RadcliffesLeBrasseur

BRIEFING

Number 64

Treatment under Section 63 – New Limitations

MENTAL HEALTH LAW

The ability to treat patients without consent under Section 63 is well known. However, a recent case[1] has made it plain that there are restrictions on the circumstances in which this section can be used.

The case concerned a patient who was detained under sections 37 and 41 of the Act pursuant to a hospital order. The hospital order provided that the patient was suffering from schizophrenia. The Clinicians who cared for the patient thought that he also suffered from a psychopathic disorder.

The patient applied to the tribunal for discharge on grounds that there was no evidence to suggest that he was suffering from a personality disorder but was being treated as such. The tribunal refused his application and he remained classified as a patient suffering from a mental illness and not a personality disorder.

The question for the Court was whether s.63[2] of the Act, allowed the compulsory treatment of a detained patient for *any* mental disorder or whether it only permitted compulsory treatment in respect of the mental disorder specified in this case by the hospital order or as specified in the application for detention under s.3.

The Court held that s.63 only permitted compulsory medical treatment for *classified mental disorders* on the grounds that the 1983 Act was designed to ensure that patients receive treatment for the disorder which justifies their detention. Contrary to previous interpretations of s.63, the Court held that a patient detained under the Act should not be subjected to treatment without his consent for a condition that did not justify his detention.

The main consequence of this judgment is that there needs to be very clear and detailed consideration of the precise nature of the medical disorder from which the patient is suffering when completing the application papers for detention. If a patient is suffering from more than one type of mental disorder, even if his presentation suggests that the main symptoms are caused by one mental illness rather than the other, there will be difficulty if there is a need to resort to compulsory treatment under s.63 if only one of the mental disorders is referred to in the application.

Patients should be reviewed with regard to the classification of their mental disorder. In the words of Lord Justice Simon Brown following this judgment : "*the question of reclassifying patients to include other disorders will assume a far greater importance than hitherto it has had*". There will therefore be greater onus on tribunals to obtain detailed evidence from a patient's RMO regarding the mental disorder from which the patient is suffering to consider whether reclassification is necessary under s.72(5) of the Act.

[1] B v Ashworth Hospital Authority (April 2003)

[2] Which provides for compulsory treatment of a patient without consent where the treatment is given to the patient "for the mental disorder from which he is suffering….if the treatment is given by or under the direction of the RMO"

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

RadcliffesLeBrasseur

BRIEFING

MENTAL HEALTH LAW

Where treatment has been given to a patient for a mental disorder that is not in accordance with the classification given on the application for detention/hospital order, discontinuation of the medication will need careful consideration if this is likely to have adverse consequences for the patient's health.

It should also be noted that the Court of Appeal considered that if a non classified disorder is diagnosed and the patient required emergency treatment, to which he could not consent, then those treating him could rely on the common law doctrine of necessity which would allow the hospital to treat the patient on the grounds that urgent treatment was necessary and in the patient's best interests.

June 2003

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: andrew.parsons@rlb-law.com.

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com