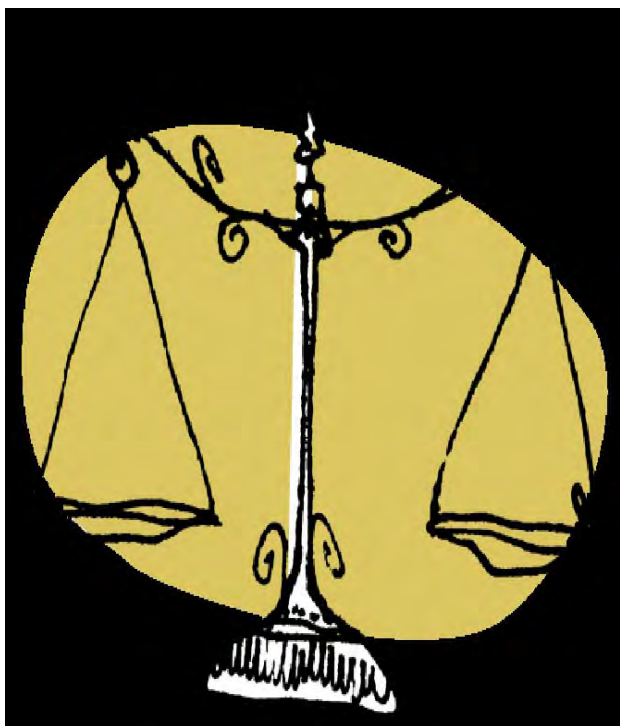

YUKON PSYCHIATRIC PATIENTS' RIGHTS

REVISED 2007



This booklet is for people who are – or might be –
involved in the psychiatric care system,
and their families.

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INTRODUCTION



What is this booklet?

This booklet is a plain language summary of the rules and procedures that can affect people who are psychiatric patients in the Yukon. It was revised in 2007 and incorporates the changes to the law that occurred in 2005.

It is designed for patients, their families, and anyone who wants to know more about the rules that apply to psychiatric care and treatment.

It describes the law contained in the following statutes:

- *Adult Protection and Decision Making Act*
- *Care Consent Act*
- *Public Guardian and Trustee Act*
- *Mental Health Act*

These statutes can be found online at:

www.gov.yk.ca/legislation and www.canlii.org/yk/laws/

(The first three statutes are contained in the 2003 *Decision Making, Support and Protection to Adults Act*)

Who wrote this booklet?

This booklet was prepared by a lawyer at the request of the Second Opinion Society. The Second Opinion Society is a non-profit society that provides support and assistance to people in emotional crisis, including people diagnosed with mental illness.

Do I need a lawyer?

This booklet only provides general information. For specific help it is best to consult a lawyer. Depending on your financial situation you may qualify for Legal Aid.

Where can I get more information?

See the back of this booklet for further sources of information and help.

HOW DO I GET INTO THE HOSPITAL?



By my choice...

If you think you need help from a doctor, you can choose by yourself to go to the hospital or health centre (or ask a friend, taxi driver, or police officer to take you there.) You can tell the doctor or nurse that you need to be admitted as a psychiatric patient. If the doctor or nurse agrees then you will be admitted as a **Voluntary Patient**.

If you are a voluntary patient, you can leave any time you want by asking for a **Discharge**.

Your status can be changed from voluntary to involuntary without your consent through the rules described below.

Against my choice...

You can be taken to the hospital without your permission. This can happen if a doctor, police officer, or judge believes on reasonable grounds that you are at risk of harming yourself or someone else because of a mental disorder.

What does “at risk of harming yourself or someone else” mean?

It can mean one of four things:

1. Currently or recently you have been threatening or attempting to cause bodily harm to yourself or someone else, and the doctor, judge, or police officer believes you are likely to cause serious bodily harm to yourself or someone else in the future; *or*
2. Currently or recently you have been behaving violently toward another person, and the doctor, judge, or police officer believes you are likely to cause serious bodily harm to someone in the future; *or*
3. Currently or recently you have been causing someone else to fear bodily harm, and the doctor, judge or police officer believes you are likely to cause serious bodily harm to someone in the future; *or*

(...CONTINUED FROM PAGE 3)

4. Currently or recently you have shown a lack of ability to care for yourself and the judge or police officer believes that you are likely to suffer impending serious physical impairment.

What does “mental disorder” mean?

According to the law in the Yukon, a mental disorder is:

“a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life.”

Examinations and Assessments

Step 1 - You are taken into custody:

If a **police officer** takes you into custody or a **judge** directs the police to take you into custody, then the police must immediately transport you for an **Involuntary Examination** (see step 2).

If a **doctor** authorizes you to be taken into custody, then the police must take you into custody as soon as possible (within 6 days maximum). After taking you into custody, the police must immediately transport you for an **Involuntary Psychiatric Assessment** (see step 3).

Step 2 - Involuntary Examination

The police will take you to the local health centre or hospital to be examined by a doctor or nurse. This is called an **Involuntary Examination**. If the doctor or nurse believes you have a mental disorder, **you can be kept under observation for 24 hours**. During this time, if the doctor or nurse believes you are at risk of harming yourself or someone else because of a mental disorder, then the doctor can recommend you for an **Involuntary Psychiatric Assessment**. If this happens, the police will take you to the Whitehorse General Hospital, unless you are already there.

If the doctor or nurse does not believe that you have a mental disorder or are not at risk of harming yourself or someone else then you must be released.

Step 3: Involuntary Psychiatric Assessment

The police will take you to Whitehorse General Hospital. **You will be kept in the hospital for not more than 24 hours and will be assessed separately by two doctors.** This is called an **Involuntary Psychiatric Assessment**.

The doctors may ask you to consent to admission to the hospital. If you choose to consent, then you are admitted as a Voluntary Patient. If you have a Substitute Decision Maker, the doctors may ask that person to consent for you. (See page 8 for rules about Substitute Decision Makers.)

If the doctors believe on reasonable grounds that

- **you have a mental disorder, and**
- **unless you stay in the hospital you are likely to**
 - **cause serious bodily harm to yourself or someone else, or**
 - **suffer serious physical or mental impairment,**

then **they may admit you to the hospital without your consent.** This is called an **Involuntary Admission** and you become an **Involuntary Patient**.

If the doctors do not think you should be an Involuntary Patient then you must be released from the hospital.

Summary

If you live outside Whitehorse, you will be taken to the local health clinic for an Involuntary Examination (1 doctor or nurse) for up to 24 hours. You can then be taken to the Whitehorse General Hospital for an Involuntary Psychiatric Assessment (2 doctors) for another 24 hours.

If you live in or near Whitehorse, you will be taken to the Whitehorse General Hospital where the Involuntary Examination (1 doctor or nurse) and Involuntary Psychiatric Assessment (2 doctors) are usually both completed in the first 24 hours.

WHAT ARE THEY SUPPOSED TO TELL ME?



Before Involuntary Admission

If you have been detained by the police, **the police must tell you:**

- where you are being taken
- why you are being taken there
- what will happen when you get there
- that you have the right to talk to a lawyer without delay

At the hospital or health centre you must be told:

- where you are
- why you are being kept there
- that you have the right to talk to a lawyer without delay

If you are unable to understand this information when you first arrive, they must repeat the information when you are able to understand it.

If you are undergoing an Involuntary Psychiatric Assessment and have not been admitted after 24 hours, then the hospital staff must tell you that you have the right to leave.

After Involuntary Admission

If you are being kept in the hospital, then the doctors must fill out a **Certificate of Involuntary Admission**, which explains why you are being kept in hospital. **They must provide a copy of the Certificate to you and to your nearest relative, Guardian (if appointed), or Proxy (if you have one). The doctors must write why they decided to make you an Involuntary Patient and provide written information on how to appeal the decision.**

(A Guardian is someone chosen by a judge to make decisions for you. A Proxy is someone you have chosen to make decisions for you, see page 17.)

See page 14 for information on appealing a decision.

WHAT RIGHTS DO I HAVE WHILE I AM IN THE HOSPITAL?

While you are a patient in the hospital, you have the right to:

- reasonable access to a public telephone for making and receiving calls
- reasonable access to visitors during visiting hours
- access at any time to your lawyer, guardian, or potential Substitute Decision Maker
- send and receive letters without having them read or interfered with by someone else
- wear clothing of your choice, as long as it is not offensive and does not endanger you
- vote
- remain free from anything that would cause physical, mental, or emotional injury, or undue discomfort or fear except for those things authorized by the law.

WHAT WILL HAPPEN TO ME IN THE HOSPITAL?



Will they provide me with treatment?

Within 5 days after you have been admitted, your doctor must prepare a treatment plan. The doctor must ask for your consent before giving any treatment. When asking for your consent, the doctor must tell you:

- why the treatment is recommended
- what the treatment is
- the benefits and risks of having the treatment
- the benefits and risks of *not* having the treatment
- what the alternative treatments are

The doctor must speak to you in a way that you understand and must give you a chance to ask questions. The doctor may allow your friend or relative to be present and help you understand.

You have the right to consent or refuse consent to any treatment. Your consent can be verbal, written, or determined by your behaviour.

Can they treat me without my consent?

If your doctor determines that you cannot understand what they are telling you about the treatment, or that you cannot understand that the treatment applies to your situation, **the doctor may decide that you are incapable of giving or refusing consent.**

If your doctor decides you are incapable of giving or refusing consent, then the doctor must find a **Substitute Decision Maker** to make the decision for you. The doctor must choose the first person on the following list:

- your Guardian, if appointed (somebody chosen by a judge to make decisions for you)

- your Proxy (somebody that you have chosen to make decisions for you, see page 17.)
- your husband or wife
- your child
- your parent
- your grandparent
- your brother or sister
- any other relative
- a close friend (who must be at least 19 years old and must also sign a written statement about your friendship. They cannot be someone who is paid to provide a service to you.)

The person on the list must have been in contact with you in the last 12 months and be willing and able to make decisions on your behalf.

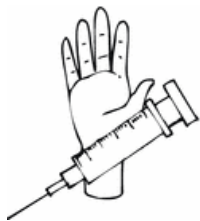
If your doctor cannot locate anyone on the list then two doctors together may act as your Substitute Decision Maker.

Before making a decision on your behalf, your Substitute Decision Maker must be given the same information you would be given about treatment and must also consult with you.

Your Substitute Decision Maker must try to learn any wishes you had made about treatment before your doctor decided you were incapable of giving or refusing consent. S/he must also try to learn what your beliefs and values are. S/he must talk to any of your friends and relatives who offer to help.

Your Substitute Decision Maker must make decisions based on your wishes. If s/he does not know your wishes then she must make decisions based on **your beliefs and values**. If s/he does not know your beliefs and values, then s/he must make decisions based on what is in **your best interests**.

CAN THEY TREAT ME WITHOUT CONSENT FROM ME OR MY SUBSTITUTE DECISION MAKER?



Emergency Treatment

In an emergency a doctor can provide treatment without your consent if the doctor is unable to communicate with you and a Substitute Decision Maker is not available. However, the doctor must not provide treatment if the doctor knows that you expressed a wish to refuse the treatment before you were found incapable of giving or refusing consent.

Can they tie me up or force me to take drugs?

To prevent physical harm to yourself or someone else, **you can be physically restrained by hospital staff or held in mechanical restraints**. This means the hospital staff can physically hold you with their hands, arms, and bodies. They can also use restraints to strap you to a bed.

You can also be given drugs that control your behaviour.

The use of physical force, mechanical restraints or drugs is not considered treatment and it does not need consent from you or your Substitute Decision Maker if it is done to prevent you from causing harm to yourself or someone else.

The hospital must use the minimum force necessary to stop you from causing harm to yourself or someone else.

If the hospital staff restrain or control you in this way, they must record what they did in your clinical record. They must also record how long they did it for and the reason why they had to do it. If drugs are used they must record the type of drug and dosage.

HOW LONG CAN THEY KEEP ME IN THE HOSPITAL?



They can only keep you in the hospital if you are an Involuntary Patient. If you are an Involuntary Patient then **before 21 days have passed your doctor and one other doctor must separately reassess you.** If they still believe you need to be an Involuntary Patient **they may require you to stay longer without your consent.** This will repeat every 21 days until they no longer believe you need to be an Involuntary Patient.

If the doctors do not renew your status as an Involuntary Patient, or 21 days have passed since your last reassessment, then your status changes to Voluntary Patient and you must be told that you have the right to leave the hospital.

But I want to leave the hospital now...

If you are a Voluntary Patient you can leave the hospital any time you wish by asking for a **Discharge.**

If you are an Involuntary Patient you can **ask your doctor for a Temporary Release.**

If you are on a Temporary Release and do not return when your doctor tells you to, **the doctor can have the police bring you back to the hospital.**

CAN THEY SEND ME OUTSIDE THE YUKON?



For Yukon Residents

If your doctor thinks you should receive treatment at a hospital outside the Yukon, he can apply to the Capability and Consent Board for a transfer. The Board must hold a hearing and decide within 48 hours. If you are sent outside, your doctor in the Yukon must consult regularly with the doctor at the outside hospital. You will be returned to the Yukon when you are able to get the necessary treatment here. If the outside hospital is not respecting your rights then your doctor in the Yukon is required to arrange for your return to the Whitehorse General Hospital. On your return the hospital must conduct another psychiatric assessment.

Note: The laws outside the Yukon may be different. Do not rely on this brochure when outside the Yukon.

You are considered a Yukon resident if you have lived in the Yukon for at least three continuous months.

For more information on the Capability and Consent Board, see page 14.

For non-Yukon Residents

The doctor can send you to your home area if the doctor thinks you can receive treatment there. The doctor must apply to the Capability and Consent Board, who will hold a hearing and decide within 48 hours.

I'M WORRIED ABOUT MY MONEY, MY PROPERTY, AND MY CHILDREN



If you are concerned about your money or property, talk to a social worker or justice worker with the Yukon Government or your First Nation. There may be some informal ways to protect your money and pay your bills. One of the tools you can ask about is a **Representation Agreement**.

The Government of Yukon publishes a brochure that explains Representation Agreements; call (867) 667-5814.

Another option to protect your money and pay your bills while you are in hospital is a **Certificate of Need for Financial Protection**. If your doctor believes that you are not capable of giving consent to your health care and that you are incapable of making reasonable decisions about your financial affairs, then the doctor may issue this certificate. The certificate gives authority to the Public Guardian and Trustee to protect your assets and pay your bills. Your doctor does not need your permission to issue the certificate, but you can appeal the doctor's decision to the Board.

If you are concerned about your children, talk to a lawyer about what your options are. You may qualify for Legal Aid to help pay the lawyer.

CAN I APPEAL THESE DECISIONS?



You can have many of these decisions reviewed by the Capability and Consent Board.

What is the Capability and Consent Board?

The Capability and Consent Board is similar to the pre-existing Mental Health Review Board, which it replaces. The purpose of the Capability and Consent Board is to review decisions of doctors and Substitute Decision Makers to ensure that the rights of the patients are respected and careful consideration is given to patients' wishes, beliefs and values, and best interests.

The Board also provides a way for friends and family members of a patient to be heard and can provide guidance to Substitute Decision Makers.

The Board is composed of doctors, lawyers, and other people who are neither doctors or lawyers.

Does the Board automatically review doctors' decisions?

The Board must review the following decisions:

- Admitting you as an Involuntary Patient, or renewing your admission as an Involuntary Patient
- Transfer of an Involuntary Patient to a treatment centre outside the Yukon

For admission decisions the Board must hold a hearing within seven days, unless you and the Board agree it is unnecessary. If the Board does not hold a hearing it will still review the paperwork to make sure the correct steps were followed.

For transfer decisions the Board must review the decision within 48 hours, but it does not have to hold a hearing.

Will the Board review other decisions made by a doctor?

The Board will not automatically review the following decisions, but you or someone else may request a review of:

- a decision that you are incapable of giving or refusing consent to treatment
- the person chosen to be your Substitute Decision Maker
- a decision to issue or not issue a Certificate of Financial Protection

Will the Board review decisions made by my Substitute Decision Maker?

The Board will not automatically review these decisions. But you or someone on your behalf can ask the Board to review your Substitute Decision Maker's consent or refusal to consent to the following treatments:

- major surgery
- radiation therapy
- dialysis
- medical research
- anything involving general anaesthetic
- major diagnostic or investigative procedures
- electroconvulsive therapy (ECT)*
- intravenous chemotherapy
- abortions*
- tissue removal*
- experimental health care*
- laser surgery

(Treatments marked with * have special rules, contact a lawyer, your doctor, or the Board for assistance.)

How do I request a review?

Contact the Capability Consent Board at (867) 633-7614. In most cases the Board is required to hold a hearing unless you and the Board agree a hearing is not required.

WHAT SHOULD I KNOW ABOUT A HEARING?



What rights do I have?

You have the following rights for any hearing that involves you:

- to read all information being used at the hearing ahead of time
- to be present at the hearing
- to ask questions at the hearing
- to provide information at the hearing
- to make a presentation at the hearing
- to have a support person with you at the hearing to assist you or to speak on your behalf
- to receive a copy of the Board's decision after the hearing

What else should I know about a hearing?

At a hearing, the Board must contain at least one doctor, one lawyer, and one person who is neither a doctor nor a lawyer.

You can ask for an adjournment of up to 8 days to get your own lawyer and you can apply to Legal Aid to pay them.

You can appeal a decision of the Board to the Supreme Court of the Yukon within 30 days.

You can ask the Board to seal all of their records about you in a confidential file.

IS THERE ANYTHING I CAN DO TO HELP MYSELF BEFORE I BECOME A PSYCHIATRIC PATIENT?

Appointing someone to make health care decisions

You can appoint someone to make health care decisions for you. This person is called a **Proxy**. To appoint a Proxy you must fill out a form called an **Advance Directive**.

An Advance Directive must be completed before you are declared incapable of giving or refusing consent.

For more information on appointing a Proxy, there are several booklets available from the Government of Yukon. Call (867) 456-6800.

NOTES



IF YOU DON'T FIND THE ANSWERS HERE, IT'S NOT THE END!

REMEMBER:

1. YOU HAVE PROTECTION UNDER OTHER LAWS AND UNDER THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS.
2. YOU HAVE THE RIGHT TO ACCESS A LAWYER
Other Yukon laws are important to you, and a lawyer can help protect your rights.
3. If you qualify financially,
YOU HAVE THE RIGHT TO LEGAL AID.

**IF YOU HAVE PROBLEMS,
PHONE US AND WE WILL HELP:
SECOND OPINION SOCIETY
867-667-2037 (CALL COLLECT)**

You can also call:

- **The Law Line:** (867) 668-5297 or 1-866-667-4305 (for free legal information).
 - **Lawyer Referral Service:** (867) 668-4231 (for help finding a lawyer).
 - **Legal Aid:** (867) 667-5210 (to apply for help with paying a lawyer).
 - **Capability and Consent Board:** (867) 633-7614.
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SECOND OPINION SOCIETY

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