

CERTIFIED SPECIALIST PROGRAM

STANDARDS FOR CERTIFICATION HEALTH LAW

Definition of Health Law Specialty

1. Health law is that branch of the practice of law pertaining to the provision of legal advice and services in respect of the provision of health care.

Designation

2. An applicant who is certified as a specialist in health law may be identified as a *Certified Specialist (Health Law)*

Achieving Specialist Certification in Health Law

3. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society's Certified Specialist Program ("Policies"), particularly those relating to:
 - Minimum Years of Practice and Recent Experience;
 - Substantial Involvement in the Speciality Area;
 - Professional Development;
 - References;
 - Professional Standards; and
 - Application Fee.
4. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in health law:
 - (a) applicants applying through Route 1 will have devoted a minimum of 50% of their practice concentration to the Health Law Experience requirements in Part I averaged over the 5 years of their recent experience; or
 - (b) applicants applying through Route 2 will have devoted a minimum of 50% of their practice concentration to the Health Law Experience requirements in Part II averaged over the 5 years of their recent experience; and
 - (c) applicants applying through Route 3 will have devoted a minimum of 75% of their practice concentration to the Health Law Experience requirements in Parts I and II averaged over the 5 years of their recent experience; and
 - (d) during the 5 years of their recent experience, applicants will have attained broad and varied experience along with a mastery of substantive law and procedures in the area, and comply with the Health Law Experience requirements of each route set out below.

5. In the event that applicants do not entirely meet the experience requirements, they may apply to the Health Law Specialty Committee (“Committee”) for consideration of their individual circumstances or their related (non-practice) skills. Consideration will be given in circumstances where applicants have:
- (a) limited their practice in recent years to a particular area of health law or have been involved in matters of extraordinary length and complexity; or
 - (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards or tribunals, or on the executive of any organization related to health law or any other experience that applicants consider relevant to their application.
- Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph 6, include with their application:
- (c) a detailed description of their individual circumstances or related (non-practice) skills; and
 - (d) references from the institutions or organizations from which their experience is drawn, references from peers and a complete list of publications.
6. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area.

Health Law Experience

7. During the 5 years of their recent experience applicants must demonstrate their experience by completing 1 of the following 3 routes as follows:
- Route 1: Applicants must have performed the tasks as required in Part I or,
- Route 2: Applicants must have performed the tasks as required in Part II, or
- Route 3: Applicants must have performed the tasks as required in Part I and Part II.

PART I - ADVOCACY

During the 5 years of their recent experience applicants must have attained broad and varied experience, generic skills and a mastery of matters of sufficient complexity with respect to health law advocacy.

8. Applicants are asked to confirm their knowledge and experience with the tasks listed in this paragraph 10, in each of (a) Advocacy Skills, (b) Principles and Issues and (c) Legislation by placing a check mark (✓) next to each task to demonstrate their health law advocacy experience.

(a) **Advocacy Skills**

- Identify the appropriate procedure and the necessary parties to resolve the client’s problem

- ❑ Identify the appropriate causes of action, claim, or remedy in any given case
- ❑ Identify the full range of defences or remedies that are available and appropriate in any given case
- ❑ Draft appropriate documentation to advance or defend a claim or matter
- ❑ Apply the law relevant to limitation periods, minors, persons of unsound mind and the discoverability principle
- ❑ Analyze, research and develop an appropriate theory to advance or defend a claim or matter
- ❑ Marshall the necessary factual evidence to advance or defend a claim or matter, including witnesses, documents, including those in the possession of a third party, and demonstrative evidence
- ❑ Marshall the necessary opinion evidence of experts to advance or defend a claim or matter
- ❑ Conduct discovery, cross-examination in advance of the hearing or trial on affidavits, and of non-party witnesses including experts on health care issues
- ❑ Apply the *Rules of Civil Procedure*, the *Statutory Powers Procedures Act* and/or the rules of procedure applicable to the forum
- ❑ Draft and argue typical interlocutory matters and significant motions
- ❑ Prepare offers to settle and requests to admit
- ❑ Advise client with respect to the full range of alternative dispute resolution options
- ❑ Advocate effectively in negotiations, mediations, pre-trials and/or pre-hearings and settlement conferences
- ❑ Advocate effectively the client's position on motions, applications, trial (jury and/or non-jury), and/or hearings and appeals
- ❑ Advise client with respect to the appropriate procedure to present matters of leave to appeal and judicial review
- ❑ Identify the appropriate procedures and the appropriate parties to bring a matter before a statutory body
- ❑ Effectively examine and cross-examine expert witnesses in regard to health care matters at a trial or hearing
- ❑ Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- ❑ Carry a contested matter forward to resolution before a tribunal and/or court

(b) Principles and Issues

Applicants will have dealt with a substantial number of the following legal principles as part of their practice:

- Duty of care
 - Fiduciary Duty
 - Informed Consent
 - Disclosure of adverse event
 - Standard of care
 - Negligence vs. error of judgment
 - Direct and vicarious liability
 - Misrepresentation or Fraudulent Concealment
 - Privacy/Confidentiality
 - Causation
 - Proof of damages
 - By-Laws
 - Limitation periods - Discoverability rule
 - Incapacity and consent to treatment
 - Professional misconduct issues
 - Personal health information and records
 - Hospital privileges
 - Other health law issues (please list)
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(c) Legislation

Applicants will have advised and/or represented clients with respect to issues/matters arising from some or all but not limited to the following legislation:

- Health Care Consent Act*
 - Substitute Decisions Act*
 - Mental Health Act*
 - Regulated Health Professions Act, 1991* and related health profession legislation
 - Coroner's Act*
 - Public Hospitals Act*
 - Personal Health Information Protection Act, 2004*
 - Health Insurance Act*
 - Charter of Rights and Freedoms*
 - Statutory Powers Procedure Act*
 - Other legislation (please list)*
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9. During the 5 years of recent experience the applicant has acted as an advocate in at least 100 days of appearances before courts and/or tribunals, during the 5 years of recent experience, where health law issues were the primary focus. Applicants are asked identify the number of days spent before each of the following courts, tribunals or regulatory bodies during the 5 years of recent experience.

Actions and/or Applications before the Superior Court of Justice _____

Appeals before the Ontario Court of Appeal _____

Hearings before the Health Professions Appeal and Review Board _____

Hearings before the Health Services Appeal and Review Board _____

Hearings before the Consent and Capacity Board _____

Proceedings before a Health Professional College Committee established under the *Regulated Health Professions Act, 1991* _____

Hearings before Boards or Committees constituted under By-Laws of hospitals established under the *Public Hospitals Act* _____

Appeals and/or Judicial Reviews to the Divisional Court on administrative decisions from health care tribunals/regulatory bodies _____

Appeals to the Divisional Court on administrative decisions from health care tribunals/regulatory bodies _____

Coroner's inquests on issues relating to the provision of health care _____

Public inquiries dealing with issues relating to the provision of health care _____

Attendances at mediations or pre-trials before mediator or judge dealing with health care issues _____

Hearings before other tribunals, regulatory bodies, or review boards dealing with issues related to the provision of health care _____

10. Applicants must provide with their application 3 summaries of proceedings outlining their advocacy experience each no longer than 2 pages and include the following information to illustrate their Health Law experience. Information must be presented consistent with the ethical obligation of confidentiality and the law of privilege.
- Issues involved in matter
 - Complexity of the matter
 - Party Represented
 - Type of proceeding (application, claim, motion, tribunal, etc.)
 - Synopsis of how matter resolved
 - Citation, if available (reported or unreported)
 - Name of other lawyers involved or if other side is unrepresented
 - Name of judge, mediator or arbitrator
 - Name of court, tribunal or committee
 - Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
 - Length of time it took to resolve matter during main proceeding
 - Appeal of decision, if any
 - Role as counsel, lead or co-counsel

PART II –GENERAL COUNSEL

Applicants must meet the requirements of at least 2 of the 3 categories enumerated below, or substantially complete a combination of all 3 categories.

11. Category 1: Corporate/Commercial

- (a) Applicants must include with their application a summary (no more than 200 words) of their practice as it relates to corporate/commercial law in the health sector. Applicants must also include a brief description of at least 3 significant transactions that they have been involved in during the 5 years of recent experience.
- (b) The applicant must perform a minimum of 30 tasks in respect of the health sector. Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their corporate/commercial experience in the health sector.

(i) Establishment/Organization of Health Related Business Structures

- Health care professional incorporation or other business structure
- Cost-Sharing/Associate Agreements
- Family Health Networks/Teams/Groups
- Partnerships, unincorporated associations, corporations, joint ventures
- Government agencies, boards/transfer payment organizations
- Health care facilities, including: long-term care facilities, nursing homes, hospitals, community care access centres, independent health facilities, health care clinics, diagnostic facilities, rehabilitation companies, organizations involved in the provision of health or health-related services (collectively, “Health Care Facilities”)
- Local Health Integration Networks

(ii) Business Organizations

Act on behalf of client with respect to:

- Purchase & sale of Health Care Facilities (shares and asset transactions)
- Amalgamation of Health Care Facilities
- Implementation of restructuring initiatives (e.g., LHINs, HSRC & Ministerial Directions, Devolution of Government Services)
- Transfers of services between Health Care Facilities
- Structuring strategic alliances between Health Care Facilities
- Structuring joint venture arrangements
- Establishing health care buying groups
- Winding up/dissolution of Health Care Facilities
- Structuring of public/private partnerships
- Oversight of health regulatory issues in commercial financings

(iii) Corporate Governance

- Provide advice regarding directors & officers' liability
- Draft Medical/Administrative By-Laws
- Draft corporate materials (e.g., resolutions, board policies, committee mandates/terms of reference)
- Develop Board orientation/continuing education sessions and materials
- Organize annual general meetings
- Organize meetings of members and directors
- Provide advice regarding conflict of interest

(iv) Negotiating and Drafting Contracts

- Asset/share purchase agreements & related documentation
- Strategic alliance agreements
- Agreements with Ministry of Health and Long-Term Care
- Alternative Payment Plans
- Incorporation documents, including articles of incorporation/letters patent
- Research & clinical trial agreements
- Services agreements
- Manufacturing and distribution/supply agreements (e.g., medical devices & drugs, medical equipment)
- Outsourcing agreements
- Consulting and management agreements
- Agreements with Health Care Facilities and health professionals
- Development and implementation of procurement processes for goods and services in the health care sector (RFPs, RFQs)
- Agreements regarding health information management and/or technology systems
- Accountability agreements

(v) Non-Share Capital Corporations

- Establish non-share capital corporations (e.g., application for letters patent, drafting objects and special provisions, supplementary letters patent)
- Advise regarding non-share capital corporations
- Prepare by-laws and by-law amendments

(vi) Establishment of Charities and Foundations

- Apply for the registration of charities
- Advise regarding issues related to charities (e.g., revenue generation) and the implications of charitable status
- Establish charitable foundation(s) for Health Care Facilities

(vii) Policies and Procedures, Guidelines and Other Tools

- Review policies, procedures, guidelines or other tools for compliance with health care legislation/standards
- Develop and implement risk management strategies

(viii) Other, Corporate/Commercial experience in Health Law sector

(Please specify particulars of experience)

14. Category 2: Opinions and Advice

- (a) Applicants must have prepared and/or provided a minimum of 200 substantial oral or written legal opinions in respect to litigation, transactions, or health sector/industry management regarding the application, interpretation of, or compliance with health law.
- (b) Applicants must also include with their application, 5 summaries of substantive opinions rendered during the 5 years of recent experience to illustrate their experience in the area of health law opinions and advice.
- (c) Applicants seeking to qualify under this category will have a broad and varied experience in providing advice and opinions in the area of health law. To demonstrate this experience applicants are asked to identify with a checkmark (✓) next to the areas in which they have rendered advice and/or opinions as listed below.
 - Health Sector Governance issues in respect of Health Care Facilities or organizations
 - Hospital Appointments/Privileges
 - Licensing and Regulation of Health Professions
 - Licensing and Regulation of the Health Sector, including laboratories, pharmaceutical/drug programs (including marketing and distribution issues), medical devices

 - Quality Assurance and Risk/Error Management, including
 - patient safety issues
 - health product liability issues
 - occupier's liability issues
 - organizational, staff and patient safety issues

- Privacy, Confidentiality and the Regulation of Health Information
- Health Records Management
- Malpractice and Institutional Liability
- Public Health, including emergency preparedness, communicable disease reporting obligations and quarantine
- Health Care funding issues, including issues related to the *Canada Health Act* and related provincial health insurance statutes
- Insurance for health professionals and institutions
- Medical/Legal/Ethical issues, including matters related to:
 - consent and capacity
 - community treatment orders under the *Mental Health Act*
 - conduct of clinical trials
 - decision making by research ethics board
 - end-of-life issues
 - resource allocation issues
 - tissue/organ donation
 - reproductive health issues
 - patient disclosure/duty to warn
 - access to health care

15. **Category 3: Substantial Contribution, Development of Health Law**

The applicant has made a substantial contribution to the development of health law through a combination of all or some of the following activities. Applicants are asked to place a checkmark (√) next to activities engaged in:

- Drafting health legislation
- Teaching health law at an accredited post-secondary institution
- Contributing to health law literature through publications, including commentary, research papers, and treatises
- Receiving graduate degrees or other academic qualifications in the area of health law
- Making presentations at conferences and continuing education programs in the area of health law to lawyers and professionals in the health sector
- Contributing to the public's understanding of health law matters through public education, including oral presentations and the development of written materials
- Participating on health sector boards or tribunals, or on the executive of any organization related to health law
- Participating on research ethics boards

Professional Development

16. For each of the 5 years of recent experience, applicants must attest to the completion of annual professional development requirements.

Prior to 2006, the annual requirement is 12 hours of relevant professional development. This may be met through participation in CLE programs or the alternative methods.

For 2006 and all subsequent years, the annual requirements are:

- (a) Not less than 50 hours of self-study; and

- (b) Not less than 18 hours of relevant professional development, at least 6 hours of which consist of participation in CLE programs that have either been accredited or are capable of being accredited by the Committee. The balance, if any, of the 18 hour professional development requirement may be met through alternative methods.

Alternative Methods

Alternative methods of professional development include, but are not limited to:

- Teaching or being guest lecturer on a course in the specialty area;
- Writing and editing of published books or articles relating to the specialty area;
- Graduate or post-graduate studies in the specialty area;
- Involvement in the development and/or presentation of professional development programs related to the specialty area;
- Involvement in the development of policy related to the specialty area.

References

17. Applicants must submit 4 references from legal practitioners eligible to practise law in Ontario who have direct knowledge of the applicant's work in Health Law in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under Health Law experience above.
18. Applicants should not include as reference: judges, partners, associates, co-workers, employers, counsel to their firm, employees, relatives, members of the Health Law Specialty Committee or the Certified Specialist Board, benchers or employees of the Law Society.
19. The Statements of Reference must be submitted with the application to the Law Society in confidential envelopes, which have been sealed, signed and dated by the referees. Envelopes, which have been opened or appear to have been tampered with, will not be accepted.

Assessment of Application by Health Law Specialty Committee

20. The Committee will consider the totality of an applicant's practice in Health Law, the applicant's Professional Development Report and references.
21. Applicants should not assume that completion of all of the enumerated practice concentration and experience requirements will automatically entitle them to certification as a specialist.
22. Applicants may be required to provide additional information to the Committee to facilitate the assessment process.
23. The Committee may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.