ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M72

MENTAL HEALTH ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 16/2006, in force 31 October 2006

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MENTAL HEALTH ACT

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MENTAL HEALTH ACT

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1. (1) In this Act—

"admission certificate" means a certificate issued pursuant to section 3 or 4;

"Board" of a facility means the Board of the Health Authority of Anguilla;

"facility" means that part of the Princess Alexandra Hospital or any other place so designated in the regulations as a facility;

"formal patient" means a patient detained in a facility pursuant to 2 admission certificates or 2 renewal certificates;

"guardian" includes—

(a) the parent or guardian of a minor;

(b) a person to whom the care of a juvenile is committed by an order under section 26 or 27 of the Juvenile Act[*]; or

(c) a guardian appointed under the Dependent Adults Act with authority over the matters referred to in section 9(2)(h) of that Act;

"Health Authority of Anguilla" means the Health Authority of Anguilla established in section 4(1) of the Health Authority of Anguilla Act;

"mental disorder" means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs—

(a) judgement;

(b) behaviour;

(c) capacity to recognize reality; or

(d) ability to meet the ordinary demands of life;

"Minister" means the Minister responsible for health;

[*] Child Justice Act, 2021 (Act 13/2021) *repealed* the Juvenile Act, R.S.A. c. J20.

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"nearest relative" means, with respect to a formal patient—

(a) the adult person first listed in the following subparagraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph being preferred to the other of those relatives regardless of gender—

(i) spouse or partner,

(ii) son or daughter,

(iii) father or mother,

(iv) brother or sister,

(v) grandfather or grandmother,

(vi) grandson or granddaughter,

(vii) uncle or aunt,

(viii) nephew or niece; or

(b) any adult person the Board designates in writing to act as the nearest relative—

(i) if there is no nearest relative within any description in paragraph (a), or

(ii) if, in the opinion of the Board, the nearest relative determined under paragraph (a) would not act, is not available to act or is not acting in the best interest of the formal patient;

"partner", with respect to a formal patient, means a person—

(a) who is of the opposite sex from a formal patient who is unmarried or who is married but separated by court order from his or her spouse; and

(b) who has cohabited with the formal patient continuously for a period of at least 3 years immediately preceding the formal patient's admission to a facility;

"patient" means a person who is admitted to a facility as an in-patient, or as an out-patient for diagnosis or treatment services, or both;

"prescribed" means prescribed by regulation under section 47;

"psychiatrist" means a medical practitioner who is qualified to practice psychiatry;

"psychosurgery" means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or that inserts indwelling electrodes for pulsed electric stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat intractable physical pain or epilepsy where those conditions are clearly demonstrable;

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"renewal certificate" means a certificate issued pursuant to section 10;

"review panel" means a review panel established pursuant to section 31;

"spouse", with respect to a formal patient, does not include a spouse who is separated by court order from the formal patient.

(2) A psychiatrist engaged by the Board to provide psychiatric services is deemed to be a medical practitioner on the staff of a facility.

Application to rights or prerogatives of His Majesty

2. This Act does not affect any right or prerogatives of His Majesty or of the Governor on behalf of His Majesty.

PART 2

ADMISSION AND DETENTION

Admission certificate

3. When a medical practitioner examines a person and is of the opinion that the person is—

(a) suffering from mental disorder; and

(b) in a condition presenting or likely to present a danger to himself or herself or to others,

the medical practitioner may, not later than 24 hours after the examination, issue an admission certificate in the prescribed form with respect to the person.

Person detained under right or prerogative of His Majesty or the Governor

4. When a person is detained under the right of prerogative of His Majesty or of the Governor on behalf of His Majesty and the detention is about to expire, a medical practitioner is authorized to examine the person and assess the person's mental condition and may, if the prerequisites for the issuance of an admission certificate set out in section 3 are met, issue an admission certificate in the prescribed form with respect to the person.

Effect of one admission certificate

5. (1) One admission certificate is sufficient authority—

(a) to apprehend the person named in the certificate and convey the person to a facility and for any person to care for, observe, assess, detain and control the person named in the certificate during the person's apprehension and conveyance to the facility; and

(b) to care for, observe, examine, assess, treat, detain and control the person named in the certificate for a period of 24 hours from the time when the person arrives at the facility.

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(2) The authority to apprehend a person and convey the person to a facility under paragraph (1)(a) expires at the end of 72 hours from the time when the certificate is issued.

Examination of person detained

6. (1) When a person is conveyed to a facility under section 12 (apprehension by warrant of Magistrate), section 13 (apprehension by police officer) or section 22 (apprehension under certificate of Minister) or detained in a facility pursuant to 1 admission certificate, the Board shall ensure that the person is examined as soon as possible by a medical practitioner on the staff of the facility.

(2) When a person is conveyed to a facility under section 12, 13 or 22, that person shall be released on the expiry of 24 hours from the time when that person arrived at the facility unless, within that time, 2 admission certificates are issued with respect to that person.

(3) When a person is detained pursuant to 1 admission certificate, that person shall be released on the expiry of 24 hours from the time when that person arrived at the facility unless, within that time, another admission certificate is issued with respect to that person.

Effect of apprehension

7. When a person is conveyed to a facility under section 12 (apprehension by warrant of Magistrate), 13 (apprehension by police officer) or 22 (apprehension under certificate of Minister), the Board has authority to care for, observe, examine, assess, treat, detain and control the person in accordance with section 6.

Contents of admission certificate

8. An admission certificate shall show—

(a) the name of the person in respect of whom the certificate is issued;

(b) the name and address of the medical practitioner issuing it;

(c) the date and time at which the personal examination was conducted;

(d) the facts on which the medical practitioner formed his or her opinion that the person is—

(i) suffering from mental disorder, and

(ii) in a condition presenting or likely to present a danger to himself or herself or to others,

distinguishing the facts observed by the medical practitioner from the facts communicated to the medical practitioner by others;

(e) where the person was examined and, if he or she is not examined in a facility, that the person is to be conveyed to a facility; and

(f) the date and time of issue.

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Effect of 2 admission certificates

9. (1) Two admission certificates are sufficient authority to care for, observe, examine, assess, treat, detain and control the person named in them in a facility for a period of 1 month from the date the second admission certificate is issued.

(2) No person shall be detained as a formal patient at a facility unless at least 1 of the admission certificates is issued by a member of the staff of the facility.

Renewal certificates

10. (1) The period of detention of a formal patient may be extended when 2 medical practitioners, after a separate examination by each of them, are of the opinion that the formal patient is—

(a) suffering from mental disorder; and

(b) in a condition presenting or likely to present a danger to himself or herself or to others;

and each issues a renewal certificate in the prescribed form within 24 hours after the examination.

(2) At least 1 of the medical practitioners who issues renewal certificates under this section shall be a member of the staff of the facility at which the formal patient is detained.

(3) Two renewal certificates are sufficient authority to care for, observe, examine, assess, treat, detain and control the person named in them—

(a) in the first case where 2 renewal certificates are issued, for a period of not more than 1 additional month;

(b) in the second case where 2 renewal certificates are issued, for a period of not more than 1 additional month; and

(c) in the third case and in each subsequent case where 2 renewal certificates are issued, for a period of not more than 6 additional months.

Contents of renewal certificate

11. A renewal certificate shall show—

(a) the name of the person in respect of whom the certificate is issued;

(b) the name and address of the medical practitioner issuing it;

(c) the date on which the personal examination was conducted;

(d) the facts on which the medical practitioner formed his or her opinion that the person is—

(i) suffering from mental disorder, and

(ii) in a condition presenting or likely to present a danger to himself or herself or to others,

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distinguishing the facts observed by the medical practitioner from the facts communicated to the medical practitioner by others;

(e) the name of the facility where the person was examined; and

(f) the date and time of issue.

Warrant for apprehension; extension of warrant

12. (1) Anyone who has reasonable and probable grounds to believe that a person is—

(a) suffering from mental disorder; and

(b) in a condition presenting or likely to present a danger to himself or herself or to others;

may lay an information under oath before the Magistrate.

(2) If the Magistrate is satisfied that—

(a) the person is in a condition presenting or likely to present a danger to himself or herself or to others; and

(b) an examination cannot be reasonably arranged in any other way;

the Magistrate may issue a warrant to apprehend that person for an examination.

(3) If the Magistrate issues a warrant under this section, the Magistrate shall also issue brief written reasons for the issuance of the warrant.

(4) A warrant under this section—

(a) may be directed to any police officer and shall name or otherwise identify the person with respect to whom the warrant is issued; and

(b) is authority for a police officer to apprehend the person named or identified in the warrant and convey the person to a facility for examination.

(5) While a person is being conveyed to a facility under the authority of a warrant, the warrant is sufficient authority to care for, observe, assess, detain and control the person named or identified in the warrant.

(6) Where a police officer has not apprehended a person within 7 days from the date of the warrant, the warrant ceases to be effective unless, before the expiry of the 7-day period, the Magistrate extends the duration of the warrant under subsection (7).

(7) On the application of a police officer, the Magistrate may extend the duration of a warrant issued under this section on one occasion only for a period of up to 7 days from the day on which the warrant expires under that section.

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Police officer's power

13. (1) When a police officer has reasonable and probable grounds to believe that—

(a) a person is suffering from mental disorder;

(b) the person is in a condition presenting a danger to himself or herself or to others;

(c) the person should be examined in the interests of his or her own safety or the safety of others; and

(d) the circumstances are such that to proceed under section 12 would be dangerous;

the police officer may apprehend the person and convey the person to a facility for examination.

(2) While a person is being conveyed to a facility under subsection (1), the authority in that subsection is sufficient authority to care for, observe, assess, detain and control the person.

(3) When a police officer conveys a person to a facility under this section, the police officer shall complete a statement in the prescribed form for the use of the facility, setting out the—

(a) name of the person conveyed, if known;

(b) date, time and place at which the person was apprehended; and

(c) grounds on which the police officer formed his or her belief under subsection (1).

Remand to facility for examination; detention under Criminal Procedure Act

14. (1) A person who, pursuant to any law of Anguilla, is remanded in custody for observation or examination may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

(2) When a person who is found to be insane under section 51 or 52 of the Criminal Procedure Act or has a special verdict found against him or her under section 53 of that Act and is ordered by the Court under section 54 of that Act to be detained in safe custody or by the Governor to be dealt with under section 55 of that Act, the Court or the Governor, without limiting the generality of section 54 or 55 of the Criminal Procedure Act, as the case may be, may order him or her to be admitted to, examined, treated and detained in a facility.

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PART 3

ADMINISTRATION

Duties toward patients

15. (1) When 2 admission certificates or 2 renewal certificates are issued with respect to a patient, the Board shall—

(a) inform the formal patient and make a reasonable effort to inform the patient's guardian, if any, and the patient's nearest relative, of—

(i) the reason, in simple language, for the issuance of the admission certificates or renewal certificates, and

(ii) the patient's right to apply to the review panel for cancellation of the admission certificates or renewal certificates; and

(b) give the formal patient, the patient's guardian, if any, one person designated by the patient and the patient's nearest relative a written statement of—

(i) the reason, in simple language, for the issuance of the admission certificates or renewal certificates,

(ii) the authority for the patient's detention and the period of it, including copies of the admission certificates or renewal certificates,

(iii) the function of review panels,

(iv) the name and address of the chairperson of the review panel, and

(v) the right to apply to the review panel for cancellation of the admission certificates or renewal certificates.

(2) In the event of language difficulty, the Board shall, if reasonably possible, obtain a suitable interpreter and provide the information and the written statement referred to in subsection (1) in the language spoken by the formal patient or the patient's guardian or nearest relative.

(3) In addition to giving a written statement pursuant to this section, the Board shall, having regard to the circumstances in each case in which the formal patient desires to exercise his or her right to apply for cancellation of admission certificates or renewal certificates, do any other things the Board considers expedient to facilitate the submission of an application.

(4) If a formal patient has designated another person to receive notices, the Board shall also mail postage prepaid a copy of all notices and information required to be given to the patient to the person designated at the address provided by the patient.

Communications by and to patients

16. No communication written by a patient in a facility or written to a patient in a facility shall be opened, examined or withheld and its delivery shall not be obstructed or delayed in any way by the Board or a member of the staff of the facility, unless the Board has reason to believe that the

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communications to the patient would be detrimental to the patient's health or communications by the patient would cause danger to the public or involve an allegation that is or may be defamatory.

Visiting hours

17. (1) A patient may receive visitors during hours fixed by the Board unless a medical practitioner considers that a visitor would be detrimental to the patient's health.

(2) Notwithstanding subsection (1), a lawyer acting for a patient may visit the patient at any time.

Application of sections 35 to 46 of the Health Authority of Anguilla Act

18. For greater certainty, sections 35 to 44 and section 46 of the Health Authority of Anguilla Act and a by-law under section 45 of that Act apply to health information of patients under this Act.

Treatment and security of patients

19. (1) On the admission of a patient to a facility, the Board of the facility shall provide the diagnostic and treatment services—

(a) that the patient is in need of;

(b) for which the facility is equipped; and

(c) that the staff of the facility is capable of providing and able to provide.

(2) The Board shall determine what level of security is reasonably required for each patient who is detained in the facility in view of all the circumstances and afterwards provide to the patient and review the necessary level of security at intervals of not more than 3 months.

Leave of absence

20. (1) Notwithstanding any admission certificates or renewal certificates issued with respect to a formal patient, the Board may grant a formal patient leave of absence from a facility.

(2) Leave of absence may be granted on any terms and conditions prescribed by the Board and, without restricting the generality of the foregoing, may include a condition that the formal patient remain under the supervision and subject to the treatment of any person or persons designated by the Board.

(3) When a formal patient is on a leave of absence granted under this section, the Board may by notice in writing given to—

(a) the patient; or

(b) the person supervising the patient;

revoke the leave of absence and recall the patient to the facility.

(4) When a formal patient refuses or neglects to return to the facility or when the Board is unable to serve a notice in writing pursuant to subsection (3), the Board may declare the patient to be

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absent without leave and issue an order in the prescribed form ordering any police officer to return the patient to the facility.

(5) Nothing in this section authorizes the granting of a leave of absence to a person who is detained in or remanded to the facility pursuant to the Criminal Procedure Act or any other Act relating to criminal proceedings under which the person is detained in or remanded to the facility.

Return of formal patient to facility

21. (1) If a formal patient leaves a facility when a leave of absence has not been granted, the Board may issue an order in the prescribed form ordering a police officer to return the patient to the facility.

(2) On receipt of—

(a) an order under subsection (1); or

(b) an order under section 20;

every police officer is empowered to apprehend, without warrant, the person named in the order and to return that person to the facility.

(3) A person who is returned to a facility under this section or section 20 may be detained for the remainder of the authorized period of detention to which the person was subject when the person's absence was discovered or, if the certificates relating to that person expired during the period the person was absent from the facility, the person is deemed to be a person in respect of whom one admission certificate is issued when the person is apprehended by a police officer under this section or section 20.

(4) An order of the Board under this section or section 20 shall state the date of expiration of the admission certificates or renewal certificates, as the case may be.

Transfer into Anguilla

22. (1) When the Minister has reasonable and probable grounds to believe that a person who is—

(a) suffering from mental disorder; and

(b) in a condition presenting or likely to present a danger to himself or herself or to others;

may come or be brought into Anguilla, the Minister may issue a certificate in the prescribed form authorizing a police officer or other person to apprehend the person named in the certificate and convey the person to a facility for examination.

(2) While a person is being conveyed to a facility under subsection (1), the authority in that subsection is sufficient authority to care for, observe, assess, detain and control the person.

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Transfer out of Anguilla

23. When it appears to the Minister that—

(a) a formal patient has come or been brought into Anguilla and that the patient's care and treatment is the responsibility of another jurisdiction; or

(b) it would be in the best interests of a formal patient to be cared for in another jurisdiction;

the Minister may, on compliance in Anguilla with the laws of the other jurisdiction, with all necessary modifications, issue a transfer in the prescribed form to authorize a transfer of the formal patient into the other jurisdiction.

PART 4

TREATMENT AND CONTROL

Mental competence

24. For the purposes of this Part, a person is mentally competent to make treatment decisions if the person is able to understand the subject-matter relating to the decisions and is able to appreciate the consequences of making the decisions.

Competence to make treatment decisions

25. (1) A medical practitioner who is of the opinion that a formal patient is not mentally competent to make treatment decisions shall complete and file with the Board a certificate in the prescribed form.

(2) The medical practitioner shall include in the certificate written reasons for the opinion that the formal patient is not mentally competent.

(3) The Board shall give to the formal patient, the patient's guardian, if any, and the patient's nearest relative, a copy of the certificate and written notice that the patient is entitled to have the medical practitioner's opinion reviewed by a review panel if the patient applies for the review by sending a notice of application to the chairperson of the review panel in the prescribed form.

(4) If an application is made to a review panel to review a medical practitioner's opinion that a formal patient is not mentally competent to make treatment decisions, neither a medical practitioner nor the Board shall act on the opinion pending the outcome of the application.

(5) A finding by a court or by a review panel that a formal patient is mentally competent or is not mentally competent applies only for the purposes of this Part.

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Treatment decisions on behalf of formal patient

26. (1) For the purposes of this Part, other than section 27(5) (psychosurgery), treatment decisions may be made on behalf of a formal patient who is a minor or who is not mentally competent by a person who is apparently mentally competent, is available and willing to make the decision and is—

(a) the formal patient's guardian; or

(b) in a case where the formal patient does not have a guardian, the patient's nearest relative as defined in paragraph (a) of that definition.

(2) A person referred to in paragraph (1)(b) shall not exercise the authority given by that subsection unless the person—

(a) is willing to assume the responsibility for making treatment decisions; and

(b) makes a statement in writing certifying his or her relationship to the formal patient and the fact set out in paragraph (a).

(3) A person authorized by paragraph (1)(b) to make treatment decisions on behalf of a formal patient shall make the decisions in accordance with what he or she believes to be the best interests of the patient.

(4) In order to determine the best interests of the formal patient in relation to treatment, a person referred to in paragraph (1)(b) shall have regard to the following—

(a) whether the mental condition of the patient will be or is likely to be improved by the treatment;

(b) whether the patient's condition will deteriorate or is likely to deteriorate without the treatment;

(c) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient;

(d) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements of paragraphs (a), (b) and (c).

(5) If the attending medical practitioner is of the opinion that a formal patient is not mentally competent to make treatment decisions and the patient objects to treatment, the treatment shall not be given pursuant to a treatment decision made by a person referred to in paragraph (1)(b) unless a second medical practitioner is also of the opinion that the patient is not mentally competent to make treatment decisions.

(6) If treatment decisions are made by a person referred to in paragraph (1)(b) on a formal patient's behalf, that person's statement in writing as to the person's relationship with the patient and as to the fact mentioned in paragraph (2)(a) can be relied on, unless it is not reasonable to believe the statement.

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(7) If a person acting on a treatment decision makes reasonable inquiries for persons entitled to make the decision, the person so acting is not liable for failure to request the decision from the person entitled to make the decision on the formal patient's behalf.

Objection to treatment

27. (1) If a formal patient who is mentally competent to make treatment decisions or a person referred to in section 26(1) objects to any treatment the patient is receiving or will receive at a facility, the attending medical practitioner shall not administer the treatment unless the review panel makes an order under this section.

(2) The Board or an attending medical practitioner who considers it in the best interests of a formal patient to administer treatment to which the patient or a person referred to in section 26(1) objects may apply in the prescribed form to a review panel for an order directing that the treatment may be administered.

(3) Before it makes an order under this section, the review panel must be satisfied after hearing the evidence of the attending medical practitioner and any other evidence it considers relevant that—

(a) the attending medical practitioner has examined the formal patient; and

(b) the proposed treatment is in the best interests of the formal patient having regard to the following—

(i) whether the mental condition of the patient will be or is likely to be improved by the treatment,

(ii) whether the patient's condition will deteriorate or is likely to deteriorate without the treatment,

(iii) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient,

(iv) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements of subparagraphs (i), (ii) and (iii).

(4) In addition to the evidence referred to in subsection (3), the review panel may authorize the examination of the formal patient by a medical practitioner who is not a member of the medical staff of the facility where the formal patient is detained for the purpose of obtaining the medical practitioner's opinion as to whether the proposed treatment is in the best interests of the patient having regard to the considerations referred to in paragraph (b) of that subsection.

(5) Notwithstanding anything in this section, psychosurgery shall not be performed on a formal patient unless—

(a) the patient consents to the psychosurgery; and

(b) a review panel makes an order under this section directing that the psychosurgery may be performed.

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Control

28. The authority to control a person under this Act is authority to control the person without the person's consent to the extent necessary to prevent serious bodily harm to the person or to another person by the minimal use of such force, mechanical means or medication as is reasonable, having regard to the physical and mental condition of the person.

PART 5

DISCHARGE

Cancellation or expiry of certificates

29. (1) The Board shall comply with and take any action necessary to comply with a decision of a review panel concerning admission certificates or renewal certificates.

(2) When a formal patient no longer meets the criteria for the issuance of admission certificates or renewal certificates, a medical practitioner shall cancel the admission certificates or renewal certificates, as the case may be.

(3) If the admission certificates or renewal certificates of a formal patient expire or are cancelled, the patient is thereupon in a facility on a voluntary basis and shall be informed of that fact.

Removal after discharge

30. (1) When a patient is discharged from a facility, the Board shall, where reasonably possible, give notice of the discharge—

(a) to the patient's guardian, if any; and

(b) to the patient's nearest relative.

(2) When a patient is eligible for discharge and refuses or is unwilling to leave a facility, the Board, after consultation with the patient's medical practitioner, may—

(a) declare that the patient is no longer in need of the services provided in the facility, and is eligible for discharge; or

(b) arrange for the transfer of the patient—

(i) to another part of the Princess Alexandra Hospital, or

(ii) to the Miriam Gumbs Senior Citizen's Home or other accommodation.

(3) Any patient who has been declared eligible for transfer or discharge as provided in this section and who refuses or fails to leave the facility when requested to do so is a trespasser.

(4) Any other person who remains on facility premises without the consent of the Board or a representative of the Board and fails or refuses to leave the facility premises when requested to do so is a trespasser.

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PART 6

REVIEW PANEL

Review panel

31. (1) The Minister shall appoint and prescribe the term of office of a—

(a) chairperson and a vice-chairperson; and

(b) roster of eligible persons to act as the other members;

of the review panel to hear applications under sections 25 (competence to make treatment decisions), 27 (objection to treatment), 36 (application for hearing regarding certificates) and 37 (review of certificates after 6 months).

(2) The vice-chairperson shall act in the absence or inability to act of the chairperson.

(3) When an application under section 25 (competence to make treatment decisions), 27 (objection to treatment), 36 (application for hearing regarding certificates) or 37 (review of certificates after 6 months) is made to the chairperson of the review panel, the chairperson shall appoint the other members of the review panel from the roster established by the Minister.

(4) The review panel shall be composed of—

(a) the chairperson or the vice-chairperson;

(b) a medical practitioner;

(c) a social worker; and

(d) two members of the general public;

but, when the Minister in writing is of the opinion that it is not reasonably possible to appoint a person referred to in paragraph (b) or (c), either because such an appointee is not available or because that person is ineligible under section 33, the Minister may appoint any other suitable person, other than a person who is ineligible under section 33, in that person's place.

(5) The Minister shall provide secretarial, legal, consultative and interpretation services and other assistance to the review panel.

(6) The Minister shall endeavour to appoint a chairperson and vice-chairperson who are lawyers.

(7) The chairperson and vice-chairperson and other members of the review panel shall be—

(a) paid such remuneration for carrying out their responsibilities as the Minister may determine; and

(b) reimbursed for such reasonable expenses incurred in carrying out their responsibilities as the Minister may approve.

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Quorum and voting

32. (1) A quorum for a review panel is 3 of the members referred to in section 31(4), which shall include the chairperson or the vice-chairperson and the medical practitioner or the person appointed in the medical practitioner's place.

(2) Each member of the review panel is entitled to one vote.

(3) A decision of a majority of the members is the decision of the review panel.

Persons prohibited as members of review panel

33. (1) No person who is a member of the Board or is an officer or employee of the Health Authority of Anguilla is eligible to sit as a member of the review panel.

(2) A person who is—

(a) within paragraph (a) of the definition of "nearest relative" or is married to a person within paragraph (a) of that definition;

(b) a spouse or partner of the patient;

(c) a medical practitioner or other person who is treating or who has treated the patient; or

(d) a lawyer who is acting or who has acted for the patient;

is not eligible to be appointed as a member or to sit as a member of a review panel for an application relating to that patient.

Authority of review panel

34. (1) The review panel shall hear and consider applications in accordance with this Act and the regulations.

(2) All proceedings of a review panel shall be conducted in private and, subject to subsection (3), no person has the right to be present without the prior consent of the chairperson.

(3) The applicant and the applicant's representative have the right to be personally present during the presentation of any evidence to the review panel and to cross-examine any person who presents evidence to the review panel.

(4) Where an application is made to a review panel and the review panel is of the opinion that disclosure of information to the patient might seriously endanger the safety of another person, the review panel may refuse to disclose the information to the patient.

Evidence under oath

35. (1) The chairperson may by notice require any person to—

(a) attend before the review panel and to give evidence under oath or, where permitted by law, on affirmation with respect to any matter related to an application to the review panel; and

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(b) produce any records respecting the matter referred to in the notice.

(2) If a person fails or refuses to comply with a notice under subsection (1), the High Court, on the application of the chairperson, may issue an order requiring the person to attend before the review panel in compliance with the notice.

(3) If a person refuses to—

(a) give evidence in compliance with a notice under subsection (1);

(b) answer any questions before the review panel pursuant to the notice; or

(c) produce any records referred to in the notice;

the High Court may commit the person for contempt in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules or any other law.

Application for hearing regarding certificates

36. (1) A formal patient, the patient's guardian or a person on the patient's behalf may apply to a review panel for cancellation of—

(a) admission certificates; or

(b) renewal certificates;

by sending a notice of application to the chairperson of the review panel in the prescribed form.

(2) The Board may submit an application under subsection (1) on behalf of a formal patient, but when an application is so made the word "applicant" wherever it occurs in this Part means the formal patient and not the Board.

(3) Subject to subsection (4), a formal patient, guardian, person on the patient's behalf or the Board that has made an application under this section with respect to 2 admission certificates or 2 renewal certificates may make further applications with respect to those certificates.

(4) No further application made under this section by a formal patient, guardian, person on the patient's behalf or the Board shall be considered by the review panel if the chairperson of the review panel reasonably believes—

(a) that the application is frivolous, vexatious or not made in good faith; or

(b) that there has been no significant change in circumstances since the previous hearing by the review panel.

Review of certificates after 6 months

37. If a formal patient has been subject to admission certificates or renewal certificates, or both, for a continuous period of 6 months and neither the patient nor the patient's representative has during that period applied for a review of the certificates, or an application for review of certificates has been withdrawn or cancelled during that period, the patient is deemed to have applied to the chairperson of

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the review panel, who shall cause a review panel to hear and consider cancellation of the certificates relating to the patient.

Notice of hearing

38. (1) On receipt of an application under section 36 (application for hearing regarding certificates) or when an application is deemed to be made under section 37 (review of certificates after 6 months), the chairperson of the review panel shall give at least 7 working days' notice of the date, time, place and purpose of the hearing—

(a) to the applicant and the applicant's guardian, if any;

(b) one person designated by the patient, to the nearest relative and to any other person that the chairperson considers may be affected by the application and should be notified; and

(c) to the Board.

(2) On receipt of an application under section 25 (competence to make treatment decisions) or section 27 (objection to treatment), the chairperson of the review panel shall give at least 7 working days' notice of the date, time, place and purpose of the hearing—

(a) to the patient and the patient's guardian, if any;

(b) to one person designated by the patient, to the nearest relative and to any other person that the chairperson considers may be affected by the application and should be notified;

(c) to the applicant;

(d) to the Board; and

(e) in the case of an application under section 25 (competence to make treatment decisions), to the medical practitioner whose opinion is being reviewed.

(3) The review panel shall hear and consider an application as soon as it is able to do so after the receipt of the application by the chairperson and may adjourn the hearing from time to time.

Decision of review panel

39. (1) A review panel may with respect to an application—

(a) for the cancellation of admission certificates or renewal certificates—

(i) cancel the admission certificates or renewal certificates, as the case may be, that are in effect at the time of the hearing, or

(ii) refuse to cancel the admission certificates or renewal certificates;

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(b) to review a medical practitioner's opinion under section 25 (competence to make treatment decisions)—

(i) cancel the certificate referred to in that section, or

(ii) refuse to cancel the certificate;

(c) to direct that treatment may be administered in accordance with section 27 (objection to treatment)—

(i) make an order under that section, which may be subject to any conditions that the review panel considers appropriate, or

(ii) refuse to make an order under that section.

(2) A review panel shall—

(a) make the decision as soon as it is able to do so after hearing the application; and

(b) inform the patient of the decision in the prescribed form and send a copy of the decision to him or her and—

(i) in the case of an application under section 36 (application for hearing regarding certificates) or when an application is deemed to be made under section 37 (review of certificates after 6 months), to the persons to whom notice of the hearing was required to be given under section 38(1), and

(ii) in the case of an application under section 25 (competence to make treatment decisions) or section 27 (objection to treatment), to the persons to whom notice of the hearing was required to be given under section 38(2).

(3) If the review panel refuses to cancel admission certificates, renewal certificates or a medical practitioner's certificate under section 25 (competence to make treatment decisions) or refuses to make an order under section 27 (objection to treatment), the written report of the decision of the review panel shall include a statement of the right to appeal the decision of the review panel to the High Court under section 41.

(4) If the review panel decides not to cancel admission or renewal certificates, it shall give written reasons for its decision.

Onus

40. In a hearing before the review panel or the High Court under this Act, the onus is on the Board to show that—

(a) detention is required and the patient meets the criteria referred to in sections 3 and 10(1);

(b) the medical practitioner's opinion under section 25 (competence to make treatment decisions) is correct; or

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(c) it is in the best interests of the formal patient to administer treatment in accordance with section 27 (objection to treatment).

Appeal to High Court

41. (1) Within 14 days after the receipt of an order or a written decision of the review panel under this Act, the applicant or formal patient may appeal the order or decision to the High Court.

(2) The appeal shall be made in accordance with the rules of the Supreme Court.

(3) The application shall be served on—

(a) the Minister;

(b) the Board; and

(c) any other persons the Court directs;

not less than 15 days before the motion is returnable.

(4) An appeal under this section shall be a rehearing of the matter on the merits, and in addition to any further evidence adduced, the Court may direct that any transcript or minutes taken by the review panel at the original hearing of the evidence be put in evidence on the appeal and that further evidence be given as it considers necessary.

(5) An order of the Court under this section is not subject to appeal.

(6) The Court may make whatever order as to the costs of the application that it considers fit.

(7) The Court may—

(a) cancel or refuse to cancel admission certificates or renewal certificates or a medical practitioner's certificate under section 25 (competence to make treatment decisions), as the case may be;

(b) rescind or refuse to rescind the order of the review panel under section 27 (objection to treatment); or

(c) make any other order it considers just.

(8) An appeal under this section shall be heard in private unless the Court otherwise directs.

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PART 7

GENERAL

Delegation

42. (1) The Minister may in writing delegate any of the powers and duties conferred or imposed on the Minister under this Act or the regulations, including the power to form an opinion, to any person for any purpose in connection with the administration of this Act.

(2) The Board may delegate to any of the officers or employees of the Health Authority of Anguilla any of its powers and duties under this Act or the regulations.

Powers of Minister

43. The Minister may do anything the Minister considers advisable for preventing circumstances that may lead to mental disorder and distress and for promoting and restoring mental health and well-being.

Mental health advisory committee

44. (1) The Minister may establish a mental health advisory committee to act in an advisory capacity in connection with any matter specified by the Minister.

(2) The Minister may, with respect to any committee established under this section—

(a) appoint or provide for the appointment of its members;

(b) prescribe the term of office of its members; and

(c) designate a chairperson and a vice-chairperson.

(3) The committee established pursuant to this section may exercise any powers and perform any duties and functions that the Minister confers or imposes on it in connection with mental health matters.

(4) The chairperson and vice-chairperson and other members of the mental health advisory committee shall be—

(a) paid such remuneration for carrying out their responsibilities as the Minister may determine; and

(b) reimbursed for such reasonable expenses incurred in carrying out their responsibilities as the Minister may approve.

Validity of documents

45. An admission certificate, renewal certificate, certificate under section 25 (competence to make treatment decisions), warrant, order or other form issued under this Act or the regulations shall not be held to be insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or in any proceedings in connection with it.

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Immunity

46. No action or other proceeding may be commenced against a member of the review panel for anything done or omitted to be done in good faith by the member while carrying out his or her responsibilities or exercising his or her powers at a meeting of the review panel.

Regulations

47. The Governor in Council may make regulations for the better carrying out of this Act and in particular may make regulations—

(a) designating any part of the Princess Alexandra Hospital or any other place as a facility; and

(b) prescribing forms and their use.

Admission of accused persons for observation

48. (1) Whenever a Judge or the Magistrate has reason to believe that a person committed for trial before him or her or charged before him or her with an offence is of unsound mind, the Judge or the Magistrate may, for the purpose of obtaining evidence as to whether the person is or is not of unsound mind, by written order direct that the person be received into a facility, to be named in the order, and be there detained under observation during such period, not exceeding 14 days, as seems expedient to the Judge or Magistrate, but—

(a) when good cause is shown, the order may be enlarged for a further period or periods, each not exceeding 8 days at a time; and

(b) no order under this subsection shall be made in respect of persons who are not being kept in custody pending trial.

(2) When an order has been made under this section, a certificate under the hand of the medical officer in charge of the facility shall be sufficient evidence of the facts therein stated concerning the state of mind of the person kept under observation and it shall not be necessary to prove the handwriting of such officer, but the Judge or Magistrate may examine any members of the staff of the facility who had the patient under observation.

(3) Every person ordered under this section to be received into a facility for observation shall be received into the facility named in the order and be there detained under observation for the period stated in the order or for such shorter period as the Judge or Magistrate who made the order may direct, and it shall be lawful for any person to whom the execution of the order is entrusted to convey the person named therein to the facility.

Power of Governor to make arrangements for removal with other Government

49. (1) The Governor may on behalf of Anguilla enter into an arrangement or agreement with the Government of another country on such terms and conditions as the Governor, after consulting with Executive Council, may consider appropriate for the removal for examination, treatment and detention of a formal patient to a facility in that other country.

(2) Any arrangement or agreement made under subsection (1) may be varied, amended, cancelled or replaced by a subsequent arrangement or agreement.

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Power of Minister to order removal to facility in another country

50. When an arrangement or agreement under section 49 has been made with the Government of a country, the Minister may make a removal order in prescribed form directing the removal of a formal patient from Anguilla to a facility in that country.

PART 8

CITATION AND TRANSITIONAL PROVISIONS

Citation

51. This Act may be cited as the Mental Health Act, Revised Statutes of Anguilla, Chapter M72.

Transitional regulations

52. The Governor in Council may, in the one year period after 31 October 2006, make such transitional regulations as he or she considers appropriate and may make them retroactive to 31 October 2006.

Transitional provisions

53. (1) In this section, "former Act" means the Lunacy and Mental Treatment Act.

(2) Each patient who, immediately before 31 October 2006, is in detention in Anguilla under the former Act is deemed to be held as a formal patient under certificates that are sufficient authority to care for, observe, examine, assess, treat, detain and control the person for a period of not more than one month.

(3) An arrangement made under section 3 of the former Act with thes Government of Antigua is deemed to have been made under section 49 of this Act.

(4) Any removal order made by the Governor under section 4 of the former Act that is in effect on 31 October 2006 is deemed to have been made under section 50 of this Act.

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