



INFOGUIDE

April 2003

How am I made treatment incapable in the community?

Can my doctor make me treatment incapable in the community?

Disclaimer: This INFOGUIDE is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

A healthcare practitioner under the Health Care Consent Act may include a doctor, a dentist, a chiropractor, a psychologist, a nurse, an occupational therapist and others. For simplicity, in this guide we will use the term "doctor" in place of healthcare practitioner.

Can my doctor make me treatment incapable in the community?

- Yes, a doctor can make you treatment incapable in any setting regardless of your status in the hospital. You can be found treatment incapable if you are a patient in a psychiatric hospital, an out-patient of the hospital, a patient in long-term care, if you are living in the community or in any other setting. The process is different if you are not an inpatient in a mental health facility or a psychiatric unit.
- In the community the treating doctor (or any healthcare practitioner that is proposing treatment) can assess you to see if you are capable of consenting to your own treatment.
- If the doctor decides that you are not capable to consent to your own treatment he or she will notify you of that decision. You do not receive a written notice and you will not receive rights advice from a Rights Adviser. The doctor must provide you with information about the consequences of this finding and your ability to apply to the Consent and Capacity Board. The information that the doctor is required to provide to you is outlined by the

College of Physicians and Surgeons (or the appropriate college for the health practitioner).

- The doctor is also required by law to find a person to give or refuse consent for the proposed treatment on your behalf. This person is referred to as your Substitute Decision-Maker or your SDM (see PPAO website for a copy of the SDM InfoGuide). The law says that your doctor must ask the first available and willing person in the following list to act as SDM: a guardian of the person, a power of attorney for personal care, a representative appointed by the Consent and Capacity Board, your spouse or partner, your child or parent, your brother or sister or any other relative. If no one is available to make decisions, the Public Guardian and Trustee will be appointed as SDM.

Does my doctor have to give me a Form 33 (Notice to Patient)?

- No. When you are made treatment incapable in the community you do not receive a copy of the Form 33 as this applies only to inpatients of psychiatric facilities. However, your doctor will assess your capacity to consent to your own treatment and if he/she decides that you are not capable then you will be told of the finding. Your doctor will then record the results of the assessment in your clinical record. You will probably not receive anything in writing from your doctor regarding this decision or finding of incapacity although some health care practitioners may provide a written information sheet.

Am I entitled to Rights Advice?

- When you are made treatment incapable in the community it is the responsibility of the doctor to provide you with information about the decision.
- The doctor must advise you of your rights and options and then provide assistance to you in exercising the option that you have chosen. This includes advising you of your right to apply to the Consent and Capacity Board to challenge the finding, applying for Legal Aid and retaining and instructing Legal Counsel. If you do not receive this information from your doctor, the finding of incapacity could be overturned by the Consent and Capacity Board or other legal consequences could follow.

Will a PPAO Rights Adviser come and visit me?

- No. When you are made treatment incapable in the community the doctor who made the finding must by law provide you with information and assistance. However, you may still contact the Psychiatric Patient Advocate Office or the PPAO website at www.ppa.gov.on.ca for general information about your rights.

Who will help me apply for Legal Aid and help me to retain counsel if I want to apply to the Board?

- It is the responsibility of the doctor who made the finding of incapacity to provide you with information including about how to apply to the Consent and Capacity board, how to apply for Legal Aid and how to retain counsel. You can also contact your local legal aid office to make an application for legal aid and ask for a list of lawyers who may be able to assist you.

Since I am not in hospital will the Consent and Capacity Board still hold a hearing if I apply to the Board?

- Yes. It does not matter where you reside when you apply to the Consent and Capacity Board. If you apply to the Board they will contact you to set up a hearing date and time so that the Board can hear your application. You may want to make sure that the Board has information to contact you including a telephone number where they can reach you during the day.
- For more information about the Consent and Capacity Board and the hearing process, see our Rights Guide "Incapable to Make Treatment Decisions" or go to the CCB website at: www.ccboard.on.ca .

Does my Substitute Decision-Maker get rights advice?

- No. Your doctor must talk to your substitute decision-maker about the proposed treatment or course of treatment, risks and benefits, side effects, alternatives and likely effects of not having treatment. After providing all relevant information about the treatment your doctor will ask your SDM if they consent to this treatment. The SDM must comply with any capable wishes you may have shared while capable or, if you have not expressed a wish then he or she must make the decision in your best interest according to the Health Care Consent Act.

Do I have any other legal recourse or options?

- There are a number of things you may wish to do if your doctor has not provided you with information about the finding of incapacity or your rights to appeal. You may decide to do none, some or all.
 - You may simply want to discuss the issue with your doctor, raise your concerns and talk about the process.
 - You may want to apply to the Consent and Capacity Board to review the finding of incapacity. You may apply with the *Form A - Application to Consent and Capacity Board to Review a Finding of Incapacity* which you may find on the Consent and Capacity Board's website or through the Psychiatric Patient Advocate Office.

- If you wish to complain about your doctor or health practitioner, see our Rights Guide *How to Complain Against Health and Social Service Practitioners*.
- You may have other legal options available to you if your doctor did not give you the proper information and assistance. Consult a lawyer to find out about your legal options, including the possibility of civil litigation.

Questions?

If you need more information this topic or want to discuss your options further please contact your local Psychiatric Patient Advocate Office or call 1-800-578-2343. You may also want to speak to a lawyer for legal advice about your options.