



# **Consent and Capacity Board**

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## **Applying for a Review of a Finding of Incapacity Regarding Treatment (Form A)**

## Applying for a Review of a Finding of Incapacity Regarding Treatment (Form A)

A health practitioner may find that you are incapable of making decision about treatment. Someone else, usually a family member, will then be asked to consent to the treatment on your behalf. If this happens, you may be entitled to apply to the Consent and Capacity Board for a hearing to review this finding.

### Who makes decisions about my treatment?

If you are capable, you may make your own decisions. If an evaluator finds that you do not understand the relevant information and that you are unable to appreciate what could happen as a result of making or not making a decision, then you will be considered to be incapable.

If you are found to be incapable, the decision will be made for you by someone else according to a priority list in the law. If you have a Guardian of the Person or an Attorney for Personal Care with the required authority, he or she will make the decision for you. If you do not have a Guardian of the Person, an Attorney for Personal Care or a Board appointed Representative, a family member(s) will likely make the decisions. If no one who is authorized to make the decision is available, the Public Guardian and Trustee will be asked to make it.

### When can I apply to the Board?

You may apply to the Board for a review of the finding of incapacity about treatment decisions if you have been provided with a Form 33 under the Health Care Consent Act or if you are not a psychiatric patient and have been told you are incapable of making decisions about treatment. You may not apply again if the Board has already decided the issue in the last 6 months.

### Health practitioner's responsibilities

- If you have been found incapable, your health practitioner must provide you with information specified in guidelines set for his or her profession. If you are admitted to a psychiatric facility, are 14 or older and the treatment proposed is for the treatment of a mental disorder, you are entitled to written notice and to rights advice.
- Treatment must not be administered without either your consent or, if you are incapable, your substitute decision-maker's consent.
- In certain unique emergency situations, consent may not be necessary.
- If you apply to the Board, treatment must not begin until your case is finished.

### How do I apply to the Board?

If you are found to be incapable and are a psychiatric patient, a rights adviser should be sent to see you. If the rights adviser does not come, if you have any questions or if you want to talk to a rights adviser at some other time, you can ask a staff person to help you contact one. The rights adviser can explain your rights and help you to apply to the Board. If you wish, the rights adviser can help you to find a lawyer.

The rights adviser or anyone else can help you to fill out an application (Form A) 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 may take place in the hospital, where you reside or receive treatment or at some other convenient place. 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 to represent you but you do not have to have one. The rights adviser can explain your rights, help you to apply to the Board and help you find a lawyer. You may also 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 Services. You may be entitled to a Legal Aid lawyer free of charge.

In some cases, the Board can order that legal representation be arranged for you before the hearing is scheduled. If you come to the hearing without a lawyer, the Board may order that legal representation be arranged for you.

## **Who are the parties to the hearing?**

The parties to the hearing are you and the person who deemed you incapable to make treatment decisions. 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.

Your doctor is required to present information at the hearing to help the Board decide whether you are capable to make decision about treatment. You and your lawyer may also present evidence.

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 will decide whether you are capable or incapable to make decisions about treatment. In making its decision, the Board will consider the test for capacity that is found in Section 4 of the Health Care Consent Act.

If the Board decides that you are capable, you can make your own decisions about treatment. If the Board decides that you are incapable, someone else will make these decisions for you.

## 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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