

## **MENTAL HEALTH (AMENDMENT) ACT.**

### **Act No. 69, 1964.**

**An Act to amend the law relating to the care, treatment and control of persons who are mentally ill and the management of their estates and the fees payable in respect of such management; to provide for the control of trust moneys held on behalf of patients; for these and other purposes to amend the Mental Health Act, 1958-1961; to validate certain matters; and for purposes connected therewith. [Assented to, 18th December, 1964.]**

Elizabeth II,  
No. 69, 1964

BE

No. 69, 1964

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title  
and citation.

**1.** (1) This Act may be cited as the "Mental Health (Amendment) Act, 1964".

(2) The Mental Health Act, 1958, as amended by subsequent Acts and by this Act, may be cited as the Mental Health Act, 1958-1964.

Amendment  
of Act No.  
45, 1958.

**2.** The Mental Health Act, 1958-1961, is amended—

Sec. 2.  
(Division  
into Parts.)<sup>1</sup>

(a) (i) by inserting in section two next after the matter relating to Part XII the following new matter :—

**PART XIIA.—PATIENTS' TRUST ACCOUNTS  
AT ADMISSION CENTRES, MENTAL HOS-  
PITALS OR AUTHORISED HOSPITALS—  
ss. 101A-101D.**

(ii) by omitting from the same section the figures "112" and by inserting in lieu thereof the figures "113";

Sec. 12.  
(Procedure  
for admit-  
ting persons  
to admission  
centres.)

(b) (i) by inserting next after paragraph (e) of subsection one of section twelve the following new paragraph :—

(f) where he is escorted to such admission centre by a welfare officer who in writing informs the superintendent of such admission centre that such welfare officer believes such person to be a mentally ill person;

(ii) by omitting from the proviso to the same subsection the word and symbols "or (e)" and by inserting in lieu thereof the word and symbols ", (e) or (f)";

(iii)

(iii) by inserting in the same proviso after the words "mentally ill person" the words "or ought to be detained therein for observation or treatment";

(iv) by inserting next after subsection three of the same section the following new subsections : —

(3A) Where a justice or medical practitioner pursuant to subsection three of this section is unable to obtain entry into any place where he has reasonable cause to believe there is any person, in respect of whom a justice has been informed as therein provided, such justice may by order under his hand require a member of the police force to accompany him or such medical practitioner for the purpose of enabling him or such medical practitioner to visit and examine such person or make inquiry or report as referred to in subsection three of this section.

(3B) A member of the police force in pursuance of any order made under subsection two, three or (3A) of this section may, with such assistance as may be found necessary, enter any place where he has reasonable cause to believe the person, in respect of whom a justice has been informed as provided in subsection two or three of this section, may be, and use such force as may be necessary for making such entry whether by breaking open doors or otherwise.

(v) by inserting in subsection ten of the same section after the words "Schedule Two" the following new paragraph : —

A person shall not be admitted to or detained in an admission centre upon the certificate of a medical practitioner given for  
the

No. 69, 1964

the purposes aforesaid unless he has been admitted thereto within ten days after the issue of the certificate.

Sec. 13.  
(Mental  
Health  
Tribunals.)

(c) by omitting from section thirteen the words "of this Part".

Further  
amendment  
of Act No.  
45, 1958.

3. The Mental Health Act, 1958-1961, is further amended by inserting at the end of section twenty the following new subsection :—

Sec. 20.  
(Transfer of  
patients.)

(2) A superintendent may make arrangements with another superintendent for the transfer of a patient from the admission centre, mental hospital or authorised hospital in which such patient is detained to the admission centre, mental hospital or authorised hospital of which such other superintendent is the superintendent. Any such arrangement shall be sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is so transferred.

Further  
amendment  
of Act No.  
45, 1958.

4. The Mental Health Act, 1958-1961, is further amended—

Sec. 21.  
(Voluntary  
patients.)

(a) (i) by omitting from subsection one of section twenty-one the words "twenty-one years" wherever occurring and by inserting in lieu thereof the words "eighteen years";

(ii) by omitting from the same subsection the words "shall be in writing and be made to the superintendent" and by inserting in lieu thereof the words "may be made orally or in writing and shall be made to the superintendent or a medical officer";

(iii)

(iii) by omitting from subsection two of the same No. 69, 1964 section the words "twenty-one years" wherever occurring and by inserting in lieu thereof the words "eighteen years";

(b) by omitting from subsection one of section twenty-two the words "twenty-one years" wherever occurring and by inserting in lieu thereof the words "eighteen years".

Sec. 22.  
(Master may take charge of estates of voluntary patients in certain circumstances.)

5. The Mental Health Act, 1958-1961, is further amended—

Further amendment of Act No. 45, 1958.

(a) by inserting at the end of section twenty-five the following new subsection :—

(2) The provisions of Part V of this Act shall, notwithstanding anything in this Act, apply to and in respect of a person detained in a mental hospital pursuant to this section as from the time such person ceases to be subject to be continued in custody.

Sec. 25.  
(Procedure in reference to certain persons under detention appearing to be mentally ill.)

(b) by inserting at the end of section twenty-seven the following new subsection :—

(2) The provisions of Part V of this Act shall, notwithstanding anything in this Act, apply to and in respect of a person detained in a mental hospital pursuant to this section as from the time such person ceases to be subject to be continued in custody.

Sec. 27.  
(Procedure on certain prisoners appearing to be mentally ill.)

(c) by inserting next after section twenty-nine the following new sections :—

29A. (1) This section shall, notwithstanding anything in this Act, apply to all persons detained in a mental hospital pursuant to the provisions of this Part of this Act.

New secs. 29A, 29B, 29C.  
Special leave in emergencies to certain persons detained in mental hospitals under this Part.

(2)

No. 69, 1964  

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(2) Special leave of absence may in an emergency be granted, upon such terms and conditions as hereinafter approved, by the superintendent to any person to whom this section applies.

No such leave shall be granted unless the Minister has approved of a recommendation of the superintendent for this purpose and of the terms and conditions upon which such leave shall be granted.

No such recommendation shall be made by the superintendent unless the superintendent is of the opinion that no danger to the community or any member thereof would result if the person in respect of whom the recommendation is made were granted such leave.

If any term or condition upon which special leave of absence is granted to any person pursuant to this section is broken such person may be retaken and dealt with as provided in section thirty of this Act.

(3) In this section—

“emergency” means visit to a sick or dying near relative, attendance at the funeral of a near relative or such other circumstance as may be deemed by the superintendent and approved by the Minister as an emergency;

“near relative” has the meaning ascribed thereto in subsection seven of section twelve of this Act.

Persons  
detained to  
be brought  
before  
Tribunal.

29B. (1) If at the expiration of six months from the date of his conveyance, removal or being sent to a mental hospital pursuant to the provisions of this Part of this Act, such person is still a person detained in a mental hospital pursuant to the provisions of this Part of this Act, the superintendent shall, as soon as practicable, cause such person to be brought before a Tribunal as constituted under section thirteen of this Act for examination.

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The Tribunal shall determine whether or not such person should be detained in a mental hospital for further observation and treatment. **No. 69, 1964**

If the Tribunal determines that such person should be so detained such person shall be detained in accordance with such determination.

If the Tribunal determines that such person should not be so detained, such person shall, if he remains subject to be continued in custody, be removed to the prison or other place from where he was taken or to some other prison or place of confinement or if such person does not remain subject to be continued in custody he shall be discharged.

29c. It shall be the duty of the superintendent of a mental hospital in which any person is detained pursuant to the provisions of this Part of this Act to medically examine or cause to be medically examined, at such intervals as may be prescribed, such person with a view to determining whether or not such person is still mentally ill and his continued detention in a mental hospital is necessary. **Medical reviews by superintendents.**

(d) by inserting at the end of subsection two of section thirty-three the following new paragraph : — **Sec. 33.**

Nothing in this subsection shall affect the operation of subsection two of section twenty of this Act in its application to persons to whom subsection two of section twenty-five or of section twenty-seven of this Act applies. **(Security conditions for persons detained in mental hospitals under this Part.)**

6. (1) The Mental Health Act, 1958-1961, is further amended— **Further amendment of Act No. 45, 1958.**

(a) by omitting section fifty-four and by inserting in lieu thereof the following section : — **Subst. sec. 54.**

54. (1) There shall be charged in respect of the powers, authorities, duties and functions of the Master in the general care, protection and management or supervision of the management of the estates **Fees charged. cf. Act No. 19, 1913, s. 9.**

**No. 69, 1964**  

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estates of patients, protected persons or incapable persons such fees whether by way of percentage or otherwise as may be prescribed.

Such fees shall be collected and accounted for by such persons and in such manner and shall be paid to such accounts as may be prescribed.

Such fees shall be charged upon and payable out of the estate of a patient, protected person or incapable person whether or not, before payment, such patient, protected person or incapable person has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

(2) The fees under this section shall be arranged from time to time so as to produce an annual amount incidental to the powers, authorities, duties and functions of the Master as aforesaid and no more.

(3) The regulations made for the purposes of this section may apply generally or to specified classes or subject-matters or to all classes and subject-matters other than those specified and may provide for the waiver, remission or reduction of any fees in specified circumstances or at the discretion or with the concurrence of the Master.

Sec. 61.  
(Master's  
powers as  
to property  
of patients.)

(b) (i) by omitting from paragraph (c) of section sixty-one the words "one thousand pounds" and by inserting in lieu thereof the words "five thousand pounds";

(ii) by omitting from paragraph (d) of the same section the words "five hundred pounds" and by inserting in lieu thereof the words "five thousand pounds";

(c)



- (c) by omitting from subsection one of section sixty-five the words “, and all percentages” and by inserting in lieu thereof the words “or voluntary patient, and all fees whether by way of percentage or otherwise”; No. 69, 1964  
Sec. 65.  
(Payments to consolidated revenue.)

- (d) (i) by inserting at the end of subsection one of section sixty-eight the following new paragraph :— Sec. 68.  
(Common fund.)

This subsection shall not apply to or in respect of any balances where such balances are held by the Master jointly with any other person and such other person has objected in writing to its application.

- (ii) by omitting from subsection two of the same section the words—  
“section.

The costs and expenses of such allocation shall be a charge on the common fund.”

and by inserting in lieu thereof the word “Act.”;

- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections :—

(3) Interest shall be allowed on—

(a) all capital balances on current account forming part of the common fund;

(b) income balances on current account forming part of the common fund where, in the opinion of the Master, such income should be interest earning.

Interest allowed in respect of income balances shall be computed as from such date as the Master may determine.

(4) Pursuant to subsection three of this section, interest shall be credited at such rate and at such time or times as the Master may determine.

Except

**No. 69, 1964**  
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Except as provided in this section, balances in the common fund shall be deemed not to earn interest.

New secs.  
68A, 68B.

- (e) by inserting next after section sixty-eight the following new sections :—

Estates  
Guarantee  
and Reserve  
Account.  
cf. Act No.  
19, 1913,  
s. 36B.

68A. (1) Out of the total amount of interest earned in the year ending the thirtieth day of June in the year one thousand nine hundred and sixty-five and each succeeding year by all investments from the common fund the Master may set aside such sum as he may consider necessary, which sum shall be carried to an account to be called the Estates Guarantee and Reserve Account to be kept by the Master.

(2) Any capital profit made upon realisation of investments from the common fund shall be carried to the Estates Guarantee and Reserve Account.

(3) The Estates Guarantee and Reserve Account may be applied for all or any of the following purposes :—

- (a) payment to the common fund of an amount equivalent to the loss upon realisation of any investment made from the common fund;
- (b) payment of any costs incurred in protecting investments made from the common fund;
- (c) payment of such other expenses or charges incurred in respect of the common fund or investments made therefrom as in the opinion of the Master are properly chargeable against the Estates Guarantee and Reserve Account;
- (d) payment of any legal costs, charges and expenses not ordered by the court to be charged against a particular estate or otherwise not properly chargeable against a particular estate;

(e)

(e) payment of any legal costs, charges and expenses not ordered by the court to be charged against a particular estate but otherwise properly chargeable against a particular estate where there are insufficient funds in the particular estate to meet such costs, charges and expenses; No. 69, 1964

(f) costs and expenses incurred by the Master in obtaining legal advice or in legal proceedings to which the Master is or is made a party where such costs and expenses are such that by reason of general interest and importance of the subject matter of the advice or proceedings, they should not, in the opinion of the Master, be charged against a particular estate.

68B. Where, after allowing interest in pursuance of section sixty-eight of this Act and after setting aside the sum referred to in subsection one of section 68A of this Act, a surplus remains out of the income of investments made from the common fund, such surplus, or so much thereof as the Master may determine, may be applied towards production of the annual amount incidental to the working of the Master's Office. Surplus income from common fund.  
cf. Act No. 19, 1913, s. 36c.

Any amount so applied shall be taken into account in arranging the fees chargeable under section fifty-four of this Act.

(f) by omitting sections sixty-nine and seventy and by inserting in lieu thereof the following sections:— Subst. secs. 69, 70 and new sec. 70A.

69. Moneys unapplied as provided in sections sixty-eight, 68A and 68B of this Act and moneys in the common fund may be invested— Investment of common fund.  
cf. Act No. 19, 1913, s. 36d.

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b)

No. 69, 1964

- (b) on deposit with the Treasurer for a period or periods not exceeding twelve months in any one case which deposit shall bear interest at a rate to be agreed upon, and any such deposit may be renewed from time to time subject to the like conditions: Provided that the total amount invested on deposit with the Treasurer shall not, at any one time, exceed five hundred thousand pounds.

Withdrawal  
from com-  
mon fund.  
cf. Act No.  
19, 1913,  
s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in any such capacity as is mentioned in this Part or Part XII of this Act or for any purpose authorised by or under this or any other Act.

(2) The Master may withdraw from the common fund any amount belonging to any particular estate included in the common fund and may separately invest such amount for the benefit of such particular estate.

(3) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

Power to  
make  
advances.  
cf. Act No.  
19, 1913,  
s. 36F.

70A. (1) The Master may make advances from the common fund for any purpose of or relating to any estate in course of administration or in the care, protection and management thereof by him.

(2)

**Mental Health (Amendment) Act.**

773

(2) Any sum so advanced shall bear interest at a rate to be fixed by the Master and such sum and the interest thereon shall be a charge on the assets of the estate or on the specific asset in respect of which the advance was made. **No. 69, 1964**

Where any sum so advanced is applied in or towards the discharge of any debt or liability the charge under this subsection shall rank in the same order of priority as the debt or liability.

(3) Any interest received under this section shall be paid into the Interest Account.

- (g) (i) by inserting in section seventy-nine after the word "patient" where firstly occurring the words "or voluntary patient"; **Sec. 79. (Cost of maintenance of patient or voluntary patient may be recovered.)**
- (ii) by omitting from the same section the words "patient or his estate" and by inserting in lieu thereof the words "patient or voluntary patient or his estate before or after his discharge or from his estate after his death".

(2) Paragraphs (a) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**7.** The Mental Health Act, 1958-1961, is further amended by omitting from paragraph (a) of subsection one of section one hundred and one the words "and is confined in any such hospital or other institution and that he" and by inserting in lieu thereof the word "and". **Further amendment of Act No. 45, 1958. Sec. 101. (Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.)**

**No. 69, 1964**    **8.** (1) The Mental Health Act, 1958-1961, is further amended by inserting next after section one hundred and one the following new Part :—

Further  
amendment  
of Act No.  
45, 1958.

New Part  
XIIA.

**PART XIIA.**

**PATIENTS' TRUST ACCOUNTS AT ADMISSION CENTRES,  
MENTAL HOSPITALS OR AUTHORISED HOSPITALS.**

Trust  
Fund.

101A. (1) Where moneys are received by a superintendent from patients for custody on behalf of the patients or from some other person for the benefit, use or enjoyment of patients, such moneys may be paid into a trust fund styled Patients Trust Fund in a bank approved by the Treasurer.

(2) A separate current account in this Part of this Act referred to as a patient's account shall be kept in the Patients Trust Fund by the superintendent in respect of each patient.

(3) Moneys standing to the credit of a patient's account may be withdrawn by that patient for any purpose which, in the opinion of the superintendent is for the benefit, use or enjoyment of that patient.

(4) (a) Where a patient is, in the opinion of the superintendent, incapable, through infirmity arising from disease or age or other reason, of withdrawing and safeguarding money from that patient's account, the superintendent may authorise the withdrawal of such sum from that patient's account as he considers necessary for the purchase of goods and services for the benefit, use or enjoyment of such patient.

(b) In such circumstances, a certificate, by two persons employed on the staff of an admission centre, mental hospital or authorised hospital, to the effect that the goods or services represented by the sum withdrawn have been received by the patient for his benefit, use or enjoyment will be evidence that that patient received those goods or services.

(5) In this section "patient" includes a voluntary patient.

**101B.**

101B. (1) Subject to this Act, balances to the credit No. 69, 1964 of patients' accounts in the books kept at an admission centre, mental hospital or authorised hospital shall be one general fund and shall be available for investment as provided in this Part of this Act. <sup>Patients Trust Fund.</sup>

(2) Interest received from the investments and on bank credit balances in the Patients Trust Fund shall be credited to an account to be called Patients Amenities Account and shall be allocated therefrom as provided in this section.

(3) The superintendent shall apply moneys standing to the credit of the Patients Amenities Account towards the payment for goods, services and amenities for the benefit, use or enjoyment of patients generally in the admission centre, mental hospital or authorised hospital of which such superintendent is the superintendent.

(4) Any capital profit made upon realisation of investments from the general fund shall be carried to the Patients Amenities Account.

(5) Any loss upon realisation of an investment shall be met from the Patients Amenities Account.

101C. Moneys in the general fund may be invested in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts. <sup>Investment of general fund moneys.</sup>

101D. After the discharge or death of a patient or voluntary patient, whose estate has been taken charge of by the Master, the superintendent shall pay over to the Master any money standing to the credit of that patient in his patient's account. <sup>Disbursement of money on discharge or death of a patient.</sup>

(2) Any act, matter or thing done before the commencement of subsection one of this section which would have been valid had that subsection been in force at the time such act, matter or thing was done is hereby validated.

**No. 69, 1964** 9. The Mental Health Act, 1958-1961, is further amended—

Further  
amendment  
of Act No.  
45, 1958.

New sec.  
109A.

- (a) by inserting next after section one hundred and nine the following new section :—

Power of  
superinten-  
dent or  
Director to  
consent to  
surgical  
operation on  
or medical  
treatment of  
patient.

109A. (1) This section shall not apply to any operation or medical or therapeutic treatment to which section one hundred and eight or section one hundred and nine of this Act applies.

(2) The superintendent of any admission centre, mental hospital or authorised hospital may authorise any member or members of the medical staff of such admission centre, mental hospital or authorised hospital to perform any surgical operation upon or apply any medical or therapeutic treatment to any patient, or, by writing under his hand, consent to any such operation being performed upon, or treatment being applied to any patient by any member or members of the medical staff of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any mental hospital or of any other State institution without naming any such member or by any medical practitioner or practitioners named in such consent.

(3) The Director may by writing under his hand consent to any surgical operation being performed upon or medical or other treatment being given to any patient by any member or members of the medical staff of any such hospital or institution without naming any such member or by any medical practitioner or practitioners named in such consent.

(4) The Director or superintendent shall before giving any authority or consent as aforesaid satisfy himself that the operation or treatment is necessary or desirable for the safety or welfare of the person proposed to be operated upon or treated.

(5)



(5) Any consent required by subsection No. 69, 1964 two or three of this section to be by writing under the hand of the Director or superintendent may in the case of an emergency be given otherwise than by writing under his hand.

(6) Any authority or consent given pursuant to this section shall, for the protection of any medical practitioner who performs such operation or applies such treatment and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if the necessary consent had been given by the person operated upon or treated while he was of sound mind, or, in the case of a minor, as if such consent had been given by his parents or legal guardian.

(b) by inserting in section one hundred and twelve next after paragraph (b) the following new paragraph : — Sec. 112. (Regulations.)

(b1) prescribing the fees to be charged under section fifty-four of this Act and matters referred to in the said section;

(c) by inserting next after section one hundred and twelve the following new section : — New sec. 113.

113. (1) The Judges, or any five of them, may make general rules and orders for regulating in all cases the form and mode of proceeding before the Court and before and by the Master, for carrying into effect the several objects of Parts X, XI and XIII of this Act (section fifty-four excepted) so far as the same relate to the powers or duties of the Court or of the Master, and for regulating the practice and forms in all matters of the Protective Jurisdiction of the Supreme Court, and the amount of the fees payable in proceedings relating to protected persons, incapable persons and patients and their estates and the mode in which the same shall be ascertained and paid. Power to judges of Supreme Court to make general orders and rules.

(2)

778            **Mental Health (Amendment) Act.**

No. 69, 1964

(2) All such general rules and orders shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules and orders; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

Further amendment of Act No. 45, 1958. (Schedule Two.)

10. The Mental Health Act, 1958-1961, is further amended by omitting Schedule Two and by inserting in lieu thereof the following Schedule :—

**SCHEDULE TWO.**

**MENTAL HEALTH ACT, 1958, AS AMENDED.**

**MEDICAL CERTIFICATE.**

**Part I.**

I, ..... (Medical Practitioner)  
(name in full—use block letters)

of ..... do hereby certify  
(address)

that on the ..... day of ..... 19.... at

..... I personally examined  
(state place where examination took place)

..... and I am of the  
(name of person in full)

opinion that the said person is a mentally ill person and is a suitable person for admission to an admission centre for observation and treatment.

\* In

**Mental Health (Amendment) Act.**

**779**

**\* In my opinion the said person is**

- (a) Suicidal
- (b) Dangerous to others
- (c) Unable to care for himself
- (d) Not under proper care and control.

**No. 69, 1964**

**\* Strike out  
and initial  
any of the  
conditions  
that are not  
applicable.**

**\* Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (quote name, relationship and address of each informant).**

**\* Information  
communicated  
by others is  
not sufficient  
by itself.**

(a) .....  
.....  
.....  
.....  
.....  
.....  
.....

(b) .....  
.....  
.....  
.....  
.....  
.....  
.....

**\* The general medical and/or surgical condition of the patient is as follows:**

**\* State pre-  
sent condition  
and any  
relevant  
history and  
any non-  
psychiatric  
medication  
currently or  
recently used.**

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.....  
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.....

**\* The**

**Pastures Protection (Amendment) Act.**

**No. 69, 1964** \* The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

\* State doses  
and duration  
of treatment.  
Distinguish  
emergency  
sedation  
if any.

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.....

Made and signed this ..... day of ..... 19.....

*Signature* .....

**Part II.**

If the assistance of a member of the Police Force is required this part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said .....  
to an admission centre.

Made and signed this ..... day of ..... 19.....

*Signature* .....

**N.B.—For admission purposes this Certificate is Valid Only for a  
Period of Ten Days from Date of Issue.**

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