



# **Consent and Capacity Board**

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## **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*.

If a health practitioner who proposed treatment or the person who is responsible for authorizing admissions to the care facility or the person responsible for providing the personal assistance services believes that an SDM is not following the principles set out in the act, they may apply to the Board for a determination as to whether the principles have been followed and for an order for 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 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](http://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 applicant, the incapable person and the substitute decision maker. 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 whether or not the substitute decision maker followed the principles for substitute decision making.

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 the substitute decision maker did or did not comply with the principles for substitute decision making. If the Board decides the substitute decision maker did not comply it may give him or her directions based on the principles. In making its decision, the Board will consider the criteria in Sections 21, 42 and 59 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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**Phone:** (416) 327-4142

**TTY/TDD:** (416) 326-7TTY or (416) 326-7889

**Fax:** (416) 924-8873

#### **Outside Greater Toronto Area**

**Phone:** 1-866-777-7391

**TTY/TDD:** 1-877-301-0TTY or 1-877-301-0889 (Toll Free)

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