



Community Legal Information Association of PEI

Health Care Decisions



902-892-0853 or 1-800-240-9798
www.cliapei.ca clia@cliapei.ca

This booklet is part of a series called “Putting Your Affairs in Order At Any Age”. Publications in this series include:

- Wills
- Powers of Attorney
- Health Care Decisions
- Moving to a Community Care Facility or Nursing Home
- New Relationships: Legal and Safety Concerns
- Preventing Abuse and Neglect of Older Adults
- You and Your Grandchildren

All of these publications can be found at www.cliapei.ca or can be ordered by calling Community Legal Information Association (CLIA) at 902-892-0853 or 1-800-240-9798.

To view the Acts mentioned in these booklets, go to the PEI **Government website (www.gov.pe.ca) and type “statutes”** into the search engine provided. You can also order paper copies from Island Information Service at 902-368-4000 or 1-800-236-5196. There is a small fee for paper copies.

Caution:

These booklets are for general information only and do not replace legal advice. The information provided is not a complete statement of the law or policy in these areas. Changes in law and policy occur frequently, so readers should check with CLIA or a lawyer for up-to-date information. For legal advice, contact a lawyer or call the Lawyer Referral Service at 902-892-0853 or 1-800-240-9798.

Health Care Decisions

The following stories are examples of situations people may experience in PEI. At the end of the booklet, we explain how the information helped.

John has diabetes. His doctor has told him about a research study where he might have access to new drugs. John is surprised by the amount of information he is told about the study and the risks involved. John wonders if all those details are necessary.

Alice was diagnosed with breast cancer five years ago. Now the cancer has returned and spread to other parts of her body. Alice knows she does not want to suffer a lot of pain, nor does she want her son Tommy and her friends to watch her slowly waste away. She wants to make sure Tommy and others know her wishes.

Hank is a young man in perfect health. He and his wife Judy recently had a baby girl. Hank hopes he will live a long and healthy life, but he thinks he should make some preparations now to make things easier for his family in case something happens to him.

This booklet is designed to give people like John, Alice and Hank general information about the law concerning health care directives and consent **to treatment**. **We'll** meet them again at the end of the booklet.

The law about health care directives and consent to treatment is contained in PEI legislation called the *Consent to Treatment* and the *Health Care Directives Act*.

The words in bold are defined in the Glossary at the end of this booklet.

What does consent to treatment mean?

Consent means agreement to medical treatment. The law recognizes that you can decide what happens to your own body and can give consent or refuse consent to medical treatment. It says your consent must be voluntary, you must have the required capacity to give your consent, and you must be properly informed.

On PEI, everyone is presumed capable of giving or refusing consent to treatment unless it is proven otherwise. If you are capable, you have the right to choose treatment or to refuse treatment on any grounds, even if this refusal may result in your death. All the details must be explained to you and your questions answered.

You have the right to ask for an associate, someone you trust, to help you understand the information and make a decision. You can be involved in your own case planning and decision making.

What are the requirements for my consent?

There are several criteria that doctors and other medical people must meet when obtaining your consent or refusal for medical treatment. Your consent must be informed. This means that the doctor or other medical person must give you information about:

- your condition;
- the proposed treatment;
- possible positive and negative outcomes of the proposed treatments, including the risks, expected benefits, and any side-effects;
- other treatment options and their possible outcomes;
- possible outcomes of no treatment at all.





Other requirements include:

- the information must be given in a way that you can understand;
- you must have a chance to ask questions and receive answers to your questions;
- your consent must be given on the basis of accurate information;
- your consent must be for that particular treatment that has been explained and discussed with you. If another treatment is suggested later, additional explanations must be given and your consent obtained for the new treatment;
- your consent must be voluntary. No one can force you to make a particular decision;
- your consent must be obtained without misrepresentation or fraud;
- you must have the capacity to make the decision. This is explained in more detail later in the booklet.

How does a doctor or other medical practitioner decide if I am capable of giving my consent?

Whether you are capable of giving or refusing consent is a medical decision. When deciding if you are capable of making health care decisions, the health practitioner must consider whether you:

- understand the relevant information about your condition;
- understand that it applies to your situation and not to someone else;
- understand that you have the right to make a decision;
- appreciate the consequences of making a decision or not making a decision.



What if I don't understand the information I was given about the treatment or I don't know what to decide?

You can have all your questions answered by the doctor or an other medical person. You can usually ask for time to think it over. You can ask to have an associate help you understand the medical information and decide about treatment. An associate

is someone you trust as an advisor to help you make decisions. Your associate may be a family member or friend. You and your associate can ask the doctor or other medical person to explain the situation to you both and to answer all your questions.

What if I think I may want to refuse treatment?

The same information and explanations must be given to you if you are considering refusal of treatment. You must be given information about the consequences of your refusal. You may ask if you can have some time to think about it. You can discuss your situation with family or other trusted advisers. It is a good idea to ask if it will be possible to change your mind later. *It is your right to refuse treatment if that is what you want.*

How do medical practitioners know I have given my consent?

You may be asked to give your consent by signing a written form. You will be asked to sign a form if you are being admitted to the hospital or if you are having surgery.

If you refuse consent, you may be asked to sign a form indicating that you refuse.

For many minor medical procedures, no form is needed. Your cooperation and behaviour indicate your consent to treatment. For example, if your doctor recommends a flu shot and you hold out your arm to receive it, you have consented.



What happens if I am incapable?

If you are unconscious, confused or unable to communicate, you are not capable of giving or refusing consent to treatment at that time. The health practitioner will ask someone else to give consent. Capacity to give or refuse consent can change.

If you or the person asked to give consent disagrees with the assessment of your capacity, a reassessment can be asked for. The reassessment will be done by a different health practitioner.

Who can make medical decisions for me if I am incapable?

While you are not capable, the health practitioner will ask someone else to give consent for you. This person is called a substitute decision-maker. The choices, listed in order, are:

- your proxy named by you as your substitute decision-maker in your health care directive;
- your guardian, if the guardian was given this duty;
- your spouse;
- your son or daughter, or your parent;
- your brother or sister;
- a trusted friend who has close knowledge of your wishes;
- any other relative; or
- the Public Guardian, if none of the above is available or willing.

Your substitute decision-maker must be 16 years of age or older, capable, knowledgeable about your situation, and have had recent contact with you. His or her decisions about your treatment must agree with any of your known wishes.

Your wishes can be written down in a health care directive. If you have no health care directive, your wishes will be what you may have expressed to family members, friends, clergy and others. If your wishes are not known, the decisions of the substitute decision-maker must be in your best interests.

What is a health care directive?



A health care directive is a document in which you explain, in writing, your wishes about health care and treatment in case you are unable to make decisions or communicate them at a future time. In your directive, you can appoint another person, called a proxy, to make **health care decisions for you when you can't** make or communicate them yourself.

Health care directives are sometimes called living wills or advanced care directives.

Who can make a health care directive?

Anyone 16 years or older who is capable may make a health care directive.

What do I put in a health care directive?

In any directive, you may include some or all of the following:

- your appointment of another person or persons as proxy to make health care decisions for you when you cannot make or communicate them yourself;
- what treatments, procedures, or **medications you want, don't want, or** would like to have stopped;
- when you would like to die a natural death and receive only the care necessary to reduce pain and suffering;
- your statement that specifies an event or circumstances when your health care directive takes effect;
- any other instructions you have concerning your health care or treatment.



You do not have to include all of these areas. You can use the directive to name a proxy **only**. **You don't have to outline details** of your wishes about treatment. **You can't direct anyone to do** anything illegal or unethical.

Your directive may be very detailed about what treatments you **want or don't want**. **Your directive may be a general outline of** your beliefs and wishes, without details. Your directive will guide your proxy and others in the decisions to be made about your treatment **when you're not capable of doing this yourself**.



How do I make a directive?

A directive is something that you can make on your own. It is best if your family is involved in the process. Making decisions about the terms of your directive may not be easy and there are many things to think about. Using a form or a booklet will help you to consider all your choices.

Prince Edward Island has developed a health care directive form that contains notes to help you fill it out. Once you sign the form, it becomes your directive. Other forms can be used or you can write your directive without a form if you wish.

You can get a copy of the blank directive form through Island Information Service at 902-368-4000 or 1-800-236-5196. The form is also available from the provincial government website, www.gov.pe.ca, or on the CLIA website, www.cliapei.ca.

If you prefer, a directive can be drawn up by your lawyer at the same time you have your will and power of attorney prepared.

What are the rules about making a health care directive?

A health care directive must be written, dated, and signed by you. The proxy or proxies you name must also sign the section of the form where they agree to be your proxy. If your named proxies have not signed the form, their appointment is not valid.

If you cannot sign the directive yourself, someone else can sign the directive for you at your direction. If someone else is signing for you, you will also need a witness. The witness **can't be your proxy or your proxy's spouse**. You, your designated signer, and the witness must all be present when your directive is signed.

Who can be my proxy?

Your proxy can be any person you trust, such as a family member or a friend. It can be your spouse or partner. A proxy must be 16 years or older and be capable of making health care decisions.



You can name more than one proxy if you wish. There is space for this on the PEI form. If you name more than one proxy, you need to state in your directive whether the decisions made by them are to be made jointly (they must agree) or successively (second proxy gets to decide only if the first one is unavailable). You can name at least one alternate in case your named proxies are unable to act for you at the time.

All the people named as your proxies or as your alternates must agree in writing to fill this role. There is a space provided **on the PEI form for this. If they don't give their written** agreement, their appointment is not valid.

If you named your spouse as your proxy and later you separate or divorce, the proxy appointment is automatically cancelled. If you want him or her to remain as your proxy, you must state that in a new directive. In the new directive you state that, even though you are separated or divorced, you still want your former spouse to be your proxy.



How does my proxy make decisions?

Decisions made by your proxy are as legally binding as if made by you. The same requirements as for consent to treatment are required. Your proxy must be given complete information on your condition so he or she is fully informed before making a decision to give or refuse consent to your treatment. Your proxy must follow the instructions in your written health care directive when making decisions about your treatment. Your proxy is expected to act in your best interests and according to your values and beliefs. Your proxy **can't delegate the authority** to make decisions to anyone else. Except in certain circumstances, the legislation does not allow proxies to give

consent for participation in research, sterilization, abortion or electric shock therapy.

What should I do with my directive after I have made it?

You need to give copies of your health care directive to your proxy and alternate, your family doctor, and the hospital where you expect to receive treatment. It helps to let others (family, friends, clergy, and lawyer) know that you have prepared a directive. You may want to discuss your decisions with them and provide them with a copy too.

When will my directive be used?

Your directive takes effect when you are unable to make decisions or communicate them yourself. In your directive, you may also name an event or condition which will activate your directive. You will likely be asked if you have a health care directive if you are in an emergency room or admitted to hospital.

Must my health care directive be followed?

When you cannot make or communicate decisions yourself, health practitioners must try to find out if you have made a health care directive. The legislation states that the health practitioners must follow your directive. However, health practitioners do not have to follow a request in a directive if they consider it illegal or unethical.



What if I change my mind?

If you change your mind about anything that is in your directive, you can make a new directive in which you say the earlier one is revoked. You can outline your current wishes in the new directive. It is a good idea to have all copies of the earlier one returned to you so that you can destroy them. Make sure you tell everyone who needs to know that you have a new directive and give them copies.

What happens if my family disagrees with my directive?

The legislation states that your wishes in your directive are to be followed. However, health practitioners may choose to give the family some time to work out disagreements before they follow your directive. It is a good idea to involve your family in the process of making your directive so disagreements or misunderstandings can be resolved at that time. It is important that your family knows what your wishes are.

Should instructions about organ donation be in my directive?

If you would like to become an organ donor, there is space on the PEI health care directive form to note this. You can choose which organs or tissues you would like considered for donation. It is important to make this wish known to your family so that they are aware of your wishes. Their permission will be sought before donation takes place.



What if it is an emergency?

In an emergency, medical people will try to get consent from your substitute decision-maker. **If a substitute can't be found** and you are experiencing severe suffering or are at risk of serious bodily harm, you can be treated without consent. Any of your known wishes must be respected by the medical people treating your emergency. Consent for your emergency treatment may be sought later.

What if I get hurt or sick while I am travelling outside PEI?

Remember to take a copy of your directive with you when you travel. Health care directives are becoming widely used and are recognized in most provinces and in some other countries. You may wish to check what the law is in the location you are visiting.

Directives made in another place are valid here in Prince Edward Island if they meet the requirements of the place in which they were made or if they meet the Prince Edward Island requirements.



What if I want to join a research study?

Extra explanations are required to be given to you if a treatment is experimental or part of a research study. Full and complete disclosure must be given to you. A full explanation includes what is proposed, any risks and discomforts, what benefits may happen, and what appropriate alternatives might be offered. You must be informed that it is possible you may not gain any benefit at all. All your questions must be answered before you decide.

Who gives consent to medical treatment for my child?

A parent or guardian gives the required consent for treatment. The parent must be guided by what is in the best interests of the child. If a parent refuses to give consent to treatment a doctor considers medically necessary for the child, the doctor may have to report the situation to child protection authorities.

What if I'm a teenager and want to give my own consent for treatment?

The law doesn't give an age limit for you to give or refuse consent to treatment. Doctors or other medical people may feel you are mature enough to discuss treatments with you without your parents present. Depending on what the treatment is, your parents may have to give consent. You can call your doctor's office to see what your doctor's policy is.



What if I'm not sure whether an elderly relative is able to decide about medical treatment?

Whether a person has the required capacity to give or refuse consent is a medical decision. Being a bit forgetful does not mean a person is no longer capable of making medical decisions. A person can be frail or confined to a psychiatric facility, but still have the required capacity to consent to or to refuse treatment.

A discussion with your relative and his or her doctor may be helpful. If your relative presently is capable of making these decisions, it may be a good idea to write a health care directive, name a proxy, and state any wishes about what **treatment he or she wants or doesn't want.**

Now let's look at John, Alice, and Hank...

*John is told by his doctor that extra explanations are required to be given to the patient if a treatment is experimental or part of a research study. John was told that a full explanation includes an outline of what is proposed, its risks and discomforts, what benefits may happen, and what appropriate alternatives might be offered. John was also informed that it is possible he may not get any benefit at all. **John's doctor answered all of his questions. John discussed the situation with his family and some close friends. He decides to enter the research study and signs the required consent forms. John gets comfort from the thought that, even if the study does not result in direct improvement for him, the study may help others in the future.***

Alice talks to her clergy, her friends and her doctors. She tries to talk to her son Tommy, but he has very strong views and is too upset to discuss it. Alice fills out the health care directive with the help of friends. She names her friend Trudy as her proxy because Tommy is so upset. She writes in her directive that she wants to receive only the treatment necessary to reduce pain and suffering and wishes to stop chemotherapy as it is making her very ill. With the help of Alice's friends, Tommy is able to understand and accept his mother's wishes.

Hank and Judy consult a lawyer. After listening to the lawyer's advice, Hank and Judy ask the lawyer to prepare a will and a power of attorney. They each fill out a health care directive form. They know that these documents can always be replaced by new ones as circumstances change.

Pamphlets or forms to help you write your directive

The following may be helpful to you when writing your Health Care Directive:

- **“PEI Health Care Directive Form”**: Available from Island Information Services at 902-368-4000 or 1-800-236-5196 or at www.cliapei.ca/sitefiles/File/publications/PLA14.pdf
- **“Let Me Decide”** by Dr. William Molloy and Virginia Mepham, Newgrange Press, Troy, Ontario. Available from local bookstores or order from on-line book sellers like Amazon or Indigo.

Glossary of Terms

advanced care directive: a term sometimes used for a health care directive.

alternate: one who takes the place of another.

associate: a person whom the patient considers a trusted advisor.

capable: a legal term meaning the ability to understand your situation and appreciate the consequences so you can give or refuse consent to medical treatment.

consent: freely given agreement to medical treatment after being fully informed.

guardian: a person appointed by the court or another legal process to make various kinds of decisions for a person when that person is not capable.

health care directive: a document in which a person sets out decisions, wishes, or instructions about future health treatment, and/or appoints a proxy.

health practitioner: a person who is registered or licensed to provide medical treatments, such as a doctor, dentist, nurse, physiotherapist, etc.

joint decision: a treatment decision made together by two proxies.

living will: a term sometimes used for a health care directive.

organ donation: **allowing one's organs to be removed immediately** after death for medical purposes, usually for transplant into another ill person.

proxy/proxies: a person named in a health care directive to make decisions when the person making the directive cannot make or communicate decisions.

Public Guardian: a public official who can act as a substitute decision-maker for a person when no proxy, family member or trusted friend is available.

reassessment: **a second assessment of a person's capacity to consent to or refuse medical treatment, if requested.**

refusal of consent: freely given decision to refuse medical treatment after being fully informed.

revoke: cancel.

spouses: two people who are legally married or two people who have lived together in a conjugal (sexual) relationship for at least 3 years or two people who are living together in a conjugal (sexual) relationship and are the natural or adoptive parents of a child or children.

substitute decision-maker: a person who is authorized to make a decision on behalf of a person who cannot make or communicate his or her own decision.

successive decision: your second-named proxy makes the medical treatment decision for you only if your first-named proxy is not available.

treatment: a medical procedure done by a health practitioner for a health related purpose.

witness: a person asked to be present at the signing of the directive who can swear it took place.

Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can visit our website at www.cliapei.ca, email us at clia@cliapei.ca or telephone CLIA at 902-892-0853 or 1-800-240-9798, . You can also find us at: www.facebook.com/CLIAPEI, www.twitter.com/CLIAPEI and www.youtube.com/CLIAPEI. You may support CLIA by volunteering, becoming a member or making a donation.

Non-commercial reproduction of this document is encouraged.
Charitable registration number: 118870757RR0001

Date: August 2014

ISBN: 978-1-897436-70-7

Funding for this project was provided by Human Resources and Skills Development Canada through the New Horizons Program. The views expressed do not necessarily represent the official policy of HRSDC.
