



INFOGUIDE

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VOLUNTARY PATIENTS

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What does it mean to be a voluntary patient?

- “Voluntary patient” is not defined in the *Mental Health Act*. Case law says that voluntary patients are capable of making a decision about staying or leaving the psychiatric or mental health unit of a hospital. Unless otherwise specified, voluntary patients are also presumed to have the capacity to make decisions about their treatment options and personal health information on the basis of informed consent, and to manage their property.
- Section 14 of the *Mental Health Act* says that a psychiatric facility is not allowed to detain a voluntary patient. You are allowed to leave the hospital at any time and the hospital cannot restrain you or stop you from leaving. However, hospital staff may try to stop you from leaving the hospital by, for example, assessing you as an involuntary patient.
- A voluntary patient can be made an involuntary patient if a doctor determines that they meet the requirements set out in the *Mental Health Act* and completes a certificate of involuntary admission (Form 3). Consult the InfoGuide on Involuntary Patients for more information.
- The hospital or doctor should make clear notes in your record of personal health information that you were told that you are a voluntary patient, as well as your agreement to be a voluntary patient.

How do I become a voluntary patient?

- A voluntary patient agrees to be in the hospital for the purposes of observation, care and treatment. If you are receiving care as an involuntary patient, a change to voluntary status does not have to be done with your consent. Once the certificate of involuntary admission is no longer valid, the law presumes you to have voluntary status.
- There are four ways to become a voluntary patient:
 - 1) You are admitted to the hospital as a voluntary patient if a doctor thinks you are in need of observation, care and treatment that can be provided by a hospital.

Example: You go to the hospital because you are feeling unwell and the doctor agrees with you that you should be admitted because you need mental health care.
 - 2) You are detained in the hospital on either an Application for Psychiatric Assessment (Form 1) or you are an involuntary patient with a certificate of involuntary admission (Form 3 or 4) but the doctor does not renew these certificates once they expire.

Example #1: After being detained in the hospital on a Form 1 for 72 hours, the Form 1 expires but the doctor does not complete a certificate of involuntary admission (Form 3).

Example #2: The doctor assesses and places you on a certificate of involuntary admission (Form 3) for two weeks. After the two weeks are over, the doctor does not complete a certificate of renewal of involuntary admission (Form 4).
 - 3) A doctor changes your status as a patient from involuntary to voluntary before your certificate of involuntary admission is finished.

Example: You are detained in the hospital as an involuntary patient on a Form 3 which expires on June 15th. However, the doctor decides on June 10th that you no longer meet the criteria to be an involuntary patient. By completing a document called a Form 5, the doctor cancels the Form 3 and you become a voluntary patient.
 - 4) You are admitted to the hospital as a medical patient but the doctor feels that you should also be a psychiatric patient.

Example: You go to the hospital because you are having chest pains and you are admitted as a medical patient to the cardiac unit. However, the doctor thinks you also meet the criteria to be a psychiatric patient and informs you of this decision.

What are my rights as a voluntary patient?

- Voluntary patients cannot be detained. This means that you should be informed that you are being made a voluntary patient so you can agree to stay in the hospital. Your agreement should be recorded in your record of personal health information.
- You should be allowed to leave the hospital whenever you choose. From a legal standpoint, you do not need a pass, leave of absence or staff permission to leave the hospital. However, some hospitals have clinical or administrative procedures that require patients to be assigned a particular privilege level or be given a pass before they are allowed to leave an inpatient unit or the hospital.
- There is the possibility that if you do not comply with the hospital's passes and privilege levels, the hospital may discharge you, making it difficult for you to obtain help from that same hospital in the future.
- Section 14 of the *Mental Health Act* says you cannot be restrained as a voluntary patient. However, the staff have a duty to restrain you if they feel that such immediate action is necessary to prevent serious bodily harm to you or others. Once you are in restraints, a doctor must promptly assess you to see if the criteria for being an involuntary patient apply to you. If not, then the restraints should be immediately discontinued.

What will happen to me if I try to leave the hospital as a voluntary patient?

- Although you have the legal right not to be detained, the staff may stop you so that the doctor may examine you prior to your departure from hospital to ensure that you do not meet criteria for admission as an involuntary patient.
- While you may choose to exercise your right to leave hospital without consulting with your doctor or nursing staff, your doctor may issue an Application for Psychiatric Assessment (Form 1) if he or she feels that you meet criteria for continued assessment. If a Form 1 is issued, police may return you to hospital.

- Staff may also ask you to sign a document that you are leaving the hospital against medical advice (AMA). You are not legally required to sign such a form.

Can I apply to the Consent and Capacity Board if I'm prevented from leaving although I'm a voluntary patient?

- No. You can only make an application to the Consent and Capacity Board if the doctor makes you an involuntary patient and places you on a certificate of involuntary admission (Form 3 or 4).

Do I have any legal recourse or options if I was prevented from leaving the hospital although I am a voluntary patient?

- Yes. You can make a complaint to the College of Physicians or Surgeons and/or the College of Nurses.
- You could also ask to be visited by a Patient Advocate if they are available at your facility. Patient Advocates work for you, and can often help communicate with hospital staff.
- You could also begin a legal claim, such as laying a charge under section 80 of the *Mental Health Act* or filing an action for unlawful detention. However, this is a very complex issue and it is recommended that you talk to a lawyer, if possible.

Do you have any other questions?

- For more information about being an involuntary patient, see the PPAO's InfoGuide called **Involuntary Patients** at www.ppao.gov.on.ca/inf-inv.html
- If you would like more information about laying a charge under section 80 of the *Mental Health Act*, see the PPAO's InfoGuide called **Mental Health Act Violations** at www.ppao.gov.on.ca/inf-men.html
- If you have questions, contact your local Patient Advocate or call the central office of the PPAO at 1-800-578-2343.