



Consent and Capacity Board

Applying to Determine Whether or Not the Substitute Decision Maker has Complied with the Rules for Substitute Decision Making (Form G)

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If a person is incapable of making decisions with respect to treatment, admission to a care facility, or a personal assistance service, decisions will be made by a substitute decision-maker (SDM). SDMs are required to follow the principles set out in the Health Care Consent Act.

A health practitioner or the person who is responsible for authorizing admissions to the care facility or for providing the personal assistance services may believe that an SDM is not following these principles. If this happens, that person may apply to the Board for a determination as to whether the principles have been followed and for an order to the SDM to comply with the Act. Use of this application is limited to the health care provider of the incapable person (e.g. family members cannot apply to the Board).

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.

How do I apply?

Fill out an application (Form G) and send it to the Board. If you cannot find a form or if you do not know how to send the form, call the Board for assistance or check our web site at www.ccboard.on.ca.

Do I need a lawyer at the hearing?

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

What will the Board consider?

The Board will consider whether or not the substitute decision maker followed the principles for substitute decision making found in sections 21, 42 and 59 of the Health Care Consent Act. These principles are as follows:

1. If the SDM knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the SDM shall give or refuse consent in accordance with the wish.
2. If the SDM does not know of any such wish, or if it is impossible to comply with the wish, the substitute shall act in the incapable person's **best interests**.

In deciding what the incapable person's **best interests** are, the substitute shall take into consideration,

- (a) the values and beliefs that he or she knows the incapable person held when capable and believes he or she would still act on if capable;

- (b) other wishes expressed by the incapable person with respect to the matter, and
- (c) the following factors:

- i) Whether the treatment, admission or service is likely to
 - i. improve the incapable person's condition or well-being,
 - ii. prevent the incapable person's condition or well-being from deteriorating,
 - or
 - iii. reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.
- ii) Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment, admission or service.
- iii) Whether the benefit the incapable person is expected to obtain from the treatment, admission or service outweighs the risk of harm to him or her.

4. Whether a less restrictive or less intrusive alternative would be as beneficial as what is proposed.

Who are the parties to the hearing?

The parties to the hearing are the applicant, the incapable person and the substitute decision maker. If appropriate, the Board may name other parties.

When and where will the hearing be?

The Board will attempt to find a time and place that is convenient for all of the parties. Each party will receive a notice from the Board with the time and place of the hearing. Hearings are usually held in a health or residential facility and take place within a week of the Board's receipt of the application.

What will happen at the hearing?

Each party may attend the hearing and invite anyone they want. Each party may have a lawyer, call witnesses and bring documents.

Each party and the Board members may ask questions of each witness. At the end of the hearing each party will be invited to summarize and the meeting will end.

How will the Board make its decision?

The Board will base its decision on whether or not it believes that the substitute decision maker followed the principles set out above.

What happens after the hearing?

The Board will meet in private to make its decision and will issue the decision within one day. If the Board concludes that the substitute decision-maker did not comply with the principles for substitute decision making it may give him or her directions based on the principles. The Board will set time limits within which the substitute must comply with the directions. If the substitute does not comply within the time specified, decision making authority moves from that person to the next qualified and available person in the hierarchy of decision makers. The directions of the Board apply to all substitute decision makers.

If the Public Guardian and Trustee is the substitute decision maker, he or she must comply with

the directions of the Board.

The Board may also provide written reasons explaining its decision. Written reasons will be issued if any of the parties request them within thirty days of the hearing.

Can the Board's decision be appealed?

The Board's decision can be appealed to the Superior Court of Justice.

Contact Us

If you would like to contact the Board or fax an application, please use any of the numbers below:

CCB Numbers
Greater Toronto Area Phone: (416) 924-4961 Fax: (416) 924-8873
Outside Greater Toronto Area Phone: 1-866-777-7391 (Toll Free) Fax: 1-866-777-7273 (Toll Free)

