

Number 32

## "Re-sectioning" patients

The ability to re-section patients immediately after they have been discharged by a Mental Health Review Tribunal was decided in 1994<sup>1</sup>. There has, however, recently been a further case considering the "re-sectioning" of patients, when the court has again confirmed this to be lawful.

### Ex-parte M

The patient had been detained under Section 3 immediately after a Mental Health Review Tribunal had discharged her from liability to detention under Section 2. She sought to challenge this. The court dismissed her application. The Judge held that the Mental Health Act was not to be construed in such a way so that the duty and discretion of an approved social worker to apply for the detention of a patient was not to be limited by an earlier decision of the Tribunal. The Judge therefore effectively held that if a patient is discharged from section by a Tribunal, further application for admission under either Section 2 or Section 3 can be made immediately.

### New case law

The court has recently had to reconsider these issues<sup>2</sup>. The patient was admitted to hospital under Section 2. The Tribunal ordered his discharge but on the day before this was to take effect, proceeding on the basis of two medical recommendations and an application by the ASW, the patient was detained under Section 3.

The patient sought judicial review of the decision to detain under Section 3. He contended that if a patient were discharged by a Tribunal, before there could be any further lawful detention under the Act there would have to be a change of circumstances from the time of the Tribunal's decision.

### The law confirmed

The application for judicial review was dismissed. The Judge held that when doctors and social workers seek admission for patients under Section 3 of the Act they are not bound by an earlier decision of a Mental Health Review Tribunal. This followed the decision in ex parte M. It was, therefore, unnecessary for there to have been a change in circumstances between the date of the Tribunal's decision and the subsequent assessment by the doctors and the social worker for the purpose of the further admission.

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**October 2000**

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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<sup>1</sup> R v. Managers of South Western Hospital - ex parte M [1994] 1 All ER 161

<sup>2</sup> R v. Tower Hamlets Healthcare NHS Trust - ex parte Von Brandenburg [2000] All ER D 921

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