



Community Legal Information Association of PEI

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# Health Care Directives



902-892-0853 or 1-800-240-9798

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

- Putting Your Affairs in Order At Any Age
- Wills
- Powers of Attorney
- Consent to Treatment
- Health Care Directives
- 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](http://www.cliapei.ca) or can be ordered by calling Community Legal Information Association (CLIA) at 892-0853 or 1-800-240-9798. To view the acts mentioned in these booklets, go to [www.gov.pe.ca](http://www.gov.pe.ca), click on “Government”, “Supreme Court” and then click on “Statutes”. A list of the acts will come up in alphabetical order. You can also order paper copies from Island Information Service at 368-4000 or 1-800-236-5196. There is a small fee for paper copies.

## Health Care Directives

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

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*Albert has been diagnosed with **Alzheimer's disease**. His wife Geraldine has arthritis and cannot get around very well. Albert doesn't want to be a burden to Geraldine and his children. He remembers his father, Dan, who had **Alzheimer's disease**. Dan often wandered off and didn't know where he was. Albert recalls how hard it was on his mother. He wants to do something now to make sure his family doesn't go through the same anguish.*

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*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.*

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*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.*

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

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

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

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## What is a health care directive?

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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?

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

## What do I put in a health care directive?

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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?

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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 it, 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 by telephoning Community Legal Information Association (892-0853 or 1-800-240-9798) or Island Information Service at 368-4000 or 1-800-236-5196. It is also available on the CLIA website ([www.cliapei.ca](http://www.cliapei.ca)) and the provincial government website ([www.gov.pe.ca](http://www.gov.pe.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?

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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 signer, and the **witness** must all be present when your directive is signed.

## Who can be my proxy?

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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?

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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.

For more information about **consent** to medical treatment, see the “Consent to Treatment” booklet.

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

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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?**

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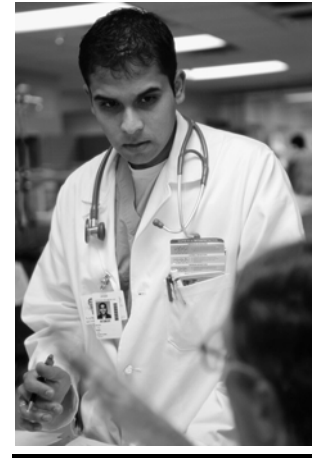
Your directive takes effect when you are unable to make decisions or communicate them yourself. In your directive, you may also name an event or condition which will activate your directive. You will likely be asked if you have a **health care directive** if you are in an emergency room or admitted to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



## Must my health care directive be followed?

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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?

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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 I do not have a health care directive and I'm in an emergency situation?

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If you are unable to give **consent** to treatment in an emergency and do not have a directive, you will still be treated. A **substitute decision-maker**, such as a family member, will be asked to give **consent** for you. In an emergency, if a substitute can't be found, medical practitioners can treat you anyway if you are experiencing severe suffering or are at risk of suffering serious bodily harm.

For more information, see the CLIA booklet "Consent to Treatment".

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

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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 happens if my family disagrees with my directive?**

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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?**

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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.

## **Now let's look at Albert, Alice, and Hank...**

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*Albert decides that he had better do something right away, while he is able. Geraldine helps Albert fill out a health care directive. In it, he states that he wants to go to a nursing home if he starts to wander or becomes too much care for Geraldine. He also states he does not want invasive treatments to save his life. This was hard for some members of his family to accept, but after discussion they know it is important to him. Albert hopes he has done everything he can to make sure his family does not go through what he did with his own father.*

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*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.*

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*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 fill out a health care directive for each of them. They know that these documents can always be replaced by new ones as circumstances change.*

## Glossary of Terms

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

**alternate:** one who takes the place of another

**Alzheimer's disease:** a brain disorder causing loss of memory and serious mental deterioration - not normal aging

**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

**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

**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

## **Pamphlets or forms to help you write your directive**

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

- “Prince Edward Island Health Care Directive Form”,  
Background Information & Notes
  - Dept. of Health & Social Services, PO Box 2000,  
Charlottetown, PE C1A 7N8. Tel: 902-368-6130  
Fax: 902-368-6136
  - Community Legal Information Association at  
902-892-0853 or 1-800-240-9798
  - A copy of the form is also available on-line at:  
[www.gov.pe.ca/photos/original/healthdirective.pdf](http://www.gov.pe.ca/photos/original/healthdirective.pdf)  
or [www.gov.pe.ca/photos/original/hss\\_bil\\_hedf.pdf](http://www.gov.pe.ca/photos/original/hss_bil_hedf.pdf)  
or [www.cliapei.ca](http://www.cliapei.ca)
- “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.com](http://amazon.com).

# Notes

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**Caution:**

**The contents of these booklets are general information only and should not form the basis of legal advice. The contents are 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 892-0853 or 1-800-240-9798.**

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