

Advance Directive

Instructions for health care matters



“When I could not get my Representation Agreement completed in time for my surgery, I used the Advance Directive to address the worst case scenario.”

What is an Advance Directive?

An Advance Directive is a new legal document in British Columbia as of September 1, 2011, when the Health Care Consent and Care Facility Admission Act was amended.

An Advance Directive is written instructions about what health care you do or do not want in the future if you become incapable and a health care decision needs to be made. An Advance Directive does not appoint a person to act on your behalf.

If you made a document with instructions for health care prior to September 1, 2011, it is only recognized as an Advance Directive if it meets the legal requirements as of September 1, 2011.

An Advance Directive is voluntary. You do not have to make one. The law says that no one can require you to have an Advance Directive in order to receive services.

A word about Health Care Consent

In B.C., if you are determined incapable of giving or refusing consent for health care, a health care provider must get consent from another authority.

A representative appointed in your Representation Agreement is an example of another authority for health care consent. An Advance Directive could also act as an authority.

If there is no Representation Agreement or Advance Directive that applies to the health care decision, the health care provider will select someone to be your Temporary Substitute Decision Maker. (TSDM) See the Nidus fact sheet for more detail, go to www.nidus.ca—Information—Health Care Consent—[Fact Sheet](#).

Who may make an Advance Directive?

You must be 19 years or older (an adult) in order to make an Advance Directive. You must also meet the capability requirements.

What are the capability requirements to make an Advance Directive?

You must be capable of understanding the type of health care your instruction deals with and the consequences of giving or refusing consent to it. You must also understand that if you make an Advance Directive and your instruction applies to the specific health care offered when you are incapable, a health care provider will only follow the instruction. They will not select someone to be a TSDM.

What does an Advance Directive cover?

An Advance Directive only applies to health care.

An Advance Directive cannot include instructions about the types of health care listed in the Health Care Consent Regulation, which are also restricted for a TSDM. See the fact sheet on [Restrictions on the Authority of a Temporary Substitute Decision Maker](#).

How do I make an Advance Directive?

You do not need a legal professional in order to make an Advance Directive. However, there are legal requirements such as who can be a witness as well as statements you must include. These requirements are discussed on page 4.

How do I write an instruction?

The essence of an Advance Directive is the written instruction(s) giving or refusing consent to specific health care. However, the law does not provide any examples of wording to use for an effective instruction.

The law does provide some general rules:

- An instruction can only cover health care.
- You cannot write an instruction that is against the law. If you do, it is not valid and must be separated or put aside from the Advance Directive. In particular, you cannot write an instruction giving consent to something that is against the law (e.g. euthanasia). You also

cannot write an instruction refusing consent to something that is required by law (e.g. use of the Mental Health Act if you are a danger to yourself or others).

Most importantly, an instruction must be clear that it gives or refuses consent to the specific health care decision. This means it must apply to the health care that is offered at the time you are incapable.

Some tips:

- You must write your instruction while you are capable, but the instruction needs to be about the health care you think you might be offered in the future if you are determined incapable.
- Be as specific as possible about the circumstances related to a treatment or intervention. Health care is defined more broadly than a specific type of treatment. What is the purpose of the health care? What problem does it address? An instruction such as "I give consent to surgery" or "I refuse consent to surgery" is likely not specific enough. See the example below.
- Avoid wording that requires judgment about your values or quality-of-life such as "If I am no longer able to communicate with my family and friends..." or "If my quality of life is severely limited..." These statements are not specific and may be interpreted differently by different people. These are better suited for a representative (someone you appoint in a Representation Agreement) than for a health care provider who does not know you.

For example, you might write in an Advance Directive: "I refuse consent for surgery" because you are thinking that you would not want surgery to treat your terminal cancer. However, you might find yourself in need of surgery due to a broken leg or severe cut following a car accident. If you are not able to consent at the time, because you are in shock or unconscious or confused, the refusal of surgery in your Advance Directive will be difficult for the health care provider to follow. Did you mean you would not want your broken leg set and you would risk amputation if the leg is not repaired and gets infected? There is not enough information in your Advance Directive to determine whether your instruction applies to that specific health care decision or the circumstance you intended. When a health care provider cannot tell if your Advance Directive applies, they will set it aside and look to another authority.

Does the health care provider have to follow my Advance Directive?

A health care provider will consider a number of issues with regard to following an Advance Directive. They first have to be of the opinion that you need health care. Then they have to determine you are incapable of consent.

The law says a health care provider *may* follow an instruction in an Advance Directive giving consent to specific health care; they *must* follow an instruction that refuses consent to specific health care.

The law also says that if treatment has been started before the health care provider locates your Advance Directive, and it includes an instruction refusing consent to the specific health care being offered, the health care provider must stop or withdraw the health care.

However, even if your Advance Directive has clear instructions, a health care provider must not follow your Advance Directive if:

- You have a Representation Agreement that covers health care, unless you included a statement in the Agreement to say otherwise.
- The instruction does not apply to the specific health care decision.
- The health care provider has evidence that your wishes, values and beliefs have significantly changed since you made the Advance Directive, unless this is accounted for in the Advance Directive.
- There have been significant changes in medical knowledge, practice or technology since you made the Advance Directive and these might substantially benefit you in relation to the health care instruction in your Advance Directive, unless you included a statement that you want your instructions followed despite any such changes.

An Advance Directive cannot address all possible health care decisions that may arise for you in the future and a health care provider could reject your instructions for one of a number of reasons. What steps can you take to make a strong plan?

A strong plan needs to be comprehensive in its authority. A Representation Agreement Section 9 can cover more health care matters than an Advance Directive and carries more authority because it gives a person or people the authority to carry out your wishes, even if a health care provider is unsure your instruction applies.

For example, an instruction such as "I refuse blood transfusions in any and all circumstances" would appear to be clear and specific. However, even though people of the Jehovah Witness faith have won the right to make this decision through various court cases, some still worry that a health care provider might be convinced by someone else that they have changed their mind and their values. In such a case, a health care provider will not follow the instruction.

Making a Representation Agreement is a way you can take the responsibility off the health care provider and put it in the hands of someone you trust - your representative. It is also a good idea to name an alternate, in case your representative is not available. You could also appoint a monitor to strengthen the Agreement and your wishes. Read more about Representation Agreement Section 9 at www.nidus.ca—Information—Representation Agreement. Also see Gwen's story at [Your News—Stories](#).

How does an Advance Directive fit with a Representation Agreement?

If you have a Representation Agreement and an Advance Directive (it does not matter which you made first), the Representation Agreement takes priority. Your representative(s) must follow any instructions or wishes you expressed verbally and/or in writing, including in an Advance Directive.

You have the option of including a statement in your Representation Agreement that a health care provider does not have to involve your representative in the specific health care decision(s) covered by your Advance Directive. This will give the Advance Directive priority.

How does an Advance Directive fit with a Living Will?

An Advance Directive is a legal document to give specific instructions about health care. A Living Will is not a legal document. Since there is no specific law for Living Wills in B.C., you can include preferences and statements about your values and beliefs, not only about health care but also about other life areas such as personal care.

Even though a Living Will has no legal effect on its own, the law says your representative (appointed in a Representation Agreement) must follow any instructions, wishes, preferences and values you express verbally or in writing such as in a Living Will.

A Living Will may also be useful to guide a TSDM, however you cannot be certain who will be selected as a TSDM when the time comes. A Representation Agreement provides comprehensive coverage as well as certainty and continuity about who may act on your behalf.

Cynthia was in the process of making a Representation Agreement Section 9 for health care and personal care. She was going to appoint her friend Albert as her representative and ask her sister to be the alternate. However, before she was able to complete her Agreement, she learned that she needed surgery to remove a benign tumour. Cynthia did not have time to get all her affairs in order before the scheduled surgery. In discussion with her surgeon, Cynthia became concerned about the possible risks, in particular the remote possibility she could end up in a coma. Cynthia asked her family doctor for help but he said that it was best to consult the surgeon as he did not know enough about the specifics. The surgeon agreed to help Cynthia write a specific instruction that she could include in an Advance Directive. Together they arrived at wording the surgeon felt able to follow if the remote possibility arose. However, the surgeon told Cynthia she should also go over the instruction with the anesthesiologist who might have a role to play if the worst case scenario should occur.

The surgery was successful and Cynthia destroyed her Advance Directive because it could only apply to the previous circumstance. She set about making a Representation Agreement to ensure any future situation could be addressed by her representatives - people she trusts and who know her.

What happens if my Advance Directive cannot be followed?

You may have a Representation Agreement that includes a statement that the health care provider does not have to get consent from your representative for matters addressed in your Advance Directive. However, if your Advance Directive cannot be followed, then the health care provider would get consent from your representative.

If a health care provider cannot follow your Advance Directive, and you do not have a Representation Agreement, they must select someone to act as your TSDM to give or refuse consent on your behalf.

What must be included in my Advance Directive?

The law says your Advance Directive must include a statement indicating you know that:

- A health care provider may not provide any health care for which you refused consent in the Advance Directive, and
- A person may not be chosen to make decisions on your behalf in respect of any health care for which you have given or refused consent in the Advance Directive.

What are the signing requirements for an Advance Directive?

If you make an Advance Directive, you and two witnesses must sign and date it in front of each other. You only need one witness if the witness is a notary public or a lawyer.

Someone may sign on your behalf if you are unable to sign/make a mark, due to physical reasons. You must still meet the capability requirements and you will have to direct someone else to sign on your behalf.

If someone signs on your behalf, they must be 19 years or older. They cannot also be a witness or someone who cannot act as a witness (see below). The signature of the person signing on your behalf must be witnessed in the same way as your signature.

Who can be a witness to an Advance Directive?

A witness to your Advance Directive must be an adult (19 years or older) who understands your type of communication, unless they receive interpretive assistance to understand.

A witness to your signature on an Advance Directive must NOT be:

- A person who provides personal care, health care or financial services to you for compensation, other than a lawyer or a member in good standing of the Society of Notaries Public of British Columbia; or
- A spouse, child, parent, employee or agent of a person listed at the first bullet above.

Are there forms for an Advance Directive?

There is no required form for an Advance Directive. The Ministry of Health has produced an optional form for an Advance Directive. They do not make it available on its own.

You can obtain the form inside the [My Voice Advance Care Planning Guide](#)

You can view the form at pages 50 and 51. To print the form, select pages 53 and 54.

Can I change or cancel my Advance Directive?

You must be capable of understanding the consequences of changing or revoking (canceling) your Advance Directive in order to do so.

You may revoke your Advance Directive by making another one and stating in the new one that you are revoking any previous Advance Directives. You can also revoke your Advance Directive by deliberately destroying it.

To make a change to your Advance Directive you must do it in writing and it must be signed and witnessed according to the same requirements for making an Advance Directive.

How do I register my Advance Directive?

You can register your Advance Directive with the Nidus Personal Planning Registry so it is available when needed. You can also register a Revocation of a previous Advance Directive and various other planning documents. For more details, go to www.nidus.ca/registry.

Where can I get more information?

New to personal planning? Read the [Nidus Personal Planning Guide](#). Go to www.nidus.ca—Self-Help—Planning Guide.

To learn more about [Representation Agreements](#), go to www.nidus.ca—Information—Representation Agreement—Fact Sheets.

To learn more about [Health Care Consent](#), go to www.nidus.ca—Information—Health Care Consent.