

PROCEDURE REGARDING AN AFFIRMATIVE ANSWER TO THE FITNESS TO PRACTISE QUESTION ON THE CLASS 1 AND CLASS 3 APPLICATION FORMS

The CPATA Regulations and By-laws require Agent in Training and Agent applicants, be fit to practise. To comply with this requirement, we ask a fitness question to address the applicant's capacity to be an Agent in Training or Agent.

In balancing respect for human dignity with the College's obligation to protect the public interest, all applicants must answer the following question and, if the answer is affirmative, to generally describe their condition:

Based on your personal history, your current circumstances or any professional opinion or advice you have received, are you currently experiencing any condition which is reasonably likely to substantially impair your ability to perform the duties of a Patent Agent or Trademark Agent in Training, or Patent Agent or Trademark Agent (as the case may be)?

This procedure guides the College and the Registration Committee (the "Committee") when an affirmative answer is received.

PROCEDURES

1. On receipt of an affirmative answer and supporting documentation, registration staff will place the answer and the supporting documentation in a separate file from the applicant's file. The separate file will be maintained in a secure location. Only the Director of Registration ('Director'), the Registrar, and, if required, an independent medical examiner of the College's choosing (the "Medical Examiner") will have access to this information. The information may be provided to the Committee on a confidential basis.
2. The Director will review the documentation to determine if additional supporting information is required. If so, the Director will request the information from the applicant.
3. The Director will provide a copy of this procedure to the applicant.

4. The Director will obtain written consent from the applicant, granting the Medical Examiner permission to contact the applicant's physician or other professional advisor, if further information regarding the applicant's condition is required.
5. On receipt of consent, the Director will provide the Medical Examiner with the affirmative answer and supporting documentation. The Medical Examiner will review the information on behalf of the Registrar and advise if the affirmative answer raises issues of the applicant's fitness which should be considered by the Registrar.
6. The Medical Examiner, during the review, may
 - a) Contact the applicant's physician or other professional advisor who has provided information relating to the affirmative answer and discuss the information provided.
 - b) Request additional information from the physician or other professional advisor to be provided promptly, to allow for expeditious processing of the application.
 - c) Following review, the Medical Examiner will provide the Registrar with a professional opinion and advice if,
 - i. the information available from the affirmative answer and the Medical Examiner's review requires further consideration before determining if the applicant's condition is reasonably likely to substantially impair the applicant's ability to perform the duties of a patent agent or trademark agent; or
 - ii. the information available from the affirmative answer and the Medical Examiner's review requires no further action and the applicant's condition is not reasonably likely to substantially impair the applicant's ability to perform the duties of a patent agent or trademark agent.
7. The advice of the Medical Examiner shall be considered by the Registrar, given the requirements in the Act, Regulation and College By-laws, and the Registrar will render a decision.
8. Registration staff will communicate the Registrar's decision to the applicant, in writing, and will provide instructions for appealing the decision to the Registration Committee should the Registrar deny the application. If the affirmative answer need not be further pursued, any related supporting documentation provided by the Applicant will be destroyed.

9. When considering the fitness of an applicant, the Committee shall consider any advice provided to the Registrar. The options available to the Committee are set out in the College By-laws. If the Committee denies the application or approves it with terms, the Committee shall provide written reasons. The decision of the Registration Committee cannot be appealed.

Pre-Submission Procedure:

The Registration Department often receives inquiries from prospective applicants wanting advice as to how they should answer the fitness question, as they are unsure whether their particular situation requires an affirmative answer.

The following procedure will guide the Director of Registration in dealing with these inquiries:

1. Before the prospective applicant discloses details of their particular situation, the Director will describe situations that rarely require an affirmative answer, such as:

- a) Long resolved situational depressions,
- b) Mental health issues for which the applicant no longer requires treatment, and
- c) Situational counseling.

The prospective applicant will be advised the College requires information only about any current circumstances which could affect their ability to perform the duties of a patent agent or trademark agent.

2. If the prospective applicant is still not sure how to answer the question, the Director will advise the applicant to consult with any advisor they have seen and then to use best judgment in answering the questionnaire fully and honestly.