

**An Overview of the Mental Health Act
By Wendy Hawkins**

Pull quote: “Psychologists need to understand this legislation because they often serve clients who have mental disorders.”

Alberta’s Mental Health Act governs the circumstances under which people with a mental health disorder can be detained, examined and admitted to a facility (usually a hospital). The Act also governs issues of appeal of detention, competence to make treatment decisions, time frames for determination, and the right to refuse treatment.

The Mental Health Act does not identify any role for psychologists. Only physicians are allowed to certify a person. Nonetheless, psychologists need to understand this legislation because they often serve clients who have mental disorders.

How a person becomes “certified”

The Mental Health Act is employed when a person who is mentally disordered represents a danger to him/herself or others and won't agree to treatment voluntarily. For example, suppose that Chris has been behaving erratically. Chris has been spending a lot of money, running naked through traffic, threatening family and friends, and refusing to sleep or eat. Family and friends are concerned and have asked Chris to see a general practitioner. Chris has refused, saying that nothing is wrong and that there is no need to see anyone.

Under the Mental Health Act, there are three options for dealing with Chris:

1. Try to convince Chris to see a doctor. Any physician in any specialty will do. The doctor will probably assess Chris for purposes of certification.
2. Call the police. The “Peace Officer’s Power (POP)” section of the Act states that if the police believe a person should be examined, is a danger to him/herself or others, or suffers from a mental disorder, the police may apprehend the person and convey him or her to a facility for examination.
3. Have family or friends – or a psychologist, or any person involved with the ill person – go before a provincial judge and swear out an application for a Warrant of Apprehension. The person who goes before the judge must provide information about Chris’s behaviour to demonstrate that he is a danger to himself or others, and that an examination can be arranged in no other way. If the judge issues a Warrant for Apprehension, then the Warrant may be taken to the police who have the responsibility to apprehend Chris and convey him to a facility for examination. The Warrant is good for seven days.

The main goal of each of these options is to have Chris seen by a physician in order to determine if he needs to be certified.

Before deciding to certify a person, a physician must examine the person and find that he or she meets all of the following three criteria.

1. The person is suffering from a mental disorder. The Mental Health Act defines a mental disorder as “a substantial disorder of thought, mood, perception, orientation

or memory that grossly impairs judgement, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life.”

2. The person is in a condition that presents or is likely to present a danger to him/herself or others.
3. The person is unsuitable for admission to a facility other than as a formal patient. This item is rather vague and is often interpreted to mean that the person is unwilling or unable to accept treatment outside of a hospital, and/or that, given the person's state, treatment outside a hospital would not be as beneficial as treatment within a hospital.

Following the examination, and finding that the person meets all three of the above criteria, the physician must then complete a certificate (a form) within 24 hours. If more than 24 hours goes by, the person must be re-examined. The person being certified receives a copy of the certificate.

Completion of one certificate gives legal authority for the next 72 hours for the person to be apprehended and conveyed to a facility, and for anyone to care for, observe, assess, detain and control the person while he or she is being apprehended and conveyed. The police are often in the position of apprehending people and conveying them, but technically this Act gives anyone the authority to detain and convey a person once a certificate is completed. As well, there is legal authority for staff at the facility to care for, observe, examine, assess, treat, detain and control the person for his or her first 24 hours at the facility.

Following the 72-hour period, the certificate is cancelled **unless** a second certificate is completed by another physician. At least one of the two certificates must be completed by a psychiatrist. The second certificate provides legal authority to care for, observe, examine, assess, treat, detain and control the person for one month from the date it is issued. The second certificate expires at the end of one month or is renewed for one more month. If there is a second renewal, it is also for one month. The third and subsequent renewals are for six months. A physician may cancel the certificates at any time.

The rights of the certified person

Everyone who is certified has the right to appeal the certificate. Also, a certified person is not compelled to undergo any treatment while he or she is in a facility. A physician may apply for a treatment order that requires the certified person to take treatment. However, such orders are given only for the least intrusive treatment. All possible treatment may be considered, but psychosurgery cannot be performed unless the certified person agrees to it.

All decisions about matters such as certification and treatment orders may be appealed to a Review Panel consisting of a chairman or vice-chairman (usually a lawyer), a psychiatrist, a physician and a member of the general public. The Review Panel meets regularly, since all appeals must be heard within at least seven days of the appeal notice. The panel receives services from the Minister as required, for example, legal, secretarial and consultative services, interpretation support.

The certified person is present at the appeal and may be accompanied by others, for example, a lawyer, family members or friends. Typically, the treating psychiatrist and possibly the treatment team are present. Both sides present their case for the panel. Then the panel members vote, and the decision of the majority is the decision of the Review Panel. In the event of a tie, the chairman votes again.

A certified person's certification and treatment must be reviewed every six months. Ultimately, if the certified person is unhappy with the Review Panel's decision, he or she may appeal to the Court of Queen's Bench. The Mental Health Act also requires the appointment of a Mental Health Patient Advocate to investigate concerns and complaints.

The role of the psychologist

Psychologists often receive referrals from physicians for an assessment of mental competence. These referrals often occur:

- very shortly after certification, in order to determine if certification should be continued, or
- when there is an application for a treatment order.

A psychologist is occasionally asked to give advice about whether a guardian or trustee should be appointed for the client. Note, however, that matters related to guardianship and trusteeship are not included in the Mental Health Act.

In conducting therapy with a certified person, psychologists should be aware that issues of control and autonomy often arise because persons who are certified lose their freedom.

Psychologists should also be aware that people who are certified are sometimes discharged from hospital but still remain certified. In these cases, the treating physician is usually trying to exercise some control over the certified person while he or she is in the community. For example, the treating physician may agree to a discharge, provided that the certified person continues with follow-up treatment such as medication or a therapy program. Certification is a way of increasing compliance; if the certified person does not comply, he or she may be required to return to hospital.

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In summary, the Mental Health Act provides for the assessment and treatment of individuals who would probably not seek help if left to their own devices. These provisions clearly allow for severe restrictions of individual freedoms. It is hoped, though, that checks within the system such as the ability to appeal to the Review Panel will ensure that freedom is not restricted unnecessarily.