

Fitness to Practice

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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** its Health Care Aides (HCAs)* in a manner that protects and serves the public interest.

HCAs have a duty to maintain their own **fitness to practice**. Being 'fit to practice' means having the physical, mental, and emotional health required to provide safe, competent, and ethical care. Some illnesses or conditions can affect an HCA's ability to think clearly, make decisions, and use sound clinical judgment. This can negatively affect client care and impact an HCA's ability to provide safe, competent, and ethical care. In such cases, the HCA must report any concerns about unsafe HCA practices to the CLHA. Please see the *CLHA Duty to Report* interpretive document for more information.

Terms found in the definitions section are **bolded** where they appear for the first time in this document.

This document is not a substitute for legal advice.

PURPOSE

The purpose of this document is to clarify the fitness to practice requirements and the CLHA's role in managing situations where HCAs may be **incapacitated**.

INTERPRETATION

The HPA term for someone who is not fit to practice is "incapacitated." It describes situations in which the fitness to practice of a health professional has been altered by a physical, mental, or emotional condition or disorder.

The CLHA considers being "incapacitated" to mean that an HCA or **applicant** is not fit to practice and must follow the process outlined in this policy before they can continue providing **professional services**.

The *Code of Ethics for Health Care Aides in Alberta* and the *Standards of Practice for Health Care Aides in Alberta* state that HCAs are responsible for **self-reflection** and maintaining their

* In this document, "HCA(s)" has the same meaning as "regulated member(s)" in the *Health Professions Act*.

personal well-being while maintaining their fitness to practice and professional conduct. When an HCA cannot assess their fitness to practice, CLHA has the authority to take action before or after initial **registration** to ensure the public's protection.

Determining Fitness to Practice for Applicants

When an applicant applies for registration as an HCA or when an HCA applies for renewal of their annual **practice permit**, the CLHA may require evidence of fitness to practice.¹ If the applicant does not provide satisfactory evidence of fitness to practice, their application for registration or for practice permit renewal may be refused.

Additionally, at the time of initial registration, if there is reason to believe that an applicant for registration as an HCA would, by working as an HCA, be a danger to the public or be unsafe because of a disability or because the applicant is **incapacitated**, section 28(3) of the HPA authorizes the CLHA to require the applicant to undergo a physical or mental examination, or both.

If possible, examinations are conducted by a health professional agreed upon by the applicant and CLHA. However, if an agreement cannot be reached, the CLHA can designate an appropriate health professional to perform the examination.

Typically, the health professional performing the examination fills out a medical information form, which is submitted to the CLHA for review. This form only requires that the health professional provide the general nature of the disability, disorder, or condition, not a specific diagnosis, unless the applicant **consents** to that information being shared.

Under section 30 of the HPA, a decision about continuing with registration can be delayed until the examination(s) results are received. Depending on the results, certain conditions may be added to the applicant's practice permit, or the application for registration may be denied if it is determined that the applicant is not fit to practice.

The authority under section 28(3) of the HPA applies only to initial registration. Once an individual has become registered as an HCA, a different process is followed.

Determining Fitness to Practice for HCAs

Once an individual becomes an HCA, there are circumstances when their fitness to practice may come into question. Section 118 of the HPA provides authority for the **Complaints Director** to direct an HCA to undergo physical or mental examinations, or both, if there are grounds to believe that the HCA is unfit for practice or is "incapacitated." The Complaints Director can order an assessment with or without receiving a formal **complaint** against the HCA.

Under section 1(1)(pp)(vii)(C) of the HPA, a failure or refusal to undergo an examination under section 118 of the HPA may be considered unprofessional conduct.

The Complaints Director may direct an HCA to stop practice until the physical or mental examination, or both, are reviewed. This means an HCA must stop working as an HCA, and a condition will be placed on their practice permit. The physical or mental examination is carried out by a health professional or at a facility chosen by the Complaints Director.

Once the medical report is reviewed, the Complaints Director can maintain or remove the order to stop working as an HCA if the Complaints Director is satisfied that the HCA is no longer considered “incapacitated” and does not pose an ongoing threat to public safety.

Under section 118 of the HPA, if the medical exam suggests treatment, the Complaints Director can direct the HCA to follow the recommended treatment at a facility chosen by the Complaints Director. The Complaints Director can also ask the person or facility providing treatment to give the treatment results directly to the Complaints Director within a specific timeframe.

Sometimes, conditions can be put on the HCA’s practice permit for an HCA to return to work. Once an HCA has returned to work, part of a treatment plan might include additional monitoring (e.g., random drug testing, alcohol testing, continued therapy, etc.). The Complaints Director determines the length of time any conditions will be in place.

Where the Complaints Director is considering making a **direction** under section 118 of the HPA, the HCA will be provided with a notice of the Complaints Director’s concerns and the reason for them. The HCA will be given a chance to respond, and they can **appeal** the decisions made against them. The HCA can also appeal the direction to get examinations or attend treatment under section 118 (1) and (2).

The Complaints Director will give the HCA any directions and expectations in writing, along with the reasoning for the decision. If the HCA 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.

If the HCA was already the **subject of a complaint** when the Complaints Director took steps to assess the HCA’s capacity under section 118 of the HCA, the Complaints Director may suspend the **complaint proceedings** for a certain period of time or **indefinitely** if the Complaints Director believes the conduct leading to the complaint was caused by the HCA’s incapacity and the HCA is complying with directions under section 118.

Opportunity to Appeal

Under section 118(6) of the HPA, an HCA can appeal the following decisions made by the Complaints Director:

- a direction to undergo a medical examination(s),
- a direction to stop working as an HCA, or
- a direction to attend the recommended treatment.

The appeal must:

- be in writing,
- set out the reasons for the appeal, and
- be submitted within seven days of the HCA receiving the written direction.

Management of Personal Information

Personal information may be collected from the HCA, their employer, and any other witnesses while determining fitness to practice or being “incapacitated” under the HPA.

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

The CLHA is not required to provide access to records made during an investigation of a complaint or during a capacity assessment to other parties (e.g., an employer or a union) who may be conducting their own investigation. However, if an HCA is directed to stop working or has conditions imposed on their practice permit because of incapacity, the CLHA is required to notify the HCA’s employer of the direction or conditions.

CONCLUSION

This document helps HCAs and applicants understand the concept of being “incapacitated” and how that relates to their professional responsibility to maintain their fitness to practice. When an HCA’s fitness to practice or their ability to monitor their fitness to practice is compromised or at risk, the CLHA has the authority to investigate and make decisions to protect the public from receiving unsafe care.

If after reading this document, you have questions about fitness to practice, please contact the CLHA’s Professional Practice Team at practice@clha.com, 780-484-8886 or 1-800-661-5877 (toll free in Alberta).

Documents are updated frequently. For the most current version and access to related documents and resources, please visit the Knowledge Hub on clha.com.

DEFINITIONS

Appeal: a request made to the Council of the CLHA to change the direction made by the Complaints Director, using the process set out in the HPA.

Applicant: a person who submits an application to become registered as an HCA.

Authority: refers to the power or right to give orders, make decisions, and enforce obedience. It can also mean the appropriate person to give orders or make decisions. This could include supervisors, managers, employers, charge nurses, or educators.

Complaint: a statement that something is wrong or not good enough. A complaint may also refer to a notice that the HCA was involved in **unprofessional conduct**, which may include a not following the standards of practice, the code of ethics, or behaviours that harm the **integrity of the profession**.

Complaints Director: the CLHA staff member responsible for administering the unprofessional conduct complaint process.

Complaint proceedings: the unprofessional conduct complaint process as explained by Part 4 of the act.

Consent: agreement to what is being done by another person such as, the client approves of the proposed actions of the HCA and the healthcare team. Consent also means an agreement to do something.

Direction: an order or instruction.

Fitness to practice: having the physical, mental, and emotional health required to provide safe, competent, and ethical client care.

Govern: to lead, control, or manage an organization or group, often by creating rules and making decisions that guide their actions.

Incapacitated: when an HCA suffers from a physical, mental, or emotional condition or disorder or an addiction to alcohol or drugs or other chemicals that impairs the ability to provide professional services in a safe and competent manner.²

Indefinitely: for a period of time with no fixed end.¹

Integrity of the profession: is the public trust built when members of the profession work within their standards of practice and code of ethics.²

² CCPNR, *Code of Ethics for Licensed Practical Nurses in Canada* (2013), Standards, Codes, Policies - College of Licensed Practical Nurses of Alberta (clpna.com).

Practice permit: a current and valid practice permit issued to an HCA by the CLHA. A practice permit may have conditions specific to the HCA in addition to conditions for all HCAs on the same register.

Professional service: defined in the *Health Professions Act* as a service that falls within the practice of an HCA. This includes one or more of the following:

- assist and support activities of daily living to provide basic personal care and health services,
- assist in teaching a health care aide certificate program approved by the council,
- participate in client education and promotion of client wellness across the lifespan,
- teach health care aide techniques and practices to practitioners in the workplace, and
- provide restricted activities provided by the regulation.

Registration: when a regulatory college approves an applicant to use a specific title, like Health Care Aide, and work in a certain profession.³

Self-reflection: the process of thinking about and examining your own thoughts, feelings, actions, and experiences to gain insight and improve one's practice.⁴

Subject of a complaint: an HCA about whom the CLHA has received a complaint.

Unprofessional conduct: according to the HPA, unprofessional conduct includes actions and behaviours that reflect poorly on the HCA profession. Unprofessional conduct includes displaying a lack of knowledge, skill or judgment to provide professional services, not following the HCA standards of practice and code of ethics, or any other behaviour that is defined as unprofessional conduct under section 1(1) of the HPA.

REFERENCES

¹ *Health Professions Act*, RSA 2000, sections 28(1)(m) and 40(1)(d.2)

² Canadian Centre for Occupational Health and Safety, *Impairment at Work*, 2024, [CCOHS: Impairment at Work - Policy and Recognition](#).

³ Live and Learn. (2017). *Registration, Certification and Licensing: What Do These Mean?*

<https://livelearn.ca/article/employment/registration-certification-and-licensing-what-do-they-mean/>.

⁴ Grech, Joseph. (2020). "Critical Self-Reflection for Nurse Educators: Now More than Ever!" *Teaching and Learning in Nursing* 16 (1). <https://doi.org/10.1016/j.teln.2020.09.001>.