



COMMUNIQUÉ for the Health Industry

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ORDERS FOR BLOOD TESTING - IMPLICATIONS OF THE *MANDATORY BLOOD TESTING ACT, 2006 (ONTARIO)*

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KEY POINTS FOR HEALTH PROFESSIONALS AND FACILITIES

- The Ontario Consent and Capacity Board ("CCB") has begun making Orders pursuant to the new *Mandatory Blood Testing Act* ("MBTA").
- An Order may be made for blood testing in certain circumstances where an individual, such as a victim of a crime or emergency response personnel, has been exposed to someone's bodily fluid and wants that person tested for HIV/AIDS and Hepatitis C and B.
- Individuals subject to a CCB Order under the MBTA must provide a blood sample for testing. Informed consent is not required to take a blood sample pursuant to an Order.
- An individual who is subject to an Order may go to any facility or health professional that draws blood.
- Health professionals presented with an Order for testing must take the sample and submit it for testing in accordance with the directions in the Order.
- Failure to comply with an Order is an offence and can result in a fine.
- Health professionals who take a sample pursuant to an Order are protected from liability for doing so.
- Given their important roles in this process, health professionals and facilities should ensure they are familiar with the Act and its implications, and have policies and procedures in place regarding taking blood samples under the MBTA.

The CCB has now issued at least one Order requiring an individual to obtain blood testing under the new MBTA.

Health professionals and health facilities that take blood samples may be presented with a CCB Order to draw a sample and send it for testing. Additionally, an individual who has been exposed to blood or bodily fluids may seek the assistance of a health professional for treatment, counselling and/or advice. It is important for health professionals and facility administrators to understand the Act and its implications so that they know their obligations when faced with an Order.

Hospitals and other health facilities should ensure that their physicians and staff are educated about the MBTA. We recommend that they establish appropriate policies and procedures for providing assistance and carrying out obligations under the Act.

Scope of the MBTA

Under the MBTA, any person can seek the blood analysis of another person for HIV/AIDS, Hepatitis C and Hepatitis B, if:

- (a) They have come into contact with a bodily substance of the other person; and
- (b) Contact with the bodily fluid occurred in one of the following circumstances:
 - As a result of being the victim of a crime;
 - While providing emergency health care services or emergency first aid to the person, if the person was ill, injured or unconscious as a result of an accident or other emergency; or
 - In the course of his or her duties, if the person is: correctional services staff, a police officer, a firefighter, a paramedic, a paramedic student engaged in field training, an emergency medical attendant, or a member of the College of Nurses of Ontario; **or a member of the College of Physicians and Surgeons of Ontario or medical student engaged in training.**

If the individual provides informed consent to being tested, the blood test can be performed without having to apply to the Medical Officer of Health. However, if the individual refuses to consent or the affected person does not wish to seek consent, any person coming into contact with blood or bodily fluids in one of the circumstances listed above may make an application to a Medical Officer of Health to order the individual's blood analysis under the Act.

Steps Under the MBTA

The MBTA sets out a progressive approach to obtaining a blood sample for analysis. Upon an application to the Medical Officer of Health, the subject of the application (referred to in the legislation as the "respondent") first has the opportunity to get voluntarily tested. If the respondent does not provide a voluntary sample, the application is referred to the CCB, which may make an Order requiring the respondent to undergo testing. If the person still refuses to comply, a Court Order for testing may be obtained.

Voluntary Testing and Informed Consent

Where the respondent voluntarily agrees to blood testing at the request of the Medical Officer of Health, the health professional who takes the blood should ensure the consent is informed, by discussing with the individual the nature of the testing, why the blood testing is necessary and also providing responses to any questions. Given the nature of the testing, post-test counselling should also be made available to the individual.

Alternatively, the individual can provide proof of his or her seropositivity for the listed communicable disease.

CCB Order If Refusal to Provide Voluntary Sample

If the respondent fails to provide a voluntary blood sample within two days of the Medical Officer of Health receiving the application, or if despite reasonable efforts, the respondent cannot be located within that time, the Medical Officer of Health must refer the application to the CCB.

The CCB must conduct a hearing within seven days after receiving a referred application, and within one day of the end of the hearing, must determine whether the respondent should be ordered to provide a blood sample.

If the CCB decides the respondent should be ordered to provide a sample for analysis, the CCB Order will:

- Require the respondent to provide a blood sample within a specified period of time.
- Require the physician or other person to whom the respondent goes for the blood sample to take the sample and deliver it to an analyst (i.e. the Ministry of Health's Central Public Health Laboratory); and
- Require the analyst to analyze the sample, make a report on it, and make reasonable attempts to deliver the report to the applicant's physician. The analyst also has obligations regarding reasonable attempts to notify the applicant, the respondent and the respondent's physician.

In other words, where there is a CCB Order, the respondent must provide a blood sample, and the health professional to whom the respondent presents must draw the sample and send it for analysis.

The legislation says that the *Health Care Consent Act* does not apply to taking a blood sample pursuant to a CCB Order. Consequently, where there is a CCB Order, the respondent's informed consent does not need to be obtained to take his or her blood.

Court Order on Failure to Comply with a CCB Order

If the respondent does not comply with a CCB Order by the date or within the time specified in the Order, the applicant can seek a Court Order requiring the respondent to comply with the CCB Order, and requiring the respondent to take whatever other action the Court considers appropriate in the circumstances.

Protection from Liability for Complying With an Order

Under section 9(4) of the legislation, health professionals and others who take a blood sample are protected from liability for any act done in good faith in compliance with a CCB Order. Similar protections exist for health professionals complying with a Court Order.

We would be pleased to provide you with further analysis and specific advice on this legislation. Please feel free to contact us for assistance with the development of policies and procedures, or for educational and informational materials.

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