

## THE MENTAL HEALTH ACT

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SUMMARY: When the Mental Health Act came in force (September 14th 1981) it was considered a milestone in the history of the mental patient in Malta. It followed the lines of the British Mental Health Act which already was being revised and therefore many expressed the opinion that the Act required adjournment. However it is still in force and the doctor is legally bound to follow its 'sections'. It provides the best safeguards against abuse and exploitation of the patient and therefore it is the defence of the rights of the mental patient. Ignorance of the Law is no excuse for non adherence and legal steps may be taken against the doctor if he does not follow the sections dealing with forced detention at Mount Carmel (the only designate hospital) overriding the will of the patient. The doctor is encouraged to use "informal admissions" as they assure cooperation of the patient and allows the patient to leave when he requests. However under strict and limited circumstances (when the patient is dangerous to self and/or others on account of mental disorder and hospitalisation is beneficial) he has to be admitted with the consent of the relatives even against his will - BUT the doctor should know how to proceed and therefore full 'details' are given. The doctor should also know the duration of detention, the privileges enjoyed by the patient and the patient's right to an appeal to the Mental Health Tribunal. He needs just acquaintance to special referrals by the Courts or the Prisons or Probation Orders but he should also know the Future Trends.

### THE MENTAL HEALTH ACT (1976)

The Mental Health Act (MHA) is primarily aimed at the protection of the individual as a citizen e.g. against unfair detention; as a patient e.g. right to treatment; and as a mental case e.g. right of protection, right of appeal etc.

Its other aim is to protect society against dangerousness amongst its members who are mentally ill.

Remember that ignorance of the Law does not excuse its non-adherence and therefore one may be sued (courts of law, medical council, Department of Health) not only if abused but also if not strictly observed.

### THE CHIEF POINTS OF THE LAW:

- 1) Admission to Mount Carmel Hospital overriding the will of the patient;
- 2) Duration of detention and in certain instances mode of discharge;
- 3) Privileges enjoyed by patients in Hospital;
- 4) Right of Appeal to the Mental Health Review Tribunal;
- 5) Case referrals in special instances (Courts of Law. Probation Order. Transfer from Prisons).

## TYPES OF ADMISSION

A. INFORMAL ADMISSION: Ordinary Ticket of Admission (DH22) by medical practitioners.

B. FORMAL ADMISSION:

i) Emergency Application for Admission for Observation (MHA2) by the nearest relative or by the Mental Welfare Officer together with one Medical Recommendation (MHA 3) Patient is admitted for 72 hours if not renewed by a second medical recommendation for Observation within those 72 hours.

ii) Admission for Observation

a) Application for Observation by the nearest relative (MHA 1) or Mental Welfare Officer.

b) Two medical recommendations are required (MHA2 x 2 or MHA5) one of whom must be on the Panel (The Panel is a list of doctors approved by the Minister of Health after consulting the Medical Council as having experience and training in Psychiatry.) Patient is admitted for 28 days.

iii) Admission for Treatment

a) Application for Admission for Treatment by the nearest relative (MHA 5) the Mental Welfare Officer may sign Treatment Application only if the nearest relative does not object. (MHA6).

b) Two medical recommendations are required one of whom must be on the Panel separately (MHA 7) or jointly (MHA 8). Such order last 1 year unless renewed two months before expiry.

Admission to Mount Carmel Hospital is the most important part of the Act where the General Practitioner is concerned and the following notes are therefore in place:

Informal Admission:

The Mental Health Act confirms Informal Admission which was already in force since October 1972. Informal means without formalities of application or direction. It means more than 'voluntary' because in the latter the patient must be capable of giving consent while for 'informal' it is enough that the patient or his nearest relative do not object. It is the commonest mode of admission. 56% of all admissions to Mount Carmel Hospital were that way in 1992. The ordinary Ticket of Admission DH22 (like the one used for referral to SLH is used). It must be clearly dated because such ticket expires after 8 days. The medical officer must ascertain that the person is suffering from mental disorder, mental subnormality or psychopathic personality AND is likely to benefit from inpatient treatment.

The patient so admitted may give notice of discharge and leave within 24 hours but if considered 'dangerous' to self or others he may be 'certified' with the consent of relatives, or if the latter cannot be reached he may be 'held for 72 hours if the Medical Officer i/c of case writes to the Director of the Hospital. If relatives insist on discharge they may do so 'against Medical Advice'.

#### Formal admissions

Formal admissions mean that 'specific' forms will be used to override the will of the patient and admit him to hospital. This serious step should only be taken under three conditions namely:

- that the patient is suffering from mental disorder (exclude promiscuity or other immoral conduct), subnormality or psychopathic disorder;
- the nature of the illness must be of a degree which warrants the detention in hospital or is susceptible to medical treatment or other special treatment (social work, occupational treatment, nursing supervision etc);
- such detention is in the interest of the patient's health or safety or with a view to the protection of other persons.

Emergency admission. The doctor must have examined the patient personally and must have done so within 3 days. This applies equally to the one who signs the Application Form, whether the relative or the Welfare Officer. Preferably the doctor would have been acquainted with the patient. (MHA 3). Such application expires after 2 days if not made use of.

Admission for Observation. This form of admission accounted for 8.2% of all admission in 1992. Two doctors (medical recommendations) are required one of whom must be on the Panel. The other preferably would have acquaintance with the patient. The recommendation may be made jointly (MHA 3) or separately in which case each would have examined the patient personally at intervals not exceeding three days. The Medical Recommendation/s must include a statement confirming the grounds for compulsory admission i.e. the degree of disorder warranting admission and that detention is necessary for the patient's safety and with a view of protecting others.

Admission for Treatment. Only 1 patient was admitted this way in 1992. Application must be made by the nearest relative (MHA 5). As said the Welfare Officer may sign only if 'no objection' by the nearest relative (MHA 6) unless the relative seems unreasonable. Two Medical Officers must sign one of whom must be on the Panel and the other one preferable who would be acquainted with the patient. They may do so jointly (MHA 8) or separately (MHA 7) not at longer interval of 3 days. Besides each having examined the patient personally and stating that the patient is to be admitted on the grounds of mental disorder likely to be dangerous to himself and/or to others, the doctors should also state why other methods for dealing with the patient are not appropriate and hospitalisation is necessary. Such admission gives the right to the patient and his relatives to appeal before the Mental Health Review Tribunals in the first 6 months if first an appeal to the Director of the Hospital fails to release the patient. Relatives are informed about this right together with the fact that the practitioner of the family may visit the patient in hospital and have recourse to the files (Case sheet).

The Law defines the order of the nearest relative namely husband/wife, son/daughter, father/mother, brother/sister, grandparents/grandchildren. It also excludes doctors from making the recommendations under certain circumstance namely if he is the person making the application, partnership with the applicant or in employment by him or has financial interest in connection with the maintenance of the patient.

After 'certification' the patient may be removed to hospital by the relatives (privately or by ambulance) or by the police if the order duly filed is handed to the Inspector of Police of the district by or on behalf of the relatives.

The relatives may opt for certain time of the day to take the patient to hospital in which case the responsibility for the delay rests with them.

The doctor should not be an accomplice in 'tricking the patient' or deceiving the patient (going for a ride, going to St Luke's etc.) He may be asked to give the patient 'an injection' to calm him prior to removal. If it is an emergency, then such measures are defined by that emergency. But an injection on an unwilling patient may have legal repercussions.

The patient may assaultively or actively refuse to be examined and the doctor may find it difficult to approach the patient to make the recommendation. The police, on the other hand may not oblige removing the patient unless they have the necessary documents. In such case, tact and persuasion usually work but may not do so exceptionally. If the patient commits a contravention like disturbing public peace, threatening people etc. police may claim the patient and ask the doctor/s to examine patient at the station. Such cases are indeed difficult at times if patient refuses to open the door for the doctor or simply elopes before the doctor calls. A full cooperation between relatives, the welfare officer and the police may help to solve such problems but one hardly is excused from not abiding by the law. The Mental Health Act does make it difficult indeed to detain patients against their will - indeed that is its primary aim!.

#### DURATION OF DETENTION

The duration is also prescribed by the Act and the doctor should not mislead the patient or his relatives by giving false hope or unfounded promises. The prescription of the Act is to minimise detention as far as possible consonant with proper assessment and treatment of the patient. Thus Emergency Admission is limited to 72 hours though it may be extended by recommendation to observation in that period of time.

The observation Order is limited to 28 days but the patient may be discharged by the Consultant before that if he thinks that the patient can be treated as Out-patient or if the relatives make a reasonable request. But the Consultant's decision overrides that of the relatives or patient in that period. The Admission for Treatment is valid for 12 months though it may be renewed. The relatives may request discharge through the Consultant i/c, through the Director of the Hospital or on appeal to the Mental Health Review Tribunal).

As a rule the cooperation between the relatives, the consultant i/c and the Psychiatric Social worker works exceedingly well in our cases to ensure early release or at least to 'hold' the patient to a minimum, consonant with safety of patient and other citizens.

In certain cases (referral by the Courts, Probation of Prisons discharge is also governed by the Act and the consultant will only be able to 'advise' the authorities but in our case such advice was always heeded by the authorities.

## PRIVILEGES IN HOSPITAL:

The right of freedom and self expression is limited by forcibly detaining a patient and overriding his will. It is also limited by 'forcing' treatment on the patient in spite of his refusal. But of course the scope of the Act is to ensure that such restriction is done under prescribed regulations, by competent persons, with the consent of the nearest relatives or the Courts, for a determined period and for the benefit of the patient or in the interest of the community.

Having said that, one may generalise and state that all the rights of the individuals are respected while in hospital. He may be given 'leave of absence' consonant with his mental state and the responsibilities of the relatives (if patient is absent without leave while he on formal admission may be brought back by the police). He has the opportunity of enjoying the main garden and canteen privileges; he may go to church and receive visitors.

Though as already said, treatment may be forced against patient's will this is always done with the consent of his relatives and withdrawal of that consent is respected.

He may vote in an election (he may be examined by Electoral Board and declared unfit or fit); he may make a will or contract (though he may be incapacitated or interdicted by the Civil Court). He may have possessions, though vetted against dangerous objects. He has full liberty to correspond without censure unless letters received interfere with treatment or the receiver objects in writing to the Director of the Hospital). No censure whatsoever if patient writes to the Minister, his Lawyer, the Chief Government Medical Officer or the Director of the Hospital.

## RIGHT OF APPEAL

The Act brings into being the Mental Health Review Tribunal which is composed of a Chairman (usually a Judge), two members (one usually a psychiatrist and the other a lay person) and a secretary. They receive appeals against detention by patients and their relatives under 'treatment' orders but also for consideration from the Minister of Justice by petitions done to him by relatives of patients referred by the Court of Judicial Police. The Minister of Health may also make recommendations for advice in special cases (e.g. transfer of Maltese nationals in foreign hospitals). The M.H.R.T. may have larger competence in the future but at present not enough cases are referred to it meaning that the patients are 'easily discharged' by the consultants or the patients and their families are not aware of this right.

## SPECIAL REFERRALS

a) If during the course of any proceedings on the charge of a criminal offence the question of insanity of the accused arises the Court may order that accused to be admitted to hospital for observation. The Criminal Court of Judicial Police (CCJP) usually appoints a panel of experts to examine and report on the state of mind of the accused both during the commitment of act and the present state of proceedings. The Court relies on such report but in case of trial by Jury, the Jury has to decide on whether to accept the report or not. (The report is the opinion of the experts but whether patient is sane or insane is a matter of fact to be determined by the jury). In case of Court Order the duration, renewal of authority for detention is determined solely by the Court or the Minister of Justice. No appeal to the MHRT is permissible but the patient or the relative (or the Social Worker) may petition the Minister of Justice for leave of absence or discharge and the latter asks for recommendations from the MHRT (and the Attorney General).

Such patients are admitted to MW10 previously known as the Maximum Security Unit but today no such units exist and the Court does not direct maximum vigilance.

If death occurs while the patient is still on Court Order the Magistrate must be informed through the Superintendent (Inspector) of Police who usually orders a post mortem to exclude foul play.

b) Section 52 of the Act amends the Probation of Offenders Act regarding the concept of 'treatment' instead of punishment. This is usually applicable to drug addicts where the Court gives a Probation Order part of which (not more than 12 months) must be spent in hospital for treatment.

c) Patients from the Prisons may be referred to Mount Carmel Hospital on the application of the Director of Prisons and two medical practitioners one of whom must be on the Panel. Such patients even while on treatment in hospital remain under Prison Regulations.

## FUTURE TRENDS

Even when the Mental Health Act came into effect (September 1981) it was already overtaken by events and the need for updating, amending or replacing was felt. By that time certain professions like the Psychiatric Social Workers, the Psychologists and the Occupational Therapists together with Community and Hospital Trained Nurses were making their impact on the treatment of mental patients. The rise of human rights pressure groups and enlightening of public attitude were becoming vociferous and influential against detention and stigmatisation. Furthermore modern treatment with psychotropic drugs and surgical interventions were giving excellent results but were also accompanied by grave hazards so that precautions against their abuse and the right of the patient for informed consent were quite in order.

The impact of the multidisciplinary team in the treatment of mental illness was appreciated. The alternatives to mental hospitalisation like Psychiatric Ward in a General Hospital, Half Way Houses, Day Hospitals and Night Hostels offered a serious challenge to the traditional long stay, old fashioned, stigmatised mental hospital. Abroad (perhaps owing to economic reasons) such hospitals are being pulled down.

The awareness of the benefits and dangers of modern physical treatment made it highly desirable (and legally binding) that the patient or his guardian must give valid informed consent with the right to refuse treatment. Some special treatment which might influence the personality of the patient possibly irreversibly (like Electric Convulsive Treatment, prolonged drug therapy and psychosurgery) require the opinion of two Consultant Psychiatrists in certain countries.

Finally special provision will have to be made for special cases - prison or hospital, with maximum security for the criminally insane, the personality disorders and the mentally retarded. With the ever far reaching specialisation and research, accommodation must be made for the exigencies of Forensic Psychiatry, Substance Abuse, Liaison Psychiatry, Psychiatry of Old Age and Psychiatry of Children and Mental Handicap.



Forms: DH/MHA\*

1. Application for Admission for Observation
2. Emergency Application for Admission for Observation
3. Medical Recommendation for Admission for Observation
4. Joint Medical Recommendation for Admission for observation
5. Application by nearest Relative for Admission for treatment
6. Application by Mental Welfare Office for Admission for Treatment
7. Medical Recommendation for Admission for Treatment
8. Joint Medical Recommendation for Admission for Treatment

\* Department of Health/Mental Health Act  
DH 22 Ticket of Referral of a patient to Hospital.