

DEPUTY APPLICATIONS UNDER THE MENTAL CAPACITY ACT — WRITING THE MEDICAL REPORT

LOSING MENTAL CAPACITY

A person can lose mental capacity for various reasons, such as a stroke, head injury or dementia. The person could have been the sole breadwinner and primary decision-maker of the household. But now, he is the one that needs to be taken care of.

In particular, someone needs to be appointed as his official representative, to make decisions on his behalf, in his personal welfare, and property and affairs — as his bills still need to be paid, his family provided for, and there may be insurance monies to be claimed, properties to be maintained, etc. If the person (“P”) had made a Lasting Power of Attorney (LPA), then he would have nominated one or more “donees” to do this. However, if he had not made an LPA, then someone who is interested to handle P’s affairs may apply to court under the Mental Capacity Act (MCA), to be appointed as P’s “deputy”.

DEPUTY APPLICATION — MEDICAL REPORT REQUIRED

The application to appoint a deputy (“deputy application”) will ask the court to: (a) make a declaration that P lacks the mental capacity to make decisions in matters relating to his personal welfare and/or property and affairs; (b) make an order for the applicant to be appointed as P’s deputy for his personal welfare and/or property and affairs; and (c) make

orders regarding the scope of the deputy’s powers. A medical report is needed to assist the court in making the decision on P’s mental capacity. It is a legal requirement for the report to be exhibited in a doctor’s affidavit accompanying the deputy application.

CONSEQUENCES OF REJECTION OF MEDICAL REPORT

If the medical report is not adequate, the court will reject the deputy application and ask the deputy to get a further and better medical report which fulfils the relevant requirements. This means that the appointment of the deputy will be delayed, which can lead to serious consequences for P and his family, as all his assets are frozen and major decisions cannot be made for him until the deputy is appointed.

TIPS AND POINTERS FOR WRITING MEDICAL REPORT

1. Use the template provided and fill it up completely

There is a court-designed template to capture the various legal requirements for the medical report. Do not use your own template nor annex your report written in your own format to the template. Fill in every box in the template and do not leave any blank. The template is available at <https://www.mlaw.gov.sg/content/lab/en.html>. You can

PROFILE



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also ask the lawyer acting for the applicant to send you the Word document.

2. Type, NOT hand-write, into the template

Doctors' handwriting can sometimes be illegible! In one case where the doctor handwrote his report, the word "impairment" looked like "improvement", which ended up causing confusion for both the lawyer and the court.

3. Key points

3.1 How recent should the last examination of P be, counting from the date of the report?

This depends on:

(a) *The length and frequency of the doctor-patient relationship*

As a rule of thumb, and subject to P's condition, for cases where the doctor has only seen P once or twice, there should be a lapse of no more than two to three months from the date of the last examination of P to the date of the report ("the lapse"). However, if the doctor has been seeing P regularly over a few years, then a lapse of five to seven months may be acceptable.

(b) *Whether P's condition is temporary or permanent*

If P's condition is permanent (eg, dementia), then seven to eight months, or a year's lapse may be acceptable. If P's condition is not permanent (eg, he is recovering from a head injury) then a lapse of no more than three to six months, or even less, would be acceptable, depending on when P's next review is.

Therefore, it is important to state:

i. Whether P's condition is a permanent or temporary one and the basis for that opinion.

Eg, if P is in a "vegetative state", you should state whether this is a permanent condition, ie, a "persistent vegetative state".

ii. Details of the doctor-patient relationship.

ie, (a) how long the doctor has known P (eg, "The patient first came to see me in 2010..."); (b) how regularly P has been seeing the doctor (eg, "The patient has come to me for regular follow-ups, two to three times a year, in the past five years..."); and (c) the date of the doctor's last examination of P.

3.2 Ask questions to establish P's mental capacity

There are different tests of mental capacity that you can apply. It is up to you to choose which you think is the most appropriate. An example of a common test is the Abbreviated Mental Test (AMT).¹

In addition, you may also ask questions related to P's personal welfare and/or property and affairs (eg, If P has a flat, what he would like to do with it; whether P knows what medical conditions he has and how he would like to be treated).

3.3 Give evidence to support your conclusions

If you have a conclusion, (eg, "P could not understand simple questions."; "P made mistakes in simple maths."; "P does not demonstrate understanding of information relating to more complex decisions such as those requiring a large sum of money."), you need to put down the supporting evidence (eg, "P answered 'I don't know.' when asked 'What is your name?'"; "P could not subtract seven from ten."; "P said \$10, when asked how much his flat was worth."). You should write down the exact questions you asked P and what he said that made you reach your conclusion on P's mental state. If you administered a test, do not just give the test score, but explain what was asked and what the answers were.

3.4 Avoid unexplained medical jargon

Your report is going to be read by laypersons (lawyers and judges) and not just medical professionals. So you should explain the technical medical terms in the report (eg, "perseveration", "AMT score of 1/10", "dysphasic") in simple English, as if you were explaining things to the reasonably educated, but non-medical, caregiver of a patient you are treating.

FURTHER READING

I hope the tips and pointers above will help you in writing a medical report that the court finds sufficiently detailed and useful in making a decision on P's mental capacity. This article is not intended to give, or be a substitute for, any legal advice. You should seek the help of a lawyer if you have a specific legal issue on any MCA matter.

It is beyond the scope of this article to deal with the principles and procedures of the MCA, but you can refer to the following links (<https://www.familyjusticecourts.gov.sg> and <https://www.publicguardian.gov.sg>) for further information and reading materials on these matters.

Finally, if you would like to see an example of a filled-in template, you can refer to the Legal Aid Bureau's website (<https://www.mlaw.gov.sg/content/lab/en.html>). ◆

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References

1. Ministry of Health. MOH Clinical Practice Guidelines 3/2007. Page 22. Available at: https://www.moh.gov.sg/content/dam/moh_web/HPP/Doctors/cpg_medical/current/2007/CPG_Dementia_Booklet.pdf.