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COMMUNIQUÉ for the Health Industry

October 17, 2007

A publication of Miller
Thomson LLP's Health
Industry Practice Group

CHALLENGES AND STRATEGIES FOR HANDLING FORM 1 PATIENTS IN NON-SCHEDULED FACILITIES PENDING TRANSFER

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Part IV - Questions and Answers

This is the fourth in a series of *Communiqués* on the topic of challenges and strategies for handling Form 1 Patients in Non-Scheduled Facilities pending transfer. It is clear that despite efforts within the health industry, including several Coroner's Inquests, there are province-wide issues, common themes and challenges for dealing with these patient populations. This fourth and final instalment provides answers to questions posed during the discussion that were of general interest.

1. What impact does a Form 1 have on someone's application for a passport or ability to be bonded?

We are not aware of any impact. A Form 1 is only an application for a psychiatric assessment. It is not a determination with any finality. It is precisely for that reason that the Form 1 itself conveys only minimal and time-limited power over the patient.

Indeed, in our view, before a Form 1 could have any such long-term impact, the constitution or the laws of natural justice would likely require some opportunity for the patient to defend or respond to the opinions expressed in the Form 1. Moreover, the Form 1 describes a person at a particular moment in time and can only be completed within seven days of personal contact with the person. Therefore, its relevance to a passport or a person's suitability to be bonded could be quite tenuous, depending on the situation.

This response relates only to the Form 1. To the extent that a Form 1 leads to more long-term involvement of the patient with the mental health system, the response may be different.

2. Can a physician "cancel" a Form 1?

Again, the Form 1 is only an application for an assessment. The *Mental Health Act* does not speak to what happens within a non-scheduled facility after it is completed because the Act requires a transfer to a Schedule 1 psychiatric facility "forthwith".

The Form 1 does not provide any legal authority to hold a patient involuntarily. Therefore, if another physician decides subsequently, in his or her view, that the patient does not require a psychiatric assessment and stops the transfer process, there is in a sense a notional "cancellation" of the application.

From a risk management perspective, a physician should use caution in these circumstances as it is often difficult to gauge the degree of a person's suicidal intent and even expert psychiatrists are fooled sometimes. If a second physician stopped the process of transfer to a Schedule 1 facility, thereby preventing the patient from being assessed by a psychiatrist, and the patient went on to suicide, in our view, there would be potential exposure for the second physician and possibly the non-scheduled facility as well. A patient's family could argue that the non-scheduled facility had not complied with the *Mental Health Act*, which requires that the patient be transferred "forthwith". The second's physician judgment would also likely be called into question.

This is a general answer to the inquiry and, as always, such determinations should be made on the basis of specific circumstances. However, we do view this as a potentially risky practice.

ABOUT THE AUTHOR

Valerie Wise is an advocacy lawyer practising in our Health Industry Practice Group, focusing on civil and commercial litigation, College matters and Inquests.

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