

# Medical Inadmissibility

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Global School of Corporate Excellence

Parsai Immigration Services



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# Agenda

- A38 - 40 minutes
- IME letters and upfront Medical exam - 30 minutes
- PDI and GCMS for medical inadmissibility - 20 minutes
- Responding to PFLs for medical inadmissibility - 30 minutes

# About the Presenter

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AI (Alireza) Parsai, BSc, MA, LL.M, RCIC-IRB

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Licensed since Jan 17, 2011

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Parsai Immigration Services (a B Corp) – downtown Toronto @ Sheraton Centre Toronto

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Adjunct Professor @ Queen's University (Law School) since 2022

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Ashton College Instructor since October 2016

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Clients from 55+ countries

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Author – 88 Tips on Immigration to Canada

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Author – 1500+ articles and blog posts on the subject of immigration

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Instructor - CPD courses approved by ICCRC, CICC and some law societies

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# Useful Links

- IRPA -  
<https://www.canlii.org/en/ca/laws/stat/sc-2001-c-27/latest/sc-2001-c-27.html?autocompleteStr=immigra&autocompletePos=1#sec40subsec1>
- PDI for Medical Requirements -  
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements.html>
- IRPR -  
<https://www.canlii.org/en/ca/laws/regu/sor-2002-227/latest/sor-2002-227.html#sec20>

# Inadmissibility on Health grounds

**A38 (1)** A foreign national is inadmissible on health grounds if their health condition

- (a) is likely to be a danger to public health;
- (b) is likely to be a danger to public safety; or
- (c) might reasonably be expected to cause excessive demand on health or social services.

# Danger to public health

- **R31** Before opining whether a foreign national's health condition is likely to be a danger to public health, an officer who is assessing the foreign national's health condition shall consider
  - (a) any report made by a health practitioner or medical laboratory with respect to the foreign national;
  - (b) the communicability of any disease that the foreign national is affected by or carries; and
  - (c) the impact that the disease could have on other persons living in Canada.
- **Current policy** - Active Pulmonary Tuberculosis (TB) and untreated Syphilis are considered a danger to public health. If the foreign national has either or both of these conditions, they will likely be found inadmissible on the grounds of danger to public safety, unless the foreign national is treated according to Canadian standards.
- **HIV** - Although the Human immunodeficiency virus (HIV) is not considered a danger to public health, CIC is committed to public health risk mitigation, and provides foreign nationals with HIV with important information that can reduce the risk of transmission.

# Danger to public safety 1/2

- R33 Before opining whether a foreign national's health condition is likely to be a danger to public safety, an officer who is assessing the foreign national's health condition shall consider
  - (a) any reports made by a health practitioner or medical laboratory with respect to the foreign national; and
  - (b)** the risk of a sudden incapacity or of unpredictable or violent behaviour of the foreign national that would create a danger to the health or safety of persons living in Canada.

# Danger to public safety 2/2

- Health conditions that are likely to cause a danger to public safety include serious uncontrolled and/or uncontrollable mental health problems such as:
  - certain impulsive sociopathic behaviour disorders;
  - some aberrant sexual disorders such as pedophilia;
  - certain paranoid states or some organic brain syndromes associated with violence or risk of harm to others;
  - applicants with substance abuse leading to antisocial behaviours such as violence, and impaired driving; and
  - other types of hostile, disruptive behaviour.



# Wealth & Inadmissibility because of Danger to Public Health or Public Safety

- Unlike excessive demand cases, **the wealth of the foreign national is not a relevant factor** for the visa/immigration officer to consider when the foreign national has a health condition that likely to cause a danger to public health or public safety:
- “The chief responsibility of the medical officer in such cases is to assess the danger to public health or safety. Wealth, regardless of how rich the applicant is, is irrelevant to this assessment.”  
([Hilewitz v. Canada, 2005 SCC 57](#), paragraph 88)

# Excessive demand on health services and on social services

Subsection R1(1) of the Immigration and Refugee Protection Regulations (IRPR) defines “excessive demand” as either of the following:

- a demand on health services or social services for which the anticipated costs exceed triple the average Canadian per capita health services and social services costs over a period of 5 consecutive years immediately following the most recent medical examination required under paragraph A16(2)(b) of the Immigration and Refugee Protection Act (IRPA), or
- a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents

# Defining Health and Social Services

- **Health services** means any health services for which the majority of the funds are contributed by governments, including the services of family physicians, medical specialists, nurses, chiropractors and physiotherapists; laboratory services; and the supply of pharmaceutical or hospital care.
- **Social services** means any social services, such as home care, specialized residences and residential services, special education services, social and vocational rehabilitation services, personal support services and the provision of devices related to those services
  - that are intended to assist a person in functioning physically, emotionally, socially, psychologically or vocationally; and
  - for which the majority of the funding, including funding that provides direct or indirect financial support to an assisted person, is contributed by governments, either directly or through publicly funded agencies.

# Excluded social services

- special education related services, including services related to the preparation of an individualized education plan and educational assistants
- social and vocational rehabilitation services, including services related to rehabilitation facilities, occupational therapy, behavioural therapy and speech language therapy
- personal, non-professional support services, such as assistance with activities of daily living (for example, bathing, dressing, feeding), meal preparation and housecleaning

# The cost threshold for excessive demand on health and social services

- **January 4, 2022**
- The annual cost threshold figure for excessive demand on health and social services has been updated. The average Canadian per capita health and social services cost has increased from **\$7,266 to \$8,019**, and 3 times that average has been updated from **\$21,798 to \$24,057**.

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/updates/2022-cost-threshold.html>

# Medical Inadmissibility Exception

A38(2) Paragraph (1)(c) does not apply in the case of a foreign national who

(a) has been determined to be a member of the family class and to be the spouse, common-law partner or child of a sponsor within the meaning of the regulations;

(b) has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances;

(c) is a protected person; or

(d) is, where **prescribed by the regulations**, the spouse, common-law partner, child or other family member of a foreign national referred to in any of paragraphs (a) to (c).

# Exceptions under IRPR (R24) 1/3

- R24 (1) The exception set out in paragraph 38(2)(a) of the Act does not apply to a child who is not a dependent child of the sponsor.

# Exceptions under IRPR (R24) 2/3

## **Prescribed family members**

- R24(2) The following family members of a foreign national referred to in paragraph 38(2)(a) of the Act are prescribed for the purpose of paragraph 38(2)(d) of the Act:
  - (a) the dependent child of the sponsor's spouse or common-law partner;
  - (b) the dependent child of the dependent child referred to in paragraph (a); and
  - (c) the dependent child of the sponsor's dependent child.



# Exceptions under IRPR (R24) 3/3

## Exception

- R24(3) Paragraph 38(1)(c) of the Act does not apply to a foreign national who is a member of the family class and is
  - (a) the conjugal partner of a sponsor;
  - (b) the dependent child of the conjugal partner referred to in paragraph (a);
  - (c) the dependent child of the dependent child referred to in paragraph (b); or
  - (d) a person referred to in paragraph 117(1)(g).

# Excessive demand under IRPR

- R20(3) Before determining that the foreign national's health condition might reasonably be expected to cause excessive demand, the officer shall consider
  - (a) any opinions of an officer who is assessing the foreign national's health condition; and
  - (b) any relevant non-medical factors, including
    - (i) the foreign national's intent and financial ability to mitigate any excessive demand, and
    - (ii) the feasibility of a mitigation plan, if any, submitted by the foreign national.

# Medical Examination

R29 For the purposes of paragraph 16(2)(b) of the Act, a medical examination includes any or all of the following:

- (a) physical examination;
- (b) mental examination;
- (c) review of past medical history;
- (d) laboratory test;
- (e) diagnostic test; and
- (f) medical assessment of records respecting the applicant.

R30 discusses who must give medical examination

# Who must give medical examination (R30) 1/2

- PR applicants whether inside or outside Canada
- Working in an occupation in which the protection of public health is essential
- Temporary residents
  - Intend to stay in Canada for more than 6 months with less than 14 days absence
  - In the past 12 months they have stayed for more than 6 months in an area that the Minister determines, after consultation with the Minister of Health, has a higher incidence of serious communicable disease than Canada
- The officer has reasonable grounds to believe the applicant is inadmissible under A38(1)
- The person seeks refugee protection in Canada

# Who must give medical examination (R30) 2/2

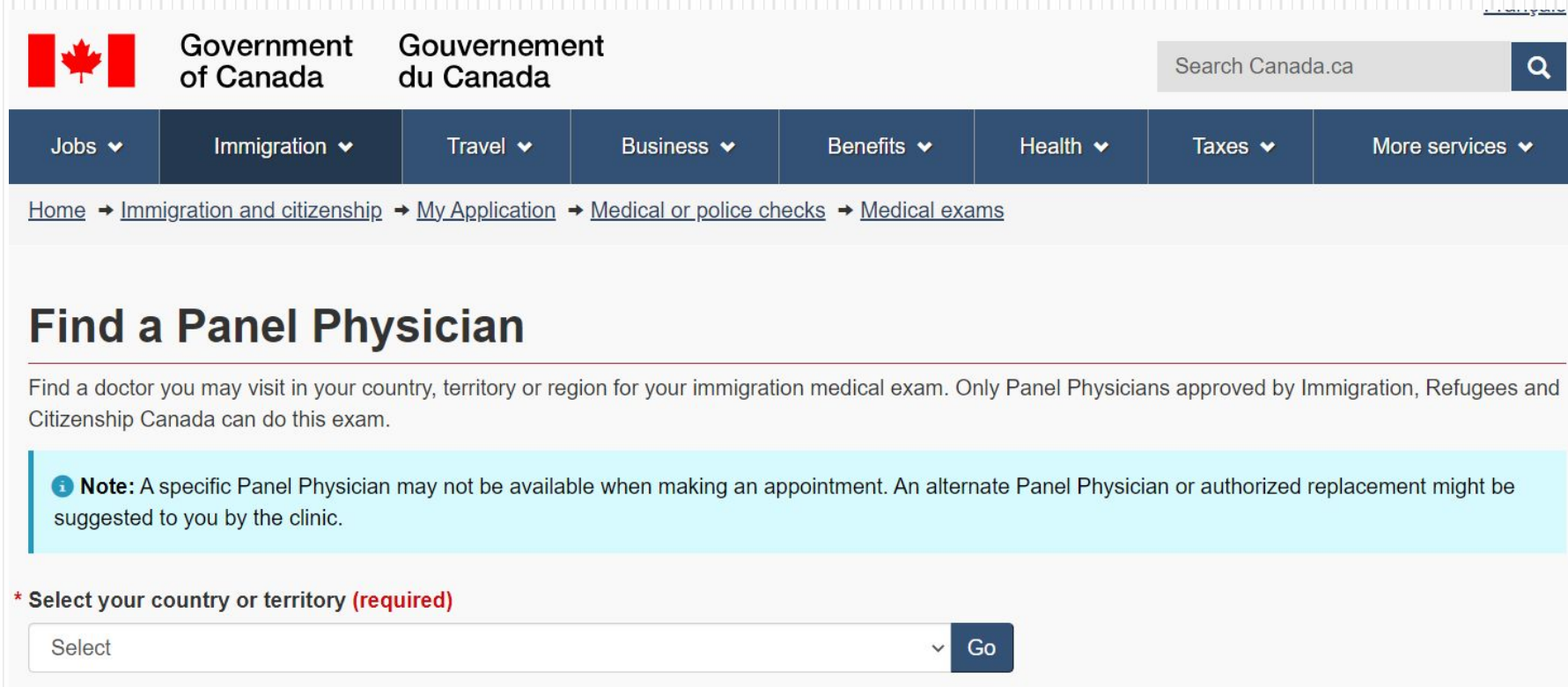
- PRRA applicants unless they have not left Canada since their refugee claim or protection claim
- Diplomats and their family members, unless they are seeking secondary employment
- Certain members of armed forces visiting Canada
- A family member of a protected person, if the family member is not included in the protected person's application to remain in Canada as a permanent resident; and
- A non-accompanying family member of a foreign national who has applied for refugee protection outside Canada.

# Subsequent examination

- R30(2) Every foreign national who has undergone a medical examination as required under paragraph 16(2)(b) of the Act must submit to a new medical examination before entering Canada if, after being authorized to enter and remain in Canada, they have resided or stayed for a total period in excess of six months in an area that the Minister determines, after consultation with the Minister of Health, has a higher incidence of serious communicable disease than Canada.

# Panel physician

<https://secure.cic.gc.ca/pp-md/pp-list.aspx>



The screenshot shows the Government of Canada website interface. At the top, there is a navigation bar with the Government of Canada logo and name in both English and French. A search bar is located on the right side of the navigation bar. Below the navigation bar, there is a horizontal menu with several categories: Jobs, Immigration, Travel, Business, Benefits, Health, Taxes, and More services. The 'Immigration' category is selected. Below the menu, there is a breadcrumb trail: Home → Immigration and citizenship → My Application → Medical or police checks → Medical exams. The main heading is 'Find a Panel Physician'. Below the heading, there is a paragraph explaining that the page is for finding a doctor for immigration medical exams. A light blue box contains a note: 'Note: A specific Panel Physician may not be available when making an appointment. An alternate Panel Physician or authorized replacement might be suggested to you by the clinic.' Below the note, there is a form with a dropdown menu labeled 'Select' and a 'Go' button. The dropdown menu is currently empty.

# Upfront medical exam

- Express Entry (if applied on or after July 7, 2022)
- TR to PR pathway
- TR to PR pathway. However, some of the applicants could be exempt from the medical exams.
- People who intend to remain in Canada for more than six months. However, they have visited or lived for six months or more in certain countries in a year before moving to Canada.
- Work permit applicants whose occupations are subject to a medical exam.



# Find out if you need a medical exam (temporary visitors only)

## Visit







<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents/country-requirements.html>

If you're applying to become a temporary resident of Canada, you must have a medical exam if you:

- want to come to Canada for more than 6 months and
- have lived or travelled for 6 months in certain countries or territories in the year before you come to Canada

You need a medical exam if there is a “yes” in the **second** column. Countries are listed alphabetically. Certain overseas locations may also be listed under the country of sovereignty, such as the United Kingdom.

Filter items  Showing 1 to 10 of 284 entries | Show  entries

Country/Territory  	Immigration Medical Exam (IME) required  	Medical Office  
Afghanistan	YES	New Delhi
Albania	NO	London
Algeria	YES	London

# What if I miss upfront medical exam

- The officer issues and IME (Immigration Medical Exam) letter
- They will issue the work permit, but add conditions
- Very unlikely – The officer refuses the application

# Medical profiles (“M” criterion)

Code	Meaning
M1	No public health risk or danger, no public safety danger and no excessive demand.
M2	Potential risk to public health. Medical surveillance required. Conditional entry recommended if granted entry to Canada.
M3	A health condition is present but is not expected to place an excessive demand on health or social services.
M4	Inadmissible due to danger to public health (for example, active infectious tuberculosis).
M5	Inadmissible due to excessive demand on health and social services. For all M5 codes, the medical officer will add a descriptive code indicating the nature of the excessive demand. T9: For excessive demand on social services H9: For excessive demand on health services E9: For displacement of Canadians who are on a waiting list
M6	Inadmissible due to danger to public safety (for example, psychopathic personality).
	NOTE: combined codes possible (M2/3, M4/6, M4/5 or M5/6)

# Medical surveillance

- Some visa holders have a medical condition of public health significance in Canada. For this reason, medical surveillance will be required upon their arrival in Canada. They will need to communicate with the provincial or territorial public health authority which has the responsibility to conduct a medical follow-up according to established protocols. At the same time, IRCC notifies the public health authorities and obtains notice of compliance when a client starts medical surveillance.

# Who requires medical surveillance?

The results of the immigration medical examination indicate if an applicant must report for medical surveillance. Although it can be requested for other medical conditions of public health significance, inactive tuberculosis is the only medical condition for which medical surveillance is currently required.

Depending on the medical condition and surveillance code, the visa holder must report to the public health authority within the following timeframe:

Code: S2.02

Medical condition: Inactive pulmonary tuberculosis

Timeframe: Within 30 days of landing in Canada

Code: S2.02U

Medical condition: Complex non-infectious inactive pulmonary tuberculosis

Timeframe: Within 7 days of landing in Canada

# Surveillance codes (“S” criterion)

Code	Meaning
S1	No requirement for medical surveillance.
S2.01	Applicant is inadmissible to Canada (active tuberculosis). Used in conjunction with the medical profile M4.
S2.02	Medical surveillance required. Conditional entry recommended if granted entry to Canada (pulmonary tuberculosis inactive).
S2.02U	Medical surveillance required. Conditional entry recommended if granted entry to Canada (complex pulmonary tuberculosis inactive).
S2.06	Applicant has complied with a medical surveillance requirement from a previous immigration medical exam (IME). No requirement for medical surveillance.

# Responding to PFLs for medical inadmissibility

- Talk to your client
- Potentially amend the retainer agreement
- Submit an ATIP request
- Ask for an extension
- Consult with primary and secondary sources
  - Another physician
  - Provincial health authorities or websites
- Build a strategy for response
  - Deny the allegations
  - Mitigate costs
  - Offer alternatives (H&C, TRP)

# Q&A

- Don't miss [gsce.ca/cpd](https://gsce.ca/cpd)
- Contact Ayyaz Qamar for course-related questions:
  - Email: [ayyaz@gsce.ca](mailto:ayyaz@gsce.ca)
  - Cell phone: (647) 325-6678
- Visit [settler.ca](https://settler.ca) for news and articles in English and Spanish languages

