



Consent and Capacity Board

Applying to the Board for Permission to Depart from Wishes (Form E)

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When an individual is responsible for making decisions on behalf of an incapable person, she or he must do so in accordance with certain rules. One of these rules requires that the individual give or refuse consent in accordance with the wishes of the incapable person if those wishes were expressed when the person was capable and at least 16 years old.

In certain circumstances, however, you may apply to the Consent and Capacity Board for permission not to follow prior capable wishes. You may be able to apply to the Consent and Capacity Board to depart from the prior capable wishes of the incapable person if:

- You have assumed responsibility for giving or refusing consent on behalf of a person who is incapable with respect to treatment, a personal assistance service or admission to a care facility.
- You are the health care provider or the person responsible for authorizing admission to a care facility or the service provider responsible for providing the personal assistance service for the incapable person and you have notified the person who assumed responsibility for giving or refusing consent before the application is made.

Whenever an application of this type is received, the law provides that the patient 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 this issue of capacity within the previous six months.

Please note: The Board may only grant permission to depart from prior capable wishes if it is satisfied that the likely result of the proposed action is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

How do I Apply?

Fill out an application (Form E) and send it to the Board. You can fill out the form by yourself or ask someone to help you do this. The form may be available where you found this information sheet. You may also be able to get the form at a hospital or other facility. If you cannot find an application form or if you do not know how to send the form to the Board, you may call the Board for assistance or check our web site at ccboard.on.ca.

When and where will the hearing be?

You will receive a notice from the Board with the time and place of the hearing. The hearing will take place in the facility where the incapable person resides or receives treatment or at some other place close to the incapable person. The hearing will be held within 7 days after the Board receives your application unless all the parties consent to an extension.

Do I need a lawyer at the hearing?

It may be a good idea to have a lawyer represent you but you do not have to have one. You may contact a lawyer on your own or through the Law Society Referral Service, at The Law Society of Upper Canada. Their number is listed in the White Pages under The Law Society of Upper Canada and in the Yellow Pages under Law Society Referral Service.

In some cases, the Board can order that legal representation be arranged for the incapable person before the hearing is scheduled. If the incapable person comes to the hearing without a lawyer, the Board may order that legal representation be arranged for him/her.

Who are the parties to the hearing?

The parties to the hearing are the incapable person, the incapable person's substitute decision maker and the health practitioner or other service provider. If appropriate, the Board may name other parties.

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.

You and/or your lawyer must present information at the hearing to help the Board decide to allow the substitute decision maker to depart from wishes.

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 then end the hearing.

What happens after the hearing is over?

The Board will meet in private to make its decision. It will issue the decision within one day. Written reasons will be issued if any of the parties request them within thirty days of the hearing.

The Board may decide to give permission to depart from wishes. In making its decision, the Board will consider the criteria in Section 36, 53, and/or 68 of the *Health Care Consent Act*.

Can the Board's decision be appealed?

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

Contact Us

CCB Numbers

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Outside Greater Toronto Area

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