

Overview of The Mental Health Act of Manitoba

Dr. Jim Simm

Office of the Chief Provincial Psychiatrist

Director of Psychiatric Services

Department of Mental Health and Community Wellness

- **Faculty: Dr. Jim Simm FRCPC CCSAM**
- **Relationships with commercial interests: (list None if no disclosures)**
 - **Grants/Research Support:**
 - **Speakers Bureau/Honoraria: Janssen Pharmaceuticals**
 - **Consulting Fees:**
 - **Other:**
- **Mitigating potential bias: (delete this section if no disclosures above)**
 - I have been sponsored by Janssen to speak on the topic of early use of long-acting antipsychotics for patients with schizophrenia. The literature provides robust evidence for this treatment, and I do not limit my prescribing to Janssen products.

Outline

FMD CME

Nov 4 2022

- Historical evolution of the Mental Health Act[s]
- How does admission work?
- What if your patient cannot manage their affairs?

Outline

FMD CME

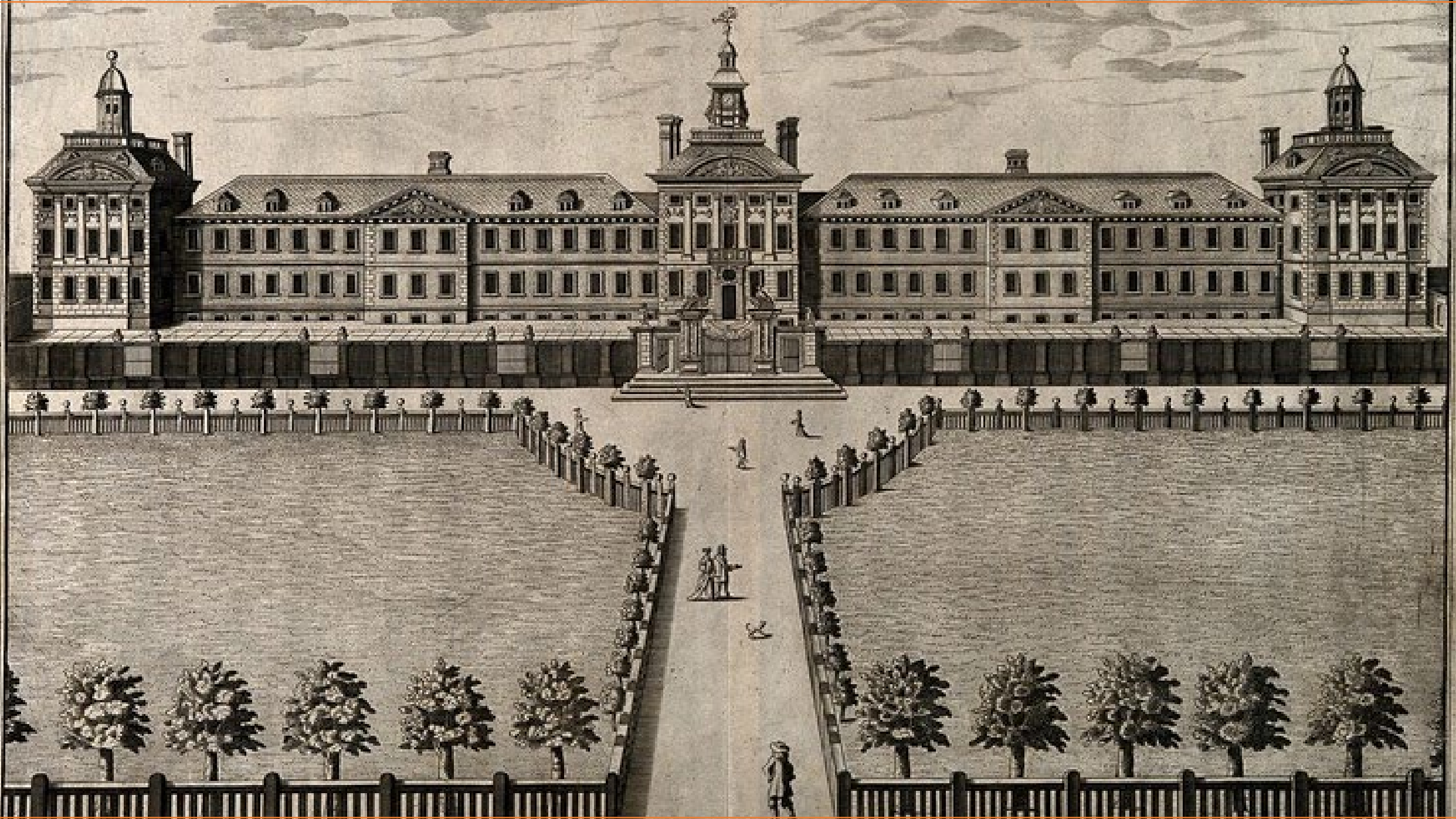
Nov 4 2022

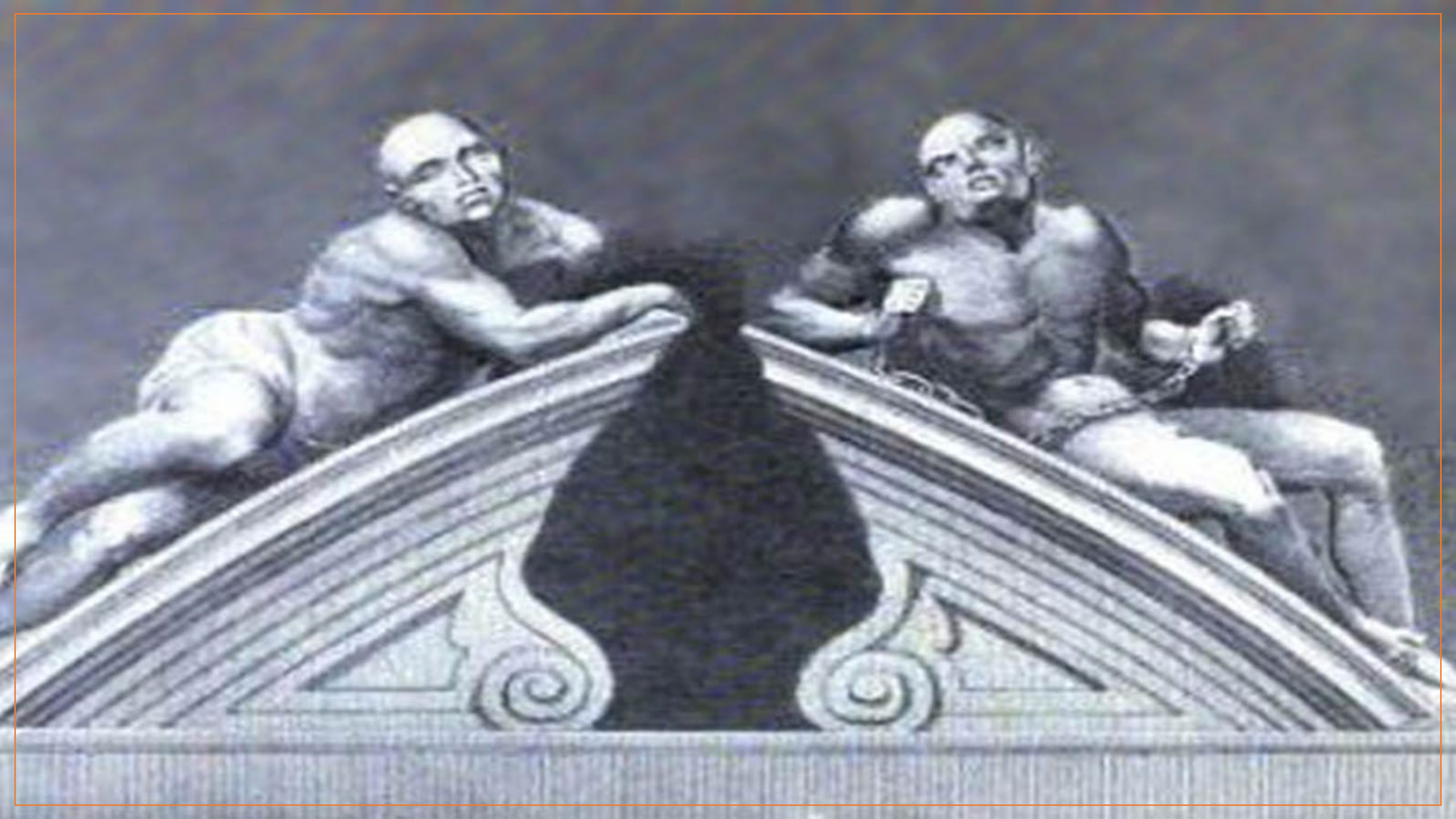
- Historical evolution of the Mental Health Act[s]
- How does admission work?
- What if your patient cannot manage their affairs?

Why do we have a Mental Health Act?

- Historically there have been overreaches by psychiatry that have led to maltreatment of citizens. The Mental Health Act[s] have been enacted to protect patient rights but ensure that those that require psychiatric services receive treatment, at times against their wishes. The Act[s] also ensure that patients have legal recourse if they disagree with hospitalization or treatment decisions.

-
- Jurists have recognized for many centuries that there were certain kinds of human behaviours and dysfunctions which the criminal justice system did not manage effectively. Madness or insanity was recognized as requiring special treatment by the ancient Greeks. Legal issues about competency to manage affairs go back to Roman times. So is this behaviour socially deviant? Or is it a product of mental illness? Is it 'bad' or 'mad'? Should certain people be excused from the normal social and legal consequences of their actions because they apparently did not know what they were doing? Should a mentally ill offender be confined in a madhouse or a prison?





-
- Hogarth's cycle *The Rake's Progress* (1723-25)).
-



- It was one of the most painful and distressing places I have ever visited. . . There were, perhaps, 70 patients, upon whose faces misery, starvation, and suffering were indelibly impressed. The doctor pursues the system of constantly cupping, bleeding, blistering and purging his patients, giving them also the smallest quantity of food, and of the poorest quality. .. The doctor, in response to my question, and evident disgust, boasted that he employs no restraint, and that his cures are larger than in any English or continental asylum

- J H Tuke on visiting the Ontario jail turned Asylum in 1845

-
- Another factor which meant that mentally ill offenders were often subjected to more punitive treatment than inmates in the prison system was the fact that the legal warrants of remand and warrants of admission were indefinite. In many jurisdictions in Canada, the superintendent of the institution was charged to: “...safely keeps...until the pleasure of the Lieutenant Governor is known.” This meant that if defendants were found “not guilty by reason of insanity”, by the court, they could expect to remain in a mental hospital for the rest of their lives, regardless of the type of the offense or the length of the sentence they otherwise would have received. Even though the person was technically not guilty, the public had to be satisfied that the perpetrators were not “getting off scot free”

United States
Supreme Court
1927 Decision on
forced sterilization
Oliver Wendell
Holmes

- We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, to prevent our being swamped with incompetence. It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. [citation omitted] Three generations of imbeciles are enough.[42]

American Journal of
Psychiatry editorial
1942 (unsigned) **The
American journal of
psychiatry. , 1942,
Vol.99, p.141-143**

- Came down decisively in favor of legislation permitting euthanasia in cases where the severity of the mental disability clearly warranted it.
- Although many parents opposed, editors stated that no sane parent could feel “normal affection...for a creature incapable of the slightest response” and such feelings must be a morbid state rooted in “obligation or guilt”

Other Miracle Cures

- Insulin Coma Treatment (80% cure rates!?, later dialed down to 37% recovered or greatly improved)
- Metrazol Shock Therapy (50% cure rate)
- Lobotomy- Moniz won 1949 Nobel Prize- Not denounced by psychiatry till the late 70's
- ECT- this one actually did work and is still used, but the memories of early ECT still remain

Post-war Theories

- Homosexuality caused by strong mother/weak father
 - Not removed from DSM till a vote by full membership in '73, passes by 58% margin
- Refrigerator mothers leading to autism
- Schizophrenogenic mothers (I was taught this in the 80's)
- Horrors of large institutions (Bedlam 1946 Life Magazine)
 - Failure of deinstitutionalization
 - Transfer of care to penal system

- Life Magazine
1946
- <https://mn.gov/mnddc/parallels2/prologue/6a-bedlam/bedlam-life1946.pdf>

BEDLAM

1946

**MOST U.S. MENTAL HOSPITALS
ARE A SHAME AND A DISGRACE**

Psychiatry- Pharmaceutical Industry Connection

- Since the advent of “newer’ anti-psychotics and antidepressants, beginning with Prozac, there has been the justified perception that diagnoses and treatment by psychiatrists have been strongly influenced by “Big Pharma” in exchange for financial incentives.

Results of failed policies and procedures

- Anti-psychiatry movements in the 60's grew, led by psychiatrists such as Szasz and Laing, calling for the devolution of all involuntary commitment and treatment
- Deinstitutionalization led to increased formation of groups fighting to ensure their family members would still receive services with dignity, even against the patient's expressed wishes.

Central Themes of MB MHA [Proclaimed October 1999]

- Strike a balance between rights of the citizen as espoused in the Charter and society's duty/obligation to provide care and treatment to those who, at times, cannot appreciate their need for treatment
- Self-determination and autonomy versus protection of the most vulnerable; safety of person and others.

The Canadian Charter of Rights and Freedoms

- The charter was enacted into law in 1981
- Statues should be consistent with the charter
- Section 1 “The Canadian charter of rights and freedoms guarantees the rights and freedom set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Charter Requirements

- Section 7 “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”
- Section 9 “everyone has the right not to be arbitrarily detained or imprisoned”
- Section 15(1) every individual is equal before and under the law ...without discrimination based on... mental disability

Charter Requirements

- Section 10 “Everyone has the right on arrest or detention to be informed promptly of the reasons: to retain and instruct counsel without delay and to be so informed, and to have the validity of the detention determined by means of habeas corpus and to be released if the detention is not lawful.”
- Section 12 “everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

And now back to
Manitoba



Manitoba MHA Definitions

- Mental disorder
- "mental disorder" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include a disorder due exclusively to a mental disability as defined in The Vulnerable Persons Living with a Mental Disability Act;

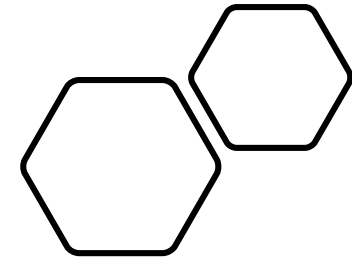
So how do you
get admitted
to a psychiatric
unit/facility?

- Voluntary
- Involuntary
 - Form 1 and 2
 - Emergency action by police
 - Form 4

SCHEDULE/ANNEXE

COLUMN 1/COLONNE 1	COLUMN 2/COLONNE 2
Brandon Regional Health Centre, Brandon Centre de santé régional de Brandon, Brandon	Centre for Adult Psychiatry and Centre for Geriatric Psychiatry/ Centre psychiatrique pour adultes et Centre de gérontopsychiatrie
Child and Adolescent Treatment Centre, Brandon/ Child and Adolescent Treatment Centre, Brandon	Entire centre/ L'ensemble des installations
Dauphin Regional Health Centre, Dauphin/ Centre de santé régional de Dauphin, Dauphin	Parkland Mental Health Centre/ Centre de santé mentale de Parkland
Eden Mental Health Centre, Winkler/ Eden Mental Health Centre, Winkler	Entire centre/ L'ensemble des installations
Grace General Hospital, Winnipeg/ Hôpital général Grace, Winnipeg	Psychiatric Unit and Extended Treatment Area/ Unité psychiatrique et aire de soins prolongés
Health Sciences Centre, Winnipeg/ Centre des sciences médicales, Winnipeg	PsychHealth Building/ Edifice PsychHealth
Manitoba Adolescent Treatment Centre, Winnipeg/ Manitoba Adolescent Treatment Centre, Winnipeg	Entire centre/ L'ensemble des installations
Manitoba Youth Centre, Winnipeg/ Centre manitobain pour la jeunesse, Winnipeg	Entire centre/ L'ensemble des installations
Selkirk Mental Health Centre, Selkirk/ Centre de santé mentale de Selkirk, Selkirk	Entire centre/ L'ensemble des installations
Seven Oaks General Hospital, Winnipeg/ Hôpital général de Seven Oaks, Winnipeg	Area 5A and the Psychogeriatric Unit/ Aire 5A et Unité de soins psychogériatriques
The Pas Health Complex, The Pas/ The Pas Health Complex, The Pas	Psychiatric Unit/ Unité de soins psychiatriques
St. Boniface General Hospital, Winnipeg/ Hôpital général de Saint-Boniface, Winnipeg	McEwen Building/ Edifice McEwen
Thompson General Hospital, Thompson/ Hôpital général de Thompson, Thompson	Psychiatric Unit/ Unité de soins psychiatriques
Victoria General Hospital, Winnipeg/ Hôpital général Victoria, Winnipeg	Psychiatric Unit/ Unité de soins psychiatriques

M.R./R.M. 151/2000; 168/2000; 173/2018



Voluntary Admission

- Criteria met if admitting physician is of the opinion that the person is
 - Suffering from a mental disorder.
 - is mentally competent to consent and consents to the admission.
 - needs psychiatric assessment and treatment of a kind that can only be provided in a facility.

Involuntary admission routes

- Physician's application
 - Justice' order
 - Peace officers' authority
 - Involuntary Psychiatric Assessment[Form 4]
-
- Note: Family can't "sign them in" to a facility, although this is still a fairly common belief

Justice's Order for Involuntary Medical Examination

- Any person may apply to a justice for the province of Manitoba for an order
- Requires written application under oath, stating reasons
- Justice considers application as well as evidence of any witnesses
- Justice may consider application without notice to person named in the application

Justices Order for Involuntary Medical Examination (cont'd)

- Criteria; The justice believes on reasonable grounds that the person
 - Is apparently suffering from a mental disorder
 - Because of the mental disorder is likely to cause serious harm to self or others or to suffer substantial mental or physical deterioration
 - Needs a medical examination to determine whether he or she should undergo a psychiatric assessment and
 - Refuses to be medically examined

Justices Order for Involuntary Medical Examination (cont'd)

- Order is valid for seven days
- The order is authority for a peace officer to take the person into custody as soon as possible, then promptly to a place where the person may be detained and examined involuntarily by a physician



Application for an Order for Involuntary Medical Examination

Formule 1 — Loi sur la santé mentale (article 10, c. M110)

Requête en vue de l'obtention d'une ordonnance d'examen médical obligatoire

To a Justice in and for the Province of Manitoba / À un juge dans et pour la province du Manitoba :

I / Je soussigné(e), _____, of / de _____, of / et résidant à (au) _____.

apply for an order for the involuntary medical examination, by a physician in Manitoba, of / demande que soit rendue une ordonnance obligatoire, à être examiné(e) par un médecin au Manitoba _____.

Date of birth / né(e) le _____ of / et résidant à (au) _____.

Family physician (if known) / Médecin de famille (s'il est connu) _____.

Hospital where current clinical records held (if known) / Hôpital où sont gardés les dossiers médicaux actifs (s'il est connu) _____.

My reasons for this application are as follows / Les motifs de ma requête sont les suivants :

1. The person named above is apparently suffering from a mental disorder because / La personne susmentionnée a, en apparence, des troubles mentaux étant donné que _____.

Because of the mental disorder, the person is likely to cause serious harm to himself or herself or another person or to suffer substantial mental or physical deterioration because / En raison de ces troubles mentaux, la personne risque de s'infliger ou d'infliger à autrui un dommage grave ou de subir une détérioration mentale ou physique importante étant donné que _____.

3. The person needs a medical examination to determine whether he or she should undergo a psychiatric assessment because / La personne a besoin d'un examen médical afin qu'on détermine si elle doit subir une évaluation psychiatrique étant donné que _____.

4. The person refuses to be medically examined. My reasons for so believing are / La personne refuse de subir un examen médical. Les raisons qui me portent à croire cela sont : _____.

SWORN/AFFIRMED BEFORE ME on / FAIT SOUS SERMENT OU AFFIRMÉ SOLENNELLEMENT DEVANT MOI le _____ at / à _____, Manitoba / au Manitoba.

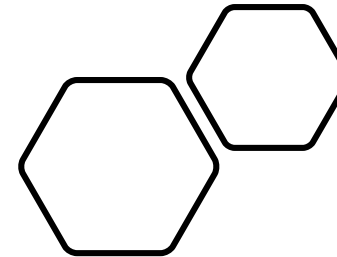
(Signature of Applicant / Signature du requérant)

An (check appropriate box) / cochez la case appropriée :

Order for Involuntary Medical Examination issued on / Ordonnance d'examen médical obligatoire délivrée le _____

Order for Involuntary Medical Examination not granted on / Requête en vue de l'obtention d'une ordonnance d'examen médical obligatoire rejetée le _____.

Additional information attached / Renseignements supplémentaires ci-jointés



Form 2 — The Mental Health Act, c. M110 (section 11)
Order for Involuntary Medical Examination
Formule 2 — Loi sur la santé mentale (article 11, c. M110)
Ordonnance d'examen médical obligatoire



To / Destinataire(s) : _____
(named peace officer or all peace officers of the area within my jurisdiction /
agent de la paix désigné ou agents de la paix de la localité dans laquelle j'ai compétence)

1. An application under oath has been made before me requesting an order for the involuntary examination of / Une requête faite sous serment m'a été présentée en vue de l'obtention d'une ordonnance obligeant _____
(name / nom)

Date of Birth / né(e) le _____ by a physician in Manitoba / à être examiné(e) par un médecin du Manitoba.
(day, month, year / jour, mois, année)

2. I have considered the application and the evidence before me and I believe on reasonable grounds that the person / J'ai étudié la requête et la preuve présentée à l'appui de celle-ci et j'ai des motifs raisonnables de croire que la personne susmentionnée :

- a) is apparently suffering from a mental disorder / a, en apparence, des troubles mentaux;
- b) because of the mental disorder, is likely to cause serious harm to himself or herself or to another person or to suffer substantial mental or physical deterioration / risque de s'infliger ou d'infliger à autrui un dommage grave ou de subir une détérioration mentale ou physique importante en raison des troubles mentaux;
- c) needs a medical examination to determine whether he or she should undergo a psychiatric assessment; and / a besoin d'un examen médical afin qu'on détermine si elle doit subir une évaluation psychiatrique;
- d) refuses to be medically examined / refuse l'examen médical.

I HEREBY ORDER that / J'ORDONNE PAR LES PRÉSENTES que _____
(name / nom)

be taken into custody as soon as possible and then promptly to / soit appréhendé(e) dès que possible et amené(e) rapidement au (à)

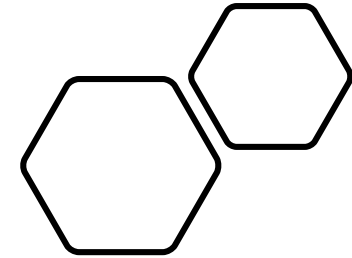
_____ (place of examination / lieu de l'examen médical)

to be detained and examined involuntarily by a physician / afin qu'il (elle) y soit détenu(e) et subisse un examen médical obligatoire.

Signed on / Signé le _____, at / à _____, Manitoba / au Manitoba.
(day, month, year / jour, mois, année)

(Justice / Juge)

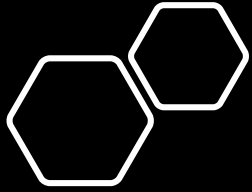
(Court / Tribunal)



Peace Officer's authority

- Criteria: the peace officer believes on reasonable grounds that the person:
 - has threatened or attempted to cause bodily harm to self
 - has behaved violently towards others or caused others to fear bodily harm from self, or
 - have shown a lack of competence to care for self





Peace Officer's Authority (cont'd)

- The peace officer is of the opinion that the person is apparently suffering from a mental disorder that will likely result in serious harm to self or others or in substantial medical or physical deterioration to self , and
- The urgency of the situation does not allow for an order for involuntary medical examination



Notice to Person in custody (Form 3)

- A peace officer takes a person into custody for an involuntary medical examination, or an involuntary psychiatric assessment must promptly inform the person in writing as to:
 - Where the person is being taken
 - Why the person is being taken for an involuntary medical exam or psychiatric assessment , and
 - The person's right to retain and instruct counsel

Peace Officer's duty

- The peace officer must remain with the person and then retain custody of him or her, or arrange for another peace officer to do so until the involuntary medical examination or the involuntary psychiatric assessment is completed, or the physician conducting the examination /assessment advises that continuing custody is not required

Peace Officer's duty (cont'd)

- if the physician does not apply for an involuntary psychiatric assessment, or the person is not admitted to the facility, the peace officer shall, if practical , arrange for the person to be returned to the place from which he or she was taken, or to another appropriate place

Criteria for Involuntary Psychiatric Assessment[Form 4]

- **Physician may apply for involuntary psychiatric assessment**

When a physician examines a person and is of the opinion that he or she

- (a) is suffering from a mental disorder;
 - (b) because of the mental disorder, is likely to cause serious harm to himself or herself or to another person, or to suffer substantial mental or physical deterioration; and
 - (c) is unwilling to undergo or is not mentally competent to consent to a voluntary psychiatric assessment;
 - the physician may apply to the medical director of a facility for an involuntary psychiatric assessment of the person.
 - Comments- How likely does the risk have to be? What is serious? How imminent does the risk of either harm or deterioration have to be? What if the person is already “deteriorated”?
-
- This can be completed in Emergency or in your office.



Physicians Application for Involuntary Psychiatric Assessment

- Must be completed within two days after the examination
- Valid for seven days
- Authorizes any peace officer to take the person into custody then promptly to a hospital with a psychiatric facility
- Sufficient authority for “ for the person to be detained, restrained and observed in a facility for not more than 72 hours;

Involuntary Medical Examination

- A person in custody for examination under a justice's order or a peace officer's authority must be examined as soon as reasonably possible, but not later than 24 hours after the person arrives at the place of examination.
- Wherever practical the examination must take place in an appropriate health care setting.
- The Act provides that the peace officer may enter any premises in order to take a person into custody.



Application by Physician for Involuntary Psychiatric Assessment

Formulaire 4 — Loi sur la santé mentale (article 8, c. M110)

Demande d'évaluation psychiatrique obligatoire

To the Medical Director of / Au directeur médical de _____ (facility / nom de l'établissement)

I / Je soussigné(e), _____, of / de _____ (name of physician / nom du médecin) (address of physician / adresse du médecin)

being a physician in Manitoba, state that / suis médecin au Manitoba et déclare ce qui suit :

1. On / Le _____, I personally examined / j'ai personnellement examiné _____, of / de _____ (day, month, year / jour, mois, année) (name / nom) (address / adresse)

2. I am of the opinion that (check appropriate box(es)) / Je suis d'avis (cochez la ou les cases appropriées) :
- a) the person is suffering from a mental disorder and because of the mental disorder, he or she is likely to / que la personne a des troubles mentaux et, en raison de ce fait, qu'elle risque :
 - cause serious harm to himself or herself or / de s'infliger un dommage grave;
 - cause serious harm to another person or / d'infliger à autrui un dommage grave;
 - suffer substantial mental or physical deterioration; and / de subir une détérioration mentale ou physique importante;
 - b) the person is / que la personne :
 - unwilling to undergo a voluntary psychiatric assessment; or / refuse de subir une évaluation psychiatrique volontaire;
 - not mentally competent to consent to a voluntary psychiatric assessment. In determining that the person is not mentally competent to consent, I have considered whether the person understands the nature and purpose of an assessment and whether the person's condition affects his or her ability to appreciate the consequences of giving or withholding consent / est mentalement incapable de consentir à une évaluation psychiatrique volontaire. En déterminant si la personne est mentalement capable de consentir, je me suis demandé si elle comprenait la nature et le but de l'évaluation et si son état influait sur sa capacité d'évaluer les conséquences d'un consentement ou d'un refus de consentir.

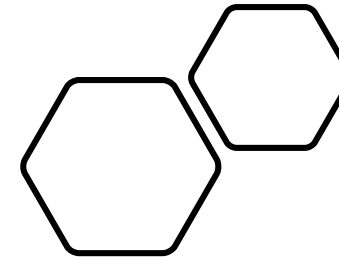
3. The facts on which I base my opinion are / Les faits sur lesquels repose mon opinion sont les suivants :
- a) those observed by me / ceux que j'ai observés moi-même : _____
 - b) those communicated to me by others / ceux qui m'ont été communiqués par d'autres personnes : _____

4. I have inquired carefully into the facts necessary to form my opinion / J'ai examiné soigneusement les faits qui m'ont permis de me former une opinion.

5. I HEREBY APPLY for an involuntary psychiatric assessment of the person / Par conséquent, JE DEMANDE PAR LES PRÉSENTES l'évaluation psychiatrique obligatoire de la personne.

Signed on / Signé le _____, at / à _____, Manitoba / au Manitoba.

(Physician / Médecin)



So what to do if one of your patient's is seen and you are of the opinion that they must have an assessment by a psychiatrist and they refuse?

- Well, it's going to throw your schedule off
- A Form 4 can be completed- not available on line-can get one by calling CRC or the Chief Psych office 204-788-6676-but this will take some time
- If you feel the threat is imminent can call 911
- If you have a Form 4- complete then
 - Call Duty Inspector 204-986-6033, explain situation and which hospital to bring patient to
 - Call ERP, ask to talk also with PEN or Psych on call and Fax over relevant info
 - <https://professionals.wrha.mb.ca/old/professionals/primary-care-providers/files/APPENDIXDGuide.pdf>

Involuntary Psychiatric Assessment/ Admission

- Criteria : the psychiatrist is of the opinion that the person
 - is suffering from a mental disorder
 - Because of the mental disorder, is likely to cause serious harm to self or others, or to suffer substantial mental or physical deterioration if not detained in a facility, and
 - Needs continuing treatment that can reasonably be provided only in a facility, and
 - Cannot be admitted as a voluntary patient because he or she refuses or is not mentally competent to consent to voluntary admission

Involuntary Psychiatric Assessment/ Admission (cont'd)

- The examining psychiatrist must not be the same physician who applied for the involuntary psychiatric assessment
- The psychiatric examination must be completed within 72 hours after the person is detained in the facility

Involuntary psychiatric assessment / admission (cont'd)

- After assessing the person the psychiatrist must
- Admit the person as a voluntary patient, or
- Admit the person as an involuntary patient, or
- Release the person
- An involuntary admission certificate is authority to detain, restrain, observe, examine and treat the patient in a facility for up to 21 days

Treatment Decisions if Competent

- Any competent patient has the right to consent or refuse to consent to treatment
- As soon as reasonably possible after admission to a facility every patient must be assessed by their attending physician to determine their medical competence to make treatment decisions

Treatment Decisions if Competent (cont'd)

- In the absence of evidence to the contrary, it is presumed for the purpose of the act that
 - A person who is 16 years of age or more is mentally competent to make treatment decisions and to consent and;
 - a person who is under 16 years of age is not mentally competent to make treatment decisions or to consent

Certificate of Incompetence to Make Treatment Decisions

- Criteria: the attending physician considers
 - whether the patient understands
 - The condition for which the treatment is proposed
 - The nature and purpose of the treatment
 - The risks and benefits involved in undergoing the treatment, and;
 - The risks and benefits involved in not undergoing the treatment, and
 - Whether the patient's mental condition affects his or her ability to appreciate the consequences of making a treatment decision

Treatment Pending Consent

- Pending consent on a patient's behalf, psychiatric treatment may be given without consent to a patient in order to prevent harm to the patient or another person.
- Emergency medical treatment may be given to a patient without consent, if there is an imminent and serious danger to the patient's life, limb or vital organ and the patient
 - in the opinion of a physician, is not mentally competent or
 - is otherwise unable to give consent



Certificate of Incapacity (Form 21)

- Initiates application for Order of Committeeship
- Applies to individuals who are about to be discharged from a psychiatric facility, or in another health care setting or are residing in the community
- Does not apply if the incapacity is due solely to a mental disability as defined in the Vulnerable Persons Living with a Mental Disability Act
- Completed by any *physician* licensed to practice in Manitoba
 - Residents can complete, but no other health care provider besides physicians on the CPSM registry



Certificate of Incapacity

Formule 21 — Loi sur la santé mentale (paragraphe 60(1), c. M110)

Certificat d'incapacité

To the Director of Psychiatric Services / Au directeur des Services psychiatriques :

Re / Objet : _____
(name of person / nom de la personne)

of / de _____
(address / adresse de la personne)

a person who is not a patient in a facility or who is a patient about to be discharged from a facility / n'est pas un malade dans un établissement ou est un malade sur le point d'obtenir son congé d'un établissement.

I / Je soussigné(e), _____
(name of physician / nom du médecin)

being a physician in Manitoba, certify that / médecin au Manitoba, certifie ce qui suit :

1. I examined the person named above on / J'ai examiné la personne susmentionnée le _____
(date(s) — day, month, year / date(s) — jour, mois, année)

2. I am of the opinion that / Je suis d'avis :

- a) because of a mental condition, the person is incapable of managing his or her property or of personal care; and / qu'en raison de son état mental, la personne touchée est incapable de gérer ses biens ou de s'occuper de ses soins personnels;
- b) the incapacity is not due exclusively to a mental disability as defined in The Vulnerable Persons Living With a Mental Disability Act / que l'incapacité n'est pas uniquement attribuable à une déficience mentale au sens de la Loi sur les personnes vulnérables ayant une déficience mentale.

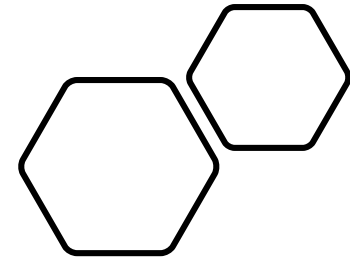
In forming my opinion, I have considered all the relevant circumstances, including the following / Afin de me former une opinion, j'ai tenu compte de toutes les circonstances pertinentes, et notamment :

- a) the nature and severity of the person's mental condition / de la nature et de la gravité de l'état mental de la personne;
- b) the effect of the person's mental condition on his or her ability to manage property and capacity for personal care / des conséquences de l'état mental de la personne sur sa capacité de gérer ses biens et de s'occuper de ses soins personnels;
- c) the nature of the person's property and personal care requirements and any arrangements known to me that the person made, while competent, for the management of property and the appointment of a proxy; and / de la nature des biens de la personne et de ses besoins en matière de soins personnels ainsi que des mesures dont j'ai connaissance et que la personne a prises, pendant qu'elle était capable, en vue de la gestion de ses biens et de la nomination d'un mandataire;
- d) whether or not decisions need to be made on the person's behalf about that property or with respect to personal care / de la question de savoir si des décisions doivent être prises au nom de la personne au sujet de ses biens ou à l'égard de ses soins personnels.

4. I am of the opinion that the person named above is incapable of managing his or her property or of personal care for the following reasons / Je suis d'avis que la personne susmentionnée est incapable de gérer ses biens ou de s'occuper de ses soins personnels pour les motifs suivants :

Signed on / Signé le _____, at / à _____, Manitoba / au Manitoba.
(day, month, year / jour, mois, année)

(Physician / Médecin)



Certificate of Incapacity- Meaning of Incapacity for Personal Care

- A person is incapable of personal care if he or she, because of a mental incapacity, is repeatedly or continuously unable
 - To care for himself or herself and
 - To make reasonable decisions about matters relating to his or her person or appreciate the reasonably foreseeable consequences of a decision or lack of decision

Certificate of Incapacity- Criteria

- Criteria: the physician must personally examine the person and consider relevant circumstances
 - Nature and severity of person's mental condition
 - Effect on person's mental condition on ability to manage property and capacity for personal care
 - Nature of persons property and personal care requirements and any arrangements known to the physician that the person made, well competent, for the management of property and the appointment of a proxy, and
 - Whether or not decisions need to be made on the person's behalf about their property or personal care
-



Certificate of Incapacity - reasons

- The physician must provide detailed reasons regarding the person's incapacity and submit the form to the chief psychiatrist's office within 30 days of the examination of the patient. Reasons for the incapacity finding may include
 - Mental status, diagnosis or provisional diagnosis
 - Confusion, disorientation, memory deficits
 - Impaired insight, poor judgment
 - Diminished ability to care for self adequately
 - Lack of realistic / rational thinking concerning handling personal and/ or financial matters

Certificate of Incapacity - background/ additional information

- Although the Mental Health Act does not specifically mention the need for a “social history” to accompany the Certificate of Incapacity, the following procedure note does require this (HCS 210.6 Jan 2006)
- https://residents.gov.mb.ca/forms.html?d=details&pub_id=1420&filter_dept=161&filter_type=policies
- The social history must include detailed information including but not limited to
 - past and current personal, family, functional, medical and psychiatric information, including any diagnosis
 - Birthdate, address, marital status
 - Names, addresses, relationships of nearest relatives
 - Financial information, power of attorney [as much information as is available]
 - Names, phone numbers of relevant health care staff, combined with other information considered applicable

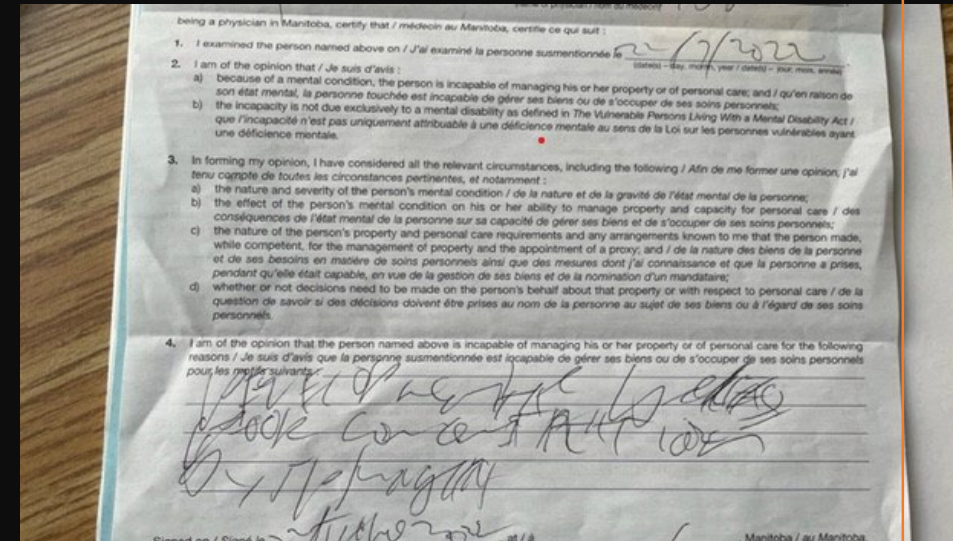
Certificate of Incapacity background- additional information

- The applicant should inform the person and the nearest relatives about the application for an Order of Committeeship, including reasons
- The nearest relatives' names and addresses are required to enable proper notifications under the act
- Preferably the Certificate of Incapacity and the social history are submitted simultaneously to expedite the process

Order of Committee :Director may require information

- MHA 60 [5] To assist in deciding whether to give notice of intent to issue an order, the director may require any person with relative information about the person who is subject of the Certificate of Incapacity to provide that information to the director
- 114 [2] [c] The director may require any person to provide information when the information is required for the purpose of carrying out the director's duties under the Act

- Can you read this?



Can I justify taking away someone's rights based on this?

...ined the person named above on / J'ai examiné la personne susmentionnée le 12th of August 2022
(date(s) - day, month, year / date(s) - jour, mois, année)

...of the opinion that / Je suis d'avis :
...because of a mental condition, the person is incapable of managing his or her property or of personal care; and / qu'en raison de
...n état mental, la personne touchée est incapable de gérer ses biens ou de s'occuper de ses soins personnels;
...the incapacity is not due exclusively to a mental disability as defined in The Vulnerable Persons Living With a Mental Disability Act /
...ve l'incapacité n'est pas uniquement attribuable à une déficience mentale au sens de la Loi sur les personnes vulnérables ayant
...une déficience mentale.

...ing my opinion, I have considered all the relevant circumstances, including the following / Afin de me former une opinion, j'ai
...ompte de toutes les circonstances pertinentes, et notamment :
...the nature and severity of the person's mental condition / de la nature et de la gravité de l'état mental de la personne;
...the effect of the person's mental condition on his or her ability to manage property and capacity for personal care / des
...onséquences de l'état mental de la personne sur sa capacité de gérer ses biens et de s'occuper de ses soins personnels;
...the nature of the person's property and personal care requirements and any arrangements known to me that the person made,
...while competent, for the management of property and the appointment of a proxy; and / de la nature des biens de la personne
...de ses besoins en matière de soins personnels ainsi que des mesures dont j'ai connaissance et que la personne a prises,
...pendant qu'elle était capable, en vue de la gestion de ses biens et de la nomination d'un mandataire;
...whether or not decisions need to be made on the person's behalf about that property or with respect to personal care / de la
...uestion de savoir si des décisions doivent être prises au nom de la personne au sujet de ses biens ou à l'égard de ses soins
...personnels.

...of the opinion that the person named above is incapable of managing his or her property or of personal care for the following
...ns / Je suis d'avis que la personne susmentionnée est incapable de gérer ses biens ou de s'occuper de ses soins personnels
...es motifs suivants :

due to Abuse Related Reasons
he has dementia also having MOC 14/30

... / Signé le August 2022 at Be... , Manitoba / au Manitoba.

Order of
Committeeship
CPSM link

- <https://cpsm.mb.ca/news/certificates-of-incapacity-form-21-of-the-mental-health-act>

Committees

- A committee is the person or persons, including the public trustee , appointed to be responsible for an individual's property or the individual's property and personal care

Committees [continued]

- Court appointed committee [private committee]- the court may appoint a committee of property or a committee of both property and personal care
- Committeeship without a court order [Order of Committeeship]- the Director of Psychiatric Services may appoint public trustee's committee of both property and personal care.
- Certificate of Incompetence to manage property- the medical director of a psychiatric facility may temporarily appoint the public trustee as committee of both property and personal care for a psychiatric in-patient

Committees- purpose

- To provide protection for the property or property and personal care of an individual who is vulnerable as a result of mental incompetence.
- To protect mentally incompetent individuals from significant risk of neglect, physical or emotional abuse or financial exploitation
- To protect mentally incompetent individuals who do not have family or others to assist them, or when those assisting them are not acting in their best interests

Order of Committeeship

- The Director of Psychiatric Services or their designate reviews Certificate of Incapacity
- Director reviews social history and may request any relevant additional information
- Notice of intent to issue order is sent to person, persons proxy and nearest relative.
- The notice of intent is sent by first class mail and is considered received five days after being sent. There are another seven days to submit a written objection to the director's office
- The director must be satisfied that the person's incapacity is not due exclusively to a mental disability as defined under the Vulnerable Persons Act

Emergency Order of Committeeship

- Applicable only if the director believes on reasonable grounds that the person needs a committee on an urgent basis because
 - there is immediate danger of health or serious harm or deterioration to the physical or mental health of the person, or of serious loss to his or her property and
 - The person needs decisions to be made on his or her behalf to prevent that danger
- Supporting documentation must clearly substantiate the need for an emergency order

Emergency Order of Committeeship[cont'd]

- All of the same initial criteria for non urgent order must be met for an emergency order
- Certificate of Incapacity must be completed by a physician who personally examined the person
- Social history, and
- any other information necessary to assist in making a decision

- all the same methods for canceling a non urgent order are available for canceling an emergency order

I Object your Chiefship

The director shall consider any objection received and review all of the information that the person or someone on his or her behalf, and the person's proxy or nearest relative, wishes to provide as to why an order should not be issued.

About 10-20% of certificates receive objections. The director may choose to hold an objection interview with both parties, and request further information. Often a trial period is given for the patient (and/or their support system) to make alternate arrangements to assist and protect them. Balance between autonomy and protecting.

Usually before Certificate of Incapacity is sent in, patient and family given opportunity to make arrangements to safeguard property.

If patient/family/proxy disagree with Director's decision, may apply to Court within 30 days



Order of Committeeship[continued]

- If the director is satisfied that it would be in the best interests of the person, an Order of Committeeship is issued appointing the public trustee as committee of both property and personal care.
- The director sends a copy of the order and certificate to the person, and the persons proxy and nearest relative, and
- informs them of the right to apply to the court within 30 days to cancel the order or to appoint another person as Committee

Order of Committeeship- Director may require information [continued]

- 114 [2] [b] the director may interview relatives and any other persons as to the history and circumstances of a patient or person for whom a committee may be appointed under part 8 [Committeeship without a court order]
- 114 [2] [d] the director may consult with any medical or other experts he considers advisable concerning a patient or a person for whom a committee may be appointed under part 8 of the MHA

Order of Committeeship- determining best interests

- The director considers all relevant circumstances, including
 - Whether the persons property or personal care will be or is likely to be properly protected by the order
 - Whether the person's property or personal care will deteriorate or is likely to deteriorate without the order
 - Whether the anticipated benefit of the order outweighs the risk of harm to the person or their property and
 - Whether the order is the least restrictive and least intrusive action available that satisfies the foregoing

Order of Committeeship- process

- In issuing an order, the director ensures that
 - Comprehensive information is gathered to make an informed objective determination of incompetence and of the need for an order
 - Proper notifications are made regarding the notice of intent and the order including the methods to apply for cancellation
 - The information on which the notice/ order is based is shared upon request pursuant to PHIA, and;
 - The director shall consider any objection received and review all of the information that the person or someone on his or her behalf, and the person's proxy or nearest relative, wishes to provide as to why an order should not be issued.

Cancellation of Order of Committeeship

- The public trustee, after investigation, may decide not to continue to act, in favor of pre-existing valid enduring power of attorney
- Committee is appointed for the incapable person in another jurisdiction
- A physician may determine the person is no longer incapable and request cancellation by the director [Form 23]

Notice of Cancellation of Certificate of Incapacity and Order of Committeeship

- At the request of the director, or the person or his or her proxy or nearest relative, physician reviews the person's condition to determine if the person is no longer incapable
- Physicians statement that person is no longer incapable of managing property or personal care, with reasons, is filed with the director
- The director may require additional information
- Notice is sent to the person, the person's proxy, and nearest relative and the Public Trustee



Physician's Statement that Person is No Longer Incapable of Managing Property or of Personal Care

Formule 23 — Loi sur la santé mentale (paragraphe 66(1) et 66(2), c. M110)

Déclaration du médecin indiquant qu'une personne n'est plus incapable de gérer ses biens ou de s'occuper de ses soins personnels

To the Director of Psychiatric Services / Au directeur des Services psychiatriques :

Re / Objet : _____
(name of person / nom de la personne)

of / de _____
(address / adresse de la personne)

I / Je soussigné(e), _____
(name of physician / nom du médecin)

being a physician in Manitoba, state that / *médecin au Manitoba, déclare ce qui suit :*

1. An Order of Committeeship is in effect for the person named above / Un ordre de nomination du curateur public est en vigueur à l'égard de la personne susmentionnée.

2. I examined the person on / J'ai examiné la personne le _____
(date(s) — day, month, year / date(s) — jour, mois, année)
to determine if he or she is no longer incapable of managing his or her property or of personal care / afin de déterminer si elle est toujours incapable de gérer ses biens ou de s'occuper de ses soins personnels.

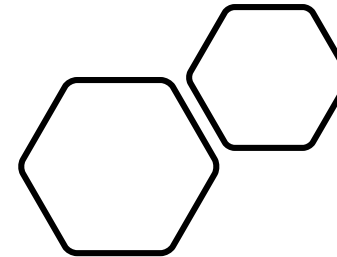
3. I have considered all the relevant circumstances, including the following / J'ai tenu compte de toutes les circonstances pertinentes, notamment :

- a) the nature and severity of the person's mental condition / de la nature et de la gravité de l'état mental de la personne;
- b) the effect of the person's mental condition on his or her ability to manage property and capacity for personal care / des conséquences de l'état mental de la personne sur sa capacité de gérer ses biens et de s'occuper de ses soins personnels;
- c) the nature of the person's property and personal care requirements and any arrangements known to me that the person made, while competent, for the management of property and the appointment of a proxy; and / de la nature des biens de la personne et de ses besoins en matière de soins personnels ainsi que des mesures dont j'ai connaissance et que la personne a prises, pendant qu'elle était capable, en vue de la gestion de ses biens et de la nomination d'un mandataire;
- d) whether or not decisions need to be made on the person's behalf about that property or with respect to personal care / de la question de savoir si des décisions doivent être prises au nom de la personne au sujet de ses biens ou à l'égard de ses soins personnels.

4. I am of the opinion that the person named above is no longer incapable of managing his or her property or of personal care for the following reasons / Je suis d'avis que la personne susmentionnée n'est plus incapable de gérer ses biens ou de s'occuper de ses soins personnels pour les motifs suivants :

Signed on / Signé le _____, at / à _____, Manitoba / au Manitoba.
(day, month, year / jour, mois, année)

(Physician / Médecin)



Thanks for your attention!

??Questions??

!!Comments!!



Order for Returning Patient Absent Without Permission

- The medical director may issue an order to have a patient absent without permission returned to the facility by a peace officer
- Order applies to voluntary patient only if patient
 - May be danger to self or others or
 - May suffer substantial mental or physical deterioration if not detained in a facility.
- Voluntary patient is examined upon return to determine if status should be involuntary.

Authorization of Transfer for Involuntary Patients

- Transfer out of Manitoba if
 - Hospitalization is arranged in another jurisdiction
 - Director he is satisfied that the patient's hospitalization is in the other jurisdiction's responsibility, or is in the patient's best interest to be hospitalized in the other jurisdiction, and
 - Patient or treatment decision maker consents to transfer
- Transfer into Manitoba if
 - Manitoba is responsible for the patients hospitalization or
 - It is in the patient's best interest to be in a Manitoba facility

Involuntary Psychiatric Admission- Renewal Certificate

- may be issued if in the attending psychiatrists is of the opinion the criteria for involuntary admission continue to be met
- Renews the patients involuntary status for not more than three months
- Each subsequent renewal certificate renews the patient's involuntary status for a further period of not more than three months

Involuntary Psychiatric Admission to Voluntary

- If at any time the attending physician is of the opinion that the criteria for involuntary admission are no longer met but the requirements for voluntary admission are met the physician must change the patient's admission status to voluntary.
- An involuntary patient becomes voluntary if a renewal certificate is not issued or if an involuntary admission certificate or renewal certificate expires.

Clinical Record

- A patient has the right to make a written request to the medical director to examine, copy and correct his or her clinical record.
- Disclosure of information is prohibited without
 - the mentally competent patients consent
 - The guardian's consent if an incompetent minor, or
 - The consent of the incompetent patients committee of both property and personal care
- disclosure without consent provisions are similar to PHIA. FIPPA does not apply

Disclosure without Consent

- To a person on the staff of the facility or a student directly involved in the patient's care, for the purpose of assessing her treating the patient
- To the medical director of another facility currently involved in the patients direct care
- To a person who is providing health care to the patient, to the extent necessary to provide that care, unless the patient, while competent, has instructed the medical director not to disclose

Patient's Application to Mental Health Review Board

- If the treatment decision maker makes a decision contrary to a healthcare directive , the patient may apply to the Review Board for an order requiring the attending physician and the facility to comply
- The review board must stop order unless
 - the decision contrary to the health care directive is in the patient's best interests and
 - all relevant circumstances have been considered , including whether the patient would now, given the circumstances, alter those wishes if competent to do so

Physician's Application to Mental Health Review Board

- If treatment decision maker refuses to consent to treatment, the attending physician may apply to the review board for an order authorizing specified psychiatric and related medical treatment.
- The review board must consider all relevant circumstances including
 - any wishes the patient expressed about the treatment while mentally competent, and;
 - if the patient would now, given the circumstances, alter those wishes if competent to do so

Outline

- Introduction
- Admission Procedures
- Treatment decisions
- Clinical records
- Public Trustee Involvement
- Leave Certificate
- Review Board

*The Mental Health Act of
Manitoba*

An Overview

Certificate of Incompetence to Manage Property (Form 10)

- Criteria: the attending physician considers:
 - Nature and severity of patients and mental condition
 - Effect on the patient's condition on ability to manage property
 - Nature of the property and any arrangements known to the physician that the patient made, while competent, for its management
 - Whether or not decisions need to be made on the patient's behalf about that property

Disclosure without Consent [continued]

- To the person authorized to make treatment decisions on the patient's behalf, for the sole purpose of making those decisions
- To any person, if the medical director reasonably believes the disclosure is necessary to prevent or lessen a serious and immediate threat to the mental or physical health or the safety of the patient or another person
- To the mental health review board for a hearing

Certificate of Incompetence to Manage Property [continued]

- On receiving the certificate, the medical director shall, if satisfied the physician's opinion is supported by the reasons given:
 - Send a copy to the public trustee, the patient and the patient's nearest relative, and
 - Inform the patient and nearest relative in writing of the effect of the certificate, the right to apply to the review board to cancel a certificate, and that the Public Trustee be informed if the patient has given an enduring power of attorney
- The Public Trustee becomes committee of both property and personal care for the patient

The [Madhouses Act 1774](#) created a Commission of the [Royal College of Physicians](#) with powers to grant licences to premises housing "lunatics" in [London](#); [Justices of the Peace](#) were given these powers elsewhere in England and Wales. Failure to gain a licence resulted in a hefty fine. Admission to a "madhouse" required certification signed by a doctor, and lists of detained residents became available for public inspection.^[2] This Act was later considered ineffectual and was repealed by the [Madhouses Act 1828](#), itself repealed shortly afterwards by the [Madhouses Act 1832](#).^[3] These Acts altered the composition of the Commission in several ways, such as including barristers in addition to doctors.

The [Lunacy Act 1845](#) and the [County Asylums Act 1845](#) together gave [mental hospitals](#) or "[asylums](#)" the authority to detain "lunatics, idiots and persons of unsound mind". Each county was compelled to provide an asylum for "pauper lunatics", who were removed from workhouses into the aforementioned asylums. The Lunacy Commission was established to monitor asylums,^[4] their admissions, treatments and discharges.

Both these acts were repealed by the [Lunacy Act 1890](#). This introduced "reception orders", authorising detention in asylums.^[5] These orders had to be made by a specialised Justice of the Peace and lasted one year. Thereafter, detention could be renewed at regular intervals by submission of a medical report to the Lunacy

Commission.^[3] The [Mental Deficiency Act 1913](#) renamed the Lunacy Commission the "Board of Control" and increased the scope of its powers. The functions of the Board of Control were subsequently altered by the [Mental Treatment Act 1930](#) and the [National Health Service Act 1946](#).^[6]

The Lunacy Act 1890 was repealed following [World War II](#) by the [Mental Health Act 1959](#). This Act abolished the Board of Control, and aimed to provide informal treatment for the majority of people with mental disorders, whilst providing a legal framework so that people could, if necessary, be detained in a hospital against their will. It also aimed to make local councils responsible for the care of mentally disordered people who did not require hospital admission.^[7]

However, like its predecessors, the 1959 Act did not provide clarity as to whether a legal order to detain a mentally disordered person in a hospital also empowered the hospital to impose medical treatment against the person's wishes.^[8] It had become clear by the 1970s that a specific legal framework for medical treatments such as [psychiatric medications](#), [electroconvulsive therapy](#) and [psychosurgery](#) was needed in order to balance the rights of detained

Outline

- Introduction
- Admission procedures
- Treatment decisions
- Patient rates
- Clinical records
- Public trustee involvement
- Leave certificate
- Review board

ADMINISTERING TREATMENT

No treatment without consent

29(1)

Except as provided in this section, an attending physician shall not administer treatment to a patient

- (a) who is mentally competent to make treatment decisions, without the patient's consent;
- (b) who is not mentally competent to make treatment decisions, without the consent of a person authorized to make treatment decisions on the patient's behalf under subsection 28(1); or
- (c) unless the review board or the court has made an order under subsection 30(3) or Part 7 authorizing the treatment to be given.

Exception for psychiatric treatment to prevent harm

29(2)

Pending consent on a patient's behalf or an order of the review board or the court, psychiatric treatment may be given without consent to a patient in order to prevent harm to the patient or to another person.

Method of psychiatric treatment

29(3)

Psychiatric treatment may be given under this section by the use of such force, mechanical means or medication as is reasonable having regard to the patient's physical and mental condition.

Considerations

60(2)

In forming an opinion under subsection (1), the physician shall consider all the relevant circumstances, including the following:

- (a) the nature and severity of the person's mental condition;
- (b) the effect of the person's mental condition on his or her ability to manage property and capacity for personal care;
- (c) the nature of the person's property and personal care requirements and any arrangements known to the physician that the person made, while competent, for the management of property and the appointment of a proxy; and
- (d) whether or not decisions need to be made on the person's behalf about that property or with respect to personal care.

Certificate of Incapacity

60(3)

A physician who completes a certificate of incapacity shall file it with the director as soon as reasonably possible but not later than 30 days after the person is examined.

Director may require information

60(5)

To assist the director in deciding whether to give notice of an intent to issue an order under subsection (6), the director may require any person with relevant information about the person who is the subject of the certificate of incapacity to provide that information to the director.

Disclosure under Subpoena

- The court may subpoena or order disclosure
- The patient's attending physician may apply to the court for hearing to determine if disclosure would "... reasonably be expected to endanger the mental or physical health or the safety of the person or another person."
- If satisfied that such is likely, the court shall not order disclosure unless it is satisfied that to do so is essential in the interests of justice

Certificate of Incompetence to Manage Property- Duration

- The certificate continues in effect until
 - The certificate is cancelled by the medical director
 - The certificate is cancelled on appeal by order of the mental health review board
 - The court makes an order appointing another committee
 - The public trustee permits a pre-existing enduring power of attorney to resume acting under the power of attorney, or
 - The patient is discharged

Notice of Cancellation of Certificate of Incompetence- Property

- Attending physician periodically reviews the patient's competence to manage property
- Attending physician statement that patient in psychiatric facility has regained competence, with reasons, is filed with the medical director
- If medical director is satisfied the physicians opinion is supported, they cancels the certificate
- Notice of cancellation of certificate of incompetence is sent to the patient, the patient's nearest relative and the public trustee

SCHEDULE/ANNEXE

COLUMN 1/COLONNE 1	COLUMN 2/COLONNE 2
Brandon Regional Health Centre, Brandon Centre de santé régional de Brandon, Brandon	Centre for Adult Psychiatry and Centre for Geriatric Psychiatry/ Centre psychiatrique pour adultes et Centre de gérontopsychiatrie
Child and Adolescent Treatment Centre, Brandon/ Child and Adolescent Treatment Centre, Brandon	Entire centre/ L'ensemble des installations
Dauphin Regional Health Centre, Dauphin/ Centre de santé régional de Dauphin, Dauphin	Parkland Mental Health Centre/ Centre de santé mentale de Parkland
Eden Mental Health Centre, Winkler/ Eden Mental Health Centre, Winkler	Entire centre/ L'ensemble des installations
Grace General Hospital, Winnipeg/ Hôpital général Grace, Winnipeg	Psychiatric Unit and Extended Treatment Area/ Unité psychiatrique et aire de soins prolongés
Health Sciences Centre, Winnipeg/ Centre des sciences médicales, Winnipeg	PsychHealth Building/ Édifice PsychHealth
Manitoba Adolescent Treatment Centre, Winnipeg/ Manitoba Adolescent Treatment Centre, Winnipeg	Entire centre/ L'ensemble des installations
Manitoba Youth Centre, Winnipeg/ Centre manitobain pour la jeunesse, Winnipeg	Entire centre/ L'ensemble des installations
Selkirk Mental Health Centre, Selkirk/ Centre de santé mentale de Selkirk, Selkirk	Entire centre/ L'ensemble des installations
Seven Oaks General Hospital, Winnipeg/ Hôpital général de Seven Oaks, Winnipeg	Area 5A and the Psychogeriatric Unit/ Aire 5A et Unité de soins psychogériatriques
The Pas Health Complex, The Pas/ The Pas Health Complex, The Pas	Psychiatric Unit/ Unité de soins psychiatriques
St. Boniface General Hospital, Winnipeg/ Hôpital général de Saint-Boniface, Winnipeg	McEwen Building/ Édifice McEwen
Thompson General Hospital, Thompson/ Hôpital général de Thompson, Thompson	Psychiatric Unit/ Unité de soins psychiatriques
Victoria General Hospital, Winnipeg/ Hôpital général Victoria, Winnipeg	Psychiatric Unit/ Unité de soins psychiatriques

Mental disorder as defined in the Mental Health Act

- “a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include a disorder due exclusively to a mental disability as defined in the Vulnerable Persons living with a Mental Disability Act .”

Admission to a Psychiatric Facility

- A psychiatric facility is a place designated in the MHA regulations as a facility for the observation, assessment, diagnosis and treatment of persons who suffer from mental disorders.
- Admission to a facility may be voluntary or involuntary.

Physicians Application for Involuntary Psychiatric Assessment

- Criteria: the physician is of the opinion that the person
 - is suffering from a mental disorder.
 - Because of the mental disorder is likely to cause serious harm to self or others or to suffer substantial mental or physical deterioration and
 - Unwilling to undergo or is not mentally competent to consent to a voluntary psychiatric assessment

Public Guardian and Trustee may intervene in emergency

64(1)

As committee under section 61, the Public Guardian and Trustee may take any emergency intervention action that is necessary to protect the incapable person, including removing him or her to a place of safety, if the Public Guardian and Trustee believes on reasonable grounds that

(a) the incapable person is or is likely to be abused or to suffer neglect; and

(b) there is immediate danger of death or serious harm or deterioration to the physical or mental health of the person.

Authority to enter

64(2)

When taking action under this section, the Public Guardian and Trustee may enter any place and take any steps necessary to protect the incapable person, and may use reasonable force to do so, if required.

Peace officer to assist

64(3)

The Public Guardian and Trustee may request the assistance of a peace officer when taking action under this section, and the peace officer shall provide such assistance

United States Supreme Court 1927 Decision on forced sterilization

Oliver Wendell Holmes

- “It is better for all the world, if instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind”

Emergency medical treatment

29(5)

Emergency medical treatment may be given to a patient, without consent, if there is imminent and serious danger to the patient's life or to a limb or vital organ and the patient,

(a) in the opinion of a physician, is not mentally competent;
or

(b) is otherwise unable to give consent.

Certificate of Incompetence to Make Treatment Decisions (cont'd)

- Upon receiving the certificate, the medical director shall, if satisfied the physician's opinion is supported by the reasons given:
 - Send a copy to the patient and the person authorized to make treatment decisions on the patient's behalf, and;
 - Inform them, in writing, of the right to apply to the Review Board for review of the physician's opinion that the person is incompetent to make treatment decisions

Certificate of Incompetence to make Treatment Decisions (cont'd)

- If incompetent, treatment decisions may be made on the patient's behalf by
 - The patient's proxy
 - If there is no proxy the patient's committee of both property and personal care
 - If there is no proxy or committee, the patient's nearest relative, or
 - If the patient is a minor, the patient's guardian

Certificates of Incompetence to Make Treatment Decisions(cont'd)

- To make treatment decisions on the patient's behalf the person must be
 - Apparently mentally competent
 - Available
 - Willing to make the decision
 - No onus on physician to inquire into the existence of a proxy or health care directive
 - Decisions must be in accordance with patients wishes or in the patient's best interests

Nearest Relative Requirements

- A patient's nearest relative other than the public trustee shall not make treatment decisions on behalf of the patient unless he or she
 - Has been in personal contact with the patient within the previous 12 months
 - Is willing to assume the responsibility for making the treatment decisions, and;
 - Makes a statement certifying his or her relationship to the patient and the facts mentioned in the preceding clauses

Nearest Relative - definition

- The adult person listed first, whole blood and elder preferred, regardless of gender
 - Spouse/ common law
 - Child
 - Parent
 - Sibling
 - Grandparent
 - Grandchild
 - Uncle/ aunt
 - Niece/ nephew or
 - Public trustee if no qualifying nearest relative

Treatment Decisions on Patients Behalf

- The treatment decision makers shall make treatment decisions on the patient's behalf
 - in accordance with the patient's wishes expressed when apparently mentally competent, if known or
 - In accordance with the patient's best interests if
 - the person has no knowledge of the patient's expressed wishes, or
 - Following the patient's expressed wishes would endanger the physical or mental health or safety of the patient or others

Determining Best Interests

- The treatment decision maker shall regard all relevant circumstances, including
 - Whether the patient's condition will be or is likely to be improved by the treatment
 - Whether the patient's condition will deteriorate or is likely to deteriorate without treatment
 - Whether the anticipated benefit outweighs the risk of harm to the patient and;
 - whether the treatment is the least restrictive and least intrusive treatment that meets the above

Committees- cont'd

- The Health Care Directives Act provides for the appointment of a proxy to make healthcare decisions on the patient's behalf
- The Powers of Attorney Act provides for the appointment of an attorney to make financial / property decisions on the donor's behalf
- Typically, the family and other supports assist persons who are no longer able to make sound decisions for themselves
- The Public Trustee is a committee of last resort involved only when it is required to do so

Powers of the Public Trustee

- With respect to personal care
 - May determine where and with whom the incapable person shall live
 - Consent to medical or psychiatric treatment or health care if a physician informs the public trustee that the person is not mentally competent to make treatment decisions.
 - Make decisions about daily living, and
 - Commence, continue, settle or defend any claim or legal proceeding