## Ministry Information

# Mandatory Blood Testing Act 2006

### What is the purpose of the Mandatory Blood Testing Act, 2006?

The Mandatory Blood Testing Act, 2006, reduces the time for getting a mandatory blood test to less than three weeks. Before the act, the process could take more than two months.

This law makes sure that police officers, firefighters, correctional services staff and others get faster access to information that can help them decide the best way to reduce the chances of getting sick should they be exposed to a serious disease.

### What diseases are listed as communicable diseases under the act?

- Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS)
- Hepatitis B
- Hepatitis C

### Should I start treatment immediately following exposure, or wait for my application to be processed?

Anyone who believes he or she has been exposed to a communicable disease as a result of coming into contact with a bodily substance of another person should immediately contact a medical professional who can help assess the risk of infection and decide whether to start treatment or preventive measures.

### Who can submit an application under the Mandatory Blood Testing Act, 2006?

Anyone may apply to a Medical Officer of Health to have a blood sample of another person analyzed if he or she has come into contact with a bodily substance from that person in any of the following circumstances:

- As a result of being a victim of crime
- While providing emergency health care services or emergency first aid to the person or
- In the course of his or her duties, if the person belongs to an identified group of individuals, including:

  - Persons who are employed in a correctional institution, place of open custody or place of secure custody
  - Police officers, civilian employees of a police service, First Nations constables and auxiliary members of a police service
  - Firefighters (including volunteer firefighters)
  - Paramedics and emergency medical attendants

- Members of the College of Nurses of Ontario
- Paramedic students engaged in field training

**Where should applications be submitted?**

Applications must be submitted to the Medical Officer of Health in the health unit where the respondent lives.

At the bottom of the application form there is a phone number that applicants can call to obtain a list of health units and the areas they cover.

**Who is responsible for screening the application?**

The Medical Officer of Health is responsible for screening the application to make sure it meets the requirements of the act and for seeking voluntary compliance from the respondent.

**Is there a time restriction on making an application under the Mandatory Blood Testing Act, 2006?**

The Medical Officer of Health in the health unit where the respondent lives must receive an application no more than seven days after the date of the occurrence. However, if the deadline falls on a Saturday, Sunday or other holiday, the deadline is extended by one day.

**What happens when a Medical Officer of Health receives an application?**

Once the application has been screened to make sure it meets the requirements of the act, the Medical Officer of Health will attempt to contact the respondent and request that the respondent voluntarily provide a blood sample for testing.

**What steps are taken if the respondent fails to provide a blood sample voluntarily?**

If the respondent does not provide a blood sample within two days of the Medical Officer of Health receiving the application, or if the respondent cannot be located in time, the application will be referred to the Consent and Capacity Board. The board will hold a hearing to decide whether to issue a mandatory order.

**When will the Consent and Capacity Board hold the hearing?**

The Consent and Capacity Board must begin and complete a hearing within seven days of receiving an application from a Medical Officer of Health. The board must make its decision within one day after the hearing ends. However if this day falls on a Saturday, Sunday or any other holiday, the deadline will be extended by one day.

**How will the Consent and Capacity Board inform me of their decision?**

The board will provide the applicant and the respondent (or their representative), as well as the Medical Officer of Health, with a copy of the board's decision and a copy of any order made by the board.

**What can I do if I disagree with the Consent and Capacity Board's decision?**

A decision of the board is final. There is no right of appeal. However, both the applicant and the respondent have the right to apply for a judicial review of the decision by the Superior Court of Justice.

**How long does the respondent have to comply with an order of the Consent and Capacity Board?**

The respondent has seven days from the date the order is made to comply.

**What are the penalties for failing to comply with an order made by the Consent and Capacity Board?**

Every person who fails to obey an order made by the board is guilty of an offence and is liable on conviction to a fine of not more than $5,000 for every day or part of a day on which the offence occurs or continues.

**Where can I find the mandatory blood testing forms?**

All relevant forms, (including the applicant report, respondent report and physician report) can be found on this website:
http://www.mcscs.jus.gov.on.ca/english/LinksResources/MandatoryBloodTesting/Forms/mbt_forms.html

# ONTARIO REGULATION 449/07

made under the

# MANDATORY BLOOD TESTING ACT, 2006

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## GENERAL

**Definitions**

**1.** (1) For the purposes of paragraph 1 of section 2 of the Act,

"victim of a crime" means a victim of an alleged crime under the *Criminal Code* (Canada).

(2) In this Regulation,

"Central Public Health Laboratory" means the Ministry of Health and Long-Term Care's Central Public Health Laboratory; ("Laboratoire central de santé publique")

"health unit" has the same meaning as in the *Health Protection and Promotion Act*; ("circonscription sanitaire")

"laboratory requisition" means an order for a blood sample in the form required by the Minister under section 12 of the Act; ("demande d'analyse en laboratoire")

"Minister" means the Minister of Community Safety and Correctional Services; ("ministre")

"occurrence" means the events alleged by an applicant to have resulted in his or her coming into contact with a bodily substance of another person; ("événement")

"personal health information" has the same meaning as in the *Personal Health Information Protection Act, 2004*; ("renseignements personnels sur la santé")

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; ("renseignements personnels")

"reporting physician" means the physician who prepares a physician report. ("médecin rapporteur")

**Other evidence of seropositivity**

**2.** For the purposes of the Act and this Regulation, a respondent may provide a laboratory report or a report or letter signed by a physician as other evidence of his or her seropositivity respecting a listed communicable disease.

**Additional persons who can apply under the Act**

**3.** The following are prescribed as classes of persons who may make an application under section 2 of the Act:

1. Persons who are employed in a correctional institution, place of open custody or place of secure custody, as those terms are defined in the *Ministry of Correctional Services Act*.
2. Police officers as defined in the *Police Services Act*, employees of a police force who are not police officers, First Nations Constables and auxiliary members of a police force.
3. Firefighters, as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*.
4. Paramedics and emergency medical attendants, as those terms are defined in the *Ambulance Act*.
5. Paramedic students engaged in field training.
6. Members of the College of Nurses of Ontario.

**Submission of application**

**4.** (1) An application under section 2 of the Act must include,

(a) an applicant report, completed as required by section 5; and

(b) a physician report, completed as required by section 6.

(2) An application must be received by the office of the medical officer of health in the health unit for the area where the respondent lives no more than seven days after the date of the occurrence.

(3) If the deadline under subsection (2) falls on a Saturday or a Sunday or other holiday, the deadline shall be extended by one day.

(4) If an application is submitted to an office of the medical officer of health in a health unit other than the health unit for the area where the respondent lives, the office that receives the application shall immediately forward it to the office of the medical officer of health in the health unit for the area where the respondent lives.

(5) The office of the medical officer of health that receives an application directly from the applicant shall record the date and time that it received the application.

(6) The date of the occurrence set out in the physician report is deemed to be the date of the occurrence for the purposes of this Regulation, despite any other information in the application respecting the date of the occurrence.

(7) An application that is faxed to an office of a medical officer of health is deemed to be received by that office,

(a) on the day it is faxed, if sent before 4 p.m.; and

(b) on the day after it is faxed, if sent at or after 4 p.m.

(8) The following rules apply in respect of an application submitted to an office of the medical officer of health in a health unit other than the health unit for the area where the respondent lives:

1. The application is deemed to comply with subsection (2) if it is received by an office of the medical officer of health in a health unit other than the health unit for the area where the respondent lives within the time required by that subsection.

2. The deadline under subsection 3 (3) of the Act applies in respect of the application from the date it was received by an office of the medical officer of health in a health unit other than the health unit for the area where the respondent lives.

**Applicant report — contents**

**5.** (1) An applicant report must include,

(a) the applicant's name, address, telephone number, OHIP number, sex, age and date of birth;

(b) the respondent's name and address and, if known, the respondent's telephone number, sex, age and date of birth;

(c) a description of the occurrence, including the date and time it occurred, any injuries sustained by the applicant and whether the applicant took any precautions before the occurrence;

(d) the name, office address, office telephone number and office fax number of the applicant's family physician, if different from the reporting physician;

(e) the statement that the applicant consented to an examination by the reporting physician;

(f) the statement that the applicant consented to counselling respecting the occurrence, including counselling respecting prophylaxis and treatment;

(g) the statement that the applicant consented to the base line testing on the applicant's blood for the listed communicable diseases ordered by the reporting physician;

(h) the applicant's consent to the release of his or her personal information and personal health information relating to the application to the Board in the event that the application is referred to the Board.

(2) Where the applicant is applying as a victim of a crime, the applicant report must state that the applicant,

(a) reported the alleged crime to the police; and

(b) has consented to the release by the police of any information from the police report to the Board in the event that the application is referred to the Board.

(3) An applicant report must be signed and dated by the applicant.

(4) If the application is referred to the Board, the applicant shall submit the results of his or her base line testing to the Board as soon as they are available.

**Physician report — contents**

**6.** (1) A physician report must include,

(a) the name, office address, office telephone number and office fax number of the reporting physician;

(b) the applicant's name, address, telephone number, OHIP number, sex, age and date of birth;

(c) the name, office address, office telephone number and office fax number of the applicant's family physician, if different from the reporting physician;

(d) a description of the occurrence, including the date and time of the occurrence;

(e) a statement regarding the type of exposure the applicant experienced and the type of bodily substance with which the applicant had contact;

(f) the reporting physician's findings of examinations related to the occurrence, including an assessment of any injuries sustained by the applicant;

(g) the applicant's immunization history and serostatus for the listed communicable diseases, if known;

(h) a description of all base line testing for the listed communicable diseases ordered by the reporting physician and, if the applicant refused any such base line testing, a description of the base line testing that the applicant refused;

(i) a description of all prophylaxis and treatment recommended by the reporting physician, including a statement regarding whether the applicant refused any such prophylaxis or treatment;

(j) a statement that the applicant consented to counselling respecting the occurrence, including counselling respecting prophylaxis and treatment;

(k) the name, office address, office telephone number and office fax number of the physician or physicians to whom the reporting physician referred the applicant for prophylaxis, treatment and follow-up, if applicable; and

(l) the reporting physician's assessment of the applicant's risk of exposure to the listed communicable diseases as potentially significant, non-significant or indeterminate.

(2) A physician report must be signed and dated by the reporting physician.

(3) A reporting physician shall order base line testing of the applicant for all of the listed communicable diseases; however, a reporting physician is not required to order base line testing for a listed communicable disease if the reporting physician has other evidence, satisfactory to the reporting physician, of the applicant's seropositivity respecting that disease.

**Application not proceeded with**

**7.** (1) If an application under section 2 of the Act does not meet the requirements of section 4 of this Regulation, the medical officer of health shall not take any of the steps set out in section 3 of the Act.

(2) The medical officer of health shall notify the applicant by registered mail if the application does not meet the requirements of section 4 of this Regulation, and shall mail the notice within two days after making that determination.

**Request for voluntary compliance**

**8.** (1) When making a request under section 3 of the Act that a respondent voluntarily provide a blood sample or other evidence of his or her seropositivity respecting the listed communicable diseases, the medical officer of health shall,

(a) follow standard public health practices and procedures;

(b) disclose the details of the occurrence, as described in the applicant and physician reports, to the respondent, without disclosing the applicant's personal information; and

(c) make reasonable attempts to deliver to the respondent a blank respondent report that may be used in the event that the application is referred to the Board.

(2) The medical officer of health may continue to request that the respondent voluntarily provide a blood sample or other evidence of his or her seropositivity respecting the listed communicable diseases even after referring the application to the Board.

**Voluntary compliance**

**9.** If the respondent voluntarily agrees to provide a blood sample, he or she shall go to a physician or person belonging to a class prescribed by section 13 and request that a blood sample be taken from him or her and shall advise the physician or other person that the sample is being provided pursuant to a request made by a medical officer of health under section 3 of the Act.

**Withdrawal of referral to Board**

**10.** If the respondent voluntarily provides a blood sample or other evidence of his or her seropositivity respecting the listed communicable diseases after the application is referred to the Board but before the Board commences its hearing into the application, the medical officer of health shall withdraw the referral of the application.

**Application referred to Board**

**11.** If the medical officer of health refers an application to the Board under subsection 3 (3) of the Act, he or she shall forward the application to the Board.

**Compliance with Board's order**

**12.** If the Board makes an order under section 5 of the Act, the maximum time period that the Board may specify in the order within which the respondent must comply with the order is seven days from the date the order is made.

**Additional persons who may take a blood sample**

**13.** The following are prescribed as classes of persons who may take a blood sample pursuant to an order made by the Board under section 5 of the Act:

1. Members of the College of Medical Laboratory Technologists of Ontario.

2. Members of the College of Nurses of Ontario who are registered nurses and who hold extended certificates of registration under the *Nursing Act, 1991*.

**Verification of respondent's identity before taking blood sample**

**14.** (1) A physician or other person to whom a person goes for the taking of a blood sample pursuant to a request made under section 3 of the Act or an order made under section 5 of the Act shall, before taking the blood sample,

(a) ask the person who is presenting himself or herself to have a blood sample taken from him or her to produce photo identification or, if the person does not have photo identification, two other pieces of identification each containing the person's name and signature; and

(b) verify that the person who is presenting himself or herself to have a blood sample taken from him or her is the respondent by inspecting the identification produced.

(2) If identification is not produced as requested under clause (1) (a) or if the physician or other person is not satisfied that the person who is presenting himself or herself to have a blood sample taken from him or her is the respondent, the physician or other person,

(a) shall not take the blood sample;

(b) shall indicate on the laboratory requisition that he or she did not take the blood sample and the reason for not doing so; and

(c) shall forward the laboratory requisition to,

(i) the medical officer of health in the health unit for the area where the respondent lives, if the person went for the taking of a blood sample pursuant to a request made under section 3 of the Act, or

(ii) the Board, if the person went for the taking of a blood sample pursuant to an order of the Board made under section 5 of the Act.

(3) Upon receiving the laboratory requisition sent under clause (2) (c), the medical officer of health or the Board, as the case may be, shall notify the applicant in writing, sent by courier, that the blood sample was not taken for the reason provided under clause (2) (b).

**Procedures for taking blood sample**

**15.** (1) A physician or other person who takes a blood sample from a respondent pursuant to a request made under section 3 of the Act or an order made under section 5 of the Act shall,

(a) attach to each of the vacutainers containing blood taken from the respondent a label that lists the respondent's name, date of birth and the date on which the sample was collected;

(b) immediately put all the vacutainers into a biohazard bag;

(c) attach a seal to the biohazard bag;

(d) write the respondent's name and date of birth on the seal attached to the biohazard bag;

(e) attach a unique number identifier to the laboratory requisition, which appears on the original and all copies of the laboratory requisition;

(f) indicate on the laboratory requisition that the identity of the respondent was verified in accordance with section 14;

(g) write his or her own name and sign and date the laboratory requisition;

(h) provide the respondent with a copy of the completed laboratory requisition;

(i) retain one copy of the completed laboratory requisition for his or her records; and

(j) send one copy of the completed laboratory requisition to,

(i) the medical officer of health in the health unit for the area where the respondent lives, if the sample is taken pursuant to a request made under section 3 of the Act, or

(ii) the Board, if the sample is taken pursuant to an order of the Board made under section 5 of the Act.

(2) A physician or other person who takes a blood sample from a respondent shall immediately deliver the blood sample, packaged as required by subsection (1), and the original completed laboratory requisition by courier to the Central Public Health Laboratory for analysis there.

(3) The copy of the laboratory requisition sent to the medical officer of health under subclause (1) (j) (i) shall be sent by fax.

**Verification of integrity of blood sample by lab**

**16.** (1) Before any analysis is performed on a blood sample taken from a respondent pursuant to a request made under section 3 of the Act or an order made under section 5 of the Act, an official of the Central Public Health Laboratory shall verify that,

(a) the seal on the biohazard bag containing the blood sample is intact; and

(b) all, or at least one, of the vacutainers are not damaged.

(2) No analysis shall be performed on a blood sample taken from a respondent if, on arrival at the Central Public Health Laboratory, the biohazard bag has a broken seal or all the vacutainers are damaged.

(3) Where the biohazard bag containing the blood sample taken from a respondent arrives at the Central Public Health Laboratory with a broken seal or with all the vacutainers damaged, an official of the Central Public Health Laboratory shall,

(a) indicate on the laboratory requisition that the biohazard bag containing the blood sample taken from the respondent arrived at the Central Public Health Laboratory with a broken seal or with all the vacutainers damaged and that no analysis of the respondent's blood sample was performed; and

(b) send the laboratory requisition, with the indication required by clause (a), to,

(i) the medical officer of health in the health unit for the area where the respondent lives, if the sample was taken pursuant to a request made under section 3 of the Act, or

(ii) the Board, if the sample was taken pursuant to an order of the Board made under section 5 of the Act.

(4) Upon receiving the laboratory requisition sent under clause (3) (b), the medical officer of health or the Board, as the case may be, shall notify the applicant in writing that the blood sample was provided but not analysed for the reason provided under clause (3) (a).

(5) The notification under subsection (4) shall be sent by courier and is deemed to be received by the applicant 24 hours after it was sent, unless the applicant establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notification until a later date and time than the deemed time of receipt.

**Analysis of blood sample**

**17.** (1) The analyst who analyses a blood sample taken from a respondent pursuant to a request made under section 3 of the Act or an order made under section 5 of the Act shall do so in accordance with the requirements specified on the laboratory requisition and in accordance with standard laboratory protocol.

(2) The analyst who analyses a blood sample taken from a respondent pursuant to a request made under section 3 of the Act or an order made under section 5 of the Act shall

prepare a blood analysis report and shall sign the report to indicate that the blood sample was analyzed in accordance with the requirements specified on the laboratory requisition and in accordance with standard laboratory protocol.

(3) If the blood sample was provided pursuant to a request made under section 3 of the Act, the analyst shall,

(a) deliver the report on the results of the analysis to the medical officer of health in the health unit for the area where the respondent lives;

(b) make reasonable attempts to deliver the report on the results of the analysis to the respondent's physician, if requested by the respondent; and

(c) if the respondent requested that the report on the results of the analysis be delivered to his or her physician, make reasonable attempts to deliver to the respondent,

(i) a notice that the analyst delivered the report on the results of the analysis to the respondent's physician or made reasonable attempts to do so, and

(ii) a recommendation that the respondent consult his or her physician for a proper interpretation of the results of the analysis.

(4) If the blood sample was provided pursuant to an order made by the Board under section 5 of the Act, the analyst shall deliver the report on the results of the analysis as required by the order and by subclauses 5 (2) (c) (ii), (iii), (iv) and (v) of the Act.

(5) Upon receipt of the report under clause (3) (a), the medical officer of health shall,

(a) make reasonable attempts to deliver the report to the applicant's physician; and

(b) make reasonable attempts to deliver to the applicant,

(i) a notice that the medical officer of health delivered the report on the results of the analysis to the applicant's physician or made reasonable attempts to do so, and

(ii) a recommendation that the applicant consult his or her physician for a proper interpretation of the results of the analysis.

**Application resubmitted**

**18.** (1) If an applicant is notified under subsection 16 (4) that the respondent provided a blood sample, but it was not analysed, the applicant may, within seven days after being so notified, resubmit his or her application to a medical officer of health.

(2) The Act and this Regulation apply to an application resubmitted under this section, with the following and other necessary modifications:

1. The resubmitted application must include,

i. the same applicant report included in the original application,

ii. the same physician report included in the original application,

iii. the results of the applicant's base line testing, if available, and

iv. a copy of the written notice given by the medical officer of health or the Board under subsection 16 (4).

2. The resubmitted application must be received by the office of the medical officer of health in the health unit for the area where the respondent lives no more than seven days after the date on which the applicant received the notice given by the medical officer of health under subsection 16 (4).

**Commencement**

**19. This Regulation comes into force on the later of August 10, 2007 and the day this Regulation is filed.**