

Number 72

Representation of Patients and Disclosure of Reports at Managers' Hearings

Issues often arise as to who may represent a patient at a Manager's Hearing and the extent to which the patient and/or their "advocates" may obtain access to the Reports prepared in connection with that hearing.

There are no formal rules of procedure specifically applicable to a Managers' Hearing. The Code of Practice does, however, give some guidance. It is also appropriate to consider the provisions of the Mental Health Review Tribunal Rules insofar as they could be regarded as setting a standard to be followed in relation to a Managers' Hearing.

Under the Code of Practice¹, the Panel should obtain written reports from the patient's RMO and others who are directly involved in the patient's care such as the key worker, named nurse, social worker and clinical psychologist, in advance of the hearing. The Code says that the patient should receive copies of the reports unless the managers are of the opinion that the information disclosed would be likely to cause serious harm to the physical or mental health of the patient or any other individual.

The test of being "likely to cause serious harm" is a fairly high standard and means that in most cases there could be no objection to disclosure of the reports. By comparison, Rule 12(2) of the Mental Health Review Tribunal Rules (MHRTR) requires the Tribunal to consider whether disclosure of documents before it to the applicant or the patient "would adversely affect the health or welfare of the patient or others". This is a rather lower standard and would justify the exclusion of a wider category of material.

Accordingly, Managers should consider whether there is anything in the reports which, if disclosed to the patient, would adversely affect the health or welfare of the patient or another. If so, it would be reasonable to withhold that material.

Turning to representation, the Code² states that the patient :

- should be given a full opportunity and any necessary help, to explain why he or she wishes to be discharged; and
- should be allowed to be accompanied by a friend or representative of his or her own choosing to help in putting his or her point of view to the Panel.

There is no reference in the Code to formal representation by an advocate, let alone by a lawyer or other professional advocate.

¹ Para 23.14

² Para 23.16

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By comparison, the MHRTR provide that any party may be represented by any person whom he has authorised for that purpose, not being a person liable to be detained [i.e. sectioned] or subject to guardianship or after-care under supervision under the Act or a person receiving treatment for mental disorder at the same hospital or mental nursing home as the patient

Under the MHRTR, the Tribunal must send copies of all documents to the applicant and patient, subject to the consideration of adverse effect on health or welfare, mentioned above. There is also provision in the MHRTR for the Tribunal nevertheless to disclose withheld documents to the representative if the representative is a barrister or solicitor, a registered medical practitioner or, in the opinion of the Tribunal, "a suitable person by virtue of his experience or professional qualification". If disclosure is made to the representative in this way, the representative may not disclose the material either directly or indirectly to the patient without the prior authorisation of the Tribunal.

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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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