



Incapacity for treatment decisions : Similarities and Differences : Mental Health Act and Health Care Consent Act

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Disclosure of Affiliations, Financial Support, and Mitigating Bias

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Session Information: MHA and HCCA

Affiliations: Please choose the statement that best describes your disclosure:

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Objectives

- ▶ Able to identify similarities and differences between the Mental Health Act (MHA) and the Health Care Consent Act (HCCA) in approach to incapable patients
- ▶ Understand the process of using MHA and HCCA in patients who are found to be incapable
- ▶ Acquire introductory to working knowledge on Capacity issues under the MHA and HCCA

References

- ▶ eLaws Ontario <https://www.ontario.ca/laws>
- ▶ A practical guide to Mental Health and the law in Ontario by Ontario Hospital Association OHA
- ▶ CPSO Guideline on Consent to medical treatment
 - ▶ <https://www.cpso.on.ca/Policies-Publications/Policy/Consent-to-Medical-Treatment>

Case Discussion

- ▶ 23 year old female, admitted to medical ward with fever for one week
- ▶ Significant history of iv drug use
- ▶ Detected to have bacteremia and subacute bacterial endocarditis
- ▶ IV antibiotics started. Central line in place.
- ▶ Patient noted to be psychotic.
- ▶ Leaving the unit repeatedly to use drugs in the parking lot.
 - ▶ Not following directions from nursing staff
 - ▶ Suspected of using PICC line to inject drugs IV
- ▶ Can we use a Form 1 or Form 3 to keep the patient in her room and get her treated with antibiotics ?

Show of hands...

- ▶ What do we do in such a situation ?

Quick review : Mental Health Act Forms

- ▶ Form 1 is for Assessment
 - ▶ Not treatment
 - ▶ For detention in a schedule 1 facility for 72 hours
- ▶ Form 3 is for Detention
 - ▶ Not for treatment
 - ▶ For detention in a Schedule 1 facility for 2 weeks
- ▶ Form 4 is also for detention
 - ▶ Not for treatment. For one month detention.
- ▶ Health Care Consent Act is for Capacity and 'Treatment'
 - ▶ For treatment with consent from Substitute Decision Maker (SDM)

Incapacity : What does it mean ?

- ▶ Patient lacks ability to
 - ▶ Understand
 - ▶ Information-such as diagnosis, treatment options, benefits/risks
 - ▶ Appreciate
 - ▶ The reasonably foreseeable consequences

Process with finding of Incapacity


- ▶ Mental Health Act : 'disease of the mind'
- ▶ Health Care Consent Act : Capacity, 'treatment' and SDM

Incapacity when using Mental Health Act

- ▶ Criteria remains the same – ‘understand AND appreciate’
- ▶ Form 33 initiated by Physician
- ▶ Rights advisor to provide advice to patient
 - ▶ Form 50 completed
- ▶ Consent Capacity Board hearing in 7 days, if requested
 - ▶ Decision in 24 hours after the hearing
- ▶ Possible appeal in Superior Court of Ontario
 - ▶ To be filed within 7 days
 - ▶ Decision can take months
- ▶ NO TREATMENT TILL CCB DECISION !!

Form 33

- ▶ Has check boxes for
 - ▶ Consent for treatment for mental disorder
 - ▶ To manage property
 - ▶ Personal Health Information

**Ministry
of
Health**

Form 33
Mental Health Act

**Notice to Patient under Subsection
59(1) of the Act and under Clauses
15(1) (a) and 15.1(a) of Regulation 741**

Clear Form

To: _____
(print name of patient)

of _____
(home address)

This is to inform you that on _____
(date of determination)

I, _____, have made a determination
(print name of physician)

that you

Check appropriate box(es):

Form patient uses to challenge findings:

1. ☐ are not mentally capable to consent to the collection, use or disclosure of personal health information within the meaning of the *Personal Health Information Protection Act*, 2004

2. ☐ are not mentally capable to manage your property

3. ☐ are not mentally capable to consent to treatment of a mental disorder ("treatment" within the meaning of the *Health Care Consent Act*)


1. Form P-1

2. Form 18

3. Form A

Rights advice

- ▶ Provided by Rights Advisor
- ▶ Patient Psychiatric Patient Advocacy Office PPAO
- ▶ PPAO will connect patient to lawyer

 Ontario	Ministry of Health and Long-Term Care	Psychiatric Patient Advocate Office (PPAO) Tel: 1 866 851-1212 416 327-8240 (Toronto)	Clear Form	Print Form	Save Form
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Request for Rights Advice Mental Health Inpatient

Instructions

1. Complete **all** sections where applicable.
2. Fax the completed request to the PPAO Intake Office at **1 866 822-2333** or **416 314-4484** (Toronto).
Do Not fax any other forms with this request.
3. Place this request form in the PPAO Requests for Rights Advice Visits binder, with a copy of each **Notice to the Patient** attached (i.e., Forms 30, 27, 33 Only).

Request Date (yyyy/mm/dd)	Request Time
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Section 1 - Hospital Contact Information

Hospital Name			
Hospital Site		City/Town	Province
Staff Contact Name	Telephone Number ext.	Fax Number	Pager Number

Section 2 - Individual to Receive Rights Advice

Patient First Name	Patient Last Name	Communication Needs	
Hospital File Number	Inpatient Unit	Room Number	Bed Number
Home Address (for patients being discharged on Form 24)			

Section 3 - Rights Advice Required

☐ Form 3 - Certificate of Involuntary Admission

☐ Form 4 - Certificate of Renewal Renewal #: _____

☐ Form 4a - Certificate of Continuation Renewal #: _____ Mandatory Hearing: ☐ Yes ☐ No

☐ Form 27 - Notice by Officer-in-Charge to a Child - Informal Patient

For Form 33 - Notice to Patient. Finding of Incapacity (check **all** that apply)

☐ Personal Health Information

Property (check Form 21 and/or Form 24)

☐ Form 21 - Certificate of Incapacity

☐ Form 24 - Certificate of Continuance

☐ Treatment

☐ Form 52 - Application to the Board for an Involuntary Patient's Transfer to another Psychiatric Facility

☐ Form 53 - Application to Board to Vary or Cancel Orders of the Board (MHA 39(9))

Note:

What happens when patient contests finding of incapacity or detention ?

- ▶ Consent Capacity Board CCB hearing in 7 days
 - ▶ Physician and patient/lawyer gets to present the information
 - ▶ Cross examination
 - ▶ Witnesses
 - ▶ Questions by CCB panel (Lawyer, Psychiatrist, Public member)
- ▶ CCB Decision provided in 24 hours
 - ▶ Reasons in writing- if asked for
- ▶ CCB decision can be contested in the Superior Court of Ontario
 - ▶ If finding of incapacity upheld by CCB, no further appeals for next 6 months

Incapacity under HCCA for medical conditions

- ▶ Criteria is the same - Understand AND appreciate
 - ▶ Assumption of capacity
 - ▶ Documentation of the incapacity on the chart
 - ▶ No Form 33 initiated.
 - ▶ No formal (automatic) rights advise by PPAO.
 - ▶ Patient to be told they can contact lawyer.
 - ▶ CCB has to be requested by patient.
 - ▶ Physician can contact SDM, obtain consent and proceed with 'treatment'
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- ▶ NO FORMS to be completed !
 - ▶ NO waiting period !
 - ▶ Treatment in an emergency possible !

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- ▶ Can we use a Form 3 to keep the patient in her room and get her treated with antibiotics ?

How should one think about it ?

- ▶ Is there a 'disease of the mind' and what is being treated ?
 - ▶ Is treatment for bacterial endocarditis or psychosis ?
- ▶ What is the consent for ? Who is SDM ?
 - ▶ Detention can be initiated for psychosis under MHA but NOT treatment
 - ▶ Rights advice if detained
- ▶ NO TREATMENT for bacterial endocarditis UNLESS
 - ▶ Incapable and consent from SDM
 - ▶ Or Incapable and a Medical emergency
- ▶ Usual questions
 - ▶ How do I document this ?????
 - ▶ How much detention/confinement can one use under HCCA ?

Limitations of HCCA

- ▶ How much restraints/confinement can one use as 'treatment' ?
- ▶ Can one use security guards and physical restraints ?
- ▶ Can I give antibiotics involuntarily ?
- ▶ What is the exact condition that patient is incapable for ?
- ▶ What is the medico legal risk ?
- ▶ Can one get consent for 'restraints' as part of 'treatment' in a patient who is not capable ?
- ▶ What if the patient leaves the unit ? How do I inform the police ? Is there a Form 1 or Form 9 ?

Cases for discussion

- ▶ Post cardiectomy delirium. Patient needed haloperidol IV, plus physical restraints and guard to keep him running out of Cardiac surgery ICU
- ▶ Mental Health Act 'detention' or 'Treatment' as an emergency under HCCA ?

Cases for discussion

- ▶ Patient on dialysis- gets delirious and starts pulling out the IV lines and attacking the dialysis machine. Needs sedation and restraints. Needs security guards.
- ▶ Mental Health Act 'detention' or 'Treatment' as an emergency under HCCA ?

A complex patient for discussion on capacity

- ▶ Patient with chronic schizophrenia admitted for being not able to walk. Delusions that his previous psychiatrist has inserted a chip in to his brain to cause paralysis.
- ▶ Denies any medical or psychiatric illness and does not want admission or treatment.
- ▶ Found to have a spinal cord tumour.
- ▶ Patient disagrees with diagnosis of tumour. Does not want treatment for anything.
- ▶ What do we do next ?



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