



Consent and Capacity Board

**Applying to Amend the Conditions of,
or Terminate the Appointment of
a Representative under the
Health Care Consent Act (Form H),
the *Personal Health Information
Protection Act* (Form P5),
or the
*Child, Youth and Family Services
Act* (Form Y5)**

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Upon application by the incapable person or another person, the Consent and Capacity Board can appoint a representative to make the applicable decisions for the incapable person in cases where,

- a health practitioner has made a finding that a person is incapable of making decisions with respect to treatment or admission to a care facility (pursuant to the *Health Care Consent Act* ("*HCCA*"));
- a health information custodian has made a determination that a person is incapable with respect to the collection, use or disclosure of personal health information (under the *Personal Health Information Protection Act* ("*PHIPA*")); or
- a service provider has made a determination that a child or young person is incapable to make decisions about the collection, use or disclosure of personal information by a service provider (under the *Child, Youth and Family Services Act* ("*CYFSA*")).

When making this appointment, the Board may impose conditions on the appointment of the representative. Following from this, upon any person's application the Board can remove, vary or suspend a condition, impose an additional condition, or terminate the appointment of the representative.

An application to amend the conditions of, or terminate the appointment of a representative may only be made if the Board has previously appointed a representative to make decisions for the incapable person (also referred to as a substitute decision-maker) under the *HCCA*, the *PHIPA* or the *CYFSA*.

Whenever an application of this type is received, the law provides that the person is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined the issue of capacity within the previous six months.

What can the Board do?

Depending on the circumstances, and unless the incapable person objects, the Board may remove, vary or suspend a condition that the Board had imposed on the appointment of the representative, or impose an additional condition. The Board may also terminate the appointment of the representative.

The Board may terminate an appointment if the incapable person or the representative requested the termination, if the representative is no longer capable, if the appointment is no longer in the incapable person's best interests, or if the incapable person has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property with the authority to make the decisions for the which the appointment was made and in the circumstances to which the appointment applies.

How to apply to the Board?

Fill out an application form (Form H under the *HCCA*; Form P5 under the *PHIPA*; Form Y5 under the *CYFSA*) and send it to the Board. The application can be found on the CCB's website. It should be submitted by email or fax if possible, but can also be submitted by regular mail.

When and where will the hearing be?

The Board will send a notice with the time and place of the hearing. The Board will attempt to schedule the hearing at a location that is convenient to the parties. The hearing will usually be held within one week after the Board receives the application.

Who are the parties to the hearing?

The parties to the hearing are the person who applied to the Board, the representative who was previously appointed by the Board, the incapable person, and the incapable person's spouse, partner, parents, children and siblings, and anyone else who is authorized to make the relevant decisions for the incapable person in place of his or her parents. The health practitioner, health information custodian or service provider is a party with respect to the deemed review of the relevant determination of incapacity. If appropriate, the Board may name other parties.

Legal representation at the hearing

It may be a good idea to have a lawyer at the hearing but parties are not required to have one. The Lawyer Referral Service at the Law Society of Ontario may be contacted for assistance. Information on this service is available on the Law Society's website. Some people may be eligible for a Legal Aid lawyer free of charge.

What will happen at the hearing?

The Presiding Member will introduce everyone and explain how the hearing will work, who the official parties are and the order in which people will speak. Each party may attend the hearing and invite anyone they want to come. Each party may have a lawyer, call witnesses and bring documents. Ideally the documents will have been exchanged between the parties and provided to the Board in advance of the hearing.

For the Board to make a decision on a Form H, P5 or Y5 application, the Board must have previously appointed a representative to make decisions on an incapable persons behalf under the *HCCA*, the *PHIPA* or the *CYFSA*. Further, there must be a valid determination of incapacity. If the Board has not reviewed the determination of incapacity in the past six months, it will do so at this hearing.

The person who wishes to amend the conditions of the appointment, impose an additional condition, or terminate the appointment of the representative must present information to help the Board decide whether to amend conditions, impose an additional condition, or terminate the appointment. The Board will consider the sections of the applicable legislation (sections 33(7) and (8), 51(6), or 66(6) of the *HCCA*; sections 27(7) and (8) of the *PHIPA*; sections 305(8) and (9) of the *CYFSA*) (links to the relevant legislation can be found on the CCB's website). Each party as well as the Board members may ask questions of each witness. At the end of the hearing each party will be invited to summarize and the Presiding Member will end the hearing.

What happens after the hearing?

The Board will meet in private to make its decision. It will issue the decision within one day. Written reasons for the decision will be issued within four business days if any of the parties request them within thirty days of the hearing. The Board will decide whether to remove, vary or suspend a condition that the Board had imposed on the appointment of the representative, impose an additional condition, or terminate the appointment of the representative.

Can the Board's decision be appealed?

A decision of the Board pursuant to the *HCCA* or the *PHIPA* can be appealed by any party to the Superior Court of Justice. There is no provision for an appeal of the Board's decision in the *CYFSA*.

Contact Us

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