

COMMUNIQUÉ

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DUTIES AND OBLIGATIONS OF THE OFFICER IN CHARGE: REVIEW OF CERTIFICATION DOCUMENTS UNDER THE MENTAL HEALTH ACT

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As noted in Rebecca Durcan's *Communiqué* dated February 7, 2003 the Officer in Charge ("OIC") in a psychiatric facility has many duties and obligations under the *Mental Health Act* ("MHA") and Ontario Regulation 741. Recently there have been a number of decisions by the Consent and Capacity Board ("CCB") which have examined the filing and review requirements of the OIC in regard to certification documentation.

In practical terms, where the OIC does not comply with the filing and review provisions under the MHA, a Certificate of Involuntary Admission (Form 3) or Certificate of Renewal (Form 4) can be challenged. In a number of instances, the CCB has found that the certification forms were invalid because the statutory requirements had not been met. As a result, it is essential that psychiatric facilities ensure that they have an appropriate process in place to ensure that the filing and review requirements have been fulfilled.

LEGISLATIVE OVERVIEW

Section 1 of the MHA defines "officer in charge" as the officer who is responsible for the administration and management of a psychiatric facility. In the absence of the OIC, his or her delegate, who is charged temporarily with the responsibility for the administration and management of the facility, has the responsibility to sign the relevant forms or perform the designated duty. The CCB has found that it is not appropriate for certain individuals to perform this function unless their role truly includes an appropriate degree of administrative and management function.

Under section 20(1)(c) of the MHA, the attending physician shall admit a person as an involuntary patient by completing and **filing** with the OIC a Certificate of Involuntary Admission (Form 3) if the criteria for involuntary admission have been met. Similarly, a Certificate of Renewal (Form 4) must also be completed and filed with the OIC. It is considered settled law that a failure to file the Form 3 (or the Form 4, if appropriate) with the OIC will invalidate the admission of a patient as an involuntary patient (or continuation of that person's involuntary status).

Pursuant to section 20(8), the OIC or his or her delegate is required to **review** the certification documents "forthwith" to ascertain whether or not they have been completed in compliance with the criteria outlined in the MHA. Where the documents have not been properly completed, the OIC must inform the attending physician to rectify the situation or else the OIC will be required to release the person.

RULINGS OF THE CCB

The Consent and Capacity Board is the body that hears appeals raised under the MHA. The CCB has stated that section 20 of the MHA,

“not only prescribes under what circumstances an attending physician can detain a person by the creation of this involuntary status, it also prescribes how that involuntary status is created. Both the substance and the procedure are prerequisites that the Board must determine are met.”

Where a person challenges involuntary admission, the CCB has held that an inquiry into the procedural requirements for the creation of involuntary admission should be made in light of the fact that our legal system accords fundamental protection to an individual’s right to liberty and freedom of choice. Further, the MHA mandates that a psychiatric facility develop a procedure under which certification documents will be filed and an immediate review of the documents by the OIC or his or her delegate will be conducted. The patient cannot be considered to be admitted as an involuntary patient under the MHA until these procedures for filing and review have been met.

“Filing”

There is no definition of “filing” under the MHA, however, some of the rulings of the CCB have provided guidance in this regard. The CCB has held that the mere placement of the certification document in the clinical record does not constitute “filing”, nor does it trigger the immediate review required by s. 20(8). In addition to placing the certificate on the patient’s chart, there must be some separate action of bringing it to the attention of the OIC in order for the document to be considered “filed”. Once the form has been filed with the OIC, s. 20(8) of the MHA requires the OIC or his or her delegate to “review” the paperwork.

“Reviewing”

As with the term “file”, there is no statutory definition of the term “review” as it pertains to the role of the OIC or delegate. In one case, the CCB described the review function as fundamentally that of a proof-reader; a review is done to ascertain whether the paperwork has been done correctly and meets the requirements of the MHA. In a subsequent case, the CCB indicated that the review conducted by the OIC or delegate is meant to ensure that Forms are signed, dated and appropriate areas completed. This requirement does not contemplate a review of the validity of the contents of the Form which is why the review function can be delegated to non-clinical personnel.

“Forthwith”

It is important to note that s. 20(8) specifically charges the OIC or delegate to conduct his or her review function *forthwith* following completion and filing of Form 3 and Form 4. Again, there is no clear definition of this term, however, it is generally interpreted to mean “immediately” or “without delay”.

In its various decisions, the CCB has emphasized that the meaning that will be attributed to “forthwith” is largely dependent upon the circumstances of the given situation. For example, in one case, the CCB found that a review of a Form following a weekend admission was not sufficient to constitute “forthwith”. The CCB does not necessarily draw a distinction between different days and times of the week, nor the convenience of the reviewer (e.g. on a weekend), when assessing if a review occurred “forthwith”.

CONCLUSION

In light of the above, we recommend that psychiatric facilities review their policies and procedures to ensure compliance with section 20 of the MHA. The facility should clearly identify the procedure by which the OIC function may be delegated and clearly articulate the responsibilities of the OIC or delegate. By streamlining the process, the facility can ensure that the OIC functions will be conducted in an efficient manner and as well, reduce its own exposure to challenges that target the technical nature of the legislative requirements .

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