



Newfoundland and Labrador Council of Health Professionals (NLCHP)

Self-Employment Regulatory Document and Resource Guide

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The basis and format of this text was inspired by a similar document created by the College of Registered Nurses of Newfoundland and Labrador (CRNNL) in 2016 and a similar document created by the Newfoundland and Labrador Association of Social Workers (NLASW) in 2019. The NLCHP gratefully acknowledges the permission of the CRNNL and NLASW to use this work in its preparation of this regulatory document for self-employed health professionals within its jurisdiction. (See references for links to documents).

OVERVIEW

This document provides direction and resources for health professionals registered under the *Health Professions Act* in relation to regulatory responsibilities for self-employed practice. Self-employed health professionals need to consider all the business aspects of running an independent practice that would normally be handled by an employer. They must adhere to all other legislation, standards of practice, ethical codes and currently policies and guidelines relevant to their practice. Self-employed health professionals are encouraged to develop a business plan and consult with an accountant, lawyer, insurance advisor and bank as applicable. This document is meant to supplement the Standards of Practice, Code of Ethics, and Scope of Practice documents developed by each health professionals College as well as the policies of the NLCHP.

Please note: this document is intended as a guideline for regulatory issues only. NLCHP does not provide advice for business operations related to matters such as taxation, legal, insurance or finances. For information about operating a business please visit:

<https://www.gov.nl.ca/business-and-economic-development/>

DEFINITION OF SELF-EMPLOYMENT

Self-employed health professionals are registered health professionals who operate their own business. Self-employed health professionals may be sole practitioners, own their own business or work as a part of professional practice with a number of health professionals.

Self-employed health professionals work with the scope and standards of practice defined by their health professional College. Self-employed health professionals are autonomous and responsible for the quality of services and ensuring compliance with legislation, standard of practice and code of ethics. Clients may include individuals, families, groups, communities, educational institutions, organizations, corporations and/or health care agencies.

SELF-EMPLOYED HOURS

It is important to note that some duties carried out in the course of self-employment may not constitute practice hours of a health professional. The health professional College regulations designated under the *Health Professions Act* each mandate standard minimum work hours to maintain registration. Section 5 of the *Health Professions Act* requires candidates for registration to be employed for a number of hours in practice over four (4) consecutive years immediately preceding registration. Health professional work hours may come from a variety of settings to ensure high quality care and service that is evidence based and appropriately managed. It is generally accepted that there are four (4) domains/practice settings of work within any health discipline namely direct clinical, education, research and administration. It may be necessary to distinguish between components that are business related (e.g. sales, bookkeeping, etc.). If a health professional is unsure what percentage of their self-employed hours are applicable to practice hours, they should review the NLCHP Employment Documentation policy and/or consult with the NLCHP.

Documentation confirming their hours of self-employed practice must be verified by an independent third party, such as an accountant, tax specialist or office manager. Self-report of hours will not be accepted by NLCHP. For further information related to hours submission refer to the NLCHP Employment Documentation Policy (<https://www.nlchp.ca/wp-content/uploads/2019/10/Policy-FINAL-Employment-Documentation2.pdf>) and/or consult with the NLCHP.

NLCHP requires all health care professionals to notify NLCHP of any change in employer, including the addition of self-employment, within 30 days of the change or addition. They must update this information on the member portal on the NLCHP website.

COMPETENCY

The decision to enter private practice is not one that should be taken lightly. Self-employed health professionals are expected to practice within their area of competence. It is the responsibility of the health professional to assess one's own competence to ensure he or she has the skills, knowledge and experience to provide quality services.

Health professionals, particularly new graduates, considering private practice should consider developing a mentorship relationship with an experienced self-employed health professional. It is helpful to identify a support system that can assist in identifying, attaining, and maintaining competence and practice standards.

Self-employed health professionals are required to meet the continuing education and professional development requirements as outlined by their health professional College. Many national bodies also provide resources for self-employed health professionals. These resources will be outlined in the Resource section of this document.

Self-employed health professional should obtain business and legal advice as needed to identify, understand and comply with the laws that apply to their practice and business such as employment standards, workers compensation and workplace safety, taxation and other relevant legislation. The NLCHP nor the health professional's College provides advice on these matters. Failure to comply with relevant legislation may be a breach of standards of practice and could result in disciplinary proceedings.

PROFESSIONAL LIABILITY INSURANCE

The *Health Professions Act* requires all health professionals to maintain professional liability insurance. Self-employed health professionals are responsible for ensuring the level of liability risk associated with their private practice is covered in their liability insurance policy. Health professionals should consult with their professional liability insurance provider when engaging in self-employed practice. There may be need for additional insurance such as general, building and/or business insurance. It is recommended that health professionals consult with an insurance advisor.

POLICIES/GUIDELINES

Self-employed health professionals shall develop written guidelines/policies to guide their practice and the business aspects of their practice. Examples of such guidelines/policies where relevant to a particular practice include documentation, record management, informed consent, cleaning of equipment, compliance with Personal Health Information Act (PHIA), collaborative services with other providers, payment for services, succession planning and closing a practice. There is no established template for policy structure, this would be at the discretion of the health care professional. Self-employed should consult with NLCHP and College policies when developing policies for their own practice to ensure consistency.

CONSENT

Self-employed health care professionals have a legal and ethical responsibility to obtain valid documented consent from clients for services and to ensure their practices regarding the informed consent process comply with the law.

FEES FOR SERVICE

The NLCHP does not set fees for private practice for any of its health professions or provide direction on the processes for collection and accounting. Services in private practice are provided on a fee-for-service model that is mutually agreed to by a client or third party (i.e., insurance company or organization) or as set out in a contract. Self-employed health professionals should review their Code of Ethics prior to establishing fees. It is the responsibility of the self-employed health professional to set reasonable fee structures that are in line with the services being provided, and ensure the client is aware of the fees at the onset of the professional relationship.

Self-employed health professionals covered by the Health Professions Act are not eligible to access money through the province medical care plan (MCP). Some insurance companies will cover the costs of health professional services that are provided by private practitioners. Self-employed health professionals can discuss this with clients who maintain private health care insurance.

All the health professions covered by the *Health Professions Act* are recognized by the Canada Revenue Agency (CRA) as medical practitioners under the medical expense tax credit. Clients of self-employed health professionals may be eligible to claim service fees on their income tax return. Self-employed health professionals should communicate this to clients. More information is available on the CRA website: <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-1-individuals/folio-1-health-medical.html>

Self-employed health professionals are accountable to meet all requirements of federal and provincial legislation in relation to tax including HST, payroll tax, payers account number, health and post-secondary tax, workplace safety registration and annual income tax.

CONFLICTS OF INTEREST

In some instances, self-employed health professionals may also be employees with health care organizations such as a regional health authority. It is important for self-employed health professionals who also work with a health care organization, to consult with their employer regarding conflict of interest policies. Health professionals should not refer clients from the health care organization they are employed with to their private practice. In situations where the health care organization makes a referral to the health professional's private practice it is important to clearly document the nature of the request and ensure the organization and client are aware. Self-employed health professionals involved in sales or product promotion must ensure their personal or private interests do not interfere with the interests of clients receiving care or the health professional's professional responsibilities.

Health professionals have an ethical responsibility to establish and maintain appropriate professional boundaries throughout the course of the professional relationship and once the relationship has ended. Issues that warrant consideration include but are not limited to:

- Development of social media policies
- Evaluating potential for dual and multiple relationships (i.e. providing services to friends or family)
- Establishing practice in a home-based setting and considerations of professional/personal self-disclosure.

ADVERTISING

Advertising means to publish, display, or distribute any advertisement, announcement or information related to a health professional's practice, or to cause or permit it, directly or indirectly, to be published, displayed. Advertising of health professional services should be conducted in a responsible and transparent manner. Any advertising undertaken must not be reasonably expected to mislead the public distributed or used. Health Care Professionals should also review any related College and national body standards/policies/guidelines related to advertising of services.

Self-employed health professionals should ensure that any advertising for their services meets all the following criteria¹:

¹ Adopted from the Newfoundland and Labrador College of Dental Hygienist Advertising Standards Policy <https://drive.google.com/file/d/0BxhRtZHLZj24VzFRSUw4ZFoxbmRnVnBubm9MOExaWm1iN3JN/view>

- (a) it is accurate and not false, fraudulent, ambiguous or likely to be confusing, misleading or deceptive;
- (b) it is capable of being proven to be true by facts independent of personal feelings, beliefs, opinions or interpretations;
- (c) it is of a dignified nature and in good taste, so as to uphold the dignity, honour and ethics of the profession and not bring the profession into disrepute;
- (d) it does not make comparisons with another practice or practitioner, or suggest that the services provided are unique or superior to another practice or practitioner;
- (e) it does not refer to the quality of services provided;
- (f) it is directed at the general public and not at an individual member of the public other than current clients of record;
- (g) it is relevant to the public's ability to make an informed choice.

PRIVACY AND CONFIDENTIALITY

The Personal Health Information Act (PHIA) in Newfoundland and Labrador governs the collection, use, and disclosure of health information. It is essential that self-employed health professionals understand all obligations as custodians of health information and other requirements under PHIA.

Self-employed health professionals should refer to the Government of Newfoundland and Labrador website for information related to PHIA and available online resources.

<https://www.health.gov.nl.ca/health/phia/>.

Within the context of privacy and confidentiality there are many components: legislative compliance, consent considerations, security of information, and appropriate release of information, etc. Links to more information is available at the NLCHP website:

<https://www.nlchp.ca/member-resources/privacy-and-confidentiality/>

DOCUMENTATION/INFORMATION MANAGEMENT

Documentation is an integral part of the self-employed health professional's practice. All health professional's have an ethical and legal obligation to maintain records.

There is no national consistency in relation to best practice regarding record retention. A search of legislative requirements including policies and guidelines in the Newfoundland and Labrador context does not identify definitive statements on timelines for retention of client health files. The documents state in a general sense, that the custodian is expected to maintain files for as

long as is necessary to meet the identified purpose.²It is the responsibility of the self-employed health professional to develop procedures and policies for record storage (paper and electronic), maintenance and security, and for ensuring that clients are aware of these policies as part of the informed consent process. The self-employed health professional is also responsible to develop policies and procedures to give clients access to their files.

MUTLI-JURISDICTIONAL PRACTICE ³

Self-employed health professionals have a responsibility to be aware of inter-jurisdictional issues when providing services using electronic technologies (i.e., on-line, video conferencing etc.) Regulatory requirements pertaining to various health professionals practice vary across provinces, US states and countries. It is the responsibility of the health professional who resides in NL to be aware of and adhere to the registration requirements for practice in this province, as well as the jurisdiction where the client resides. Health professionals should also ensure that they have professional liability insurance policies which provide adequate coverage for the practice and the jurisdiction in which practice is being provided. Further information on the jurisdictional regulatory requirements can be obtained by contacting the appropriate regulatory agency in the jurisdiction where the client resides.

SUCCESSION PLANNING⁴

Independent work brings unique challenges one must consider in ensuring that clients receive appropriate services across the continuum of care. Some of the issues include:

- Medical/extended leave and its impact on service delivery.
- Competency.
- Death of the health care professional and protection of client files.
- Sudden interruptions to services.

Health Care Professionals in private practice who anticipate having to take medical/extended leave should ensure that clients receive advanced notice (when possible) to the disruption of

² Newfoundland and Labrador Centre for Health Information (NLCHI):emailed response from NLCHI representative March 5, 2015; *Reference IM00072105*

³ Adopted from the Newfoundland and Labrador Association of Social Worker's Resources Guide for Private Practice (2019)

⁴ Adopted from the Newfoundland and Labrador Association of Social Worker's Resources Guide for Private Practice (2019)

services, and to make necessary referrals for timely and appropriate access to continuing care with the informed consent of the client.

Similarly, a referral to another professional may be warranted when issues arise during the professional relationship that fall outside the parameters of the health professional's expertise and knowledge and cannot be addressed in the interim with additional professional development. It is the responsibility of the health care professional to acknowledge one's knowledge, skills and competencies and to be transparent with clients on their limitations.

In terms of the death of a health care professional in private practice, health care professionals should make advance preparations respecting client files and for this to become part of the informed consent process. Through informed consent, clients should know where their files will be located if the health care professional becomes deceased.

RETIRING OR CLOSING A PRIVATE PRACTICE

If a health professional is closing their practice, they must make an appropriate transition of care and/or storage of client files. A health practitioner may own client files and is custodian of all the information in the file, including the client's personal information. However, the client receiving care owns their personal information and is entitled to its access.⁵ Therefore it is incumbent on the practitioner to ensure that proper notice is given to transfer care and the information if requested by the client, or a designated representative. In many cases there is also a requirement for the health professional to retain records for a period of time even after the information is transferred. It is not unusual to have a nominal fee associated with copying and forwarding client information at the request of the client or a named designate.

Where a practitioner is relocating or closing their practice, announcements may be published through local media, as well as letters written to each client. In some circumstances there maybe agreements between practitioners in a group practice to assume client care when one leaves or retires. These agreements must be clearly written and understood by clients, though clients are not obligated to the services offered in the same office by a different practitioner. It will be the client's choice if they choose to receive care.

⁵ Government of Newfoundland and Labrador (2011) *Personal Health Information Act*
<http://assembly.nl.ca/Legislation/sr/statutes/p07-01.htm>

RELOCATING OR STORING CLIENT FILES

When a health practitioner has sold their practice or dies unexpectedly, client files may be relocated and notice must be given by public advertisement or personal letter. In cases where the practitioner has died, it is the executor of the estate who provides notification. Information would include that a copy or the original file may be transferred to another practitioner if requested, and that records shall be retained for a specified period of time.⁶ In most cases there will be a timeline associated with transferring the records and a limited time by which a client may request the file or the information from the custodian or designated custodian.

The matter of relocating and appropriately storing personal health information is an essential responsibility of the health practitioner. The College of Chiropractors of British Columbia stipulates in its practitioner handbook that not declaring the proper storage and making provisions for client information when closing or relocating a practice can jeopardize professional standing in the College if inappropriately managed.

GUIDELINES

1. A plan for client files and personal information is a component of professional behavior that protects client care and personal information.
2. There are only a few occasions where a health professional can refuse to treat a client, otherwise discontinuing client treatment or care without sufficient notice could be interpreted that care was abandoned.
3. If a health professional is closing or relocating their practice, reasonable notice must be given by public announcement and/or personal letter. Written notices should be forwarded and confirmed by registered mail.
4. In the event that a practitioner dies, the executor or representative must send out notice advising clients of how their files may be transferred and/or stored, as well as how clients or their appointed designate may access the file if necessary and for how long.
5. According to the *Personal Health Information Act* (PHIA, 2011, NL) a health professional owns a client file and is a custodian of the personal and health information but it is the client who owns the information.

⁶ The Newfoundland and Labrador Dental Board Information for Licensees: Guidelines and Policy Statements: Protocol for Dental Records (2012)

6. When a request is made for a client file, it is recommended that a copy be made and forwarded on the client's behalf at their request. Copies and original files must be retained by custodian (designated custodians) for a period of time even after the transfer of care is made.⁷

REFERENCES AND RESOURCES

REFERENCES

College of Registered Nurses of Newfoundland and Labrador Self-Employed Registered Nurses and Nurse Practitioners (2016)

https://www.crn.nl.ca/sites/default/files/documents/RD_Self_Employed_Registered_Nurses_and_Nurse_Practitioners.pdf

Newfoundland and Labrador Association of Social Workers Resource Guide for Private Practitioners (2019)

https://nlasw.ca/sites/default/files/inline-files/Private_Practice%20Guidelines_%28Revised_May_2019%29_0.pdf

Employment Documentation Policy, NLCHP, <https://www.nlchp.ca/wp-content/uploads/2019/10/Policy-FINAL-Employment-Documentation2.pdf>

Government of Newfoundland and Labrador (2011) *Personal Health Information Act*

<http://assembly.nl.ca/Legislation/sr/statutes/p07-01.htm>

The Newfoundland and Labrador Dental Board Information for Licensees: Guidelines and Policy Statements: Protocol for Dental Records (2012)

<http://www.nldb.ca/downloads/Protocol-Dental-Records.pdf>

Government of Newfoundland Labrador (2002) *Access to Information and Protection of Privacy Act*

http://assembly.nl.ca/Legislation/sr/statutes/a01-1.htm#5_1

RESOURCES

Business and Economic Development, Government of Newfoundland and Labrador

<https://www.gov.nl.ca/business-and-economic-development/>

⁷ Government of Newfoundland and Labrador (2011) *Personal Health Information Act*

Canada Tax Revenue Agency

<https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-1-individuals/folio-1-health-medical.html>

PHIA Resources, Government of Newfoundland and Labrador, Department of Health and Community Services,

<https://www.health.gov.nl.ca/health/phia/index.html>

Privacy and Confidentiality, NLCHP Member Resources <https://www.nlchp.ca/member-resources/privacy-and-confidentiality/>

Office of the Information and Privacy Commissioner, Resources for Custodians Government of Newfoundland and Labrador

<https://www.oipc.nl.ca/custodians>

The Canadian Dental Hygienist Association Independent Practice Network (IPN)

https://www.cdha.ca/cdha/The_Profession_folder/Independent_Practice_folder/CDHA/The_Profession/Independent_Practice/Introducing_Independent_Practice_Network.aspx?hkey=6baa1969-bb7a-45db-8596-b2a498f678f5