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**Community Legal Information Association  
of Prince Edward Island, Inc.**

## **What Seniors Need to Know Health Care Decisions**

*Albert*, age 60, has been diagnosed with ***Alzheimer's disease***. His wife Geraldine, also 60, has bad arthritis and cannot get around very well. Albert is frightened and upset. He knows he does not want to be a burden to Geraldine or their children, who have their own families now, but he also realizes his condition will worsen as time goes by. His father, who had become senile and lived at home until his death at age 70, was a real worry to them all. He often wandered off, not knowing who or where he was. Albert wants to do something now to make sure he doesn't follow in his father's footsteps and cause his family similar concerns.

*Alice* was diagnosed with breast cancer five years ago. She underwent treatment for two years and everything seemed fine. Recently, she found out the cancer has returned and spread to other parts of her body. She is getting chemotherapy now, but it is only in an effort to increase the time she has left.

Alice made her will and named a Power of Attorney during her first bout with cancer, so that is done. She knows she does not want to suffer a lot of pain, nor does she want her daughter and her friends to watch her slowly "waste away".

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Prince Edward Island has legislation called the *Consent to Treatment and Health Care Directives Act*. This pamphlet provides information on each of these topics.

\* Words in ***bold italics*** are defined in the glossary at the end of this pamphlet.

## Consent to Treatment

### What does consent to treatment mean?

The legislation says that everyone is presumed *capable* of making decisions about their care 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. This means that you can say either “yes” or “no” to the treatment a *health practitioner* (doctor, dentist, physiotherapist, etc.) suggests.

### What if I don't understand or don't know what decision to make?

You can ask an *associate* to 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.

### How do I know I am getting the right information? Is there any protection for me?

There are several criteria that health practitioners must meet when obtaining your *consent* or refusal for treatment. These criteria are for your protection and are:

1. Consent must be informed. This means that the health practitioner must give you information about:
  - your condition,
  - the proposed treatment,
  - possible positive and negative outcomes of the proposed treatment,
  - other treatment options and their possible positive or negative outcomes, as well as
  - possible outcomes of no treatment at all.
2. The information must be given in a way that you can understand.
3. You must have a chance to ask questions and receive answers to your questions.

4. Consent must be given voluntarily. No one can force or coerce you to make a particular decision.
5. Consent must be obtained without misrepresentation or fraud. You must give or refuse consent on the basis of accurate information.
6. Consent must be only for that particular treatment that has been explained and discussed.

### **How does a health practitioner decide if I am capable?**

If you are unconscious or unable to communicate, you are not capable of giving or refusing consent at that time, though you may be capable later. If you are conscious but have had a stroke, you may be in a state of confusion about what is being said to you.

When deciding whether you are capable of making health care decisions, the health practitioner must look at whether you are able to:

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

If you disagree with the health practitioner about whether or not you are capable, you have the right to request a **reassessment**. A reassessment will be completed by a different health practitioner.

When capability returns (for example, when you regain consciousness), responsibility for your health care decisions will be returned to you.

### **What happens if I am incapable?**

If the health practitioner determines that you are incapable, he or she chooses a **substitute decision-maker** who may make decisions for you. Here are the possible choices, listed in the order the practitioner must follow in finding a substitute:

1. the **proxy** named by the patient as their substitute decision-maker in a ***health care directive***
2. the **guardian** of the person, if given this duty as guardian
3. the spouse of the person
4. the son, daughter, or parent of the person
5. the brother or sister of the person
6. a trusted close friend of the person
7. any other relative of the person
8. 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 must have had recent contact with you. Their decisions must agree with any of your known wishes. If your wishes are not known, the decisions must be in your best interests.

### **What if it is an emergency?**

In an emergency, treatment required to prevent serious bodily harm or to ease severe suffering may be administered without consent, if it is not possible to get consent at the time.

## **Health Care Directives**

### **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/or treatment in case you are unable to make decisions or communicate them at a future time. You can also make known your wishes about end-of-life medical treatment.

Health care directives are sometimes called ***living wills***. They come into effect when you are no longer capable of making decisions or of communicating your decisions to others.

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

In any health care directive, you may include the following:

1. what treatments, procedures, or medications that you want, don't want, or would like to have stopped
2. when you would like to receive only the care necessary to promote comfort and reduce pain and suffering
3. appointment of another person as a proxy to make health care decisions for you when you cannot make them yourself
4. a statement that specifies under what circumstances your health care directive takes effect, and
5. any other instructions you have concerning your health care or treatment, such as instructions about how and where you would prefer to spend your final days.

You do not have to include all of these areas, but you may if you wish. You may NOT use a directive to instruct anyone to carry out ***assisted suicide*** or ***euthanasia***.

## **Who can make a health care directive?**

Anyone over the age of 16 years who is capable may make a health care directive.

## **Do I need a lawyer to make a directive?**

While it is a good idea to discuss this with your lawyer, 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 your choices.

There are booklets listed at the end of this pamphlet that can help you write a health care directive. Prince Edward Island has developed a health care directive form. It contains notes to help you fill it out. 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 1<sup>st</sup> floor Jones Building, 11 Kent St., Charlottetown (368-4000 or 1-800-236-5196).

### **What are the rules about making a health care directive?**

A health care directive must be written, dated, and signed by you. If you cannot sign for yourself, someone else must sign for you. If another person signs, the signing must be witnessed. You, your signer, and the *witness* must all be present when your directive is signed. The person who signs for you and the witness cannot be your proxy or the spouse of your proxy.

### **Who can be my proxy?**

Any person you trust with this responsibility may be your proxy. You can name more than one proxy if you wish. If you name more than one proxy, you need to state in your directive whether the decisions made by them are to be *joint decisions* (they must agree) or whether one of them can make decisions. You should name at least one *alternate* in case your proxy is unable to act for you at the time.

If you named your spouse as proxy and later you divorce, the proxy appointment is automatically canceled. If you want him or her to remain as proxy, you must state in your directive that, even though you are divorced, that person is still your proxy.

The person named as your proxy must agree in writing to be your proxy **BEFORE** you become incapable of making or of communicating your own decisions.

Decisions made by your proxy are as legally binding as if made by you. Your proxy must be given complete information on your condition in order to give or refuse consent to treatment. The requirements are the same as if the consent or refusal were being obtained from you. Your proxy must follow the instructions in your directive when making

decisions. Your proxy is expected to act in your best interests and according to your values and beliefs.

### **What if I change my mind?**

If you change your mind about anything that is in your directive, you can make a new one in which you say the earlier one is *revoked*. It is a good idea to have all copies of the earlier one returned to you so that you can destroy them.

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

It is recommended that you distribute copies of your directive to your proxy, if you have named one, your family physician, and the hospital where you expect to receive treatment. It helps to let others - like your family, friends, clergy, or lawyer - know that you have prepared a directive. You may want to discuss your decisions with them and provide them with a copy.

### **Must my directive be followed?**

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

### **What if I get hurt or sick while away from Prince Edward Island?**

Health care directives are becoming widely used and are recognized in most places. If you are traveling to another province or outside of Canada, check to see what the law is in the location you are visiting.

Also, remember to take a copy of your directive with you.

Out-of-province health care directives are valid in Prince Edward Island if they meet the requirements of the province in which they were made or if they meet the Prince Edward Island requirements.

### **What happens if my family disagrees with my directive?**

The legislation states that your wishes are to be followed. 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 also important that your family knows what your wishes are.

Health practitioners may choose to give the family some time to work out disagreements before they follow your directive.

### **Should instructions about organ donation be in my directive?**

If you decide you would like to become an organ donor, there is space on the Prince Edward Island 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 decision. In the event of your death, your family will be asked to consent to donation.

*Back to Albert..... Albert decides that he had better do something right away, while he is still capable. He expresses his wishes to Geraldine and together they talk to their children.*

*The whole family helps Albert draw up a health care directive in which 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 adds that he does not want invasive treatments to save his life when he becomes unable to make his own decisions about treatment. This is hard for his family to accept but he states it several times, so they know it is important to him.*

*The family discusses Albert's wishes with his doctor and gives his doctor a copy of the directive. Albert is still frightened about what the future holds, but is reassured that he has done*

*everything he could to make sure his family does not relive what they went through with his father.*

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*Back to Alice.....Alice talks to her clergy and her friends about her fears. Her clergy brings her a Prince Edward Island Health Care Directive form. She brings up the subject with her*

*daughter who is too upset to even discuss it.*

*Alice goes ahead and fills out the health care directive anyway, with the help of her friends, and gives a copy to her family doctor and her oncologist. As she is terminally ill, she decides she wants to receive only the treatment necessary to reduce pain and suffering and also wishes to stop the chemotherapy, as it makes her very ill.*

*When her daughter hears about this, she is very angry. However, through time, and with the help of Alice's friends and her clergy, she is better able to understand and accept her mother's wishes. She then decides to make her mother's final time comfortable, pleasant, and meaningful for both of them. Alice is as content as possible under the circumstances, and is fully supported by her family and friends.*

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## **Glossary of Terms**

<b><i>alternate</i></b>	one who takes the place of another
<b><i>Alzheimer's disease</i></b>	a brain disorder causing loss of memory and serious mental deterioration <b>not</b> normal aging
<b><i>assisted suicide</i></b>	death achieved with the help of another person at the request of the deceased
<b><i>associate</i></b>	a person whom the patient considers a trusted advisor
<b><i>capable</i></b>	the ability to understand the subject matter for which consent is required and the ability to appreciate the consequences of giving or withholding consent
<b><i>consent</i></b>	freely given agreement
<b><i>euthanasia</i></b>	deliberate imposition of death to prevent further suffering
<b><i>guardian</i></b>	a person appointed by the court to make various kinds of decisions for a person when that person is not capable
<b><i>health care directive</i></b>	a document in which a person sets out decisions, wishes, or instructions about future health care treatment, and/or appoints a proxy
<b><i>health practitioner</i></b>	a person who is registered or licensed to provide treatment
<b><i>joint decision</i></b>	a decision made together, or shared
<b><i>living will</i></b>	a term sometimes used for a health care directive

<b>organ donation</b>	the act of allowing one's bodily organs to be removed immediately after death for medical purposes, usually transplant
<b>proxy</b>	the person or persons appointed in a health care directive to make decisions on behalf of the person who made the directive
<b>Public Guardian</b>	a public official who can act as a substitute decision maker for a person when no proxy, family member or trusted friend is available
<b>reassessment</b>	a second assessment requested by a person, their associate, or a family member who disagrees with a health practitioner's opinion that the person is not capable of making a decision about treatment
<b>revoked</b>	cancelled or undone
<b>substitute decision maker</b>	a person who is authorized to make a decision on behalf of a person who is incapable of making their own decisions
<b>treatment</b>	a procedure or set of procedures done for a health-related purpose
<b>witness</b>	someone present at a signing so as to prove it took place

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

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

### **Living Will**

*by Dr. Peter A. Singer, University of Toronto*

Booklet and video are available

For booklet, send a request for the U of T

Living Will booklet, along with a \$5.00 money order or cheque to:

Center for Bioethics  
88 College Street  
Toronto ON M5G 1L4

## **Let Me Decide**

*by Dr. William Molloy and Virginia Mepham*

Available at the local bookstore on the shelf or by special order.

To find out about other Let Me Decide material available (talking books, videos), contact:

Newgrange Press

428 Orkney Road R.R.#1, Troy

ON L0R 2B0

Tel: 905 628 0354

Fax: 905 628 4901

*E-mail:* [idecide@netcom.ca](mailto:idecide@netcom.ca)

*Website:* [www.netcom.ca/~idecide](http://www.netcom.ca/~idecide)

### ***Credits***

*The information in this pamphlet was prepared by Community Legal Information Association of PEI, Inc. The material was extensively reviewed and edited for accuracy and readability.*

### ***Caution***

*The contents of these pamphlets are general information only and should not form the basis of legal advice. Changes in law and policy occur frequently, so readers should check with a lawyer or Community Legal Information Association (telephone 892-0853 locally or 1-800-240-9798 toll-free) for up-to-date information.*

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