



Community Legal Information Association of Prince Edward Island, Inc.

Islanders' Guide to the *Mental Health Act*

Prince Edward Island's *Mental Health Act* defines mental disorder as "a substantial disorder of thought, mood, perception, orientation or memory that seriously impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life."

If a person seems to have lost the ability to understand and appreciate how they are behaving or thinking or if he or she is unable to reason or remember things, and this seriously affects their behaviour, they may have a mental disorder. However, the *Act* clearly says that **a mental handicap or learning disability is not a mental disorder in and of itself.**

Hillsborough Hospital, the **Queen Elizabeth Hospital** and the **Prince County Hospital** are psychiatric institutions which provide in-patient treatment for some people suffering from mental disorders. As well, some people receive treatment as out-patients at community-based mental health clinics or treatment centres where mental illness can be professionally diagnosed and treated.

An Addiction Facility may also have the authority to admit people as involuntary patients under the *Mental Health Act* when the mental disorder is caused by alcohol or other drugs. For more information about this, call the staff of an addiction treatment program.

Admissions

There are two types of admission to a mental health facility: **voluntary**, when the patient agrees to or asks for treatment, and **involuntary**, when a patient does not agree to receive treatment. In certain circumstances, people may also be admitted for assessment and/or treatment under the *Criminal Code of Canada*.

Voluntary Patients

If you believe you have a mental disorder and you want to be treated, ask your family doctor for a preliminary psychiatric examination. If your doctor agrees that treatment is needed, you can be admitted to hospital as a voluntary patient.

Voluntary patients have their freedom. However, if a voluntary patient refuses treatment and requests a discharge, staff must make a "judgment call" as to whether the mental
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disorder is severe enough to endanger the patient's own safety or the safety of others. If they think there is a danger, staff are permitted by the *Act* to restrain the patient and arrange for a doctor's examination within eight (8) hours.

Involuntary Patients

The *Act* clearly says that the person's own safety or the safety of others is the measure for making decisions about involuntary care.

Any Island doctor can make an application for the psychiatric assessment of a patient. Once an application is made, a peace officer can take the client to a psychiatric facility for assessment.

The institution may only hold a person for 72 hours to allow a psychiatrist to examine the person and consider the case.

The psychiatrist has three options:

- deciding there is no need for hospitalization;
- finding the person needs hospitalization and is willing to stay as a voluntary patient; and
- finding that there is a serious mental disorder and a risk to the safety of the person or others - and that the person is unwilling to accept care.

If the psychiatrist determines a client falls under the third option, the psychiatrist will issue a certificate of involuntary admission, an order that can keep the person in hospital for up to 28 days.

If you have a family member or know someone who you think is at serious risk and needs help, but who is refusing to get it, you can apply to the Supreme Court of P.E.I. for an order for a psychiatric examination. You will have to go to court with information to back-up your application, including evidence of the problem and the danger, and ask the judge to issue an order to force the person to go to a doctor for examination.

In an Emergency

When a crisis involving a mental disorder happens at home and puts a person or people in danger, there are three ways family members or other concerned adults can react:

- If the person with a mental disorder already has a doctor who knows the case, call the doctor and arrange for an appointment. Ask for a formal application for a psychiatric assessment.
- If it is possible to get the person to the emergency department at the hospital, go there and request the duty doctor to conduct a psychiatric examination.
- If there is violence, call the police directly. They can take the person into custody and deliver them for examination/assessment.

What if a person refuses to cooperate with a court order or doctor?

A doctor's application for a psychiatric assessment or a court order for the examination of a person allegedly suffering from a mental disorder is valid for seven days (starting on the day of the order). During this time, a police officer, or other person who has been given authority by the court, can take custody of the person and take them to the hospital for a psychiatric examination/assessment. Upon arrival at the hospital, staff will take over custody of the patient.

People taken into custody have rights. They must be told:

- where they are being taken;
- that they are being taken for an involuntary examination or assessment;
- the reasons for this; and
- that they have the right to speak to a lawyer without delay (as soon as it is safe and practical for them to do so).

People who cannot afford to hire a private lawyer may be able to get legal aid and should call the legal aid office. Legal Aid: 902-368-6043 (Charlottetown); 902-888-8219 (Summerside)

The staff of the mental health facility must repeat this information as soon as the person being hospitalized seems able to understand.

Can people be kept in hospital if they don't want to be there?

Patients are kept in hospital if they are suffering from a mental disorder and are a danger to themselves or others. A certificate of involuntary admission is valid for 28 days on the strength of a psychiatrist's assessment (this may be renewed).

If the same psychiatrist does the initial examination and the later psychiatric assessment, the patient has the right to call for a second opinion.

When a person is kept as an involuntary patient, the hospital must inform the following people in writing:

- the patient; and
- the most immediately available adult member of the patient's family, (the first adult person who can be reached) or some other person who has a close relationship with the patient; or, if this is not possible,
- the Public Guardian (an independent public official).

These people must also be informed about the patient's right to speak to a lawyer and the right to have the involuntary admission reviewed by the Review Board.

If the assessing psychiatrist decides that the mental condition of the person does not require admission as an involuntary patient or if after 72 hours the person has not been assessed by a psychiatrist, staff must tell the patient that he or she may leave.

What is the Review Board?

The Review Board is an independent committee, appointed by the Government, that has the power to review decisions made in all psychiatric facilities in Prince Edward Island. It consists of three members: a lawyer, a doctor, and a person who is neither a lawyer or a doctor.

The purpose of the Review Board is to make sure that decisions about involuntary patients and treatment without consent are made fairly, based on good reasons, and in the best interests of the patient.

The Board may review decisions about:

- involuntary admission to a psychiatric facility;
- a certificate of renewal;
- a certificate of leave;
- a patient's right to see and read their clinical records;
- a patient's ability to make decisions about treatment;
- a decision to transfer the patient to another facility; and
- the denial of the patient's right to contact people while in hospital.

The Board automatically reviews any certificate of renewal for involuntary admission which is being filed for a third time. It then automatically reviews the certificate at least once a year. The patient, a parent or guardian, a person with a close personal relationship to the patient, or the Public Guardian may apply for a review.

When the Review Board receives an application for review of a decision, the Board holds a hearing within 10 days. All parties are given three days notice before the hearing, can read any papers or reports that may be used at the hearing, and may be represented by a lawyer or any other person they choose.

The outcome of a Review Board hearing may be appealed before a judge of the Supreme Court of P.E.I. if one of the parties believes that the Board has acted wrongly while reaching its decision.

What is a certificate of change of status?

At any time, the psychiatrist can sign a certificate of change in status to change a patient's status from voluntary to involuntary or the other way around. Patients must be told of this change, and the reasons why their status has been changed. If the certificate changes the patient's status to voluntary, the patient must be told that they now have the right to
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leave the institution. If the certificate changes the patient's status to involuntary all the rights set out in the previous section apply.

Renewal of certificate

A certificate of involuntary admission, or change in status, is valid for a period of 28 days. If the psychiatrist decides that the patient has improved, the certificate is cancelled or allowed to expire, and the patient is told that he or she may leave. If the psychiatrist decides that the patient must stay for more treatment, a certificate of renewal must be signed. The first certificate of renewal is valid for 30 days. If the patient still needs to stay in hospital, a second and, if necessary, a third certificate may be signed. Each of these certificates is valid for 90 days.

Any time a certificate of renewal is signed, staff must give written notice to the patient and to the nearest available member of the patient's family, or some other person with a close relationship with the patient.

If for some reason the administrator cannot find a family member or person close to the patient, written notice will go to the Public Guardian or some other official named by the Minister to act on the patient's behalf.

What is a certificate of leave?

Sometimes the attending psychiatrist feels that an involuntary patient has improved to the point where they would benefit more from treatment outside the hospital. In these circumstances, the psychiatrist signs a certificate of leave, allowing the patient to live in the community.

Certain conditions may be written into the agreement, such as getting regular medical check-ups and taking prescribed medication. If the psychiatrist has reason to be concerned about the patient's safety or the safety of others, the patient's leave may be cancelled.

Consent to Treatment

Even though you may have a mental illness, you still have the right, under most conditions, to give or refuse consent to psychiatric or other medical treatment.

When a patient is admitted to a mental health facility, the attending psychiatrist has to decide if the patient is able to agree to or refuse treatment.

- Does the patient understand what the treatment is being recommended for?
- Does the patient realize what the treatment involves?
- Does the patient understand the benefits of treatment? Or the risks of no treatment?

If the psychiatrist believes the patient is not able to make a properly thought-out decision, the psychiatrist may sign a certificate of incapacity.

Substitute Decision Makers

When a patient is incapable of giving or refusing consent to treatment, the psychiatrist may choose a substitute decision-maker to make decisions for the patient. The patient may appeal this decision to the Review Board.

Normally, the person making the treatment decision would be a guardian or (in the attending psychiatrist's opinion) the most appropriate member of the patient's family, or some other person close to the patient. Consenting to treatment for someone else is a very serious responsibility and the *Act* has guidelines to help the substitute decision-maker keep the patient's best interests in mind.

Can a substitute decision-maker refuse to act?

Sometimes the appointed substitute decision-maker is not available or may not wish to make the decision and there is no other appropriate substitute available. In such cases, the Public Guardian may give or refuse consent on the patient's behalf.

The attending psychiatrist must review the patient's condition and ability to make decisions monthly. Once the psychiatrist is satisfied that the patient has regained the ability to give or refuse consent to treatment, the certificate of incapacity will be cancelled and all those involved will be told.

Are there times when consent to treatment is not required?

A patient in a psychiatric facility may be given medical treatment without consent, if a psychiatrist believes that there is an emergency which poses serious danger to the patient, or if the patient needs short-term restraining treatment to prevent serious harm to themselves or others. Any treatment may include reasonable use of restraint or medication. The hospital has to keep a written record whenever this kind of action is taken.

Even in non-emergency circumstances, if a patient refuses treatment which the psychiatrist feels is needed, a second psychiatrist may be called in to examine the patient.

If both doctors agree, they will ask the Review Board to study the case and authorize treatment on the patient's behalf. They must agree that the treatment is:

- the least intrusive and restrictive course of treatment available;
- that it will likely improve the mental condition of the patient;
- that the patient's condition is unlikely to improve without the treatment; and
- the benefits of the treatment outweigh any risk of harm to the patient.

It is the Review Board which makes the decision about giving this treatment.

What about a young person?

There is no legal age of consent for treatment. The law requires that the health professional is certain the patient understands the treatment being recommended and the potential consequences of agreeing to or refusing the treatment. Some young people will be able to understand all of this and others will not.

The *Mental Health Act* states that if a person is under 16, a parent or guardian may give or refuse consent on their behalf, but this is not a requirement.

If you are 16 years old or older, you may wish to name a proxy in a Health Care Directive. A proxy is a person you appoint to make health care decisions on your behalf if you cannot do so for yourself. If you do not have a proxy named and the doctor determines you cannot give consent, the doctor will choose a substitute decision-maker according to the *Consent to Treatment Act*. This may result in a person being appointed to make decisions on your behalf that you would not have chosen for yourself.

What is guardianship?

A guardian is someone who is appointed by the court to look after another person's well-being when they have been determined not to be able to make personal decisions for themselves.

The guardian makes decisions about all personal matters, such as where the person lives, their health care, education or training, friends, and any legal matters. A family member or friend may apply to the court to be named as guardian for another person if they believe that person is unable to make decisions for themselves.

There are rules that must be followed in order to protect the best interests of the person who needs a guardian. See a lawyer or the Public Guardian for more information about being appointed as another person's guardian. (There is sometimes confusion between the role of a guardian and the role of a trustee. A trustee is mainly concerned with the proper management of a person's financial affairs.)

When a mental disorder is caused by addiction

The *Mental Health Act* may be used when a serious mental disorder is caused by addiction or abuse of alcohol or other drugs.

When a person's addiction disorder poses a risk to their own or someone else's safety, and the person is unwilling or unable to seek help voluntarily, it is possible for a doctor to have the person admitted against their will to a psychiatric or addiction treatment facility for assessment by a psychiatrist or addiction specialist. For more information about how this works in practice, you should talk with an addictions physician.

This pamphlet contains information about one area of the law only: The *Mental Health Act*. It does not contain a complete statement about the law in this area. If you have a problem, questions or concerns about mental health and individual rights call the Department of Health and Wellness at 902-368-6414 or Health PEI at 902-368-6130.

If you need legal advice, call a lawyer. If you do not know a lawyer, call the Lawyer Referral Service at 902-892-0853 or 1-800-240-9798 toll-free. You can have a brief consultation with a lawyer for a modest fee. You may also be eligible for Legal Aid if you are being kept in hospital against your wishes. Phone 902-368-6043 in Charlottetown and 888-8219 in Summerside for more information about Legal Aid.

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