

# **Applying to have a Representative Appointed, or to be Appointed a Representative to Make Decision(s) with Respect to the Collection, Use or Disclosure of Personal Health Information**

## ***Personal Health Information and Protection Act (“PHIPA”)* Form P-3 or P-4**

If 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, the decision will be made by another person according to the law. The law also allows for an incapable individual to apply to the Consent and Capacity Board to have another person appointed as their representative to give or refuse consent on their behalf, or, another person may apply to the Board to be appointed as the incapable individual's representative to give or refuse consent to the collection, use or disclosure of the incapable individual's personal health information.

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.

### **Who may be appointed as a representative?**

Anyone who is at least 16 years old and capable with respect to the required decisions may be appointed as a representative if it is in the best interests of the individual to whom the personal health information relates. The Board will only consider appointing a representative if a relevant determination of incapacity has been made and if the incapable individual does not object to the appointment. A representative may not be appointed if the incapable individual already 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 required decision.

### **What can a representative do?**

Depending on the circumstances, the Board may appoint a representative to make just the decision currently required or it may authorize the representative to make a wider range of decisions related to the collection, use or disclosure of personal health information. The Board may also impose conditions or time limits on the appointment or appoint someone other than the person who applied. The Board may amend or revoke an appointment at any time.

### **How to apply to the Board**

Fill out an application form (Form P-3 if the incapable individual is applying; Form P-4 if another person is applying) and send it to the Board. The applications 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 proposed representative, the incapable individual and his or her spouse, partner, parents, children and siblings, and anyone else who is authorized to make decisions for the incapable person in place of his or her parents. The health information custodian is a party with respect to the deemed review of the 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 P-3 or P-4 application 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 be appointed as the incapable individual's representative must present information to help the Board decide whether to appoint a representative to make decisions about the collection, use or disclosure of the incapable person's personal health information. The Board will consider the criteria in section 27(6) of *PHIPA* (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 to appoint or not appoint a representative to make decisions about the collection, use or disclosure of the incapable individual's personal health information.

**Can the Board's decision be appealed?**

A decision of the Board may be appealed by any party to the Ontario Superior Court of Justice.

**CCB Contact Information**

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