



INFOGUIDE

January 2009

Searches: Person and Property

Disclaimer: This material is prepared by the Psychiatric Patient Advocate Office with the intention that it provide general information in summary form on legal and advocacy topics which is current when first published. The contents do not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice should be obtained in actual situations. While every care has been taken in the preparation of this material, the Psychiatric Patient Advocate Office cannot accept responsibility for any errors or omissions in the material, including those caused by negligence. The Psychiatric Patient Advocate Office is not responsible for the accuracy of information contained on other websites accessed by links from this website.

What types of things are considered a “search”?

- There are a number of different types of searches that happen in hospitals, such as searching your room or belongings. This is the least invasive type of search. Your body may also be searched. You may be “patted-down” by staff to see if you have any contraband or harmful objects. You may be asked to remove some clothing. You may have a full “strip-search” where all of your clothing is removed and your body and clothes are checked. You may also be asked to show private areas to staff. Finally, you may be asked to give bodily substances such as urine or blood for testing.
- The more invasive the search, like a strip search or urine sample, the more rules will apply to the hospital. The hospital will have to show that they had good reason to do the search, and, that it was done in the most appropriate way possible, respecting your dignity and rights.

Does the law govern when a search can be conducted?

- Yes. The rules around when a search can be legally conducted are explained in a number of cases that the courts have decided. Most of the law is about searches that have taken place outside of hospitals, for example searches that are done by police, so some of the rules are not as clear as you might like. Also, hospitals are more public places than your home or vehicle so there may be a decreased expectation of privacy allowing a broader right to search in some circumstances. This is not clear from the law. However, the rules are helpful to understanding your rights around search in a hospital.

- There are three things to remember about a search that will help you understand whether it is legal or not:
 - (1) Does your disposition order or other court order allow for searches? Sometimes disposition orders will specifically allow random urine testing for drugs or other types of searches. If it does, the hospital has the ability to search you based on the court order (but see below for more information).
 - (2) If there is no court order to allow the search, the hospital must have reasonable grounds to believe that you have an item that is illegal or contraband. “Reasonable” grounds could be a number of different things but it can’t simply be a “hunch” or a “suspicion”. Full ward searches may not be allowed given this requirement.
 - (3) Even if there is a court order or reasonable grounds, the search must be conducted in a reasonable way. That means that you still have the right to hand over any material that you may have, the right to privacy (not to be searched publicly), and other rights.

Do I have to consent to a search of my person or property?

- You do not have to consent to a search of your person, your room or your property. You have the right to demand that the hospital show that they have reasonable grounds to conduct a search. If you are searched and do not believe it was a proper search, keep careful notes of the incident and you may want to talk to your lawyer or Patient Advocate about it. If you are punished or have your privileges restricted you may also contact the Patient Advocate.

Can I be searched if I am a voluntary patient?

- As a voluntary patient, you always have the right to leave the facility and not be detained by staff (although they may want to do an assessment to make sure you do not meet the grounds for a Form 1 or Psychiatric Assessment). You do not have to agree to a search but you may have to leave the hospital if you choose not to co-operate.

Can I make a complaint about how the search is conducted?

- You always have the right to question the care you receive in a hospital, including any searches. You can complain about the fact that an improper search has taken place or the way the search was carried out. You can also complain if any of your belongings were damaged.
- You can complain internally within the hospital, work with your Patient Advocate or speak with your lawyer about other ways to raise the issue.

If I am concerned about staff conduct can I make a complaint to the College of Nurses of Ontario?

- Yes. You can make a complaint to the College of Nurses if a nurse was involved in the search. Your Patient Advocate can help you with this process. You can also complain to other Colleges if doctors or social workers, for example, were involved in the search.

Does the hospital have a policy regarding searches and how they are conducted?

- Some hospitals have policies on when and how searches can be conducted, especially in forensic mental health programs. You can ask your Patient Advocate or ward staff for information about the policies at your hospital. Keep in mind that some policies may go beyond what is allowed in the law and you can challenge those policies.

Can staff confiscate my property?

- Hospitals have the ability to take items away from you that are illegal or that are possible dangers to you or others. You can ask staff to explain why they think the item is “illegal”. If the item is not illegal and you do not believe that it is a danger, you can question whether it should be taken from you.

Do I have the right to ask staff for written confirmation of the property that they have taken from me?

- If anything is taken from you during the search, you have the right to ask that you are given a receipt of the item so that you are sure to get it back later.

Do they have to return my property to me on discharge?

- As long as the property is not illegal, it is your property and you have a right to get it back when you leave the hospital.

Do I have the right to talk to a lawyer before the search is conducted?

- Under normal circumstances you can contact a lawyer or your Patient Advocate before a search takes place. However, if the hospital believes that there is an emergency, particularly if they think you have a weapon or something harmful, they may search you without waiting for you to make any calls. If this happens, you may want to talk to your lawyer or Patient Advocate afterwards.

Do I have the right to be present when my belongings or room is searched?

- You should be able to watch as your room is searched to make sure nothing is taken. This will allow you to get a receipt for anything that is damaged or removed.

If they search me do I have a right to privacy?

- If you are being searched, particularly if part of your body is being searched, you have the right to have the search done in a way that is respectful and maintains your privacy. If you are being touched by staff or if any clothing is being removed, you can ask that the search happen in a private room away from others.
- If you are asked to provide a urine sample, you may also be asked to allow a staff member to be present to watch you provide that sample. This should only be done in very specific circumstances, if, for example, you have previously tried to tamper with the test. If you are being asked to have a staff member present, talk to your Patient Advocate or lawyer.

Should I be searched by someone of the same gender?

- If you are being touched or if your clothing is removed, you can request that the search be done by a person of the gender that you would prefer. Always ask that a second person be present during the search, again of the gender that you would prefer.

Do hospital staff have the authority to call the police if they find something during the search that they think I shouldn't have?

- If staff find an item that is illegal, they may contact the police.

Do they have the right to turn my property over to the police?

- In some cases, staff must give items to the police. You should talk to your lawyer about this and whether or not the item was found during a legal search. If the search was improper, it will be an argument for a future criminal process.

Do I have any legal recourse if my rights are violated?

- Speak to your Patient Advocate or your lawyer about any search that has happened that makes you uncomfortable. There are a number of possible ways that you can challenge the hospital if they have acted inappropriately.

Questions?

If you have questions contact your local Patient Advocate or Rights Adviser or call the central Psychiatric Patient Advocate Office at 1-800-578-2343.