

GUIDE TO THE INTERPRETATION OF ONTARIO REVIEW BOARD DISPOSITION ORDERS

In fulfilling its mandate under Part XX.1 of the *Criminal Code of Canada* to make and review dispositions in relation to persons charged with criminal offences who are found not criminally responsible on account of mental disorder or unfit to stand trial, the Ontario Review Board conducts approximately 2000 hearings annually, and issues a disposition in respect of most of them. There are many terms in the Board's dispositions that recur frequently. At times, there has been uncertainty about the precise meaning of those terms where they are not defined in the *Criminal Code*. As an aid to interpreting the Board's dispositions and in formulating recommendations to the Board regarding dispositions, the Board is issuing this guide, which includes a standard lexicon, in hopes of minimizing these uncertainties.

It must be understood that when crafting a disposition, the Board is free to depart from or modify the commonly used terms described in this guide, and to add other terms and conditions. The actual language used in a disposition always prevails over the guide and its lexicon.

In producing this document, the Board had the benefit of earlier work done by the Forensic Directors Group Ontario ("FDG").

A. MANDATORY REQUIREMENTS

Every Board disposition will require the person in charge to execute its terms, and in the case of a detention order, create a program for the rehabilitation of the accused. A disposition may also place other requirements on the person in charge such as a requirement, in the case of detention orders, to notify the local police at such times as the person in charge exercises their discretion to permit the accused to enter the community and to advise the local police of the terms and conditions under which they permitted the accused to do so.

B. PLACE AND LEVEL OF DETENTION:

When the Review Board makes a custodial disposition, the disposition will name the hospital at which the accused¹ is ordered detained and the forensic service, unit, or program in which they are detained. It may also identify the level of security required for their detention.

C. PRIVILEGES

Dispositions ordinarily grant certain privileges to an accused, typically related to movement and community living. Some dispositions list all the privileges available to an accused, while others grant privileges up to and including a particular privilege. The former is the preferred approach for the purpose of certainty, but where the latter approach is used, the accused may, with the approval of the person in charge, exercise privileges up to and including the highest privilege named in the disposition.

D. MOVEMENT BY THE ACCUSED:

Dispositions often specify and circumscribe the permitted place of an accused's movement, both within and outside the hospital, the type of supervision required upon such movement, the activities permitted

¹ The term "accused" is used in Part XX.1 of the *Criminal Code* to refer to persons subject to the jurisdiction of the Review Board and is used throughout this document. Some of the Board's reasons for disposition use the word "patient" rather than "accused". The two terms are interchangeable.

and the frequency and duration of movement. The following terms are generally used when movement is authorized by a disposition.

1. PLACE

An accused may be permitted to move within a hospital and/or its grounds, and into the community, as described below.

Within hospital/grounds:

An accused may be permitted access to any part of the hospital and the hospital grounds, subject to the supervision required by the disposition.

Into the community:

An accused may be permitted to enter the community, as defined in the disposition. The community may be defined as being within a specified distance from the hospital, as being within a defined town, city, or other community/municipality, as being within the particular hospital's catchment area or as being the entire province or a defined part of it. As indicated above, when an accused is permitted to enter the community, they will be subject to the supervision required by the disposition, will sometimes be limited to activities named in the disposition (most commonly necessary medical, dental, legal or compassionate purposes, education, employment, recreation or socialization, travel and vacation), and the frequency and duration of their entry will sometimes be limited by the disposition (including whether or not overnight entry is permitted).

2. SUPERVISION

The following are the types of supervision ordinarily required in a disposition, and related definitions:

escorted:

An accused must be in the presence of one or more staff members and must be in close proximity to and within the sight of a staff member at all times.

accompanied:

One or more accused must be in the presence of one or more staff members, approved persons, or delegates (the latter two terms are defined below), and each accused's whereabouts must be known and usually within the sight of at least one accompanying staff member, approved person, or delegate.

indirectly supervised:

An accused need not be in the company of a staff member, approved person, or delegate, but must agree to abide by the reporting and supervisory conditions established by the person in charge of the hospital ("person in charge"). Indirect supervision may include the required use of such tools as: itineraries and/or logbooks, telephone or in-person checks, or reporting to the person in charge or their delegate as required.

approved person:

A person who is not a member of hospital staff who has been approved by the person in charge to provide supervision of an accused for the purposes of a particular activity.

delegate:

A staff person or team that works for an external agency providing community support and has been approved by the person in charge to provide supervision of an accused for the purposes of a particular activity.

3. ACTIVITIES

Where a disposition limits entry into the community to a specified activity, the following activities are sometimes permitted.

necessary medical, dental, legal, or compassionate purposes:

The person in charge, a staff member, an approved person or a delegate may take an accused into the community: to obtain medical or dental treatment that is medically necessary and medically ordered, and that cannot be provided within the hospital where the accused is detained; for purposes of addressing legal matters where the accused is ordered to appear by a court, the Board, or other judicial or quasi-judicial body; for compassionate purposes, for example, where a member of the accused's immediate family (or, in some cases, a member of the accused's wider family or a non-family individual that the accused is close to) has died or is gravely ill.

education:

A formal educational activity such as secondary school, college or university, or education related to career or skill development.

employment:

An employment or similar activity (including sheltered employment or structured volunteer activity) in which an accused may be engaged. This may include time spent searching for a job; unpaid meetings and activities that are associated with employment; and job assessment or training activities. It may also include self-employment activities.

recreation or socialization:

Activities such as sports, games, movies, shopping, hobbies, entertainment events, or meetings with friends or family or as part of an organized group. Activities may or may not involve other participants.

travel:

Travel to a specified destination or within a specified area for the purpose of visiting identified individuals or vacationing. Restrictions as to duration, boundaries of travel and traveling companions may be specified in the disposition. Where such restrictions are not specified, the person in charge may impose such restrictions at their discretion.

4. FREQUENCY AND DURATION

The frequency and duration of entry into the community permitted by a disposition may be specified in the disposition, including whether overnight entry is permitted. Where the frequency or duration of entry into the community is not specifically stated, the person in charge may permit entry at their discretion, and subject to such restrictions as they deem appropriate. However, the Board takes the view, based on long-standing experience, that the discretion of the person in charge does not extend to permitting overnight entry unless the disposition specifically allows it.

E. RESIDING IN THE COMMUNITY:

Custodial dispositions often permit an accused to reside in the community, including in a residential rehabilitation placement for substance use recovery treatment, usually subject to the approval of the person in charge. The disposition may specify the type of residential accommodation and the location of the accommodation.

1. COMMUNITY

When a Board disposition permits an accused who is detained in custody to reside in the community, permission is commonly at the discretion of the person in charge. The disposition may either specify the place where the accused is to reside or set parameters within which the person in charge may select the place where the accused is to reside when approving such accommodation. A community residence is generally, although not always outside of the hospital grounds and may include a specific type of accommodation or a specific community within which the accused may reside.

When a Board disposition permits an accused who is detained in custody to reside in the community in a residential rehabilitation placement for substance use recovery treatment, the disposition will either specify the place where the accused is to reside or set parameters within which the person in charge may select the residential rehabilitation placement for substance use recovery treatment when approving such accommodation.

2. TYPE OF ACCOMMODATION

The following are the types of accommodation that are commonly permitted in dispositions.

approved by the person in charge:

Any residence that is approved by the person in charge.

supervised and approved by the person in charge:

A residence that has staff supervision throughout the course of the day (but not necessarily resident staff supervision 24/7) and that is approved by the person in charge.

24-hour supervised and approved by the person in charge:

A residence which has in-person resident staff supervision 24/7 and that is approved by the person in charge.

F. CONDITIONS DIRECTED TO THE ACCUSED

Dispositions usually contain conditions directed to the accused, such as restrictions as to consuming alcohol and/or drugs, a requirement to submit to monitoring of alcohol and/or drug consumption by the person in charge or their delegate, restrictions as to using or possessing firearms and/or ammunition, restrictions as to associating with, contacting, or directly or indirectly communicating with particular persons, and a requirement that the accused report to the hospital or return to the hospital for the purpose of an assessment under the *Mental Health Act*. Where such conditions are contained in a disposition, the person in charge must take reasonable steps to ensure that the conditions are monitored and are complied with.

The person in charge also has the authority delegated to them by the Review Board to direct that restrictions on the liberty of an accused be increased or decreased within the limits set out in the disposition. Where restrictions on an accused's liberty are significantly increased for a period of more than seven days, the Review Board must be notified.