

Number 59

Managers' Decisions, Contested Treatment Regimes and Protection of Confidentiality

This month's briefing brings reports on 3 unrelated but interesting practical decisions for healthcare providers.

Decisions of Hospital Managers

The Power of discharge under Section 23 Mental Health Act may be exercised by any three or more members of a panel or committee formed to exercise the function of hospital managers. Thousands of managers hearings take place every year, more often than not with three members.

The Court has recently had to consider whether the managers can decide by a majority or, given the express terms of Section 23, whether the power of discharge can only be exercised if the three members of the panel unanimously agree on this.

Although administrative law normally permits decisions to be made by a majority, the terms of Section 23 clearly state that the power of discharge may only be exercised by three members of the managers panel. The Court decided¹ that the wording of Section 23 required a unanimous decision of a three member panel. Where the panel comprised four or more members, a majority sufficient decision would suffice. The common law rule regarding majority decisions was displaced by the clear words of Section 23 (4).

Compulsory Treatment in the Presence of Alternative Views

Previous briefings have looked at the legal position where the patient objects to a proposed course of treatment².

In a recent case³ the patient's RMO proposed to give depot anti psychotic medication. A SOAD was duly appointed and confirmed the treatment. The patient's solicitor however, obtained a report from an independent psychiatrist who considered it unlikely that the patient was suffering from a psychotic illness, rather that she suffered from an untreatable personality disorder so that she should not be given the anti-psychotic medication.

At first instance the Court concluded that the patient lacked capacity and that she was indeed suffering from a psychotic illness. On appeal, it was claimed on behalf of the patient that where there was a reasonable body of medical opinion to suggest that the patient was not suffering from a treatable condition, it could not be shown convincingly that the proposed treatment was medically necessary as required by Article 3 Human Rights Act. If it were not shown to be so it could be challenged as being inhuman and degrading treatment given the patient's lack of consent⁴. However, the Court concluded that whilst the fact that there was an alternative body of opinion was relevant to whether the treatment was in the patient's best interest or medically necessary, it was no more than that. In the light of the

¹ R (on the application of Tagoe-Thompson) –v- Hospital Managers of the Royal Park Centre[2002] All ER 113 – RadcliffesLeBrasseur acted for the NHS Trust

² See for example R (on the application of Wilkinson) –v- Broadmoor Special Health Authority [2002] All ER 294 – See Mental Health Law Briefing No 53

³ R (on the Application of N) –v- Dr M [2002] All ER 75

⁴ Herczegfaly –v- Austria (1992) ECHR 10533.

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evidence in the current case, the Judge was entitled to conclude that the treatment should proceed, and there was no breach of Article 3.

Disclosure of Confidential Medical Records

A Defendant newspaper company published an article including verbatim extracts of medical records of a patient at a Special Hospital. The hospital authority commenced proceedings against the newspaper seeking disclosure of the source of that information. The journalist who had been the author of the article did not know the identity of the initial source only an intermediary. Nevertheless, the Court ordered him to produce a statement providing details of how the information came to be within his possession given that there was a clear case of wrong doing and breach of confidentiality.⁵

Despite the well known public interest in a free press, the Court was clear that confidentiality of medical records is an important public interest right that must be protected.

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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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⁵ Ashworth Hospital Authority –v- MGN Limited [2002] All ER 234