

# Fitness to Practice and HPA Definition of “Incapacitated”

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## INTRODUCTION

The College of Licensed Practical Nurses and Health Care Aides of Alberta (CLHA) has the authority under the *Health Professions Act* (HPA) to carry out its activities and govern Licensed Practical Nurses (LPNs)\* in a manner that protects and serves the public interest.

As professional nurses, the obligation to ensure one’s own fitness to practice is the commitment each LPN makes. Some illnesses or conditions can affect cognitive functioning, decision-making, and clinical judgment and jeopardize client care. It may also impede an LPN’s ability to self-identify their capability to provide safe, competent, and ethical care. In these situations, it becomes important to report concerns about unsafe LPN practice to the CLHA.

The HPA provides options for how situations related to fitness to practice and “incapacitated” can be managed by the CLHA, as explained in this document.

See the CLHA policy on *Professional Responsibility and Accountability* and the *Duty to Report* interpretive document for more information.

## PURPOSE

The purpose of this document is to provide applicants and LPNs with a clear understanding of:

- “incapacitated” as described in the HPA;
- the authority and role of the Registrar to manage incapacity issues of applicants;
- the authority and role of the Complaints Director to manage incapacity issues of LPNs; and,
- the CLHA management of the information collected.

This document is not a substitute for legal advice.

## INTERPRETATION

The HPA does not define fitness to practice but uses the term “incapacitated” to describe circumstances where the fitness to practice of a healthcare professional has been compromised by a physical, mental, or emotional condition or disorder.

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\*In this document, “LPN(s)” has the same meaning as “regulated member(s)” in the *Health Professions Act*.

Section 1(1)(s) of the HPA reads: “incapacitated” means suffering from a physical, mental or emotional condition or disorder or an addiction to alcohol and drugs as defined in the Pharmacy and Drug Act or other chemicals that impair the ability to provide professional services in a safe and competent manner.”

The CLHA considers issues of “incapacitated” to mean that an applicant or LPN is not fit to practice.

In accordance with the code of ethics and standards of practice for the profession, LPNs are responsible for maintaining their own fitness to practice and professional conduct. Being ‘fit to practice’ means having the physical, mental, and emotional health required to provide safe, competent, and ethical nursing care. Recognizing that there are situations where an LPN’s ability to monitor their own fitness to practice can be compromised, the HPA provides authority for the CLHA to intervene before or after initial registration to ensure the public is protected.

### **Determining Fitness to Practice or “Incapacitated” for Applicants**

As outlined in the HPA, if there are grounds to believe that an applicant would be a danger to the public or be unsafe to practice because of a disability, or that the applicant may be “incapacitated”, section 28(3) of the HPA provides authority for the Registrar to require the applicant to undergo physical or mental examination, or both. The purpose of the medical examination is to assist the Registrar in determining whether the applicant would be a danger to the public if they became an LPN.

Examinations are typically conducted by a health professional agreed upon by both the applicant and the Registrar; however, if an agreement cannot be reached, the Registrar can designate an appropriate health professional to perform the examination.

The health professional performing the examination must fill out a medical information form which is submitted to the Registrar for review. This form only requires that the health professional provides the general nature of the disability, disorder, or condition and not a specific diagnosis unless the applicant consents to that information being shared.

In accordance with section 30 of the HPA, a registration decision may be deferred until the results of the medical examination(s) are received. Depending on the results, certain conditions may be imposed on the applicant’s practice permit or the application for registration may be refused if it is determined that the applicant is not fit to practice.

This authority is applicable only at initial registration. Once the individual has become an LPN, a different process is used.

## Opportunity For Applicants to Appeal

Applicants can request to review their file and the documents used by the Registrar when considering their application. Additionally, applicants can request Council review a registration decision. The request for review must:

- be in writing,
- set out the reasons why the application should have been approved (or should have been approved without conditions), and
- be submitted to the Registrar within 30 days of receiving a copy of the decision.

## Determining “Incapacitated” for LPNs

There are circumstances when a LPN’s fitness to practice may come into question. Section 118 of the HPA provides authority for the Complaints Director to direct an LPN to undergo physical or mental examinations, or both, if there are grounds to believe that the LPN is unfit for practice or “incapacitated” as defined in the HPA. The Complaints Director may use this authority with or without receiving a formal complaint against the LPN at any stage of the conduct process as an alternative method of handling the concern.

It is important to understand that a failure or refusal to undergo an examination under section 118 may be considered unprofessional conduct in accordance with the Health Professions Act.

The Complaints Director may direct an LPN to cease practice until the physical or mental examination, or both, are reviewed. The physical or mental examination is carried out by a health professional or at a facility specified by the Complaints Director. The health professional does not have to be the LPN’s current healthcare provider.

Once the medical examination(s) report is reviewed, the Complaints Director may uphold or lift the direction to cease practice if the Complaints Director is satisfied that the LPN is no longer considered “incapacitated” and does not pose an ongoing threat to public safety.

Under section 118 of the HPA, if treatment is recommended following the medical examination(s), the Complaints Director may direct the LPN to comply with the recommended treatment at a facility specified by the Complaints Director and provide the results of that treatment within a specified timeframe.

Restrictions may be placed on the LPN’s practice permit as a condition for the LPN to return to practice. Additional monitoring (e.g., random drug or alcohol testing and continued therapy as recommended by assessing healthcare provider) may be required upon return to practice depending on the situation or as part of the treatment plan. The Complaints Director determines the length of time any restrictions will be in place.

Where the Complaints Director is considering making a direction under section 118 of the HPA, the LPN will be provided with notice of the Complaints Director's concerns and the basis for the concerns. The LPN can appeal the direction to cease practice.

Any direction will be detailed in writing to the LPN along with the reasoning for the decision provided by the Complaints Director.

If the LPN does not comply with directions from the Complaints Director, the Complaints Director can treat a failure to comply with their directions under section 118 of the HPA as a new complaint under section 54 of the HPA.

### **Opportunity for LPNs to Appeal**

Appeals related to certain decisions of the Complaints Director may be made to the Council. Decisions of the Complaints Director that may be appealed include:

- a direction to undergo a medical examination(s);
- a direction to cease practice; or
- a direction to comply with the recommended treatment.

The appeal must:

- be in writing;
- set out the reasons for the appeal; and
- be submitted to the CLHA within 7 days of the LPN receiving the direction.

### **Management of Personal Information**

Personal information may be collected from the subject of the complaint (the LPN), their employer, and any other witnesses, during the process of determining fitness to practice or "incapacitated" under the HPA.

The CLHA is not required to provide access to records made during an investigation into a complaint to other parties who may be doing their own investigation (e.g., an employer or a union).

An LPN's personal information can be shared with a health professional for the purpose of physical or mental examinations as part of the investigation.

The Complaints Director must notify the LPN if the LPN has been directed to cease practice. Section 119 of the HPA outlines who the LPN must inform if a LPN's practice permit is cancelled or suspended, if conditions are imposed, or if a direction to cease providing nursing services is imposed. For example, if the Complaints Director makes a direction under section 118 of the HPA, the information must be provided to the LPN's employer and other regulatory colleges.

## **CONCLUSION**

The commitment to providing safe, ethical, and competent care begins with LPNs taking care of themselves and maintaining the required mental and physical wellness to meet their professional responsibility. However, in situations where an LPN's ability to recognize they may not be fit to practice is impaired, the HPA gives the CLHA authority to investigate and intervene to protect the public from receiving unsafe care.

This document has been developed to help applicants for registration and LPNs understand the legal implications of being "incapacitated," as defined in the *Health Professions Act*, and how that relates to their professional responsibility to maintain fitness to practice.

Documents are updated frequently. For the most current version and access to related documents and resources, please visit the Knowledge Hub on [clha.com](http://clha.com).

If after reading this document you have questions, please contact the CLHA's Professional Practice Team via [practice@clha.com](mailto:practice@clha.com) or 780-484-8886 or 1-800-661-5877 (toll free in Alberta).