

Legal Issues

Involuntary Hospitalization and Capacity

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Legislation

Mental Health Act

Criteria for admission to psychiatric facilities

Health Care Consent Act

Rules for determining capacity and obtaining informed consent for treatment, admission to a care facility, personal assistance services

Substitute Decisions Act

Framework for power of attorney for personal care or property

Personal Health Information and Protection Act

Governs collection, use, and disclosure of personal health information

Case: Paul

- First night on call as clinical clerk in psychiatric ER.
- 35 year-old male brought in by police in cuffs - accusing strangers on the street of being spies, yelling and smashed a car window. Bystanders felt threatened and called 911.
- Documented history of schizophrenia.
- Paul presents as disheveled, loud, hostile, and belligerent.
- He continues to yell about spies conspiring against him, and he accuses nursing staff of being “in with them.”
- Police tell you that he is known to them – he has been apprehended before for mental health concerns.

You decide you need to assess Paul, and possibly admit him to hospital for psychiatric stabilization. Security accompanies you to see him.

Paul refuses further assessment and admission. He tells you “I’m leaving this place. The spies have infiltrated. It’s my duty to eradicate them.”

What can you do?

Form 1: Application for Psychiatric Assessment

- Any physician can complete
- May rely on own observations and / or reports of others
- Can be completed in hospital or in the community
- Physician must have examined patient within past 7 days
- Once signed, effective for 7 days – allows person to be transported (often by police) to a psychiatric facility
- Once at psychiatric facility, may be detained for up to 72 hours
- Does not give authority to treat

Filling Out the Form 1

- Physician's name and business address, phone, fax
- Patient's name and home address
- Date patient was examined (can be different than date that form is completed)

Form 1 (Box A) Criteria: Past / Present Test

Describe **why** you believe there is risk

Must have “reasonable cause to believe” that:

- past or present threat or attempt to cause **bodily harm to self or others**

Ex: suicidal ideation, suicide attempt, self-harm, violent or homicidal ideation

- past or present **violent behaviour** or **causing another to fear bodily harm**

Ex: assaulting, intimidating, threatening others

- past or present **lack of competence to care for self**

Ex: not adhering with medical treatment with risk of serious medical complications, intimidating behaviours with risk of being assaulted by others, engaging in risky sexual behaviours , setting fires at home

Paul's Form

Box A – Section 15(1) of the Mental Health Act Serious Harm Test

The Past / Present Test *(check one or more)*

I have reasonable cause to believe that the person:

- has threatened or is threatening to cause bodily harm to himself or herself
- has attempted or is attempting to cause bodily harm to himself or herself
- has behaved or is behaving violently towards another person
- has caused or is causing another person to fear bodily harm from him or her; or
- has shown or is showing a lack of competence to care for himself or herself

I base this belief on the following information *(you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.)*

My own observations:

Told me he wants to "eradicate" spies. Presents as hostile, belligerent, verbally abusive.

Facts communicated to me by others:

Police report that he was behaving aggressively in public, and smashed a car window. Bystanders in public felt threatened. Aggressive and threatening with nursing staff in hospital.

Form 1 (Box A) Criteria: Future Test

Describe **psychiatric symptoms** – ie. why is the risk related to a mental illness

- Use details, examples, specific signs and symptoms
- Often useful to refer to previous records if available
- Often useful to utilize collateral from family, friends, health care providers involved in patient's care

Paul's Form

The Future Test *(check one or more)*

I am of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

- serious bodily harm to himself or herself,
- serious bodily harm to another person,
- serious physical impairment of himself or herself

Box A – Section 15(1) of the Mental Health Act **Serious Harm Test** *(continued)*

I base this opinion on the following information *(you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.)*

My own observations:

Unkempt, with disorganized thinking and behaviour. Expressing paranoid delusions about spies with plans to "eradicate" them. Appears to be attending to internal stimuli (auditory hallucinations).

Facts communicated by others:

Longstanding history of schizophrenia with many similar past presentations. Has assault charges from past episodes of illness due to being paranoid about spies.

Form 1: Box B

- You will not use this as often
- Can be useful in cases when you know the patient well
- Includes very specific criteria around the patient's capacity, nature of their illness and past treatments, and risks when illness not treated
- Complete only Box A or Box B – not both!

Completing the Form 1

- Today's date and time
- Signature of physician completing
- Complete the Form 42 (notice to the patient) - once at the hospital if Form 1 completed in the community, or immediately if Form 1 completed in hospital
- Photocopy Form 42 and give patient the original
- Document on the Form 1 when the detention in hospital commenced, and when the Form 42 was delivered (times should not be too far apart)

Other Routes to Assessment

Form 2-

Any person (eg. family, friends, health care providers, landlords) can swear to a Justice of the Peace that Box A or Box B criteria for certification under the Mental Health Act are met.

The JP can complete a Form 2 which is delivered to police, giving them authority to apprehend the person and bring them to ER for assessment. If appropriate, a Form 1 can then be completed by the examining physician.

Back to the Case: Paul

- Admitted to hospital on a Form 1
- Refuses antipsychotic medication
- Tells you that he knows people are spies if they wear the colour orange – when co-patient wore an orange t-shirt, had a loud verbal altercation and threatened co-patient - required security presence and chemical restraint
- Accuses hospital staff of being spies, and verbally abusive towards them
- Observed checking the doors and windows of his room

Paul's Form 1 is expiring in 8 hours.

He demands to be discharged, saying that you are one of the spies conspiring against him.

What do you do?

Form 3: Certificate of Involuntary Admission

- Cannot be completed by same physician that completed Form 1
- Criteria (Box A): mental disorder that likely will result in **serious bodily harm** to self or others, or **serious physical impairment**
- Lasts for 14 days
- Notice provided to patient – Form 30
- Patient will receive Rights Advice, and opportunity to appeal the decision

If the patient remains certifiable when the Form 3 is to expire, all subsequent Forms authorizing their detention in hospital will be Form 4 (Certificate of Renewal).

The first Form 4 lasts one month, and the second lasts two months. The third and all subsequent Form 4's last three months.

The patient receives notice (Form 30), Rights Advice, and an opportunity to appeal with each Form.

Back to Paul

- You complete a Form 3, and Paul chooses not to contest it.
- You believe an antipsychotic medication is necessary and recommend it to Paul.
- He refuses.

Can you administer this medication if Paul refuses?

Assessing Capacity

- Must assess Paul's capacity to consent to treatment
- Refusal does not indicate a lack of capacity
- **Capacity is specific** to time and treatment (eg. may be capable to decide about Tylenol, but not about antipsychotics)
- **Consent is based on capacity** (not age, diagnosis) and must be **informed**

Testing Capacity

To be capable with respect to treatment, must be able to:

Understand the information relevant to making a decision about treatment (ie. process, retain, and cognitively grasp the information)

AND

Appreciate the reasonably foreseeable consequences of a decision or lack thereof (ie. apply the information to own circumstance and weight the foreseeable benefits/ risks)

Informed Consent

Must provide information that a “reasonable person” would want about the treatment in order to make a decision

Includes:

- Nature of treatment

- Expected benefits

- Risks and side effects

- Alternatives to the proposed treatment

- Likely consequences of not receiving the treatment

Assessing Paul's Capacity

You provide Paul with the information that is required for informed consent.

He tells you he does not believe it is possible that he suffers from a mental disorder. He accuses you of being a spy and says: "You just want to turn me into a zombie so the spies can take over." He does not see any possible benefit from the proposed treatment, or any possible risks of not accepting the treatment.

You find that Paul is incapable of consenting to treatment of his mental disorder with antipsychotic medication.

Document your finding of incapacity in his chart. Be sure to include the information that was provided to him and his responses.

Provide notice to the patient – Form 33. Keep a copy in the chart.

Patient will receive Rights Advice and opportunity to appeal.

Substitute Decision Making

When a person is incapable, a substitute decision maker (SDM) is authorized to make decisions on their behalf.

The SDM is to make decisions according to the person's known capable wishes, or if unknown, the best interests of the person.

The Health Care Consent Act provides a hierarchy of who can be an SDM. In practice, it is very often a family member, or the Public Guardian and Trustee.

SDM Hierarchy

1. Guardian of the Person
2. Attorney for personal care
3. Representative appointed by the Consent and Capacity Board
4. Spouse or partner
5. Child or Parent or CAS
6. Parent with right of access
7. Brother or sister
8. Any other relative
9. Office of the Public Guardian and Trustee

Treating Paul

Paul's mother has visited him several times while in hospital. She is highest on the hierarchy to act as his SDM. She is capable, available, and willing to act in this role.

She provides informed consent to the treatment.

Antipsychotic medication is ordered. Paul initially refuses to take it. Security is called and he decides to cooperate, and takes the antipsychotic medication orally.

Discharging Paul

Two weeks pass, and Paul's Form 3 is set to expire.

There has been a significant improvement. Paul's behaviour has remained calm and controlled for several days. He interacts with staff and with co-patients appropriately. He continues to talk about spies, but is much less preoccupied and distressed by the topic. He no longer expresses a wish to "eradicate" them. He is not suicidal.

While Paul's insight remains limited, he acknowledges that the medication helps him to remain calm, and he agrees to continue taking it and to follow-up with a psychiatrist.

Paul is no longer certifiable, and he is discharged from hospital.

Useful Links

Form 1:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/014-6427-41~1/\\$File/6427-41_.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/014-6427-41~1/$File/6427-41_.pdf)

Form 42:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1787-41~1/\\$File/1787-41_.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1787-41~1/$File/1787-41_.pdf)

Form 3:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-6429-41~1/\\$File/6429-41_.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-6429-41~1/$File/6429-41_.pdf)

Form 4:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-6430-41~1/\\$File/6430-41_.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-6430-41~1/$File/6430-41_.pdf)

Form 30:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1076-41~1/\\$File/1076-41.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1076-41~1/$File/1076-41.pdf)

Form 33:

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1088-41~3/\\$File/1088-41_.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/014-1088-41~3/$File/1088-41_.pdf)