

May 30, 2025

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Sidney Peters
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Dear Ms. Peters:

**Re: Mr. Steven Reynen
Patient at Royal Ottawa Mental Health Care
CCB File No. 25-0375
Court File No. CV-25-00099970-0000**

As you know, we were retained to assist Dr. Tabitha Rogers with an application to the Consent and Capacity Board for directions with respect to a wish expressed by Mr. Steven Reynen regarding treatment (Form D).

Now that the Board has issued its decision, Dr. Rogers is seeking to reinstate treatment and is seeking the Public Guardian and Trustee (PGT)'s position in this regard.

Background

As you will recall, Mr. Reynen was admitted to the Ottawa Hospital on January 20, 2025, and was found incapable of consenting to treatment with antipsychotic medication. The finding of incapacity was upheld by the Board on January 29, 2025 (see CCB File No. 24-7505). Mr. Reynen did not appeal the Board's decision.

Mr. Reynen's substitute decision maker (SDM), the PGT, provided its consent to treatment with the long-acting injection paliperidone (Invega Sustenna). Mr. Reynen received a first dose at The Ottawa Hospital and a second dose after he was transferred to the Royal Ottawa Mental Health Care. However, upon learning that Mr. Reynen had expressed a prior wish regarding treatment, further treatment was put on pause pending the Form D application to the Board (see CCB File No. 25-0375).

The hearing took place on May 14, 2024. The deemed Form A (application for review of a finding of incapacity) was dismissed given that a finding of incapacity had been upheld by the Board within the last six months. On May 15, 2025, the Board issued its decision, finding that Mr. Reynen had not made a prior capable wish applicable to the circumstances and directing Mr. Reynen's SDM to refuse or give consent to the proposed treatment plan in accordance with section 21(1)2 of the *Health Care Consent Act* (i.e. the incapable person's best interests).

On May 23, 2025, Mr. Reynen filed an appeal to the Superior Court of Justice of the Board's decision regarding the Form D (CV-25-00099970-0000).

Reinitiating Treatment

In light of the Board's decision, Dr. Rogers is seeking to restart treatment with paliperidone (Invega Sustenna). It is our position that treatment can resume notwithstanding the fact that Mr. Reynen is appealing the Board's decision regarding the Form D application.

Section 80 of the HCCA provides a comprehensive procedural code governing appeals from the Board. Section 80 does not contain a power to stay an order of the Board pending appeal to the Superior Court. Instead, section 18 of the HCCA sets out conditions under which a stay of treatment may occur pending an appeal.¹ The conditions are:

- a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment (s.18(1)(a));
- b) before the treatment is begun, the health practitioner is informed that the person intends to apply, or has applied, to the Board for a review of the finding (s.18(1)(b)); and
- c) The application to the Board is not prohibited by subsection (s.18(1)(c)).

If those conditions are met, treatment cannot begin until the incapable person has exhausted their review and appeal rights (s. 18(3)).

However, if section 18 does not apply, there is no automatic stay with respect to treatment, as stated by Justice Brown in *Starson v. Pearce*:

If section 18 does not apply to the circumstances of the present case, in my view it is not open to me to graft onto the HCCA's appeal provisions some procedural gloss regarding stays of treatment; it is not for the court to rewrite the Act: *Fleming, supra.*, at page 95. To do so would interfere with the fine balancing of interests apparent from the provisions of that Act.²

In this case, Mr. Reynen was found incapable of consenting to treatment and the finding was upheld by the Board. Mr. Reynen did not appeal the Board's decision and the time to do so has well lapsed. As such, Mr. Reynen has exhausted his review and appeal rights in respect of a finding of incapacity. Moreover, treatment was initiated but put on pause pending the Board's directions. Therefore, based on the above, section 18 does not apply in the circumstances, and it is our position that there is no stay of treatment.

At this time, **we are seeking the PGT's position regarding reinitiation of treatment with paliperidone (Sustenna Invega) pending Mr. Reynen's appeal.** Please do not hesitate to contact us should you have any questions. We look forward to hearing from you.

¹ *Starson v. Pearce*, 2009 CanLII 46 (ON SC) at para 22.

² *Ibid.*

Yours very truly,

Gowling WLG (Canada) LLP



Marie-Ève Caissy

cc: Brooke Smith, Gowling WLG (Canada) LLP
Mark Handelman, Mr. Reynen's counsel before the Consent and Capacity Board
Crystal Liew, the Public Guardian and Trustee's counsel before the Consent and Capacity Board