

### Recent Guidance on what Treatment can Fall within Section 63 MHA

It is established law that section 63 of the Mental Health Act 1983 can be interpreted fairly widely in considering what treatment can be termed as treating a patient “for the mental disorder from which he is suffering” without consent. Such treatment must be given under the direction of an Approved Clinician who is in charge of the patient’s treatment.

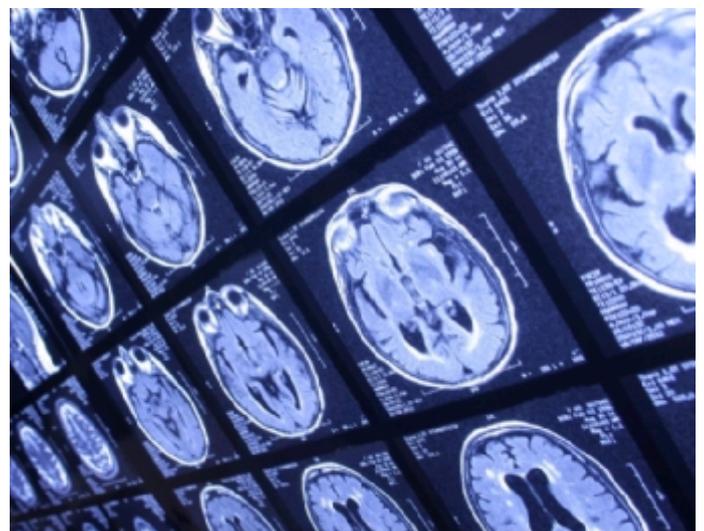
Section 63 has been used to authorise treatment that is not just a direct treatment of the patient’s mental disorder itself. This has included treatment to force feed anorexic patients with a nasogastric tube. In the leading case of *B v. Croydon Health Authority* [1995], a patient who was suffering from borderline personality disorder was treated in this way, following the decision of the court, because the Court reached the view that the treatment was aimed at treating a *symptom* of the patient’s mental disorder, namely a refusal to eat in order to inflict self-harm. The court held that treatment included:

- A range of acts ancillary to the core treatment
- Ancillary treatments can include nursing and care ‘concurrent with the core treatment or as a necessary prerequisite to such treatment or to prevent the patient causing harm to himself or to alleviate the consequences of the disorder...’[1]
- Relieving the symptoms of the mental disorder – see s. 145(4) which now confirms that treatment which is to alleviate or prevent a worsening of the disorder or one or more of its symptoms or manifestations is as much a part of treatment as treatment to relieve its underlying cause.

### Recent case law

In a recent case in which this firm acted on behalf of a psychiatric unit involved in a patient’s treatment, the question arose as to whether section 63 would extend to treating a patient for her type 1 diabetes given that her refusal to accept such treatment was clinically regarded as a symptom of her mental disorder ( a personality disorder). The patient had a history of refusing to accept her insulin therapy for periods of time that caused a serious medical risk and she was frequently admitted as a medical emergency to a general hospital. There had been occasions where she had been admitted by ambulance in a critical condition.

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Footnote: 1. Per Hoffman LJ

The consultant diabetologist treating the patient considered that it was absolutely vital that she should continue to receive insulin to prevent complications such as diabetic ketoacidosis.

Given that the patient was a child aged 17 the primary focus of the application made jointly by the psychiatric unit and the general hospital was an application that the Court make a declaration that it was lawful to override her refusal and administer appropriate treatment for the patient's diabetes with, if necessary, reasonable restraint on the grounds that it was in her best interests to do so.

The second aspect of the application was, however, an application that the court declare that the patient's refusal of insulin treatment was part of a repeated pattern of self-harming (para suicidal) behaviour and as such was a symptom of the patient's personality disorder. The Court accepted this and held that it was lawful to treat the patient's diabetes pursuant to section 63 of the Mental Health Act, her refusal to accept such treatment being a symptom of her mental disorder.

## 24 Hour Advice

Issues of consent often arise in urgent situations, in many cases outside normal office hours. As a result we provide a 24 hour advice service particularly to advise on issues of consent, and for issues in relation to patients detained under the Mental Health Act. For further details please contact us.

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