



RISK NOTE

SUBJECT: Representation Agreements

Representation Agreement Act (RAA)

Purpose of the RAA

The purpose of the *RAA* is to allow a competent adult to create a written document, a Representation Agreement (RA), which would have the legal effect of appointing another individual (the representative) to make decisions based on the adult's wishes, if the adult becomes incapable to do so. RAs may give the representative different authorizations, such as the ability to make decisions regarding the adult's personal and health care decisions and management of financial affairs.

Competence to Appoint a Representative

Until the contrary is demonstrated, every adult is presumed to be capable of making, changing or revoking a RA, and making decisions about personal care, health care and legal matters and about the adult's financial affairs, business and assets. The adult's method of communication is not grounds for deciding that they are incapable.

Statutory Restrictions on a Representative's Authority to Make Health Care Decisions

Under the *RAA* there are some decisions that a representative may not make. For example, a representative is restricted under the *RAA* from refusing treatment under certain provisions of the *Mental Health Act*.

Two Types of Representation Agreements

There are two types of RAs that can be created under the *RAA*.

Standard Provisions

The first type is made under Standard Provisions and provides authority to the representative to help the adult make decisions or to make decisions on behalf of the adult about the adult's personal care, routine management of finances such as paying bills, major health care and minor health care decisions as defined by the *Health Care (Consent) and Care Facility (Admission) Act*, obtaining legal services and instructing legal counsel to commence proceedings, except divorce proceedings.

Under Standard Provisions, an adult may authorize the representative to accept a facility care proposal under the *Health Care (Consent) and Care Facility (Admission) Act*

only for admission to a family care home, a group home for the mentally handicapped or a mental health boarding home.

A representative may not refuse health care necessary for life or to physically restrain, move or manage the adult or authorize another person to do so.

An adult may make a representation agreement under Standard Provisions even though the adult may be incapable of making a contract, managing his or her health care, personal care or routine management of financial affairs.

Non-standard Representation Agreements

The second type is a Non-standard RA and includes provision for a representative to make all the decisions included in the Standard Provisions and also may authorize the representative to do anything the representative considers necessary in relation to the personal care or health care of the adult. Specific personal or health care decisions may be deciding where the adult is to live including if that is in a care facility, what social or educational activities the adult will participate in, whether or not the adult will have contact or associate with another person and make day-to-day decisions about dress or diet. For specified kinds of health care which are detailed in the Non-standard RA, the representative may give or refuse consent to the health care even if the adult is refusing to give consent at the time the health care is given. The representative may physically restrain, move and manage an adult or authorize another person to do so, even if the adult objects, if it is necessary to provide personal or health care to the adult.

Under the Non-standard Provisions, if a representative is given authority to give or refuse consent for health care for the adult, the representative may give or refuse consent to health care necessary to preserve life.

Who Can Act as a Representative?

An adult can appoint, as his/her representative, anyone 19 years of age or older unless the person provides personal care or health care services to the adult for compensation or is an employee of a facility that provides personal or health care for the adult. Regardless of these restrictions, any child, parent or spouse of the adult who is at least 19 years of age may be named as a representative. The Public Guardian & Trustee may also be named as a representative. If the appointment relates to non-personal/health purposes, the adult may appoint a trust company or credit union. If the adult appoints more than one representative, the adult must assign the area(s) of authority granted to each. They may be given different areas of authority or all or part of the same area of authority. If they are given overlapping areas of authority, they must act unanimously unless the agreement says otherwise. Each representative is required in law to complete a certificate which should be attached to the RA. In addition, the adult may appoint "alternate" representatives, but he/she must then outline the circumstances under which the alternate representatives can act and may specify conditions subject to which the alternate representative is authorized to act.

Access to Information

Provided the representative's area of authority permits, the representative of an adult has all the right to information and documents to which the adult is entitled. Health Care Agencies (HCAs) must, at the request of the representative, provide the information or produce the documents for inspection and copying to the representative. In addition, the representative may request information and records pertaining to the incapability of the adult. The exceptions are information protected by solicitor-client privilege or prohibited from release under section 51 of the *Evidence Act*.

If the representative has the authority to make health care decisions the representative is entitled to the adult's health records when requested. It is imperative for an HCA to review the RA in order to determine if the representative can make health care decisions and, therefore, is entitled to the adult's health records.

Obligations of the Representative

The RA requires the representative to:

- act honestly and in good faith;
- exercise the care, diligence and skill of a reasonably prudent person;
- act within the authority given in the RA;
- consult, to the greatest extent possible, with the adult to determine current wishes; and
- comply with those wishes if practical.

Appointment of Monitors

Under the *RAA*, an adult may appoint a monitor to ensure that the representative is complying with the agreement. This person is entitled to speak and visit with the adult at any time and anyone having custody or control of the adult must not hinder the monitor from doing so.

Termination of the Representation Agreement

An adult may revoke or change a RA at any time they are deemed competent to do so. Additionally, there are a number of circumstances in which the RA automatically terminates including the death of the adult. Other examples include: the end of a marriage (unless the RA stipulates otherwise), the death of the representative, the incapacitation of the representative or upon court order. A court order under s.19 of the *Patient's Property Act* terminates every provision made by the adult in respect of the adult's property.

Determining Valid Appointment

If there is an allegation that a person has been legally appointed as the adult's representative under a RA for the purpose of making health care decisions on behalf of the patient, the health care provider should review the RA document to ensure the representative has authority to make specific health care decisions. A representative may retain the services of a qualified person to assist the representative in doing

anything the adult has authorized the representative to do and that person should also provide proof of authority to act for the representative.

Extrajurisdictional Representation Agreements

A RA made in a jurisdiction outside of BC may be deemed effective in BC if it meets the requirements outlined in section 9 (Non-standard RAs) of the *RAA*, and the Regulations to the *RAA*. The deemed RA relates only to personal care or health care decisions about the adult. A “deemed representation agreement” is one that has been made by a resident, who was ordinarily a resident of a jurisdiction outside of British Columbia, but within Canada or within the USA, Great Britain and Northern Ireland, Australia or New Zealand. The RA must have been made according to the laws of the jurisdiction in which the person was a resident and the RA was made. It also must continue to be effective in the jurisdiction in which it was made.

To be effective in BC, a deemed RA must be accompanied by a certificate from a solicitor permitted to practice in the jurisdiction in which the deemed RA was made. The certificate must indicate that the deemed RA meets the requirements as stated.

A person named as a representative and the person who made the deemed RA must both be at least 19 years of age. Powers or duties performed by the representative must be lawful under the *RAA* or in the jurisdiction in which it was made.

Determining whether a RA is valid and whether a representative can in law make specific health care decisions can be challenging and is not necessarily the role of a health care provider. If a health care provider has any concerns about any issues involving a representative, please seek further advice from your risk manager or corporate legal counsel.

What does a Representation Agreement or certificate look like?

The following are copies of sample Representation Agreements and certificates for your interest.

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact your organization's risk manager or chief risk officer to discuss.

Form 1

Certificate of Representative or Alternate Representative

(sections 5 (4) and 6 (2) of the Representation Agreement Act)

[to be completed by each representative and alternate representative named in a representation agreement made under section 7 of the Representation Agreement Act]

Part 1 – Identification of representative or alternate representative

- 1 This certificate applies to the representation agreement made *[date]* by*[name of adult]*.
- 2 I am named in the representation agreement as representative or alternate representative.
- 3 My contact information is as follows:
..... *[name]*
..... *[telephone number], of*
..... *[address]*
..... *[city, province, postal code]*
..... *date of birth, if not a trust company or credit union]*.

Part 2 – Certifications made by representative or alternate representative

- 1 I certify that
 - (a) I am an adult *[does not apply to a trust company or credit union]*,
 - (b) I do not provide, for compensation, personal care or health care services to the adult who made the representation agreement, or I do provide the services described in this paragraph, but I am a child, parent or spouse of the adult,
 - (c) I am not an employee of a facility in which the adult who made the representation agreement resides and through which he or she receives personal care or health care services, or I am an employee described in this paragraph, but I am a child, parent or spouse of the adult,
 - (d) I am not a witness to the representation agreement,

- (e) I have read and understand, and agree to accept, the duties and responsibilities of a representative as set out in section 16 of the *Representation Agreement Act*, and
- (f) I have read and understand section 30 of the *Representation Agreement Act* and have no reason to make an objection as described in that section.

....., [date].

*[signature of representative, alternate representative or
authorized signatory of a trust company or credit union]*

Form 2

Certificate of Monitor

(section 12 (5) of the Representation Agreement Act)

[to be completed by the person named as monitor]

Part 1 – Identification of monitor

- 1 This certificate applies to the representation agreement made [date]
by [name of adult].
- 2 I am named in the representation agreement as monitor.
- 3 My contact information is as follows:

..... [name]
..... [telephone number], of
..... [address]
..... [city, province, postal code]

Part 2 – Certifications made by monitor

- 1 I certify that
 - (a) I am an adult,
 - (b) I have read and understand, and agree to accept, the duties and responsibilities of a monitor as set out in section 20 of the *Representation Agreement Act*, and
 - (c) I have read and understand section 30 of the *Representation Agreement Act* and have no reason to make an objection as described in that section.

....., [date].

.....
[signature of monitor]

Form 3

Certificate of Person Signing for the Adult

(section 13 (4) (d) of the Representation Agreement Act)

*[to be completed by the person who signs a representation agreement made under
section 7 of the Representation Agreement Act for the adult
making the agreement, if the adult is physically incapable of signing]*

Part 1 — Identification of the person signing on behalf of the adult

1 This certificate applies to the representation agreement made..... *[date]* by
..... *[name of adult]*.

2 I signed the representation agreement on behalf of the adult.

3 My contact information is as follows:

..... *[name]*
..... *[telephone number]*, of
..... *[address]*
..... *[city, province, postal code]*

Part 2 – Certifications made by the person signing on behalf of the adult

1 I certify that

- (a) I am an adult *[does not apply to a trust company or credit union]*,
- (b) the adult who made the representation agreement was present when I signed the representation agreement on his or her behalf, and directed me to sign because he or she was physically incapable of signing,
- (c) I understand the type of communication used by the adult who made the representation agreement when he or she directed me to sign the agreement,
- (d) I am not named in the representation agreement as a representative or an alternate representative, and
- (e) I am not a witness to the representation agreement.

..... *[date]*.

.....
[signature of person signing for the adult]

Form 4

Certificate of Witnesses

(section 13 of the Representation Agreement Act)

*[to be completed by each person witnessing the signing of a representation agreement
made under section 7 of the Representation Agreement Act]*

Part 1 — Identification of, and certifications made by, first witness

- 1 This certificate applies to the representation agreement made *[date]*
by *[name of adult]*.
- 2 I witnessed the signing of the representation agreement by, or on behalf of, the adult.
- 3 My contact information is as follows:

..... *[name]*
..... *[telephone number]*, of
..... *[address]*
..... *[city, province, postal code]*

- 4 I certify that
 - (a) I am an adult *[does not apply to a trust company or credit union]*,
 - (b) the adult who made the representation agreement was present when I witnessed the representation agreement,
 - (c) I understand the type of communication used by the adult who made the representation agreement, or had interpretive assistance to understand that type of communication,
 - (d) I am not named in the representation agreement as a representative or an alternate representative,
 - (e) I am not a spouse, child, parent, employee or agent of a person named in the representation agreement as a representative or an alternate representative *[does not apply to an employee or agent of the Public Guardian and Trustee, or a trust company or credit union]*, and
 - (f) I have read and understand section 30 of the *Representation Agreement Act* and have no reason to make an objection as described in that section.

....., *[date]*.

.....
[signature of witness]

To Make an Objection

If you believe that you have grounds to make an objection at this time, you

- (a) must not witness the representation agreement,
- (b) must not execute this certificate, and
- (c) may report your objection to the Public Guardian and Trustee.

Part 2 — Identification of, and certifications made by, second witness

[to be completed only if the first witness is not a lawyer or a member in good standing of the Society of Notaries Public of British Columbia]

1 This certificate applies to the representation agreement made *[date]*
by *[name of adult]*.

2 I witnessed the signing of the representation agreement by, or on behalf of, the adult.

3 My contact information is as follows:

..... *[name]*
..... *[telephone number], of*
..... *[address]*
..... *[city, province, postal code]*

4 I certify that

- (a) I am an adult *[does not apply to a trust company or credit union]*,
- (b) the adult who made the representation agreement was present when I witnessed the representation agreement,
- (c) the first witness and I were in the presence of each other when each of us witnessed the representation agreement,
- (d) I understand the type of communication used by the adult who made the representation agreement, or had interpretive assistance to understand that type of communication,
- (e) I am not named in the representation agreement as a representative or an alternate representative,

- (f) I am not a spouse, child, parent, employee or agent of a person named in the representation agreement as a representative or an alternate representative *[does not apply to an employee or agent of the Public Guardian and Trustee, or a trust company or credit union]*, and
- (g) I have read and understand section 30 of the *Representation Agreement Act* and have no reason to make an objection as described in that section.

..... *[date]*.

[signature of witness]

To Make an Objection

If you believe that you have grounds to make an objection at this time, you

- (a) must not witness the representation agreement,
- (b) must not execute this certificate, and
- (c) may report your objection to the Public Guardian and Trustee.

Form 5

Certificate of Extrajurisdictional Solicitor

(made under section 9 (4) of the Representation Agreement Regulation)

[to be completed by a solicitor in the jurisdiction in which
an extrajurisdictional representation agreement was made]

Part 1 — Identification of solicitor

- 1 This certificate applies to the instrument made [date] by
..... [name of adult], authorizing
.....
..... [name of person or persons]
to do the following:

.....
.....
.....
.....
.....
.....

[summary of the powers the person, or each person, is granted].

- 2 I am lawfully entitled to practise law in[province or
state, if applicable, and country].

- 3 My contact information is as follows:

..... [name]
..... [telephone number]
..... [address]
..... [city, province or state]
..... [postal code or zip code]
..... [e-mail (optional)].

4 The regulatory body that governs the practice of law in my jurisdiction is

..... [name]

..... [telephone number]

..... [address]

..... [city, province or state]

..... [postal code or zip code]

Part 2 – Certifications made by solicitor

1 I certify that

- (a) the instrument described in Part 1 of this certificate authorizes a person to assist the maker of the instrument to make decisions, or to make decisions on behalf of the maker of the instrument, respecting personal care or health care,
- (b) at the time of making the instrument, the adult who made it was to the best of my knowledge ordinarily a resident of [province or state, if applicable, and country], and that jurisdiction is
 - (i) outside British Columbia but within Canada, or
 - (ii) within the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia or New Zealand, and
- (c) the instrument was validly made according to the laws of the jurisdiction in which
 - (i) the adult who made the instrument was ordinarily resident, and
 - (ii) the instrument was made.

....., [date].

.....
[signature of solicitor]

Note: this regulation replaces B.C. Reg. 459/99.

[Provisions relevant to the enactment of this regulation: *Representation Agreement Act*, R.S.B.C. 1996, c. 405, sections 13 (4) (d) and 42]