

The Community Legal Assistance Society's Mental Health Law Program is a program of the Community Legal Assistance Society (CLAS)

To contact the community Legal Assistance Society's Mental Health Law Program

Telephone: 1-604-685-3425

Toll free outside the Lower Mainland

1-888-685-6222

The mental Health Law Program

Is funded by

The Legal Services Society of BC



**WHAT YOU
NEED TO
KNOW ABOUT
YOUR
LEGAL RIGHTS
UNDER THE
MENTAL
HEALTH ACT**

I. ADMISSION AND CERTIFICATION

What does being certified mean?

Being certified (also called “involuntarily Detained”) means three things:

1. You can be given treatment, which can include medication, against your will if necessary.
2. You are subject to direction and supervision by hospital staff.
3. You cannot leave the hospital without permission of the doctor treating you.

What are the criteria for certification?

At some point, either in the community or when you arrived at the hospital, a doctor examined you and completed a Medical Certificate which indicates that the doctor is of the opinion that::

1. That you have a mental disorder that seriously impairs your ability to react appropriately to your environment or to associate with others, and
2. Because of the illness, you need to receive treatment in or through a psychiatric facility, and
3. You need care, supervision and control to prevent your substantial mental or physical deterioration or for your protection of others and
4. You cannot be suitably admitted as a voluntary patient.

If you are recalled after being on leave for more than six months, you immediately become entitled to a review panel hearing and second medical opinion as if you were newly certified. (For example, you would be able to immediately apply for and have a hearing within 14 days.)

How do I apply for a Review Panel if I am on leave?

You can ask the doctor specified on the Leave Authorization form or your mental health team or the hospital to give you an application form or you can contact the Community Legal Assistance Society’s Mental Health Law Program at (604) 685-3425 and someone will assist you.

Who can I call for more information and /or assistance?

If you need information regarding the rights that you have under the law, you should contact hospital staff or a member of your treatment team.

If you would like more information about applying for a Review Panel, you can call the Mental Health Law Program at (604) 685-3425 if you are in the lower mainland or toll free at 1-888-685-6222. If you are elsewhere in British Columbia.

The Mental Health Law Program is independent from any medical/psychiatric facility and provides free and legal representation at Review Panels to patients who are certified in hospital or in the community.

The second way to review your case is to ask a judge to decide if there was or is sufficient reason to admit and detain you in the hospital. This is called a Section 33 application. The judge may discharge you or may ask a psychiatrist for a written report on your mental status. It can take up to ten days for the report.

You will have to pay for your own lawyer and possibly court costs. The Mental Health Law Program cannot help you find or pay for a lawyer to go to court.

IV. LEAVE

What is leave?

The hospital may release you into the community while you are still certified. You may be released with conditions, provided there is proper community support.

(i.e. a requirement that you remain in a particular location or check in with a community care team to receive prescribed medications).

You should receive a copy of the Leave Authorization form (Form 20).

Am I still certified if I am on extended leave?

Yes. This means that you can be given medications against your will if necessary and you can be brought back to the facility (recalled) if you don't follow the conditions of the leave. You still have the right to go to a Review Panel or to court if you are on leave.

How many Certificates are required to detain me?

Only one Certificate is required to detain you for up to 48 hours. The Certificate can be completed and it gives the police or ambulance authority to take you to hospital. In order to hold you any longer than that, a second Medical Certificate has to be completed before the end of 48 hours., and you can then be held for one month from the date of the first Certificate.

If you admitted yourself voluntarily to hospital, you can still become certified if the doctor believes you meet the criteria for certification. You can then be held for 48 hours from the time the first Medical Certificate is completed and a second Certificate has to be completed in order for you to be detained beyond the initial 48 hours.

What kind of an examination has to be done to certify me?

The examination to complete the first Medical certificate can be as simple as observing you, listening to you, and/or receiving information from people who know you. However, in order to complete a 2nd Medical Certificate to detain you past the initial 48 hours, the doctor should personally examine you.

Do I have to stay for the whole month if I am certified?

The doctor can discharge you any time, even before the end of the month, if s/he feels you no longer meet the criteria for certification. However, Renewal Certificates can be completed for additional time in hospital if the doctor believe you still meet the criteria for detention.

The renewal periods are:

1 month following the 1st month of certification, 3 months following the 1st month renewal, and 3 months following the 3 month renewal.

The 6 month renewal can be repeated for as long as the doctor believes you still meet the criteria.

Am I allowed to know what is written on my Medical Certificates?

Yes. You are allowed to know why you have been certified. You can ask the doctor or nursing staff to show you the Medical Certificates or to give you copies. If you need help, you can contact the hospital staff or a member of your treatment team.

Who will know about my detention here?

The hospital must send a notice to a near relative advising of your admission and detention. If you apply for a review panel. Or are discharged, they must send another notice. You are entitled to choose the near relative who can be a family member or a friend. If you wish to choose the near relative, you must complete a form called Nomination of Near Relative (Form 15). You can obtain the form from the hospital staff or from your treatment team.

If the hospital has no information about a near relative, they must send the notice(s) to the Public Trustee instead. The *Mental Health Act* does not give a right to advise persons such as your employer of detention. However, under the *Freedom of Information and Privacy Act*, s. 33, health care providers can release information to near relatives or others where disclosure is required for continuity of care or for compelling reasons if someone's health or safety is at risk.

- Whether there is a significant risk that because of mental illness, you will fail to follow the treatment plan which the doctor considers necessary to minimize further involuntary hospitalizations.

Do I have to pay?

No. A Review Panel is free of charge to you. You can also have a legal advocate from the Mental Health Law Program represent you free of charge

Can the Review Panel help with any other legal problems?

No. The Review Panel only has the power to decide whether you presently need to be detained. The panel cannot help you with any past hospitalizations you feel were wrong, nor can the panel make decisions about your treatment or any other complaints you may have.

3. Discharge by Court.

How can my case be reviewed by the Court?

You should hire a lawyer to help you with one of the two ways the court can review your case.

One way is to ask a judge to review your Medical Certificates to see if they have been completed properly. This is called a habeas corpus application. If your Medical Certificates are not valid the judge will probably order you to be re-examined.

Who are the members of the Review Panel?

All Review Panel members are appointed by the Minister of Health Services and assigned by the Review Panel Office for a hearing. Each Panel is comprised of a Chairperson who is legally trained, a physician and a person who is neither a lawyer nor a physician.

Can I have an advocate help me at the hearing?

Yes. You have the right to have legal representation at the hearing. The Community Legal Assistance Society's Mental Health Law Program may be able to provide an advocate to present your case for discharge to the Review Panel. An advocate is independent, does not work for the hospital, and is free of charge.

You also have the right to hire your own lawyer which you must pay for on your own.

What factors will the Review Panel consider in making their decision?

In determining whether you meet the criteria, the Review Panel will consider all evidence presented at the hearing concerning:

- Your mental state at the time of hearing,
- A history of mental disorder including hospitalization for treatment.
- Whether you complied with treatment following hospitalizations in the past; and

II. SECOND OPINION ON TREATMENT

If you are involuntarily detained in a hospital, you or someone on your behalf can request and receive a second medical opinion on the appropriateness of your treatment.

How and when can I request a second opinion on treatment?

A form called Second Medical Opinion on Treatment (Form 11) must be completed in order to process your request. Once, during each period of detention (1 month, 3 months, every 6 months thereafter), you can request a second medical opinion examination. You can ask the hospital staff or a member of your treatment team for the form.

Can I ask for a specific doctor to provide the second medical opinion?

Yes. You, or the person requesting a second medical opinion on your behalf, can choose any doctor licensed to practice in British Columbia to provide the second opinion. However, if the doctor you choose does not practice in the same health region as the hospital you are in, you may have to pay the cost of the doctor's travel.

If I request a second medical opinion, does that hospital have to stop the current treatment until they receive the opinion?

No. However, the examination for purposes of a second opinion must be made as soon as reasonably practicable and the second opinion must be delivered

To the director of the facility by the 3rd day after the day of the examination.

How do I apply for a Review Panel?

You can apply for a Review Panel by asking the hospital for an Application for Review Panel Hearing (Form 7) or you can call the Community Legal Assistance Society's Mental Health Law Program at (604) 685-3425 and someone will assist you.

Can I apply for a Review Panel on a weekend?

You can complete the form for a Review Panel on the weekend but your request will not be processed until the Review Panel Office opens on Monday.

How long do I have to wait until the Review Panel meets?

If you are newly certified or are in the first renewal period of one month, the hearing must be held within 14 days of the Review Panel Office receiving your application. If you are in the second renewal period of three months, the hearing must take place within 28 days of the Review Panel Office receiving your application. If you are in a subsequent renewal period of six months, the hearing must be held within 28 days as long as 90 days has passed since your last review panel.

Can I apply for a Review Panel Hearing if I am being detained with one Medical Certificate?

No. You can only apply after a 2nd Certificate has been completed.

Does the hospital have to follow the recommendations of the second opinion?

The facility director where you are detained must consider the recommendations and may authorize any changes to the treatment plan. However, the hospital does not have to follow the recommendations of the second opinion.

III. DISCHARGE FROM THE HOSPITAL

There are three ways that you may be discharged:

1. Discharge by the Doctor

The doctor who is treating you will decertify you when s/he feels you no longer meet the criteria for certification. This can be done anytime. Once you are decertified, you can leave the hospital if you wish or you may be able to stay voluntarily.

2. Discharge by Review Panel

The Review Panel has the authority to review and discontinue your detention if they believe that you do not meet the criteria for certification.

What is a Review Panel Hearing?

It is an informal hearing where three members of the Review Panel will hear the reasons why you think you are ready to leave the hospital and the reasons why the hospital thinks you should stay. You or the hospital may ask for witnesses to give evidence in person or by phone. After hearing all the evidence, the panel members will decide if you can be decertified.