Mental Health Legislation
Self-Directed Learning Package

Prepared 2002 by: Helen Gardner, RN
Nurse Clinician

Amended 2012 by Gail Thorpe, RN
and Tammy Cotie, CHIM
INTRODUCTION

The purpose of this Self-Learning Package is to provide the professional Nurse with the information to understand the Mental Health Act, and relevant parts of the Substitute Decisions Act, the Health Care Consent Act and the Personal Health Information Protection Act. This package is not intended to be a substitute for a legal interpretation of the law.

All nursing staff who are involved in working with clients of The Royal, whether on an in-patient or out-patient basis, are required to have a basic, working knowledge of the legislation listed above and the implications for providing nursing care.

This self-directed learning package and review exercise should take the reader approximately one and one-half hours to complete.

OBJECTIVES

Upon completion of this Self-Directed Learning Package, the learner will be able to:

1. Describe the main legal issues covered by the Mental Health Act, Bill 68 (Brian’s Law), the Substitute Decisions Act and the Health Care Consent Act

2. Define the meaning of a Community Treatment Order (CTO), and identify criteria for issuing or renewing a CTO.

3. Describe an informal, voluntary and an involuntary admission.

4. Define the meaning of “informed consent”.

5. Describe the conditions under which treatment may be given without informed consent and the implications for providing nursing care.

6. Define the meaning of “power of attorney” and discuss the three types of attorney that may be obtained.

7. Define “substitute decision maker” and describe the implications for providing nursing care.

8. Define the role of the Rights Advisory and identify the situations under which a Rights Advisory must be contacted.

9. Identify the most commonly used mental health forms under the Mental Health Act, Bill 68 (Brian’s Law), the Substitute Decisions Act and the Health Care Consent Act; as well as who signs the form and the applicable time restrictions.
THE LEGISLATION

The legislation surrounding mental health, consent and substitute decision making provide the legal framework for those who care for persons with mental illness. It provides clear guidelines for the standards under which treatment and hospitalization may occur, and directs the care provided by facilities and practitioners. The laws are intended to balance the individual’s right to autonomy and self-direction, provision of appropriate care, protection and treatment, with the safety of the community and the public at large.

The Mental Health Act is a law which governs the treatment of all persons who need mental health care in Ontario. It defines how and when a person may be brought to a psychiatric facility, and the terms under which that person may be admitted and detained within the psychiatric facility. The Act covers the legal review of matters such as involuntary hospitalization, community treatment orders and the management of their finances and property. The criteria for declaring incapacity with regards to finances and property are clearly defined. Community treatment orders are also governed by the Act.

The Health Care Consent Act is a law which addresses the issues surrounding informed capable consent before treatment or admission to a facility. It outlines how to determine if a person is capable of making decisions about admission or treatment and capable of giving informed consent, as well as how health practitioners are to deal with emergency situations where valid consent is not available. The Act details how to identify an appropriate substitute decision maker and how that decision maker should make decisions for the person deemed incapable of making their own decisions. The Act also outlines the options available if a substitute decision maker is not making decisions in an appropriate manner.

The Substitute Decisions Act is a law which deals with issues relation to the long-term arrangements for substitute decision-making. It defines powers of attorney for property, finances and personal care and how these attorneys may be obtained. The Act also defines statutory guardianship a court-appointed guardians and the terms under which these guardianships may be issued and revoked. The powers and rules governing attorneys and guardians are also outlined.

The Personal Health Information Protection Act governs the collection, use and disclosure of personal health information. It is essential for health care providers to understand how the unique demands of providing mental health care affect the interpretation of the health information custodian’s obligations under PHIPA and to understand the circumstances in which the Mental Health Act takes precedence over the terms of PHIPA to allow for the collection, use and disclosure of personal health information without consent.
ADMISSION TO A PSYCHIATRIC FACILITY

A person may be admitted in a psychiatric facility as either a voluntary, involuntary or informal patient.

If a physician in a psychiatric facility examines a person and believes that the person is in need of treatment, the physician may recommend admission to that facility. If the person agrees to be admitted and stay in the psychiatric facility or his/her own free will, then this person is considered to be a voluntary patient. A voluntary patient may leave the psychiatric facility at any time; however, the patient should discuss the matter with his/her attending physician before making that decision.

If the person is under the age of 16, or is mentally delayed, and the examining physician finds that the person is incapable of making decisions about a proposed treatment, the physician must obtain consent to treatment from the appropriate decision maker. If consent is obtained, the person may be admitted to a psychiatric facility as an informal patient. A person with an informal patient status may have that status changed to involuntary with the completion of a certificate of involuntary admission (Form 3). There is no maximum time period for an informal admission. An informal patient may apply to the Consent and Capacity Board to review the informal admission and/or the finding of incapacity. An informal patient may not leave the psychiatric facility without being discharged.

Form 1 Application for Psychiatric Assessment
In most cases the path to involuntary admissions begins with an Application for Psychiatric Assessment (Form 1). Any physician can make such an application but he/she must have personally examined the person within the past seven days prior to issuing the certificate. Persons must be admitted to a psychiatric facility where he/she may be detained, restrained, observed and examined for up to 72 hours. There is no right to apply to the Consent and Capacity Board for a review of the Form 1.

Form 2 Justice of the Peace
Any person can appear before a justice of the peace and provide sworn information that there is a person within the jurisdiction of the justice who requires mental health care and meets the criteria for a Form 1

Form 17 Mental Health Apprehension
Police officers may apprehend a person without a Form or Order, in certain circumstances, to take the person to an appropriate place for examination by a physician if the officer has grounds to believe that the person is acting or has acted in a disorderly manner and that the person meets the criteria for admission under Form 1. The police officer must remain at the examining facility and retain custody of the person until the facility takes custody of him or her.

A person, who is being detained in a psychiatric facility under a certificate of involuntary admission (Form 3), or a certificate of renewal (Form 4), is considered to be an involuntary patient. Involuntary status gives authority, subject to rules in the Mental Health Act, to detain, restrain and examine a person at a psychiatric facility. The rules regarding consent to treatment apply to involuntary patients in the same way as they apply to all other patients. That is, capable consent is required from the patient or from the substitute decision-maker, for non-emergency treatment. Once the certificate of admission (Form 3) has expired, the involuntary status of a patient may be renewed by a certificate of renewal (Form 4) as often as the attending physician feels is appropriate, as long as the legal criteria are met. A patient has the right to a
hearing before the Consent and Capacity Board each time a new certificate of renewal (Form 4) is signed. After every 4th certificate of renewal (Form 4) is signed, a patient’s status is automatically reviewed by the Board. This right to automatic review cannot be waived by the patient or the substitute decision-maker.

COMMUNITY TREATMENT ORDERS

The government introduced changes to the Mental Health Act on December 1, 2000 to ensure that people with serious mental illness get the care and treatment they need in a community-based system. Community Treatment Orders (CTO) are also governed by the act.

CTOs are a comprehensive plan of community-based treatment, or care and supervision that is less restrictive than being detained in a psychiatric facility. These orders are for individuals who have a history of repeated hospitalizations and who meet the criteria for committal for a psychiatric assessment under the Mental Health Act; as well as for involuntary psychiatric patients who agree to a treatment/supervision plan as a condition of release from a psychiatric facility. Specifically, CTOs are designed for those people who are inpatients of a psychiatric facility, whose condition has stabilized and are ready for release; or for the person who stops the treatment in the community or has a change in condition and needs to be readmitted to a psychiatric facility.

The criteria for a CTO include the following:

1. The person must have a prior history of hospitalization
2. The community-based treatment plan must be in place
3. The person must have been examined by a physician within 72 hours prior to entering into the CTO plan
4. The physician must have consulted with the other persons named in the community treatment order
5. The person must be able to comply with the plan
6. The person and their substitute decision maker (if applicable), must have consulted with a Rights Advisor
7. The person or the substitute decision maker must have given consent to the CTO under the conditions for consent outlined in the Health Care Consent Act.

A person who is subject to a CTO or is being considered for a CTO, as well as their substitute decision maker (if applicable), have the right to retain legal counsel and consult with a Rights Advisor. In addition, the person subject to a CTO or a representative on their behalf may apply to the Consent and Capacity Board to have the CTO reviewed to ensure that the criteria for issuing and/or renewing the CTO have been met.

A CTO will expire six months after the date it was made unless it is renewed. A CTO may be terminated at any time within those six months by the physician who issued or renewed the original CTO if the person named in the order fails to comply with the conditions set out in the order. In this instance, the physician may issue an order for examination and have the person
returned to a psychiatric facility for assessment. If an order for examination is issued, the police have the authority to take the person named in the order into custody and bring them to a physician for assessment. This order remains in effect for thirty days after the order is written. A CTO may also be terminated before the six months expire if the person named in the order or their substitute decision maker withdraws consent, or the substitute decision maker requests a review of the person’s condition.

CONSENT TO TREATMENT

With the exception of certain emergency situations, all treatment requires informed, capable, voluntary consent. If capable, the patient makes his/her own decisions regarding treatment. If the patient is found not capable, the decision is made on his/her behalf by a substitute decision-maker. Valid consent to treatment must be informed and be given voluntarily by a capable person, and may be oral or written, expressed or implied.

A capable person is an individual who is able to understand the information about the proposed treatment and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. A person is presumed to be capable of making a decision with regards to treatment unless there are reasonable grounds to believe that the person is incapable.

Informed consent means that the health practitioner has given information that a reasonable person would need to make the decision and has answered any questions that the person may have. Unless there is an indication to the contrary, a health practitioner may presume that consent to treatment includes consent to variations or adjustments in the treatment if the benefits, risks and side effects of the changed treatment are not significantly different from the original treatment. In addition, the health practitioner may presume that consent is also given for the continuation of the same treatment in a different setting if there is no significant change in the benefits, risks and side effects of the treatment in the new setting.

Consent may be withdrawn at any time by a person who is capable of doing so. A person who is considered capable of consenting to treatment is also considered to be capable of withdrawing consent.

In an emergency situation, a health practitioner may treat without consent. An emergency is considered to be a situation wherein a person is experiencing severe suffering, or is at risk of serious bodily harm if treatment is not administered immediately. There are three situations in which a health practitioner may administer treatment without consent:

1. The person appears to be capable but cannot communicate with the health practitioner because of a language barrier or disability and reasonable attempts have been unsuccessful in communicating with the individual. Treatment may only continue until the patient is able to communicate and consent may be obtained.

2. The individual is incapable, a substitute decision-maker is not available and any delay would prolong the person’s suffering or put the person at risk for serious harm. Treatment may only continue as long as necessary to obtain a decision from a substitute decision-maker.
3. The substitute decision-maker refuses to give consent for treatment and the health practitioner is of the opinion that the substitute decision-maker has not followed the rules for decision making as outlined in the Health Care Consent Act.

A person who has been deemed incapable cannot give valid informed consent. Except in an emergency, treatment of an incapable patient may not begin if:

1. The health practitioner is informed that the patient plans to apply to the Consent and Capacity Board to review the finding of incapacity, or
2. The patient or some other person plans to apply for the appointment of a representative for the patient, or
3. If a substitute decision-make has not been identified or agreeable.

If 48 hours pass without an application to the Board being made, or if the application is withdrawn, treatment may then begin.

If the Board issues its decision and the health practitioner is informed that one of the parties intends to appeal the decision to provincial court, treatment may not begin until the entire appeal process is completed. However, if no appeal of the Board’s decision is filed within 7 days of the Board handing down the decision, treatment may begin. In a situation where the appeal may take some time, the health practitioner may apply to the court to have treatment initiated and maintained until such time as the appeal is ruled upon. These restrictions do not apply to treatments that have already started, only to those that are proposed.

A finding of incapacity to consent to treatment does not automatically terminate upon discharge from the facility. However, it does not last indefinitely. If a new admission occurs shortly after a person was found incapable to consent to treatment, and there is no evidence to indicate that the person may now be capable, the previous finding of incapacity may stand. Alternately, if the new admission occurs long after the person was found incapable to consent to treatment, it may be too out of date to be reliable. In this case, a new assessment and determination of capacity would have to be done.

SUBSTITUTE DECISION MAKERS

A substitute decision make (SDM) is a person who has been given the legal authority to make decisions on behalf of another person. A person who has been granted this authority as a SDM must follow strict rules of decision making, as outlined in the Substitute Decisions Act. A SDM may be put in place because an individual has been found to be incapable to make certain decisions. An individual who is currently capable may put a SDM in place now because they are concerned that they might become incapable of making their own decisions sometime in the future.
POWER OF ATTORNEY

A power of attorney is a legal document that one person can use to grant another person (or persons) the authority to make important decisions on his/her behalf. The person given the authority in the document is called an “attorney” and the person making the power of attorney is called a “grantor”. Attorneys are required to follow strict legal rules of conduct that are outlined in the Substitute Decisions Act. The Act also outlines who may grant a power of attorney under what conditions, as well as who may become an attorney.

There are three different types of powers of attorney that may be made in Ontario:

1. A power of attorney for personal care
2. A continuing power of attorney for property
3. A general power of attorney for property

Power of Attorney for Personal Care

This document allows the grantor to give written instructions about particular kinds of care and to name one or more substitute decision-makers to make personal care decisions on their behalf. The grantor may authorize the attorney to make decisions about any or all of the following: healthcare, nutrition, shelter, clothing, hygiene and safety. This type of attorney only comes into effect if the grantor becomes incapable of making a particular decision.

With regards to determining incapacity, there are personal care decisions that fall under the Health Care Consent Act; medical treatment, admission to a nursing home, or personal assistance service in a nursing home. In these situations, authority to make these decisions passes to the attorney when the grantor has been found incapable under the rules set out in the Health Care Consent Act. For those personal care decisions that do not fall under the Health Care Consent Act, the grantor may specify in the power of attorney how his/her incapacity is to be determine. If nothing is specified however, the power of attorney comes into effect when the attorney decides that the grantor is incapable of making the required decision.

Some people worry that they may resist necessary care if they become incapable. To deal with this situation, the Substitute Decisions Act has provisions for the creation of a powerful type of power of attorney for personal care, referred to as a “Ulysses Contract”. This document may contain, among other things, clauses that allow for the use of necessary and reasonable force to facilitate the person’s hospitalization and treatment.

Continuing Power of Attorney for Property

This document allows the grantor to give authority to the attorney for making decisions dealing with the property and money of the grantor. The grantor may choose to give authority to the attorney over all of his/her property and money, or may choose to give authority to the attorney for only certain aspects of the grantor’s property. The continuing power of attorney for property may specify when or under what conditions the power of attorney comes into effect, as written by the grantor. However, if these conditions are not specified, the attorney has the authority to make decisions over the grantor’s property and money at any time once the document is signed. This power of attorney for property remains in effect even if the person who grants it becomes incapable.
General Power of Attorney for Property

A general power of attorney for property is only valid when the grantor is capable of managing his/her own property and becomes invalid when the grantor becomes incapable. For this reason, a general power of attorney for property is not very useful for those wishing to plan for a time when they may become incapable. This type of document is typically only used for business or travel purposes.

REPRESENTATIVES APPOINTED BY THE CONSENT AND CAPACITY BOARD

Under certain circumstances, the Health Care Consent Act gives the Consent and Capacity Board the power to appoint someone to represent an incapable person in decisions about treatment. In this case, the authority to consent to treatment on behalf of another person must be specified. This can happen in one of several ways; the incapable person may apply to have a specific person named as their representative; or a person may apply to the Board to have him/herself named at the representative for an incapable person. The Board may appoint the representative as requested in the application, or some other person. The Board may also refuse to appoint a representative. When the Board does appoint a representative, this appointment may be amended or revoked at any time. If an attorney for personal care or a guardian is already in place, the Board may not appoint a representative.

STATUTORY GUARDIAN

A statutory guardian is put in place when a person is found to be incapable of managing their own property. There is no equivalent procedure for personal care. A statutory guardian manages a person's property and money, and may make any decision about property that the person could if capable, except make a will. Initially, the statutory guardian will be the Public Guardian and Trustee. A person’s spouse, partner, relative, attorney for property or a trust company nominated by a spouse, may apply at any time to take over from the Public Guardian and Trustee.

A statutory guardian may be put in place once a person is found to be incapable of managing property. In a psychiatric facility, the application for Statutory Guardianship may be done by a physician who has examined the person for capacity. A professional assessor may be asked to visit a person in any setting and determine capacity for managing property. This assessor is a member of a defined list of professions who is specially qualified and who is specifically listed on the list of recognized assessors. Assessors are usually in private practice and charge a fee for the assessment.

COURT-APPOINTED GUARDIANSHIP

Anyone may apply to the Superior Court of Justice to be named as an incapable person's legal guardian. The judge who grants the guardianship specifies the powers of the guardian in the order, depending on the circumstances. The court may grant a guardianship for personal property or a guardianship for personal care.
ROLE OF THE RIGHTS ADVISOR

The role of the Rights Advisor is established under the Mental Health Act and is a legal requirement to ensure that a person is informed of their rights if their legal status is changed. A Rights Advisor is a person designated by a psychiatric facility, or by the Minister, as someone who is qualified to provide rights advice. This does not include: (a) a person involved in the direct clinical care of the person in need of rights advice, or (b) a person providing treatment or care and supervision under a community treatment plan.

There are eight mandatory rights advice situations; seven of these occur within a psychiatric facility and one in the community. In a psychiatric facility these situations include:

1. When a person’s informal or voluntary status is changed to involuntary (i.e. a Form 3 is signed)
2. When a person’s involuntary statue is continued by a physician (i.e. a Form 4 is signed)
3. When a physician determines that a person is incapable to manage his/her property, including finances (i.e. a Form 21 is signed)
4. When a physician determines that a person is incapable to consent to treatment
5. When a physician determines that a person is incompetent to examine or consent to the disclosure of his/her clinical record (i.e. a Form 31 is signed)
6. When a 12-15 year old is admitted to a psychiatric facility as an informal patient
7. When a community treatment order is issued or renewed regardless of whether the person is in a psychiatric facility or in the community. This is the only circumstance in which rights advice is provided in the community and in which rights advice is provided to both the person and their substitute decision-maker, if there is one.

When any one of the above listed situations occurs, the physician or his/her representative is required under the law to notify the Rights Advisor. The Rights Advisor is required, in turn, to promptly meet with the patient. It is the responsibility of the Rights Advisory to explain to the patient the significance of the situation and to discuss the options available, including the right to request that the Consent and Capacity Board review the situation if the patient disagrees with the physician’s decision. If the patient wishes to have a hearing before the Board, the Rights Advisory assists the patient to make the application, obtain legal counsel if requested and to apply for Legal Aid if so requested. The patient has the right to refuse to meet with the Rights Advisor.

References
APPENDIX A: COMMONLY USED FORMS

The Mental Health Act

Form 1: Application by Physician for Psychiatric Assessment
This form is completed by the physician who has examined the person and may be completed anytime within 7 days from, and including, the date of examination. A physician may only sign a Form 1 if they have reasonable cause to believe that the individual is a risk for “seriously bodily harm to self of others”, “serious physical impairment of self “ (i.e. putting oneself at risk for harm through gross neglect), or “substantial mental or physical deterioration” and is apparently suffering from a mental disorder. This form authorizes the apprehension of the person in the community to be brought to a psychiatric facility and detained for up to 72 hours for assessment. If the person is not apprehended within 7 days from date of signing, the Form 1 expires.

Form 2: Order for Examination
This form is completed by a Justice of the Peace and authorizes the apprehension of the person in the community to be brought to a physician for examination. This examination is usually completed in an emergency room, but not necessarily. The purpose of the examination is for the physician to decide whether or not a Form 1 is needed. A person may only be detained just long enough for a physician to complete an initial examination under a Form 2. If the person is not apprehended within 7 days from the date of signing, the Form 2 expires.

Form 3: Certificate of Involuntary Admission
This form is completed by the attending physician, who must not be the same physician who completed the Form 1. A Form 3 is used to either continue to detain a person brought to a psychiatric facility under a Form 1 for more than 72 hours, or to change the status of an informal or voluntary person currently being held in a psychiatric facility to involuntary status. A Form 3 may also be used to change an individual’s status to involuntary if the person is being detained on an Order to Admit a Person Coming into Ontario (Form 13) and the maximum 72-hour period has not yet expired. A Form 3 expires two weeks from and including the date it is signed.

Form 4: Certificate of Renewal
This form is completed by the attending physician and must be completed before the previous Form 3 or Form 4 has expired. This form is used to renew involuntary status of a person and gives authority to continue to detain and examine the person in a psychiatric facility. The attending physician will complete a Form 4 if they have reasonable cause to believe that the reasons for the individual admission under a Form 3 still exist; the individual has shown clinical improvement as a result of treatment and the person is not suitable for admission as an informal or voluntary patient. The first Form 4 is valid for one month from expiry date of preceding Form 3, including date of signing. The second Form 4 is valid for two months from expiry date of preceding Form 4, including the date of signing. The third and all subsequent Form 4s are valid for three months from expiry date of preceding Form 4, including the date of signing.

Form 5: Change From Involuntary to Informal or Voluntary Status
This form is completed by the attending physician whenever it is determined that the person no longer meets the legal test for voluntary status, or whenever the physician determines that the person has become an appropriate candidate for voluntary status. This does not necessarily mean however, that the person is ready to leave the psychiatric facility. The physician must note on the Form 5 the reason for changing the person’s status. If a certificate of involuntary admission (Form 3) or a certificate of renewal (Form 4) expires before the physician completes
another certificate, the person’s status automatically changes from involuntary to voluntary and completion of a Form 5 is not required.

**Form 9: Order for Return**
This form is completed by the officer in charge of a psychiatric facility or higher designated representative. A Form 9 is required when a person who is being legally detained in a psychiatric facility (i.e. an involuntary or informal patient) is absent without permission. A Form 9 is also required when a legally detained patient on authorized leave violates a condition of that leave. This form authorizes the return of the person to the same or nearest psychiatric facility. This form is not required until 24 hours have passed from the time the officer in charge becomes aware of the person’s absence. After 24 hour however, a Form 9 must be signed in order for the person to be returned. This form is valid for one month. If the person is still at large after one month, they are considered legally discharged from the facility.

**Form 21: Certificate of Incapacity to Manager One’s Property**
This form may be completed by the physician who performs the examination for capacity. This assessment may be completed upon admission to a psychiatric facility as part of the admission process or at any time during the admission. This form allows the Public Guardian and Trustee to become the person’s statutory guardian for property. A Form 21 expires when the person is discharged from the psychiatric facility unless a Form 24 to continue the Certificate of Incapacity has been signed prior to discharge.

**Form 24: Notice of Continuance of Certificate of Incapacity to Manager One's Property**
This form is completed by the physician who has performed the examination for capacity within 21 days prior to discharge from a psychiatric facility. A Form 24 allows the Public Guardian and Trustee to continue guardianship for the person outside the psychiatric facility and has an indefinite expiry date.

**Form 30: Notice to Patient**
This form is completed by the attending physician who has also signed the Form 3 or Form 4. This form advises the person that they have been given involuntary status, the reasons for involuntary status and that the person has the right to retain legal counsel and contest the involuntary status.

**Form 33: Notice to Patient**
This form is completed by the physician who has made the determination that a person is incompetent to (a) consent to treatment; (b) examine or authorize disclosure of his/her clinical records, or (c) manage his/her property. This form advises the person that they have been found incompetent and that they have the right to appeal this determination under the Consent and Capacity Board.

**Form 42: Notice to Person**
This form is completed by the attending physician at the psychiatric facility after the detention period under a Form 1 or Form 13 has started. A Form 42 advises the person of the reasons for the detention and that they have the right to contact a lawyer. Failure to present a Form 42 to the person being detained will usually make the detention unlawful.

**Form 45: Community Treatment Order**
This form is completed by a physician who is qualified to issue or renew a community treatment order and who has examined the person within the 72 hours prior to writing the community
treatment order. A community treatment order will expire six months after the day it is signed unless renewed or terminated.

**Form 47: Order for Examination**
This form is completed by the physician who issued or renewed the community treatment order. A Form 47 authorizes a police officer to take the person into custody and then promptly to a physician for assessment. This form expires within thirty days of being signed, including the date of signature.

**The Health Care Consent Act**

**Form A: Application to the Board to Review a Finding of Incapacity**
This form is completed by the person deemed to be incapable and requests that the Board review the physician’s determination to incapacity to consent to treatment, be admitted to a care facility or receive personal assistance services in a nursing home.

**Form G: Application to the Board to Review Compliance with Rules for Substitute Decision-Making**
This form is completed by the health practitioner who proposed treatment and requests that the Board review the appropriateness of the substitute decision maker’s decisions. This can be requested whenever the health practitioner is of the opinion that the substitute decision-maker has given or refused consent in a manner that violates the rules for substitute decisions found within the *Health Care Consent Act*.

**The Substitute Decisions Act**

**Form 1: Application to Replace the Public Guardian and Trustee as Statutory Guardian**
This form is completed by the person wishing to become the statutory guardian and allows the applicant to take over from the Public Guardian and Trustee as the manager of a person’s property. A Form 1 may be completed at any time after guardianship is created.

**Form 4: Request for Assessment of Capacity**
This form may be completed by any person at any time when the applicant has reason to believe that a person may be incapable of managing property. If the court finds reasonable evidence to believe that the person is incapable of managing their own property then the court may order that the person be assessed by a health professional.
MENTAL HEALTH LEGISLATION REVIEW EXERCISE

Directions: Answer all questions in the space provided. The Review Exercise will be reviewed and discussed in class.

1. Mrs. Brown is a 43 year old woman with a diagnosis of Bipolar Disorder. She had seen her physician 5 days ago and her physician felt that she appeared disorganized and very preoccupied with her finances at that time but did not suggest admission. Her husband calls her physician today to tell her that his wife has not been eating or sleeping for the past 4 nights and has been knocking on neighbors’ doors, accusing them of stealing her money from the bank account and threatening to “do something about it”. Based on this information, what action(s) might the physician take and why?

2. Bill 68 (Brian’s Law) introduced changes to the Mental Health Act that affected the care of individuals in a community-based mental health system. Describe the two most significant changes.


3. List four (4) of the seven (7) criteria for writing a Community Treatment Order (CTO).

4. Describe the purpose of a Community Treatment Order (CTO)

5. Define:
   
   a) Informal Admission

   b) Involuntary Admission

   c) Voluntary Admission
6. Mr. Smith is in hospital and certified on a Form 3. He had been admitted 12 days ago, after being brought to the emergency room by police for threatening to kill his son. Mr. Smith’s attending physician place Mr. Smith on a Form 3 because he felt there was reasonable cause to believe that Mr. Smith was a serious risk for harm to others. Today the nurse assigned to Mr. Smith brings him his regular medication and he calmly states, “I am not taking those pills”. Does Mr. Smith have the right to refuse his prescribed medication? Why or why not?

7. There are three (3) situations in which a health practitioner may treat an individual without first obtaining consent. Briefly describe these three (3) situations.
8. Define a “Power of Attorney”

9. The Substitute Decisions Act outlines three (3) types of powers of attorney. For each of the following describe the decision which an attorney is authorized to make on behalf of the grantor.

a) Power of Attorney for Personal Care

b) Continuing Power of Attorney for Property

10. Define “statutory guardianship”.
11. Mr. Jones has a diagnosis of schizophrenia and has been admitted to the hospital today from the boarding home where he lives as his community care team felt that he was decompensating. Mr. Jones has a sister who lives nearby and she has been his power of attorney for personal care for the past three years. Mr. Jones was not found incapable to consent to treatment and agreed to the admission. During the admission process, Mr. Jones becomes agitated and tells the nurse that he won’t be taking any medication while he is in hospital. Can the sister give consent for Mr. Jones to receive treatment? Why or why not?

12. The provision of Rights Advisor is a legal requirement under the Mental Health Act. Describe the responsibilities of the Rights Advisor.
13. List four (4) of the eight (8) mandatory rights advice situations.

14. Indicate whether each of the following statements is True or False

a) Under the Mental Health Act, a Form 1 may be completed anytime within 72 hours after an individual has been examined by a physician

   True   False

b) Under the Mental Health Act, a Form 3 must be completed by a physician who is not the same physician that completed the Form 1.

   True   False

c) Under the Mental Health Act, the involuntary status of a patient may be renewed by a physician a maximum of four (4) times using a Form 4, as long as all the legal criteria are met.

   True   False
d) Under the *Substitute Decisions Act*, a Form 21 allows the Public Guardian and Trustee to continue guardianship for the individual outside the psychiatric facility.

True   False

e) Under the *Mental Health Act*, failure to present a form 42 to an individual being detained in a psychiatric facility under a Form 1 or Form 13 will usually make the detention unlawful.

True   False

f) A Form 45 will expire within six (6) months after the day it is signed, unless renewed or terminated.

True   False

g) If a health practitioner who proposes a treatment is concerned about the decisions being made by the substitute decision maker, a Form G may be completed. This form requests that the Consent and Capacity Board review the appropriateness of a substitute decision maker’s decisions.

True   False

h) Under the *Substitute Decisions Act*, a Form 1 must be completed within the first 48 hours after statutory guardianship is created.

True   False