

Number 4

Emergency Detention Powers

As a result of the recent decision in Bournewood, attention has been focused on the powers available to detain informal patients. The Mental Health Act provides express authority to detain informal in-patients and it is important that staff working in mental health are aware of the emergency legal powers to detain clients who may be at risk of self harm or harm to others. Indeed, in view of the duty of care owed to the patient, failure to exercise these powers in a case where the patient subsequently suffers harm could lead to a claim for compensation.

Whilst the existence of these powers should be well known, the nurses holding power, in particular, is little used. The purpose of this *Briefing* is to remind staff of these provisions notwithstanding Bournewood.

There are two emergency detention powers which might be used when a patient seeks to self-discharge from hospital:

Nurses' Holding Power

Section 5(4) of the Act gives an RMN or RMHN the power to detain a patient who is an in-patient and prevent him leaving the hospital. It authorises detention for a period of 6 hours from the time that the nurse reports in writing the fact that the patient is being detained under this Section. The period of detention is not renewable. During this period, the medical practitioner in charge of the patient's treatment (or his nominated deputy) should examine the patient and consider preparing a report pursuant to Section 5(2) to authorise further detention - see below.

The nurses' holding power can only be used in respect of a patient who has been receiving in-patient treatment for a mental disorder and appears to be suffering from a mental disorder to such a degree that it is necessary for the patient's health or safety, or for the protection of others, for him to be restrained in hospital. It therefore cannot be used in respect of patients in a general hospital who are not receiving treatment for mental disorder.

The authority to detain the patient under Section 5(4) comes to an end once the medical practitioner arrives.

Statistics show that Section 5(4) is not widely used (there were 1,216 reported uses in 1994/1995). It is possible that powers of persuasion meant it was unnecessary to rely upon the formal provisions of the Act but it is important that nurses are aware of this power, able to carry out a risk assessment of the patient, and able to implement emergency detention in appropriate cases.

Doctors' Holding Power

Section 5(2) of the Act authorises the medical practitioner in charge of a patient's treatment (or his nominated deputy) to detain an in-patient for up to 72 hours for the purpose of assessing him for possible formal admission under the Act. The authority to detain arises if the doctor believes the

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patient needs to be the subject of an application for formal admission and lasts for a period of 72 hours from the time that the doctor provides a report to this effect to the hospital managers. It is not renewable. Once the patient has been assessed, if it is decided that the patient is not to be detained, discharge should follow immediately.

Unlike the nurses' holding power which can only be exercised to detain psychiatric patients, this power can be exercised by any doctor who is responsible for a patient's treatment and could therefore apply to a general patient who is not in a psychiatric hospital or a psychiatric wing.

A patient who is detained under this provision cannot be transferred to another hospital, although the patient could be transferred from one ward to another within the same hospital.

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