Coalition of Persons with Disabilities

Newfoundland and Labrador

Advance Health Care Directives

and

Substitute Decision Makers

This booklet provides general information about the law concerning **Advance Health Care Directives** in Newfoundland and Labrador.

The law about Advance Health Care Directives is contained within the provincial legislation.

A copy of this law can be found online at:

http://www.assembly.nl.ca/legislation/sr/statutes/a04-1.htm

The Coalition of Persons with Disabilities - Newfoundland and Labrador would like to thank the following organizations for their contributions supporting the Advance Health Care Directives Initiative.

PUBLIC LEGAL INFORMATION
Association of NL

Newfoundland and Labrador
Association for Community Living

Independent Living
Resource Centre

Newfoundland Labrador
Association of the Deaf

Canadian
Hard of Hearing
Association
NEWFOUNDLAND & LABRADOR

AUTISM SOCIETY
OF NEWFOUNDLAND AND LABRADOR
Shamrock Farm · A Place to Grow.

PEOPLE FIRST
OF
NEWFOUNDLAND
AND LABRADOR

PERSONNES
D'ABORD DU
TERRE-NEUVE-
ET-LABRADOR

CANADIAN MENTAL
HEALTH ASSOCIATION
ASSOCIATION CANADIENNE
POUR LA SANTÉ MENTALE
NEWFOUNDLAND AND LABRADOR DIVISION

Status of
Women Central

The Coalition of Persons with Disabilities - Newfoundland and Labrador would like to thank the following organizations for their contributions supporting the Advance Health Care Directives Initiative.

CHANNAL

Newfoundland and Labrador
Brain Injury Association

Idanl
Learning Disabilities Association of Newfoundland and Labrador
The right to learn, the power to achieve

cnib
vision health. vision hope.

PROVINCIAL ADVISORY COUNCIL ON THE STATUS OF
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Newfoundland
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Exploits
Disability Assoc.

Epilepsy
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Lieutenant Governor of Newfoundland and Labrador

Message from The Lieutenant Governor

I am honoured to support the Advance Health Care Directives education initiative as promoted by the Coalition of Persons with Disabilities – Newfoundland and Labrador (COD-NL).

An Advance Health Care Directive enables all individuals to ensure that their health care wishes are known and considered if for any reason they are unable to speak for themselves. This may be accomplished through individualized instruction and/or appointment of a substitute decision-maker(s).

Health care planning is about exercising your own choice and having your wishes documented so that they can be used by the health care system. It is an option available to everyone throughout the province and supported by provincial legislation. Most provinces and territories throughout Canada have similar options.

I am honoured to be a patron for the Coalition of Persons with Disabilities – Newfoundland and Labrador (COD-NL) and promote consideration of the Advance Health Care Directive throughout this province.

Frank F. Fagan, CM, ONL, MBA

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What is an Advance Health Care Directive?

An Advance Health Care Directive (directive) is a document in which you can explain your wishes about health care and treatment if you are not able to make decisions or communicate them at a future time.

In your directive, you can appoint one or more person(s), called a Substitute Decision Maker(s), who will make health care decisions for you if you cannot make them or communicate them yourself.

The directive is a legal document that must be followed except in limited circumstances. For example, in cases of emergency, health care providers can proceed with treatments that are medically necessary in order to save the life of the patient, if a delay in reaching a Substitute Decision Maker would pose a big risk to the patient. Directives cannot be followed if you ask someone to do something that is against the law.

Most provinces and territories have this type of directive. It is sometimes called a *living will*, a *health care directive*, a *directive or health care proxy.*

You should be aware that if you do not name a Substitute Decision Maker, there is legislation in Newfoundland and Labrador that will identify this person for you. This is covered in Section 10 of the *Advance Health Care Directives Act:*

http://www.assembly.nl.ca/legislation/sr/statutes/a04-1.htm#10

Newfoundland and Labrador has legislation allowing for individual health care directives. Each Regional Health Authority has the directive material and forms available within their health care centres:

Eastern Regional Health Authority - www.easternhealth.ca

Central Regional Health Authority - www.centralhealth.nl.ca

Western Regional Health Authority - www.westernhealth.nl.ca

Labrador/Grenfell Regional Health Authority - www.lghealth.ca

Who can make an Advance Health Care Directive?

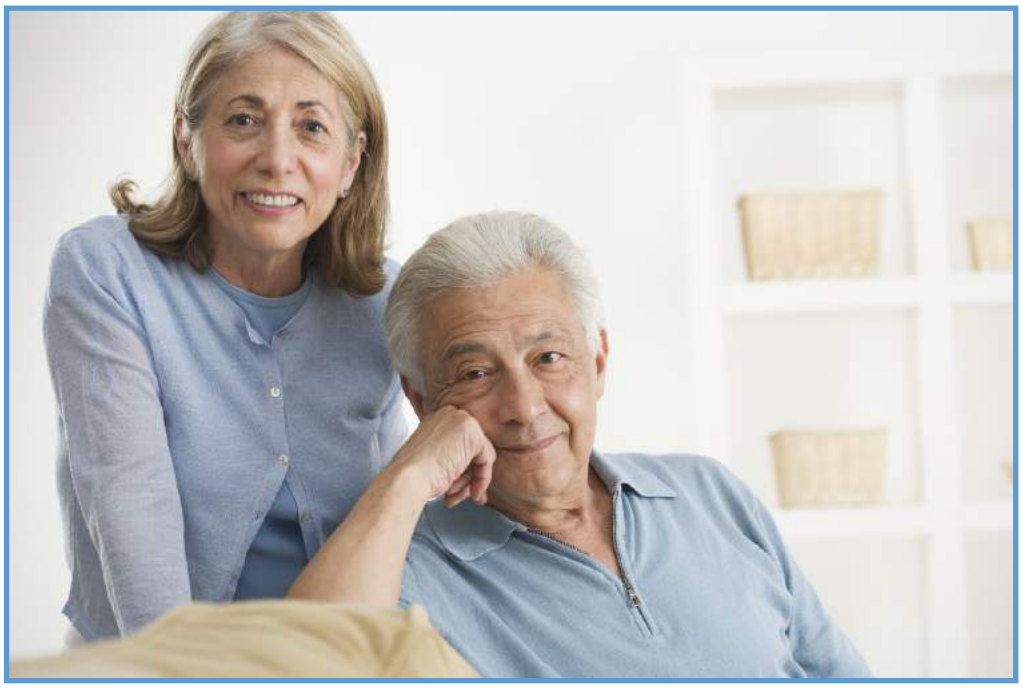
Anyone over the age of 16 who is capable may make an Advance Health Care Directive and/or appoint a Substitute Decision Maker.

A person under 16 years may make a directive, if assessed as a mature minor, which is a person under the age of 16 who understands his/her health issues and wishes to make his/her own decisions.

Where do I begin?

A directive is something that you can prepare on your own. It is best if your family is involved in the process, but sometimes family members do not agree with our health decisions and you may choose to appoint a friend rather than family.

There are many things to think about when writing your directive. Using a form like the one contained at the end of this booklet will help you to consider all your options. When you sign the form and have it properly witnessed it becomes your directive. You can create your own directive or have a lawyer prepare one for you. It is important to regularly review your advance health care directive and update it as required.



What do I put in my Advance Health Care Directive?

The choice is yours about what you say in your directive. You can use the form provided by the Department of Health and Community Services (located on page 15 of this booklet), have a lawyer prepare a directive for you, or simply write down your wishes. *(Note: Whichever method is used, your directive must meet the legislative (legal) requirements, which includes having it witnessed by two independent witnesses).*

If you use the Department of Health and Community Services form, you can choose to fill out some areas and not others. You can use the directive to name a Substitute Decision Maker only, or you can skip that section.

Whichever format you use, your directive may be a general outline of your beliefs and wishes, or it can be very detailed. It will guide your Substitute Decision Maker(s) and others in the decisions to be made about your treatment when you are not capable of doing this yourself.

In your directive you may include some or one of the following:

- Your appointment of another person or persons as a Substitute Decision Maker to make health care decisions for you when you cannot make or communicate them yourself. Example: this is a person or persons who you know understands what you would and would not want and will speak for you when you cannot speak for yourself.
- What treatments, procedures, or medications you want, do not want, or would like to have stopped. *Example: You may put time frames such as "please give my regular medications, but antibiotics for no more than thirty days".*
- Any other instructions about your health care or treatment.

No matter what format you use, you cannot ask anyone to do anything illegal or unethical.

What are the rules about making an Advance Health Care Directive?

A directive must be dated and signed by you. If you cannot sign for yourself, you may ask someone to sign the directive for you. The person signing on your behalf cannot be the Substitute Decision Maker or the spouse of the Substitute Decision Maker.

Your signature (or the signature of the person signing on your behalf) must be witnessed by at least two independent witnesses. The witnesses cannot be your appointed Substitute Decision Maker or your appointed Substitute Decision Maker's spouse.

Your Substitute Decision Maker(s) must also sign the directive indicating he or she agrees to the appointment. If the Substitute Decision Maker(s) does not sign the directive, the appointment is not valid. You, the person signing for you and the witnesses must all be present when your directive is signed and witnessed.

It is important that your Substitute Decision Maker(s) is available when/if you need them.

Who can I appoint as my Substitute Decision Maker(s)?

A Substitute Decision Maker is a person 19 years of age or older who will communicate your health care wishes, if you are unable to do so. This person can be anyone you know and trust, to carry out your directive, such as your spouse or partner, a family member or a friend.

As noted earlier, the Substitute Decision Maker must indicate in writing his/her acceptance to the appointment.

You can appoint one Substitute Decision Maker or you can appoint two or more people to work together as a team or individually to make decisions.

You can also indicate any person **whom you do not wish** to act as your Substitute Decision Maker.

If you do not appoint a Substitute Decision Maker, one will be appointed for you according to the *Advance Health Care Directive Act*. This person will likely be a family member.

What are the rules to appoint a Substitute Decision Maker(s)?

The Substitute Decision Maker(s) must indicate acceptance of this role in writing. You should talk about your wishes with your Substitute Decision Maker. If your Substitute Decision Maker(s) does not know your wishes, s/he will act as s/he believes you would wish. You should feel comfortable that this person(s) will communicate your wishes accurately.

If you appoint more than one person, the first person named in your directive will be appointed to act. If the first person is not available to act, the next person named will be appointed to act on your behalf. If you want your Substitute Decision Makers to act as a team to make decisions this must be clearly written in your directive.

A directive is a legal document and while it is not necessary for a lawyer to prepare it, you may wish to consult with a lawyer when drafting any legal document. You may wish to review this with your physician as well.

How does Substitute Decision Making work?

Decisions made by your Substitute Decision Maker(s) are as legally binding as if it were you making the decisions.

Your Substitute Decision Maker must:

- be informed about your condition before making a decision to give or refuse consent for treatment,
- act in your best interest according to your wishes, values and beliefs, not their own,
- not delegate his or her responsibility to anyone else,
- follow instructions as written in your directive.

The Act states that explicit consent is required for:

- Medical treatment for the primary purpose of research;
- Sterilization that is not medically necessary for the protection of your health;
- The removal of tissue from your body while you are living for transplantation to another person;
- The removal of tissue from your body while you are living for the purpose of medical education or medical research.

What should I do with my directive after I make it?

You should give copies to your Substitute Decision Maker(s). It is wise to give a copy to your doctor and family members. You may inform friends, clergy and your lawyer that you have prepared a signed directive. You should keep a notice that you have a directive and where it can be found.

If a health care professional has a copy of your directive, he/she is required by law to include it your medical record.

At the present time, once you are admitted to any health care facility your directive should become part of your medical record.

Must my Advance Health Care Directive be followed?

When you cannot speak for yourself health care practitioners will likely ask your family if you have made an Advance Health Care Directive. If not, it is the role of your family and or Substitute Decision Maker(s) to inform hospital staff that you have a directive.

A health care professional has a duty to take all reasonable steps to find out if an incompetent or uncommunicative patient has named a Substitute Decision Maker who is available. However, in cases of emergency health care, a health care professional may proceed with treatments that are medically necessary to preserve the patient's health or life, if a delay in obtaining consent from the Substitute Decision Maker would pose a significant risk to the patient

Health care providers will not follow any instructions in a directive that are illegal or unethical.

There are other exceptions to when an advance health care directive must be followed. For example, the maker of an advance health care directive (or his/her Substitute Decision Maker) cannot refuse involuntary psychiatric treatment or involuntary admission to a psychiatric hospital.

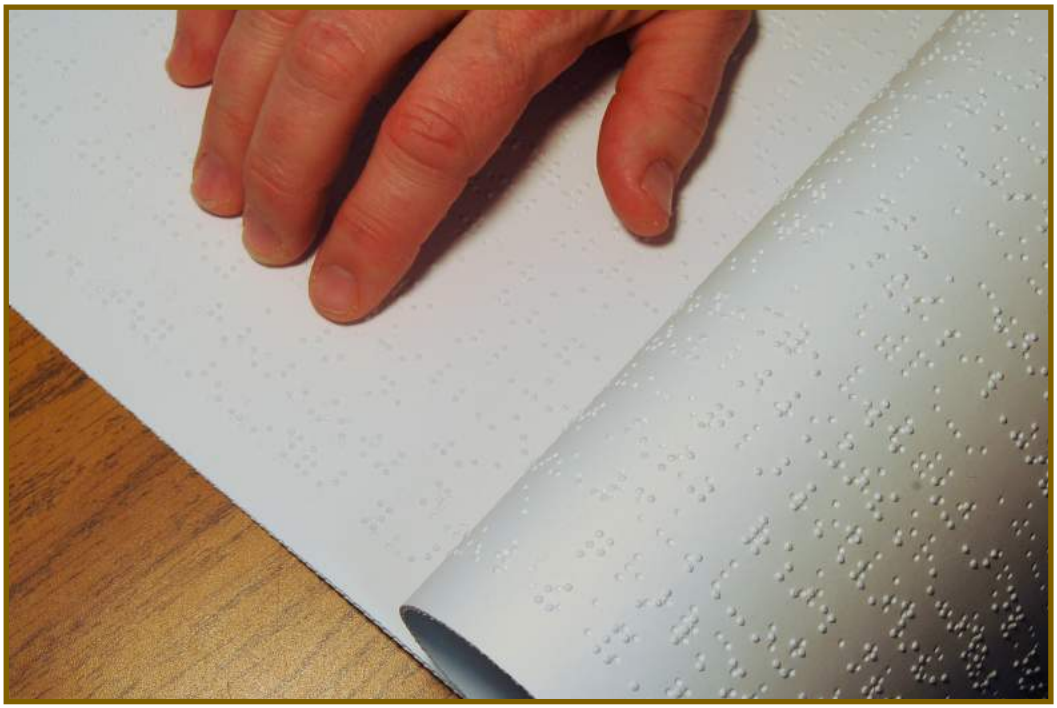
What if I change my mind?

You should review and, if necessary, update your directive regularly. Follow all procedures explained previously when writing a new directive.

- Tear up the old directive
- Make a new directive
- Write in your new directive that the old one is being replaced.
- Sign it yourself with two witnesses present.
- If you choose a Substitute Decision Maker(s) make sure he or she signs their name(s) and give him or her a copy. If more than one person is a Substitute Decision Maker then all must sign and provide each with a copy.
- You should alert others that you have made a new directive.
- The most recently prepared and dated directive is accepted as the legal document.

A lawyer can revise your directive following your new instructions.

When the new directive is completed you may choose to provide the revised copies to others such as family, health care providers, and/or clergy.



Is an Advance Health Care Directive valid in other provinces?

You should bring a copy of your directive with you when you travel. It is a good idea to check the laws for the places you travel to see if your Newfoundland and Labrador Advance Health Care Directive is valid.

What happens if I do not make a directive?

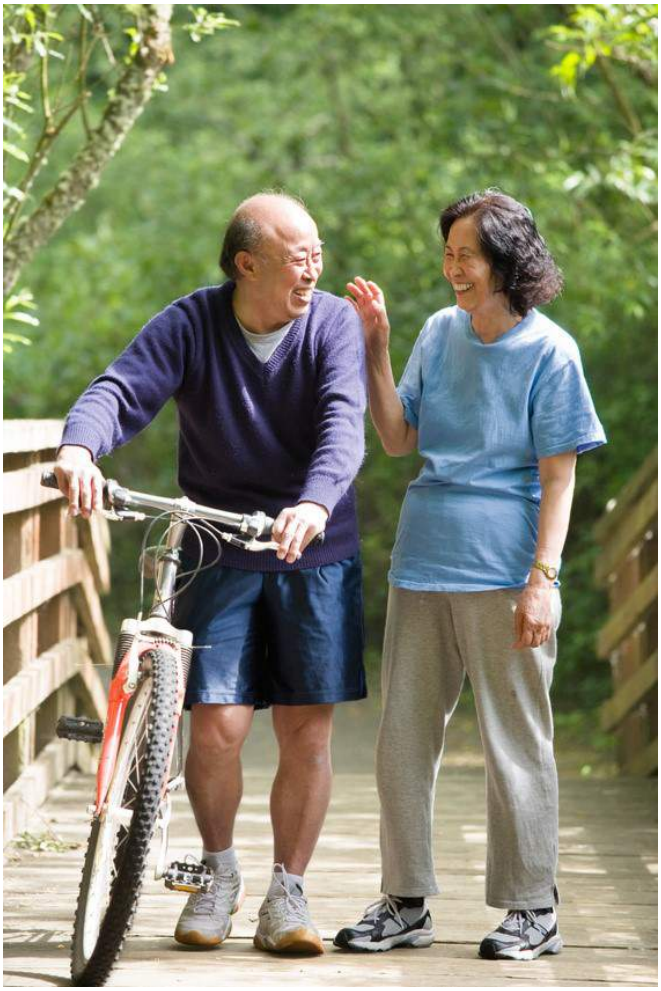
If you do not make a directive and you become unable to communicate your wishes, a Substitute Decision Maker will be appointed for you according to Section 10 of the *Advance Health Care Directives Act* in Newfoundland and Labrador.

What happens if family members disagree with my directive?

The legislation states that your wishes are to be followed provided that the directive is completed correctly with proper witnesses and signatures in place. It is an easier process if your family knows your wishes in advance. The direction of your properly appointed Substitute Decision Maker overrides all wishes of your family.

Should instructions about organ donation be in my directive?

In Newfoundland and Labrador a person may give direction regarding their wishes for disposal of their body and direction of organs after death. The Substitute Decision Maker does not have authority to consent to organ donation on your behalf. That consent follows the process in the provincial law called *The Human Tissue Act (1990, revised, 2006).*



Glossary of Terms

Advance Health Care Directive: A document in which a person sets out decisions, wishes or instructions about future health treatment and/or appoints a proxy/substitute decision maker.

Alternate: one who takes the place of another.

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 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 frience is available.

Revoke: cancel.

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 substitute decision maker 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.

ADVANCE HEALTH CARE DIRECTIVE

(TO BE PLACED ON MY MEDICAL RECORD)

I have stated my treatment wishes in this directive. If I am ever unable to communicate these wishes because of illness or injury, this directive must be used. If I am able to communicate my treatment wishes, this directive must not be used.

I, _____ *(your name)*, of _____ *(address/city/province)*, on this __ *(day)* of _____ *(month)*, _____ *(year)*, willingly and after careful deliberation, make this advance health care directive.

Signature: _____

(If you cannot sign with your signature, you can sign with a mark other than your signature, or you can direct someone other than your substitute decision maker(s) or your substitute decision maker's spouse to sign for you in your presence.)

We, the witnesses for this directive, are <u>not</u> the appointed substitute decision maker(s) or a spouse of the appointed substitute decision maker(s). We witness this directive in presence of _____ *(the maker of the directive)*.

Name: _____
Address: _____
Tel. #(Home): _____
Tel. # (Work): _____
Signature: _____

Name: _____
Address: _____
Tel. #(Home): _____
Tel.# (Work): _____
Signature: _____

<u>In this directive, I have set out the following</u> *<u>(you may choose one or both options)</u>*<u>:</u>

☐ **The instructions and/or general principles I want to be followed about my health care treatment if I am ever unable to communicate these wishes because of illness, injury, or otherwise.** *(If you choose this option, please complete the "Instructions and/or General Principles about my Health Care Treatment" section below)*

☐ **The person(s) that I appoint to act as my substitute decision maker(s) if I am unable to communicate my health care wishes because of illness, injury, or otherwise and/or the person(s) that I do <u>not</u> wish to act as my substitute decision maker(s).** *(If you choose this option, please complete the "Substitute Decision Maker(s)" section below)*

Instructions and/or General Principles about my Health Care Treatment

These are the instructions and/or general principles that I want to be followed if I am unable to communicate a health care decision:

_____

_____

_____

_____

Appointment of Substitute Decision Maker(s)

You may appoint one or more substitute decision maker(s). If you require additional space, please attach another page.

I appoint the following individual(s) to act as my Substitute Decision Maker(s) to make health care decisions on my behalf in the event that I am unable to do so: *Each person that you appoint must indicate in writing that they accept the appointment*

1. Name: _____
Address: _____
Relationship to me: _____
Telephone # (Home/Cell): _____
Telephone # (Work): _____

Acceptance of Substitute Decision Maker #1

I, _____ accept my appointment as Substitute Decision Maker. I am at least 19 years of age.

Signature: _____

2. Name: _____
Address_____
Relationship to me: _____
Telephone # (Home/Cell): _____
Telephone # (Work): _____

Acceptance of Substitute Decision Maker #2

I, _____ accept my appointment as Substitute Decision Maker. I am at least 19 years of age.

Signature: _____

3. Name: _____
Address: _____
Relationship to me: _____
Telephone # (Home/Cell): _____
Telephone # (Work): _____

Acceptance of Substitute Decision Maker #3

I, _____ accept my appointment as Substitute Decision Maker. I am at least 19 years of age.

Signature: _____

4. Name: _____
Address_____
Relationship to me: _____
Telephone # (Home/Cell): _____
Telephone # (Work): _____

Acceptance of Substitute Decision Maker #4

I, _____ accept my appointment as Substitute Decision Maker. I am at least 19 years of age.

Signature: _____

If you have appointed more than one Substitute Decision Maker, please select one of the following:

☐ I want my Substitute Decision Makers to act jointly. If I have appointed only two Substitute Decision Makers, this means that their decisions must be unanimous. If I have appointed more than two, the decisions of the majority will be considered the decisions of all.

☐ I want my Substitute Decision Makers to act successively. This means that the person I have appointed first in the list will be the only person that will act as my Substitute Decision Maker. If that person is not available or is unable or unwilling to act, then the person I have designated second will be the only person that will act as my Substitute Decision Maker (and so on).

☐ I want my Substitute Decision Makers to act as follows: *(Complete if you wish your substitute decision makers to make decisions in different way from what is in the above two options)*

_____

_____

_____

I do not wish the following person(s) to be my substitute decision maker(s): *If you do not appoint a substitute decision maker, or if the person(s) appoint is/are not available or unable or unwilling to act, a substitute decision maker will be appointed for you under section 10 of the* Advance Health Care Directives Act. *If you require additional space, please attach another page.*

1. _____ 2. _____

I authorize my substitute decision maker(s) to give consent on my behalf for the following procedures/treatments: *The* Advance Health Care Directives Act *states that the consent by a substitute decision maker for the following procedures/treatments has no effect unless you expressly authorize the substitute decision maker to give such consent.*

1. Medical treatment for the primary purpose of research:
   ☐ Yes ☐ No
2. Sterilization that is not medically necessary for the protection of my health:
   ☐ Yes ☐ No
3. The removal of tissue from my body while I am living for transplantation to another person:
   ☐ Yes ☐ No
4. The removal of tissue from my body while I am living for the purpose of medical education or medical research:
   ☐ Yes ☐ No

I _____, have made an Advance Health Care Directive. A copy is located at the following place(s):

_____

_____

_____

_____

_____ _____

Your signature Date

Newfoundland Labrador

Department of Health and Community Services and
Department of Justice

The contents of these booklets are general information only and should not form the basis of legal advice.

Date: September 2013

Charitable Registration Number: 891520660RR0001

Newfoundland Labrador

For more information contact:

Coalition of Persons with Disabilities - Newfoundland Labrador
460 Torbay Road, St. John's, NL, A1A 5J3
709-722-7011, info@codnl.ca

www.codnl.ca

The Coalition of Persons with Disabilities graciously accepts all monetary donations. Cheques may be written to COD-NL.
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