

INCAPABILITY ASSESSMENTS REGULATION

PART 1 – DEFINITIONS AND PRESCRIBED TERMS

Definitions

- 1 In this regulation:
 - “**Act**” means the Adult Guardianship Act;
 - “**assessment report**” means an assessment report completed under section 8.

Health authority designates

- 2 The following bodies are prescribed for the purposes of the definition of “health authority designate” under the Act:
 - (a) a regional health board under the *Health Authorities Act*;
 - (b) the Provincial Health Services Authority;
 - (c) Providence Health Care Society, a society incorporated under the *Society Act*;
 - (d) Correctional Service of Canada, in relation to the operation of the Regional Treatment Centre (Pacific Region);
 - (e) Bishop of Victoria, a Corporation Sole, doing business as St. Joseph’s General Hospital.

Qualified health care providers

- 3 The classes of health care providers who are prescribed as qualified health care providers for the purposes of the Act are as follows:
 - (a) persons who are authorized under the *Health Professions Act* to practice the designated health profession of
 - (i) nursing,
 - (ii) occupational therapy, or
 - (iii) psychology,but only if the board for the college established under that Act for the designated health profession has, under section 19 (1) (k) or (l) of that Act, established standards, limits or conditions respecting the performance by its registrants of assessments of incapability for the purposes of the *Adult Guardianship Act*,
 - (b) persons who are registrants of the British Columbia College of Social Workers, if the board for the college has, under section 7 (3) (a), (b) or (c) of the *Social Workers Act*, established standards, limits or conditions respecting the performance by its registrants of assessments of incapability for the purposes of the *Adult Guardianship Act*.

PART 2 – PERFORMING AN ASSESSMENT OF INCAPABILITY

Division 1 – Assessments of Incapability Generally

Information to be given before assessment

- 4 Before performing an assessment of incapability in respect of an adult, a qualified health care provider must advise the adult that
- (a) the adult is being assessed for the purpose of determining whether the adult is incapable of making decisions about the adult's personal care, health care or financial affairs, and
 - (b) if the adult is found to be incapable of making decisions about the adult's personal care, health care or financial affairs, the assessment may be used to appoint a guardian or statutory property guardian for the adult.

Others may be present

- 5
- (1) A qualified health care provider may permit a person other than the adult being assessed to be present during all or part of an assessment of incapability if
 - (a) necessary or advisable for the purposes of communicating with the adult,
 - (b) necessary or advisable for the purposes of conducting the assessment, or
 - (c) requested by the adult.
 - (2) A qualified health care provider may require a person not to be present during all or part of an assessment of incapability if, in the opinion of the qualified health care provider, the presence of the person would disrupt or in any way adversely affect the assessment process.
 - (3) Subsection (2) applies even if the adult requests the person to be present.

Medical examination required

- 6
- (1) An applicant for the appointment of a guardian for an adult or a review of an adult's guardianship, must ensure that at least one of the assessment reports required under section 5 (2) or, if applicable, 26 (3), of the Act is completed by either
 - (a) a medical practitioner, or
 - (b) a qualified health care provider who has received, from a medical practitioner who has either examined the adult or reviewed the adult's medical status, information respecting all diagnoses or prognoses that may be relevant to the adult's ability to make decisions about the adult's personal care, health care or financial decisions, as applicable.
 - (2) A health authority designate must not issue or continue, as applicable, a certificate of incapability unless satisfied that an assessment of incapability required under section 32 (2), 34 or 35 (3) of the Act is completed by either a person described in subsection (1) (a) or (b).

If adult refuses assessment

- 7 If an adult refuses, in full or in part, to participate in an assessment of incapability, the assessment may be performed
- (a) except in the case of an assessment for the purposes of section 32 or 33 of the Act, only if the court orders an assessment, and

- (b) if the qualified health care provider reasonably believes the assessment would be accurately completed by doing so, using observational information and information gathered from other sources.

On completing assessment

- 8** On completing an assessment of incapability, a qualified health care provider must do all of the following:
- (a) complete an assessment report as set out in Form 1 or 2, as applicable;
 - (b) attach to the assessment report details of the assessment, including
 - (i) the factors that were considered in making a determination of the adult's capability or incapability,
 - (ii) the conclusions that were reached on the basis of those factors, and
 - (iii) a summary of the information provided under section 7 (b), and
 - (c) advise the adult who is the subject of the assessment of the qualified health care provider's determination of the adult's capability or incapability.

Division 2 – Assessments of Incapability Under Part 2 of the Act

Application of this Division

- 9** This Division applies to assessments of incapability made for the purposes of Part 2 of the Act only.

Personal care decisions

- 10** (1) For the purposes of determining whether an adult is incapable of making decisions about the adult's personal care, a qualified health care provider must make the determination based on whether the adult demonstrates an understanding of all of the following:
- (a) the personal care that is, or may reasonably be in the near future, needed by the adult;
 - (b) the proposal made to provide needed personal care, and
 - (c) the reasons for that proposal;
 - (d) the risks and benefits of receiving or not receiving the personal care described in paragraphs (a) to (c);
 - (e) that the information referred to in this subsection applies to the situation of the adult.
- (2) In addition to the matters set out in subsection (1), a qualified health care provider who is assessing an adult in relation to personal care must make the determination of incapability based on whether the adult demonstrates that he or she is personally able to take steps to ensure that his or her personal care decisions can be implemented.

Health care decisions

- 11** For the purposes of determining whether an adult is incapable of making decisions about the adult's health care, a qualified health care provider must make the determination based on whether the adult demonstrates an understanding of all of the following:

- (a) the condition for which health care must be provided, or may reasonably need to be provided in the near future, to the adult, and
- (b) the nature of the health care to be provided;
- (c) the risks and benefits of receiving or not receiving the health care described in paragraph (b);
- (d) that the information referred to in this section applies to the situation of the adult.

Financial decisions

- 12** (1) For the purposes of determining whether an adult is incapable of making decisions about the adult's financial affairs, a qualified health care provider must make the determination based on whether the adult demonstrates an understanding of all of the following:
- (a) the nature of the adult's financial affairs, including the approximate value of the adult's business and property;
 - (b) the obligations owed to the adult's dependants;
 - (c) the decisions or actions respecting the adult's financial affairs that must be made or taken for the reasonable management of the adult's financial affairs;
 - (d) the risks and benefits of making particular decisions or taking particular actions in respect of the adult's financial affairs;
 - (e) information given to the adult respecting the matters set out in paragraphs (a) to (d);
 - (f) that the information referred to in this subsection applies to the situation of the adult.
- (2) In addition to the matters set out in subsection (1), a qualified health care provider must make the determination of incapability based on whether the adult demonstrates that he or she is personally able to take steps to ensure that his or her decisions respecting financial affairs can be implemented.

Division 3 – Assessments of Incapability Under Part 2.1 of the Act

Application of this Division

- 13** This Division applies to assessments of incapability made for the purposes of Part 2.1 of the Act only.

Assessment for statutory property guardianship

- 14** For the purposes of determining whether an adult is incapable of making decisions about the adult's financial affairs, a qualified health care provider must make the determination based on
- (a) whether the adult demonstrates
 - (i) an understanding of all of the factors listed in section 12 (1) of this regulation,
 - (ii) that he or she is personally able to take steps to ensure that his or her decisions respecting financial affairs can be implemented, and
 - (b) for the purposes of an assessment under section 34 of the Act, the changes, if any, in the adult's incapability since the previous assessment and the adult's understanding of those changes.

Certificate of incapability issued by health authority designate

- 15 For the purposes of section 32 (3) of the Act, a certificate of incapability issued by a health authority must be in Form 3.

Request for second assessment

- 16 For the purposes of section 33 (3) (a) of the Act, a request for a second assessment of an adult's incapability must be made within 30 days of the adult being advised that the Public Guardian and Trustee is the adult's statutory property guardian.

Exemption from reassessment

- 17 (1) In this section, “**designated facility**” and “**director**” have the same meaning as under the *Mental Health Act*.
- (2) Section 34 (a) [*reassessment of adult to be discharged*] of the Act does not apply in any of the following circumstances:
- (a) the director does not know, and has no reason to believe, that the adult has a statutory property guardian;
 - (b) if the director knows that the adult has a statutory property guardian,
 - (i) the statutory property guardian has been notified of the adult's admission to the designated facility and that the adult is to be discharged,
 - (ii) the director has no reason to believe that the adult, if reassessed, would be found to be capable, and
 - (iii) the director keeps a record of the decision not to have the adult reassessed and the reasons for the director's opinion under subparagraph (ii);
 - (c) regardless of whether the director knows or has reason to believe that the adult has a statutory property guardian, the adult is being discharged from the designated facility less than 48 hours after the adult's admission.

The Adult Guardianship (Abuse and Neglect) Regulation, B.C. Reg. 13/2000, is amended***(a) by repealing section 3 (3) and substituting the following:***

- (3) If an adult refuses, in full or in part, to participate in an assessment, the assessment may be performed, if the assessor reasonably believes the assessment would be accurately completed by doing so, using observational information and information gathered from other sources. , **and**

(b) in section 6,

- (i) by renumbering the section as section 6 (1),
 - (ii) by repealing subsection (1) (a), and
 - (iii) by adding the following subsection:
- (2) On completing an assessment, a member of the team of assessors, or, if there is only one assessor under section 2 (1) (b), that assessor, must advise the adult of the assessors', or assessor's, determination of the details and results of the assessment.

Form 1

ASSESSMENT REPORT

FOR ASSESSMENTS UNDER PART 2 OF THE ADULT GUARDIANSHIP ACT

[Court Appointed Guardianship]

[This form is to be completed by a qualified health care provider within the meaning of the Adult Guardianship Act and the Regulations]

I, *[name and occupation]*,
a qualified health care provider, confirm that I have assessed whether
..... *[name of adult]*

is incapable of making decisions about his or her *[mark the appropriate box/boxes]*

- personal care health care financial affairs

My opinion based on my assessment is that the adult named above is

[mark the appropriate box/boxes]

Incapable of making decisions about some or all of his or her

- personal care health care financial affairs

Capable of making decisions about his or her

- personal care health care financial affairs

In accordance with section 8 of the regulation, I have attached a copy of the details of the assessment and advised the adult of my determination of the adult’s capability or incapability.

..... *[signature]*..... *[date]*
(mm/dd/year)

..... *[qualified health care provider’s mailing address]*

..... *[city]* *[province]*

..... *[postal code]*..... *[telephone number]*

..... *[fax number]* *[email address]*

Form 2

ASSESSMENT REPORT

FOR ASSESSMENTS UNDER PART 2.1 OF THE ADULT GUARDIANSHIP ACT

[Statutory Property Guardianship]

[This form is to be completed by a qualified health care provider within the meaning of the Adult Guardianship Act and the Regulations]

I, *[name and occupation]*,
a qualified health care provider, confirm that I have assessed whether
.....*[name of adult]*
is incapable of making decisions about his or her financial affairs.

My opinion based on my assessment is that the adult named above is
[mark the appropriate box]

- Incapable** of making decisions about his or her financial affairs
- Capable** of making decisions about his or her financial affairs

In accordance with section 8 of the regulation, I have attached a copy of the details of the assessment and advised the adult of my determination of the adult’s capability or incapability.

.....*[signature]*.....*[date]*
(mm/dd/year)

.....
.....*[qualified health care provider’s mailing address]*
.....*[city]**[province]*
.....*[postal code]*.....*[telephone number]*
.....*[fax number]**[email address]*

Form 3

CERTIFICATE OF INCAPABILITY

SECTION 32 (3) OF THE ADULT GUARDIANSHIP ACT

[Statutory Property Guardianship]

[This form is to be completed by a health authority designate]

I, *[name and occupation]*,
 a designate of the *[health authority or other prescribed body]*, confirm that in respect of
 *[name of adult]* born
 *[date of birth of adult]*, I
 (mm/dd/year)

[mark the appropriate boxes]

- have received an assessment report from a qualified health care provider,
- am satisfied that the Public Guardian and Trustee has been consulted, and
- am satisfied of all of the matters set out in section 32 (3) of the *Adult Guardianship Act*, including that
 (name of adult) is incapable of making decisions about his or her financial affairs.

..... *[signature]* *[date]*
 (mm/dd/year)

The Public Guardian and Trustee of BC accepts this certificate and by signing it is appointed statutory property guardian for the adult.

..... *[signature]* *[date]*
 (mm/dd/year)