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The Nova Scotia College of Nursing is the regulatory body for licensed practical nurses (LPNs), registered nurses (RNs) and nurse practitioners (NPs) in Nova Scotia. Our mandate is to protect the public by promoting the provision of safe, competent, ethical and compassionate nursing services by its registrants.

Capacity refers to an individual's¹ ability to make life decisions such as personal care, finances, living arrangement, health, leisure activities, etc. It includes the ability to understand the consequences of a decision and/or the failure to make a decision. Individuals are presumed to have capacity to make decisions unless there is information that suggests otherwise. A decision may require different levels of capacity depending on the nature of the issue and the level of risk (e.g. having a flu shot versus having a high-risk surgery). This guideline provides information about the legislation related to capacity assessment and the nurse's² role in assessing capacity.

Personal Directives Act and Regulations

The *Personal Directives Act* (PDA) (2008) allows an individual with capacity to make a personal directive outlining instructions about future personal care decisions to be made on their behalf in the event that they lose capacity. The PDA also authorizes the individual to appoint a delegate to make personal care decisions for them should they no longer have capacity to do this for themselves. Personal directives take effect only when an individual lacks the capacity to make a personal care decision.

If an individual has not made a personal directive and has been determined to lack capacity, the PDA allows for a statutory decision-maker to be appointed. This statutory decision-maker is usually the nearest relative who has capacity and is willing to make decisions. When no such relative exists, the Public Trustee acts as the statutory decision-maker.

Under the PDA, personal care is considered to include, but is not limited to, “health care, nutrition, hydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities, support services and any other personal matter that is prescribed by the regulations” (s.21). In the *Regulations*, health care is further defined as “any examination, procedure, service or treatment that is done for a therapeutic, preventative, palliative, diagnostic or other health-related purpose, and includes a course of health care or a care plan”(s. 2(2)).

A basic capacity assessment for personal care, as defined by the PDA, falls within the scope of practice of many health care providers, including nurses. A more formal capacity assessment may be required when:

- an individual is unable to make decisions beyond their personal care
- the nurse is unable to determine the individual's capacity
- there has been a significant change in the individual's day-to-day capacity.

In addition, section 4 of the *Personal Directives Regulations* states that only a physician can complete a capacity assessment when:

- requested by the delegate, statutory decision-maker, nearest relative, health care provider, person in charge of a home care services provider or person in charge of a continuing care home in which the individual resides. Individuals may also request a reassessment of their capacity if they feel that their status has changed (PDA, s. 10);
- there are concerns that the individual who has made a personal directive lacks capacity to make the decision to leave the province (PDA, s. 11); or,
- a delegate's capacity needs to be assessed (PDA, s. 13(a)).

[Click here](#) for more information about the *Personal Directives Act*.

1 Individual refers to a person or client

2 The term nurse in this document refers to LPNs, NPs and RNs unless otherwise stated.

Adult Capacity and Decision-making Act and Regulations

The [Adult Capacity and Decision-making Act \(ACDMA\)](#) and [Regulations](#) came into effect on December 28, 2017 and replaced the *Incompetent Persons Act*. This new law applies to adults who may not be able to make some decisions for themselves due to temporary or permanent learning disabilities, mental health conditions, brain injuries or other health issues.

The ACDMA outlines the requirements for assessing capacity to determine the need for a representative³ (formerly known as a guardian under the *Incompetent Persons Act*) to be appointed to make certain decisions for the individual across the different capacity domains. These domains include, but are not limited to, personal care, finances, living arrangement, health and leisure activities.

The ACDMA extends the authority to complete capacity assessments to health care professionals other than physicians, including nurse practitioners (NPs) and registered nurses (RNs), who have completed education mandated by the Public Trustee’s Office.

[Click here](#) for more information about capacity assessments under the ACDMA.

Table 1: Summary of Provider Roles in Assessing Capacity

	Capacity to make Personal Care Decisions (PDA)	Decisions Needing a Representative (ACDMA)	Capacity related to Requests for MAiD	Capacity related to Decisions under Personal Directives Regulations (s.4)
LPN	X			
RN	X	X*		
NP	X	X*	X	
Physician	X	X	X	X

*RNs and NPs who have completed education mandated by the Public Trustee’s Office

Capacity Assessments for MAiD

In 2016, federal legislation changed the *Criminal Code* to allow medical assistance in dying (MAiD) for eligible clients and included NPs among the health care professionals authorized to provide MAiD. According to MAiD eligibility criteria, providers must determine if the individual has capacity to give informed consent to request and receive this intervention. Under the PDA, NPs are authorized to conduct the capacity assessments required for the provision of MAiD. [Click here](#) for more information about the NP role in MAiD.

Nurses’ Accountabilities Related to Assessing Capacity under the PDA and ACDMA

Nurses are accountable to be familiar with the specific legislation that is applicable to their practice setting and the type of capacity assessment required as well as to follow agency policies when initiating an assessment of capacity:

- If the nurse believes the individual has capacity, the nurse obtains consent from the individual and provides the nursing service or treatment.

³ “Representative” means a person appointed as a decision-making representative under the ACDMA (formerly referred to as guardian or trustee).

- If the nurse is unable to determine the individual's capacity to make personal care decisions, they should consult the individual's primary care provider to request further assessment. If the nurse is aware that the individual has an enduring power of attorney or a personal directive, the nurse should inform the primary care provider as part of the consultation.
- If there is disagreement about the individual's capacity or when requested by a delegate, statutory decision-maker or others as outlined in the *PDA* or *ACDMA*, the nurse should request an assessment of the individual's capacity by an authorized health care professional.
- Where a determination has been made that the individual does not have capacity, and a personal directive exists, the nurse should follow the instructions of the personal directive and/or the directions of the delegate named in the personal directive.
- When a decision has been made that a client does not have capacity and a personal directive does not exist, the nurse must seek out the statutory decision-maker to make informed decisions on the client's behalf.

Conclusion

Respect for the individual's dignity, autonomy and right to independent decision-making is protected by legislation in Nova Scotia but must be balanced with individual and public safety. Nurses are accountable to follow their standards of practice and be familiar with relevant legislation when determining an individual's capacity to consent to the specific services being provided.

For further information on anything contained within this practice guideline, please contact a NSCN practice consultant at practice@nscn.ca.