

THE RIGHTS OF PERSONS WITH MENTAL DISORDER

We refer to the paper by Dr Anthony Zahra and Dr Nigel Camilleri entitled “An Overview of the New Mental Health Act for the Maltese Islands” published in the *The Synapse Magazine*, Volume 13 Issue 01, and submit our comments, remarks and clarifications from a patient rights’ perspective.

THE DEFINITION OF “MENTAL DISORDER”

The authors suggest that a specific reference to either the World Health Organisation International Classification of Diseases or the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders could provide more definite guidance to users of the Mental Health Act. However if legislation is too prescriptive or prefers one international classification over another, then it may diminish clinical autonomy and as a result hamper rather than guide the service provider. As a result this may negatively impact the beneficiary of the service.

FORMULATION OF THE MULTIDISCIPLINARY CARE PLAN IN PATIENTS ADMITTED VOLUNTARILY TO A MENTAL HEALTH LICENSED FACILITY

Patient management should start as early as possible and service providers should take up the proposed recommendations by the authors that “an initial care plan should be written up in the first 48 hours of the patients’ admission into hospital”. The health care facility is already obliged to draw up its own operational procedures and patient care management protocols in terms of care to be provided from the point of admission onwards. Legislation allows a reasonably long period of time to ensure that at the latest, the multidisciplinary care plan should be fully finalised and operational within a week of admission to voluntary care. Service providers should aspire to bettering this deadline for the benefit of patients and in accordance with best professional practice.

DETENTION OF UP TO 4 HOURS BY NURSE IN CHARGE OF A VOLUNTARY PATIENT TO ALLOW MEDICAL REVIEW IF IT IS PERCEIVED THAT THERE ARE GROUNDS FOR INVOLUNTARY ADMISSION

Since this subarticle is already in force, concerns should be immediately addressed by the mental health facility’s management structure and documented in clear operational guidelines and/or patient care management protocols as required by the Mental Health Act itself. The Act places the onus on the clinical director responsible to ensure that healthcare staff comply with such patient care management protocols.

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INVOLUNTARY ADMISSION FOR OBSERVATION

The authors outline the procedure used in the UK and such an approach would indeed be welcome as a truly multidisciplinary proactive planned approach to care and treatment in Malta. The role taken by the approved mental welfare officer (AMPH) in the UK in the patient admission process is not applicable to old or new local mental health legislation. The mental welfare officer in the local legislation takes the place of the “responsible carer” and will only be involved in those admissions wherein such responsible carer is not willing to sign the application or is untraceable. The new legislation allows the mental welfare officer to dissent from medical opinion, documenting reasons on the application form, without hampering the admission process. Given that all applications for involuntary admission for observation will be forwarded by the Clinical Director to the Commissioner within 48 hours of the admission, such divergence of opinion will be noted and looked into, thus providing adequate checks and balances between the medical and the social viewpoints on involuntary admissions.

EMERGENCY ADMISSION FOR OBSERVATION

This is the most frequently used route of involuntary admission in Malta. We support the recommendation that there should be more widespread efforts for joint planned admission with the examination of the specialist psychiatrist provided within 72 hours of the first examination and prior to the actual admission. It is not in patients’ best interests to exclude the possibility for emergency admissions based on one medical recommendation only. As a safeguard for the patient, the new law requires that the second medical assessment by a psychiatry specialist be carried out within 24 hours of admission.

THE ROLE OF THE RESPONSIBLE CARER IN AN APPLICATION FOR INVOLUNTARY ADMISSION FOR OBSERVATION

We understand the concerns raised by the authors with respect to the responsible carer. Article 4 states that the responsible carer shall be a person “who maintains a close personal relationship with the patient and manifests concern for his welfare”. This article also provides a clear process by which a responsible carer can be identified in the event that a patient lacks mental capacity or otherwise fails to appoint a responsible carer in writing. The responsible specialist can request a change in responsible carer through the Commissioner in circumstances such as those mentioned by the authors.

If at application for involuntary admission for observation stage, the patient has not made a previously expressed choice of responsible carer in writing, Article 4 should be followed to identify the responsible carer. Given that there is a medical recommendation for admission, the application can be filled by a mental welfare officer if the responsible carer does not agree with the need for an involuntary admission or if the responsible carer is absent or cannot be identified at this stage.

INVOLUNTARY ADMISSION FOR OBSERVATION – CAN TREATMENT BE PROVIDED?

Whilst the legal text may not be sufficiently clear in this regard, it is our opinion that the period of involuntary admission for observation with a maximum duration of 10 days should be an active period of observation accompanied by full treatment as required. The clinical assessment performed by the specialist within 24 hours of admission is a legal requirement and should hopefully be followed by subsequent regular assessments which should guide clinical management on a case by case approach, as happens in other non-psychiatric clinical specialties. We fully agree with the authors' recommendation for regular clinical audit.

MENTAL CAPACITY

The new mental health act covers mental capacity stemming from a mental disorder. Hence only a specialist in psychiatry will be able to certify a person suffering from a mental disorder as having mental capacity or lack thereof. However we agree with the authors that local legislation may need to move forward to a wider view of capacity. Our office has launched this debate in a highly successful and well attended seminar held on 22nd February of this year. The contributors to this debate included the President of Malta, the Speaker of the House of Representatives, the Minister for Health, the EU Commissioner for Health, the current Maltese Judge in the European Court of Human Rights, and a panel of experts from the legal, ethical, geriatric, notarial and psychiatric fields. The debate included seminal ideas about the possibility of moving towards stand-alone capacity legislation, introduction of advance directives and other legislative action. We agree that all doctors and indeed all healthcare professionals should receive adequate training in

capacity assessment. We need to expand upon the notion that capacity can be assessed only in relation to a specific decision and that capacity can fluctuate over time and therefore may require repeated assessments. This means providing patients with enough time and assistance to understand the information given to them, reflect on it, and communicate their decision to the clinical team. We need to relearn to discover patience in dealing with patients.

PRACTICAL IMPLICATIONS

The authors refer to changes in the “period of time for which an emergency order will remain valid”. We would like to clarify this statement. Under current legislation, a patient may be admitted involuntarily to a psychiatric hospital for up to 72 hours on the strength of a single signature. In the new legislation which is coming into force, an involuntary emergency/urgent admission for observation on the strength of one signature will force necessitate specialist assessment within 24 hours. Furthermore a specialist assessment within 24 hours of admission will also be a requirement in involuntary admission for observation even when 2 assessments and signatures have been carried out prior to admission. This change in legislation is linked to patients' rights and does not in any manner impinge on professional capabilities and performance. A person detained involuntarily is being deprived of freedom and hence a safeguard to the patient, his/her responsible carer and the service delivery team is contained in the legislative requirement for a specialist assessment within 24 hours of admission. Hence an admission for observation whether urgent conditions or not provides the service provider with a holding capacity of not more than 10 days. In those 10 days decisions need to be taken. There are four possible outcomes: (1) patient is discharged home, (2) patient is placed on a compulsory/involuntary community treatment order, (3) patient requires further inpatient treatment and care but his/her admission can be changed into a voluntary type of admission, and (4) patient requires further involuntary inpatient treatment and care. In all of these instances, a multidisciplinary care plan should be formulated. In the first and third options, there is no obligation for involving the Commissioner for Mental Health. In the second and fourth option there is a formal process which is set in motion which requires the service providers and the Office of the Commissioner to work together for the benefit of the patient.

The Office of the Commissioner has to date provided around 25 sessions to healthcare professionals working within the mental health services, primary health, the social welfare sector, and probation services, in both Malta and Gozo. We have also provided an in-house document of “Explanatory notes to healthcare professionals”. The Office has also disseminated a number of leaflets pertaining to the salient features of the Mental Health Act and the functions of our Office. We remain open to further specific requests which may be sent on mentalhealthcommissioner.mfh@gov.mt

