

HEALTH CARE TREATMENT AND CONSENT



It is a good idea to think about who you want to make health care decisions for you when you are not capable of making these decisions yourself. Anyone could lose this ability, even temporarily.

LEGAL INFOⁱ
NOVA SCOTIA



It is a good idea to think ahead about who you would want to make health care decisions for you if you could not make these decisions yourself. Anyone could lose this ability, even for a short time.

A **personal directive** lets you choose someone to make health care and other personal care decisions for you if you cannot make them yourself. It can give that person guidelines to follow for making decisions.

Advance planning is important for all stages of life. Personal directives help to make sure the decisions you would want are made when you cannot make them yourself, even for a short time. They are also intended for permanent incapacity, such as a brain injury where you may live in the community for many years with assistance. They are also intended for use at the end of your life. A personal directive helps you get the level of comfort and care you want.

This guide can help you start to answer some of your questions about personal directives.

If you wish you can make your personal directive online at www.legalinfo.org/forms/personal-directive, or you can download instructions for writing a personal directive, and a personal directive form, at www.legalinfo.org/wills-and-estates-law/health-care



Who consents to medical treatment for me if I cannot?

Everyone in Nova Scotia has the right to make decisions for themselves about personal care and medical treatment as long as they have the **capacity** to do so. Capacity is the ability to understand information that you need to make a personal care or medical decision. It is also the ability to understand what can happen as a result of making a decision or not making a decision.

You can prepare for a time when you may not be able to make health care or personal care decisions for yourself by writing a personal directive while you are well. A personal directive is a legal document that names another person to make personal care or health care decisions for you. This person is called a delegate or a proxy.

If you have not named someone to consent, or agree, to health care decisions, your doctor will ask your closest family member to consent for you. They will ask people in this order:

- spouse (including legally married spouses, registered domestic partner, or common-law partner),
- adult child,
- parent,
- grandparent,
- grandchild,
- aunt or uncle,
- niece or nephew, and then
- other relative.

There is another way that someone could be named to make health care decisions for you when you cannot do it. A relative or friend can apply to the courts to be named as your representative. The courts might allow them to give consent to health care for you. Before naming a representative, a judge must find that you are not capable of consenting and that the best thing for you is to have a representative. The Nova Scotia Public Trustee has information on this topic at www.novascotia.ca/just/pto. Look under Adult capacity and decision-making.

In very unusual cases, there is no representative or other person who can consent for you. In these cases the Nova Scotia Public Trustee may be asked to give consent for you and might agree to take on this task. The Public Trustee is a government office that manages the affairs of some people who cannot do it for themselves. Contact the Nova Scotia Public Trustee for more information, or see the Public Trustee website at www.novascotia.ca/just/pto.

▶ How do I name a delegate?

You must write a personal directive. In it, you may name any person to be your delegate who is at least 19 years old and mentally competent. If you want to name your spouse or partner and they are not yet 19 years old, you may do that. **Mentally competent** means the person must be able to make important decisions. The delegate does not have to be related to you.

Choose someone you can trust to carry out your wishes. Talk with your delegate about your wishes for your health care.

Your directive must be in writing, and you must sign it. A person who is not your delegate or their spouse must witness your signature. Name a back-up delegate in your directive. This is in case your first choice cannot act for any reason, even for a short time. For example, your delegate could be travelling in another country. In that case, your back-up delegate could make decisions for you. Your delegate could make decisions for you once they returned to the country or they could be reached.

Your personal directive could include instructions for your care, directions on who to consult about your care or who to notify about your circumstances, and how a delegate may be compensated for taking on this role. The people giving you health care would need to respect those instructions if they could not reach your delegate or back-up delegate.



Do I need a lawyer to prepare a personal directive?

You don't have to talk to a lawyer when you write your personal directive, but it is a good idea. Your lawyer can make sure that your directive meets all the legal requirements and says clearly what you want it to say. Lawyers charge a fee based on the amount you want them to do, and how complex the work is. You should discuss fees with the lawyer before you decide to hire them.

Talk with your regular health care provider - your doctor or nurse - when writing your directive. This will help you to decide what treatments you agree to. Your doctor can explain the different ways to treat your medical condition and can give the best instructions for your needs. Without medical advice, your instructions might not give the results you want.



What should I do if a hospital or a care facility asks me to sign a standard personal directive form?

Some health care and residential care facilities use standard personal directives when patients or residents are admitted. These directives may include instructions that you would not want. For example, they might include a do-not-resuscitate order.

You do not have to sign this standard form. Also, a hospital or health care facility in Nova Scotia cannot refuse to treat you or admit you just because you refuse to sign their directive. The *Personal Directives Act* says it is against the law for these facilities to demand a personal directive.

If you get a standard form, review it with your health care provider (your doctor or nurse) before you decide whether to sign it. You might also show it to a lawyer. Do not sign a standard directive form if it would not give you the health care results you want. Instead, talk with your family about your health care wishes. You may want to write your own directive if you don't already have one.

▶ How specific should my health care instructions be?

Many facilities will ask you if you have a personal directive. If you have one, give the facility a copy for its files.

Your directive should be clear and detailed. Include the types of treatments you would agree to and those you would not agree to. Try to avoid broad statements that might reduce the options available for your treatment. For example, if you say you do not want to be given any medication, you might be ruling out a simple treatment that could ease your pain or help you overcome minor ailments during your illness.

Write down your values and beliefs in your personal directive as a way to assist in interpreting instructions and to help your delegate.

▶ Where should I keep my personal directive?

Give your doctor a copy of the directive to keep in your medical file. You could also give a copy to your delegate and to your close family members.

Keep the original at home in a special place. Tell your delegate or close family members where it is. Keep it in a firesafe box.

Do not put your directive in a safe deposit box that is in your name only. If you do, your delegate may not be able to get to it. Although people who have been given copies of your directive may not need the original, your delegate should be able to get the original directive if needed.

For example, you could be in hospital and staff might not be able to find the copy you provided. A medical person who does not know you might need to see the original. Keep a list of people who have copies of your personal directive with the original. If you are travelling, take a copy of your directive with you. If you are going into hospital or a continuing care home, take a copy with you. Some people like to put their delegate's contact information in the document.

▶ How often should I update my personal directive?

Update your personal directive when you make important life changes, like a common law relationship, marriage, remarriage, or divorce. Update it if your delegate or back-up dies or becomes unable to consent.

Review your directive from time to time with your doctor. Medical treatments change regularly as research improves them. You might want to mention new treatment methods and technology. If you have

a specific illness or condition, review your directive more frequently to make sure you keep up to date on treatments.

Organizations that deal with diseases (like cancer, AIDS, or Alzheimer's disease) have good information about new treatments and care. They can also give you support and help you and your family cope with the illness.

You can always ask your doctor or your medical specialist for more information, or you can go online. If you get information online, check to be sure that it comes from a reliable source.



How can I end a personal directive?

You can **revoke**, or end, your personal directive at any time, as long as you have capacity. You can declare your intention to cancel your personal directive in writing, and have it signed and witnessed. You can also destroy all copies of the old directive and write a new directive if you want to.

Tell your doctor, hospital, or health care facility that you ended your personal directive. Get back any copies you gave them. They need to know that you have changed your mind, whether or not you make a new directive. You should also tell your family members.

You do not have to write a new directive to cancel the old one. If you decide to make a new directive, then include in it a paragraph that ends (revokes) the old directive. Give a copy of your new directive to your doctor. You could also give a copy to your delegate and to your family members.



Will my personal directive be valid outside Nova Scotia?

There are legal requirements for directives to be valid in Nova Scotia. The law about directives is not the same outside the province. If you are outside Nova Scotia and you cannot consent, your directive might not be followed. It would have to meet the requirements in the province or country you are visiting.

Before travelling, review your directive and get advice from your lawyer. That will help to make sure that your directive will be followed if you cannot consent to treatment while travelling. If you plan to live outside Nova Scotia for some time, you may want to write another directive that will be valid where you are living.

Where can I find more information?

If you wish you can make your personal directive online at www.legalinfo.org/forms/personal-directive, or you can download instructions for writing a personal directive, and a personal directive form, at www.legalinfo.org/wills-and-estates-law/health-care

Nova Scotia Department of Justice, Personal Directives, including an information booklet, instructions for writing a personal directive, and a sample form: www.novascotia.ca/just/pda/

Government of Canada website about medical assistance in dying: www.canada.ca/en/health-canada/services/medical-assistance-dying.html

Government of Canada information about changes to the law about medical assistance in dying that came into force on March 17, 2021: <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>

End-of-life care in Nova Scotia: call 8-1-1 to speak to a registered nurse or go to www.811.novascotia.ca

Medical assistance in dying in Nova Scotia: call the Nova Scotia Health Authority at 902-491-5892 or see their website, at www.nshealth.ca/about-us/medical-assistance-dying

Dying with Dignity Canada: www.dyingwithdignity.ca

Caregiving Benefits: Contact Service Canada at 1-800-206-7218 for information about Employment Insurance Caregiver benefits to help you take time away from work to provide care or support to a critically ill or injured person or someone needing end-of-life care. Website: www.canada.ca/en/services/benefits/ei/caregiving.html

Nova Scotia Caregiving Leaves: Contact Nova Scotia Labour Standards at 1-888-315-0110 for information about unpaid leaves from work under Nova Scotia's Labour Standards Code, including Critically Ill Adult and Child Care Leaves, Compassionate Care Leave. novascotia.ca/lae/employmentrights/leaveparentcourt.asp

Nova Scotia Hospice Palliative Care Association: nshpca.ca

Canadian Hospice Palliative Care Association: www.chpca.ca/

Health Law Institute, Dalhousie University: End of Life Law and Policy in Canada: eol.law.dal.ca/

