

Number 35

Restricted patients and nearest relatives

Last year saw several cases regarding the legal status of nearest relatives. The last of these, reported in December, deals with the position of the nearest relative of a restricted patient.¹

The Facts

The patient was convicted of manslaughter on the basis of diminished responsibility. As a result of a diagnosis of schizophrenia he was detained under S37 Mental Health Act.

A Mental Health Review Tribunal proposed to discharge the patient with residence conditions. The patient did not want his family to know of the Tribunal's decision and sought an injunction to prevent them disclosing this. He contended that there was no requirement for the Tribunal's decision to be communicated to his nearest relative.²

Court Decision

The court held that the Mental Health Review Tribunal Rules did not require any information to be disclosed to the nearest relative of a patient detained under Section 37 of the Act if the patient did not wish this.

Guidance

Following this decision the Department of Health have issued guidance confirming that when a detained patient applies to a Tribunal (or the case is subject to referral) the statement about the patient required by the Rules³ should not name a nearest relative in Part A of the statement. Based on the decision of ex parte H restricted patients do not have nearest relatives who have functions under the Mental Health Act.

RadcliffesLeBrasseur January 2001

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Out of office emergency advice available 24hrs on 07802 506 306.

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

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¹ *R v. Mental Health Review Tribunal for West Midlands and North West Region ex parte H* [2000] All ER (D) 2189

² See Mental Health Review Tribunal Rules 1983

³ See Rule 6 Mental Health Review Tribunal Rules 1983

NEWSFLASH

Reforming the Mental Health Act

The awaited white paper on the reform of the Mental Health Act was published on 21st December 2000. The proposals will be dealt with in a future Briefing. A summary of the proposals is available at www.doh.gov.uk/mentalhealth/summary.htm