



Consent and Capacity Board

Applying to the Board for Orders about Detention (Form 51)

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When a patient is detained under a certificate of continuation (Form 4A), the patient or someone on their behalf may apply at certain times to the Board to request one or more certain specific orders which are listed in the *Mental Health Act* (section 41.1).

The Board may only make one or more of the following orders:

- Transferring the patient to another psychiatric facility.
- Placing the patient on a leave of absence for a designated period of time.
- Directing a different security level or different privileges within or outside the facility.
- Directing supervised or unsupervised access to the community.
- Directing certain vocational, interpretation or rehabilitative services.

You should be as specific as possible on your application.

When can I or someone on my behalf apply?

This application is made together with an application to review your involuntary status. You may bring this application when your doctor files a request for a mandatory review of your involuntary status, when you apply for a review of your first certificate of continuation (Form 4A) or when you apply to review involuntary status on a subsequent certificate. However, you may only make one application for these orders every twelve months unless there has been a material change in circumstances.

How do I apply?

A rights adviser will meet with you after the certificate of continuation is completed and that person can assist you in completing the Form 51. You can also do so yourself or with the assistance of a lawyer or someone else. The Form may be available where you found this information sheet. Once it is completed, ask hospital staff to send the form to the Board. If you cannot find an application form or if you do not know how to send the form to the Board, you may contact the Board for assistance or check our web site at ccboard.on.ca.

When and Where will the hearing be?

Within 7 days, a prehearing conference will be arranged. If you have a lawyer, it is not necessary that you attend. At the conference, all parties will have an opportunity to explain their positions, discuss the evidence for the hearing and make arrangements for the hearing to occur. During the prehearing conference, a date for hearing will be set.

The hearing will include the application to review involuntary status and your request for these orders. It will be held at the facility in which you are currently detained.

Do I need a lawyer at the hearing?

It would be a good idea to have a lawyer represent you but you do not have to have one. You may ask the rights adviser to assist you in finding a lawyer, or you may contact a lawyer on your own or through the Law Society Lawyer Referral Service listed in the White pages of the telephone directory under Law Society of Upper Canada and in the Yellow pages of the telephone directory under Lawyer Referral Service.

If you do not wish to represent yourself, the Board may order Legal Aid Ontario to arrange a lawyer for you.

Who are the parties to the hearing?

The parties are the patient or person who requested the hearing, the patient's attending physician, the officer in charge of the facility, and, if a party is requesting a transfer, the officer in charge of the named facility. The Minister of Health and Long-Term Care may also choose to be a party. If appropriate, the Board may name other parties.

What will happen at the hearing?

The presiding member will introduce everyone and explain how the hearing will work, who the official parties are, and the order in which the people will speak. Each party may attend the hearing and invite anyone they want to come. Each party may have a lawyer, call witnesses and bring documents.

You and your lawyer may present information at the hearing to help the Board decide how the request you are making affect the following:

- The safety of the public.
- The ability of the psychiatric facility or facilities to manage and provide care for you and others.
- Your mental condition.
- Your re-integration into society.
- Your other needs.

- Whether the limitations on your liberty relating to your involuntary detention are the least restrictive limitations in light of the circumstances requiring your involuntary detention.

In addition in the case of transfer requests whether:

- The transfer is likely in your best interest.
- The transfer is likely to improve your condition or well-being.
- Whether an attempt has been made to transfer you administratively.

Each party or their lawyer and the Board members may ask questions of each witness. At the end of the hearing, each party will be invited to summarize and the Presiding Member will then end the hearing.

What happens after the hearing is over?

The Board members will meet in private to make their decision. The panel will issue its decision within one day of the hearing. Written Reasons may be requested by any party and will be issued within four business days of the request.

The Board may decide to grant one or more of the Orders requested or not. In making its decision, regarding each Order requested, it will consider the factors set out above (section 41.1(3) and (10) of the *Mental Health Act*).

Can the Order be varied or cancelled?

Yes. An officer in charge can take temporary action contrary to an order if there is a risk of serious bodily harm to the patient or another person. If this action lasts more than seven days, the officer in charge must promptly apply to the Board to vary or cancel the Order.

The officer in charge, the patient or a person acting on their behalf may apply to the Board (Form 53) if there has been a material change in circumstances. In the case of an application by the officer in charge, it can be made at any time and heard at a time set by the Board. In the case of an application by the patient or someone on their behalf, it will be heard when the next review of the certificate of continuation is reviewed.

Can the Board's decision be appealed?

A decision of the Board can be appealed by any party to the Superior Court of Justice.

Contact Us

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