update January 2020

***Interpretive Document:** 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. An Interpretive Document provides an explanation of legislation that affects practical nursing and how to practice in compliance with the law. These explanatory documents are meant to clarify an LPN's understanding of obligations and issues arising from various pieces of legislation.*

Approval Date	April 19, 2018
Revision Date	January 6, 2020
Approver	Executive



INTRODUCTION The College of Licensed Practical Nurses of Alberta (CLPNA) is mandated to regulate the profession in the public interest. Certain illnesses or conditions affect cognitive functioning, decision-making and clinical judgment and these impairments can jeopardize client care.

As professional nurses, the obligation to ensure one's own fitness to practice is the commitment each LPN makes upon joining the profession (see the CLPNA document on "Professional Responsibility and Accountability" for more information). However, some illnesses or conditions can impair the ability to self-identify that your capacity to provide safe, competent and ethical care is compromised. In these situations, it becomes important to report concerns about an LPN not practicing safely to the CLPNA (see the "Duty to Report" document for more information).

The *Health Professions Act* provides options for the CLPNA to deal with these situations proactively and in an alternative manner to formal disciplinary proceedings; these options and their processes are explained in this document.

PURPOSE The purpose of this document is to provide applicants and regulated members with a clear understanding of:

- incapacity as defined in the *Health Professions Act*,
- the authority of the Registrar and Complaints Director in assessing incapacity, and
- what can be done with the information collected during these processes.

INTERPRETATION The *Health Professions Act* provides a specific legal definition for incapacity.

Incapacity is defined as suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol and drugs as defined in the Pharmacy and Drug Act or other chemicals that impair the ability to provide professional services in a safe and competent manner.¹

In accordance with the *Code of Ethics and Standards of Practice*, LPNs are professionally responsible and accountable for monitoring and maintaining their own fitness to practice and professional conduct.² Being 'fit to practice' means having the physical, mental and emotional health required to provide safe, competent and ethical nursing care. Recognizing that there are situations where an LPN's ability to monitor their own fitness to practice can be compromised; the *Health Professions Act* provides authority for CLPNA to intervene before or after initial registration in order to ensure that the public is protected.

Assessing Incapacity at Initial Registration

If there are grounds to believe that an applicant would be a danger to the public or be unsafe because of disability or incapacity, s. 28(3) of the *Health Professions Act* provides authority for the Registrar to require an applicant to undergo physical or mental examinations. The purpose of the examination is to assist the Registrar in determining whether the applicant would indeed be a danger or unsafe if they became a regulated member of the profession.

The examination can be conducted by a person agreed to by the applicant and the Registrar; however, if an agreement cannot be reached, the Registrar can designate a person to perform the examination.

The health professional performing the examination must fill out a medical information form which is submitted to the Registrar for review. This form only requires that the assessor provide the general nature of the disability, disorder or condition and not a specific diagnosis unless the applicant consents to that information being shared.

In accordance with s. 30 of the *Health Professions Act*, a registration decision may be deferred until the results of the medical examination are received. Depending on the results, certain conditions may be imposed on the applicant's practice permit or the application for registration may be refused if the applicant would be a danger to the public.



This authority is applicable only at initial registration. Once the individual has become a regulated member of the profession, a different process is used.

Opportunity to Appeal – Initial Registration

Applicants can request to review the documents used and created by the Registrar when considering their application.³ Additionally, applicants can request a review of a registration decision by the Council. The request for review must:

- be in writing,
- set out the reasons why the application should have been approved (or should have been approved without conditions), and
- be given to the Registrar within 30 days of receiving a copy of the initial decision.⁴

Assessing Incapacity after Initial Registration

Section 118 of the *Health Professions Act* provides authority for the Complaints Director to direct the regulated member to undergo physical or mental examinations if there are grounds to believe that the member is incapacitated. The Complaints Director can use this authority even if no complaint has been made.

It is important to understand that a failure or refusal to undergo an examination under s. 118 may be considered unprofessional conduct in accordance with the Health Professions Act.⁵

The physical or mental examination is carried out by a person or a facility specified by the Complaints Director and the assessor does not have to be the member's current health care provider.

The Complaints Director may also direct a regulated member to cease providing nursing services until the medical information is reviewed and the Complaints Director is satisfied that the member is no longer incapacitated and does not pose a threat to client safety.

If treatment is recommended after the examination, the Complaints Director may direct the member to

comply with recommended treatment at a facility specified by the Complaints Director and provide the results of that treatment within a specified timeframe.

In most cases where the Complaints Director is considering making a direction under s. 118, the regulated member will be provided with notice of the Complaints Director's concerns and the basis for the concerns. The regulated member will be provided with an opportunity to respond to these concerns.

Restrictions may be placed on the member's practice in order for them to return to work safely. Additional monitoring (e.g., random drug or alcohol testing) may be required upon return to practice depending on the situation or as part of the treatment plan. The Complaints Director will determine the length of time any restrictions should be in place.

If the member does not comply with directions from the Complaints Director, the Complaints Director must proceed with the investigation of any complaint made. The Complaints Director can also treat a failure to comply with their directions under s. 118 as a complaint and proceed with the unprofessional conduct process.

Opportunity to Appeal – After Initial Registration

It is important for members to know that they may appeal to the Council the following directions from the Complaints Director:

- the direction to undergo a medical examination,
- the direction to cease providing nursing services, or
- the direction to comply with the recommended treatment.⁶
- The appeal must:
 - be in writing,
 - set out the grounds for the appeal, and
 - be given to the CLPNA within 7 days of the member receiving the direction.⁷



Access to your Personal Information

If a complaint is received about a member, s. 63 of the *Health Professions Act* provides authority for the CLPNA, as part of the complaint investigation process, to collect personal information from the subject of the complaint (the member), their employer and/or any other witnesses.

The CLPNA is not required to provide evidence or records of information gathered during an investigation into a complaint to other parties who may be doing their own investigation (e.g., an employer or a union).⁸

Regulated members should be aware that their personal information can be shared with a health professional who is providing an independent medical opinion as part of the investigation.

The Complaints Director must notify the Registrar if the member has been directed to cease providing professional services.⁹ Section 119 of the *Health Professions Act* outlines who the Registrar must inform if a member's practice permit is cancelled or suspended, if conditions are imposed or if a direction

to cease providing nursing services is imposed. For example, if the Complaints Director makes a direction under s. 118, the information must be provided to the member's employer and other regulatory colleges.¹⁰

CONCLUSION The commitment to providing safe, ethical and competent care begins with LPNs taking care of themselves and maintaining their physical, emotional and psychological health. However, in situations where the LPN's ability to recognize the problem is impaired, the *Health Professions Act* gives the CLPNA authority to investigate and intervene in order to protect the public.

This document has been developed to help applicants and members understand the legal implications of incapacity as defined in the *Health Professions Act* and how it relates to the professional responsibility to maintain fitness to practice.

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

REFERENCES

¹ *Health Professions Act*, RSA 2000, c H-7, s 1(1)(s).

² Canadian Council for Practical Nurse Regulators (CCPNR), *Code of Ethics for Licensed Practical Nurses in Canada* (2013), http://www.clpna.com/wp-content/uploads/2013/02/doc_CCPNR_CLPNA_Standards_of_Practice.pdf.

³ *Health Professions Act*, s 30(4).

⁴ *Health Professions Act*, s 31.

⁵ *Health Professions Act*, s 1(1)(pp)(vii)(C).

⁶ *Health Professions Act*, s 118(6).

⁷ *Health Professions Act*, s 118(7).

⁸ *Health Professions Act*, s 125.

⁹ *Health Professions Act*, s 118(4).

¹⁰ *Health Professions Act*, s 119(1).