

Personal Health Information Protection Act, 2004 and Rights Advice under the *Mental Health Act* and its Regulations

Is the health information custodian permitted to disclose personal health information to a Rights Adviser?

The *Personal Health Information Protection Act, 2004* (PHIPA) does not change the ability of the health information custodian to disclose personal health information to a Rights Adviser. Any identifying information about an individual who is a patient in a psychiatric facility or a person to whom a Community Treatment Order (“CTO”) relates is “personal health information” within the meaning of PHIPA. PHIPA permits a health information custodian to disclose personal health information where another law permits or requires such a disclosure.

As the *Mental Health Act* and its regulations require that a Rights Adviser be notified so that a Rights Adviser may provide rights advice as required by law, the notification is a required disclosure and as such authorized by PHIPA. The notification of a Rights Adviser includes disclosure of personal health information reasonably incidental or necessary for the provision of the rights advice. PHIPA permits the Rights Adviser to use or disclose the information received from a health information custodian or its agents for the purpose of carrying out its statutory duty.

For further information on the provision of rights advice services, you may contact the Psychiatric Patient Advocate Office at 1-800-578-2343 or 416-327-7001.

What is Rights Advice?

Rights advice is a process by which individuals in psychiatric facilities and individuals living in the community being considered for a CTO and their substitute decision-maker, if any, are informed of the change in their status and the options available to them.

The rights advice function includes: explaining to the client the significance of the form the physician has signed; explaining the options available; and, upon the client’s request, assisting the client to apply to the Consent and Capacity Board for a review of the decision, to apply for Legal Aid and to retain a lawyer. The function also includes completing a Form 50 “Confirmation of Rights Advice”.

Who may be a Rights Adviser?

A Rights Adviser is a person or a member of a category of persons who is qualified to perform the function of a Rights Adviser and has been designated by a psychiatric facility or the Minister of Health and Long-Term Care (“Minister”) to perform the function of a Rights Adviser. A Rights Adviser may not be a person involved in the direct clinical care of the person receiving rights advice or, in the case of a CTO, a person providing treatment or care and supervision under a community treatment plan.

The Rights Adviser must be knowledgeable about the rights to apply to the Consent and Capacity Board, the workings of the Board, and how to obtain legal services. The Rights Adviser must

successfully complete a training program for rights advisers approved by the Minister. The Psychiatric Patient Advocate Office's (PPAO) training program for Rights Advisers has been approved by the Minister. The Rights Adviser must also have the communication skills necessary to perform effectively the function of a Rights Adviser.

CTOs are the only circumstance in which rights advice may be provided in the community. The Minister has designated the PPAO to provide rights advice to individuals being considered for a CTO and their substitute decision-makers, if any, where the individual is not a patient in a psychiatric facility. Before issuing or renewing a CTO, the physician must be satisfied that the individual and their substitute decision-maker, if any, have consulted with a rights adviser and have been advised of their legal rights.

When is Rights Advice Provided?

Rights advice is provided in eight mandatory situations pursuant to the *Mental Health Act (MHA)* and its regulations. The eight situations are:

- the person's status is changed to involuntary
- the patient's involuntary status is renewed
- the patient is found incapable to manage property
- the patient's incapacity to manage property is continued
- an admission of an informal patient (12 to 15 year old child)
- the patient is admitted to a psychiatric facility, is 14 years or older and is determined to be incapable of consenting to a collection, use and disclosure of his/her personal health information within the meaning of the *Personal Health Information Protection Act, 2004*
- the patient is admitted to a psychiatric facility, is 14 years or older and is found to be incapable with respect to consenting to treatment of a mental disorder within the meaning of the *Health Care Consent Act, 1996*
- where a CTO is proposed to be issued or renewed by the physician

Form 50 "Confirmation of Rights Advice" is completed by the Rights Adviser to indicate that rights advice has been provided. The Form 50 is given to a staff member at the facility or a specified person.

What is the Process for the Delivery of Rights Advice?

When any of the above described rights advice situations occurs, the law requires a physician or officer in charge of a psychiatric facility to notify a Rights Adviser. This notification triggers the rights advice process. The Rights Adviser is required to respond to this notification promptly by "meeting with" the client to provide rights advice or, in the case of CTOs, providing rights advice to the client or his or her substitute decision-maker, if any.

The Rights Adviser will explain to the client the significance of the form, which triggered the rights advice, as well as the options available if the client disagrees with the form. If the client wishes to have a hearing before the Consent and Capacity Board, the Rights Adviser will, upon the client's request, assist the client to apply to the Consent and Capacity Board, obtain legal counsel and apply for Legal Aid.

Rights Advisers provide information to clients in a neutral, non-judgmental manner. Rights Advisers do not make decisions for clients but act only upon the instruction of the client.

What Information does the Rights Adviser Require?

For the purpose of performing the rights advice function, Rights Advisers obtain information about the client from, and provide information about the client to, individuals such as : the client, the psychiatric facility, community workers, clinical staff, legal counsel, the Consent and Capacity Board, Legal Aid, interpreters, CTO Coordinators, and substitute decision-makers.