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# Health Care Directives



DUNNING PLACE

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Saskatchewan  
Ministry of  
Justice and  
Attorney General



# Health Care Directives

The purpose of this booklet is to outline briefly the law and practice around health care directives.

This booklet is a summary and a guide based on the law. It is not as comprehensive as the law itself. It is not legal advice. If, after reading this booklet, you have questions or are uncertain about how to interpret the information, you should consult with a lawyer.

## What is a health care directive?

*The Health Care Directives and Substitute Health Care Decision Makers Act* (the Act) has been the law on health care directives since 1997. Under the Act, you can make a health care directive (directive) to appoint someone (a proxy) to make treatment decisions for you if you are unable to make those decisions (e.g. if you are unconscious, suffer from dementia or have Alzheimer's disease).

Your directive can also provide specific directions as to what you wish to have done or not done in your medical treatment.

If you have not created a directive, treatment decisions will be made by a relative or by treatment providers. Decisions will be made according to conversations or communications that took place before you were incapacitated, or according to what is believed to be in your best interests.

In the Act, "treatment" is defined as anything that is done for a therapeutic, preventive or palliative purpose related to the physical or mental health of a person.

A health care directive may also be called one of the following:

- advanced care directive
- advanced care plan
- personal directive
- living will

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

Any person over the age of 16 with the capacity to make a health care decision may make a directive.

In the Act, capacity is defined as the ability to:

- understand information related to a health care decision about a proposed treatment;
- appreciate the consequences of making or not making a health care decision about a proposed treatment; and
- communicate a health care decision on a proposed treatment.

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

Two very important pieces of information:

1. Directions (the clearer, the better) as to what you want to happen in your treatment if you are incapable of expressing those wishes. You can give directions as to what you want done – and not done.
2. Ideally, the name of your proxy – the person you have chosen to make treatment decisions for you if you are incapable of making those decisions for yourself.

## **What may I not put in a directive?**

You cannot authorize illegal activities (e.g. euthanasia, assisted suicide or any activity prohibited by the *Criminal Code*.)

## **What does a directive do?**

If you have clearly indicated the kind of treatment you want to receive, it ensures that your directions are followed.

If you have not been specific, and if you have only indicated “no heroic measures” or “no extraordinary procedures,” it may be difficult to determine what treatment you want in a particular circumstance. What your proxy considers heroic or extraordinary may not be viewed that way by medical professionals and vice versa. Under the Act, this sort of broad directive is used for guidance as to what the patient would have wanted.

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

Any adult who is capable can be appointed as your proxy. It will probably be a close family member or a very good friend. You will probably want to talk to whomever you choose before you make the directive.

You can appoint two people to be your proxy, either to act at the same time or separately. You can also appoint an alternative in case the first proxy dies or is unable to act.

## **Is it important to have a proxy?**

Yes. Appointing a proxy gives you control over who will make treatment decisions for you when you are not capable. Failure to have a directive or appoint a proxy who is aware of your wishes means others will make treatment decisions for you.

## **What happens if I don't appoint a proxy?**

If no proxy is appointed, the Act specifies that your nearest available and willing relative makes treatment decisions for you.

## **Who is considered my nearest relative?**

In the Act, the nearest relative is defined as the first available person from the following list:

1. your spouse or the person you live with and have a relationship of some permanence with;
2. an adult son or daughter;
3. a parent or legal custodian;
4. an adult brother or sister;
5. a grandparent;
6. an adult grandchild;
7. an adult uncle or aunt;
8. an adult nephew or niece.

If you have no nearest relative or none can be reached, two treatment providers (probably two doctors) can make emergency treatment decisions.

### **What if I have a power of attorney?**

If you have a property power of attorney, the attorney has no authority to make treatment decisions on your behalf. If you have a personal power of attorney and have specified that he or she can make treatment decisions on your behalf, then he or she can make those decisions.

However, if the proxy in your directive is someone other than your personal attorney, the proxy's decision carries more weight.

### **What if I have a guardian?**

If you have been found to be incapable of managing your affairs and a property guardian has been appointed by the court, the property guardian has no authority to make treatment decisions for you. If a personal guardian has been appointed by the court, he or she has the authority to make personal decisions for you, including treatment decisions.

However, if the proxy in your directive is someone other than your personal guardian, the proxy's decision carries more weight.

### **Can caregivers make treatment decisions?**

No. A caregiver has no authority to make treatment decisions unless:

- he or she is your nearest relative;
- you have named him or her your proxy;
- he or she is your personal attorney; or
- he or she has been appointed by the court as your personal guardian.

According to regulations, the operator of a licensed care home or a staff member in that home cannot be appointed your proxy in a directive.

## **Will the proxy be liable?**

The Act provides that no one will incur liability if he or she has acted in good faith. This provision ensures that medical professionals, proxies and next-of-kin who have followed a directive have some protection from liability.

## **What about admission to a treatment facility?**

A proxy or nearest relative may apply to a treatment provider to admit you to a health care facility. A health care facility is not defined in the Act, so it is not clear whether it includes a nursing home.

## **Who is entitled to my health care information?**

The Act provides that personal health care information is to be disclosed by a treatment provider to a proxy, personal guardian or nearest relative where it is necessary to make a treatment decision.

## **How can I revoke a directive?**

You can revoke a directive by:

- making a new directive;
- destroying the directive;
- recording in writing that it is no longer valid; or
- indicating verbally that it is no longer valid

If a spouse has been appointed as a proxy, the appointment is revoked if the marriage is terminated by divorce.

## **What if a directive is made outside Saskatchewan?**

As long as your directive complies with the Act, it is valid in Saskatchewan.

## **What are the legal requirements?**

The requirements are simple. A directive must be in writing, dated and signed by you. If you are physically unable to sign the document, a substitute signer and witness must sign it.

## **Is there a form I can use?**

There is no standard form for a directive. Samples of forms can be obtained from the health regions, from your lawyer, or from the Internet. We have attached a sample form at the back of this booklet that you can use as a guide. This form is available at [www.justice.gov.sk.ca/pgt](http://www.justice.gov.sk.ca/pgt).

## **Do I need a lawyer?**

You do not need a lawyer to prepare a directive. You can write one yourself, but you should think carefully about the words that you use and in particular, the medical terminology that you use.

You can use a form drafted by an organization or prepare your own. You should sign a directive only if you understand and agree with what it says.

If you are getting your lawyer to prepare your will and power of attorney, you can also ask him or her to prepare a directive for you.

## **Where can I get further information?**

Further information is available from:

- Public Legal Education Association has published a booklet called “Health Care Directives and Life After 60.” You can also visit their website at [www.plea.org/](http://www.plea.org/)
- The Regina Qu’Appelle Health Region has published a booklet called “My Voice.” You can also visit their website at [www.rqhealth.ca/](http://www.rqhealth.ca/)
- The Saskatchewan Association of Health Organizations has published a booklet called “Advanced Care Directives.” You can also visit their website at [www.saho.org/](http://www.saho.org/)



## Contact Information

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# SAMPLE HEALTH CARE DIRECTIVE

## TO MY FAMILY, DOCTOR, AND ALL THOSE CONCERNED WITH MY CARE:

I, \_\_\_\_\_ (Print your name), being capable of giving instructions about my current medical treatment, make this health care directive to be followed if I lose the capacity to make or communicate decisions regarding my health care.

### PART 1 – Health Care Wishes

(State your wishes as clearly as possible. Failure to do so may result in your wishes not being given effect.)  
The following are my feelings and wishes regarding my health care:

\_\_\_\_\_

I particularly want to have the following health care:

\_\_\_\_\_

I particularly do not want the following health care:

\_\_\_\_\_

The following are thoughts that I feel are relevant to my instructions: (You may state your religious beliefs, philosophy, or other personal values that you feel are important.)

### PART 2 – Health Care Proxy

I appoint the following person(s) to be my health care proxy: (A proxy must be 18 years of age or older.)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

If I have named more than one person, I want them to act: \_\_ successively or \_\_ jointly

Your proxy will have the same power and authority to make health care decisions for you as you would have if you were capable of making those decisions. If you wish to limit the scope of your health care proxy's powers, you may do so on the following line:

### PART 3 – Signatures

Signature of maker: \_\_\_\_\_ Date: \_\_\_\_\_

Witness's declaration: I have witnessed the signing of this health care directive by the maker (optional):

Signature of witness: \_\_\_\_\_

Address: \_\_\_\_\_

Consent of health care proxy: I consent to my appointment as health care proxy.  
(Optional)

Signature of proxy: \_\_\_\_\_ Date: \_\_\_\_\_