

COVID-19 and the *Mental Health Act*

CAN I COMPLETE A FORM 1 FOR RISKS ASSOCIATED WITH COVID-19?

Section 15(1) of the *MHA* (Box A)

Past or present:

- Threats or attempts to cause bodily harm to him/herself,
- Violent behaviour towards another person or causing another person to fear bodily harm from him/her, or
- Lack of competence to care for self

And future risk of:

- Serious bodily harm to self,
- Serious bodily harm to others, or
- Serious physical impairment

TO APPLY BOX A IN THE CONTEXT OF COVID-19, ASK:

- 1) Has the client shown lack of competence to care for self?
 - a. This may include not taking steps to avoid exposure or to seek care for symptoms indicating probable exposure and/or infection?
- 2) Is there a future risk of **serious bodily harm** to the client or others related to a failure/inability to self-isolate or seek care?
- 3) Is that harm **likely?** (50%+1 probability).
 - a. Consider: is there evidence of probable exposure? Is the client experiencing symptoms? Etc.
- 4) Is that harm **arising directly as a result of mental disorder?**
 - a. There must be a clear link between a mental disorder and the behaviour leading to the likely risk of serious bodily harm.

BEFORE COMPLETING A FORM 1, CONSIDER:

- 1) **What is the goal** of bringing the client to hospital and is it achievable given current system pressures?
- 2) Have you **explored all less intrusive/restrictive options** to support the client in the community?
- 3) Do the risks in the community **outweigh** the risks to the client of being in hospital and the risks they may pose to others in the hospital?
- 4) If completing a Form 1:
 - a. Have you **clearly documented** the rationale (including the considerations above); and
 - b. Have you **communicated** the rationale to the emergency department to assist their decision making?

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CAN I COMPLETE AN *MHA* 'EXAMINATION' BY PHONE/VIDEO? FORM 1, 3, 4, 4A, 49 AND CAPACITY ASSESSMENTS

The *Mental Health Act* requires that an "examination" be performed prior to completion of certain *MHA* forms (Form 1, 3, 4, 4A, 49). The term "examination" is not defined. The Ontario Court of Appeal has held that the definition of "examination" needs to be broad enough to encompass the diverse circumstances physicians face when making the decision to commit involuntary individuals to a psychiatric facility.

Thus, conducting examinations by phone or video may be permissible under the appropriate circumstances, after consideration of the factors described below.

Ultimately, the physician in each individual case will have to be satisfied that they have been able to conduct a sufficient assessment so as to constitute an "examination" according to the standards of the CPSO.

ISN'T THIS A SIGNIFICANT CHANGE?

OTN and other video platforms have been used in the past to do *MHA* examinations, particularly Form 1s. Until now, a phone assessment has been generally considered inadequate. However, in light of the safety risks associated with in-person assessments and the fact that video platforms are inaccessible or impractical for many clients, professional medical associations are increasingly endorsing other means of providing care, including telephones. The Ontario Court of Appeal has also recognized that there may be factors that prevent physicians from directly observing the client. In these circumstances, physicians may need to undertake other measures (including telephone assessments) to evaluate a patient.

HOW DO I KNOW IF A PHONE ASSESSMENT IS 'ENOUGH'?

Whether a telephone or video assessment suffices will depend on the circumstances of each case. Some factors to consider include:

- Are there compelling circumstances that make it unsafe or impractical to conduct an in-person examination?
- Have you been able to observe the client, or received information from others who have had direct contact with the client (e.g. case worker, housing staff, family members, etc.)?
- Have you been able to review the client's medical records and/or the available history?
- Have you received and reviewed any collateral information?
- Were you able to obtain relevant information from your phone/video contact with the client?

Based on the totality of the information received, as described above, ask:

Have you made careful inquiry into all the facts necessary to form an opinion about the nature and quality of the person's mental disorder?

The information contained herein is for educational purposes only. It should not be considered legal advice and is not a substitute for legal advice in a given situation. This information may not be applicable in all circumstances. Physicians/clinicians must use their own clinical judgment on a case-by-case basis.

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HOW DO I OBTAIN A FORM 2?

Justices of the Peace are continuing to hear applications for Form 2s. Some are doing so in-person, others via remote/video technology. For information about processes and hours in the Toronto region, call (416) 327-5179. Otherwise, a list of contact information for local courthouses is available at: https://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

See above for considerations on the application of Box A to COVID-19 related risks.

GUIDANCE/RESOURCES FOR CONDUCTING EXAMINATIONS BY PHONE/VIDEO

College of Physicians and Surgeons (CPSO):

<https://www.cpso.on.ca/Physicians/Your-Practice/Physician-Advisory-Services/COVID-19-FAQs-for-Physicians>

Ontario Psychological Association:

<http://www.psych.on.ca/OPA/media/Public/OPA%20Guidelines%20and%20Reviews/GUIDELINES-FOR-BEST-PRACTICES-IN-THE-PROVISION-OF-TELEPSYCHOLOGY.pdf?ext=.pdf>

Canadian Medical Protective Association (CMPA):

<https://www.cmpa-acpm.ca/en/covid19>

Royal College of Physicians and Surgeons of Canada:

<http://www.royalcollege.ca/rcsite/documents/about/covid-19-resources-telemedicine-virtual-care-e#on>

Ontario Court of Appeal

<https://www.canlii.org/en/on/onca/doc/2017/2017onca712/2017onca712.html?searchUrlHash=AAA-AAQArTmVsc29uIHYuIExpdmVybW9yZSwgMjAxNyBPTkNBIDcxMiAoQ2FuTElJKQAAAAAB&resultIndex=1>