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The Responsible Medical Officer and Mental Health Review Tribunals

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The RMO who is well informed about his patient, and conversant with the law in respect of the particular problems that the case presents, has little to fear from Tribunal proceedings. Nevertheless to have to write reports and insert, into a busy timetable, often at short notice, a sometimes lengthy Tribunal is an irritation which can have an adverse effect on both knowledge of the case and on objectivity.

A clear understanding of what is required of the RMO may assist in both writing reports and presenting evidence to the Tribunal. It is towards achieving this end that these notes are written. The essential information is contained in the Mental Health Act and Regulations, but is not always easily digestible.

(1) Parliament and European Law decree that decisions to detain patients should be subject to independent review. Whatever one's views about Tribunals they do, unless the law is revised, need to be taken seriously. In the majority of instances they are so regarded, but whatever irritations they present, it does not help the RMO or the patient for these views to become evident in the proceedings.

(2) The RMO, engaged in a busy routine, is not always adept at communicating reasons for his actions in either legal or non technical terms. He may be used to discussion in case conferences but not to the judicial process of formalised question and answer. The forethought promoted by conceptualising this problem may go a long way to its solution.

(3) Neither is an RMO necessarily accustomed to dealing with challenges to his views and he may feel threatened when he is. A Tribunal, particularly when the patient is legally represented, cannot help being at times 'adversarial'. But no one is accused and it is important to recognise the distinction. The Tribunal is there to assess the facts and the legal justification for restriction of liberty in the face of those facts. It is for the President to ensure a fair hearing for *all* those involved.

(4) A Tribunal must address the patient's current state in deciding, as required by S72, whether he is 'then suffering' from a form of mental disorder compatible with the section under which he is detained. The history of events leading to hospitalisation may well be relevant to this decision but the propriety of the original detention is not of prime concern. This is not to say that the patient must exhibit all the behaviour of relevance to the Tribunal's decision during the proceedings, or even on the same day or week, but such factors must have current relevance, e.g. distress or violence may return if medication is now refused. Clearly there can be a *reductio ad absurdum* in both directions, excess concentration on the immediate present or distant past could both be unhelpful and a legally and clinically appropriate balance must be maintained.

(5) The RMO must be readily conversant with the relevant provisions of the MHA 1983 and Regulations (Statutory Instrument 1983, No. 942) and in particular with:
   (a) the provisions of the Section under which the patient is detained
   (b) Section 72 (see below)
   (c) the definitions laid down in Section 1.

(6) If the RMO is to carry conviction with the Tribunal he should be readily conversant with the patient's history, the content of the case notes, current treatment, and future treatment options. This may seem self-evident, but RMOs do go on leave, delegate to other doctors and spend time with other patients so that it is easy for events to pass them by. The Tribunal will require them to update their report verbally, particularly if it is written some time prior to the tribunal.

(7) The RMO should be prepared to offer an opinion on the patient's current state in relation to the matters of law referred to in Section 72. The Tribunal does not have to agree with him but it is easier to take regard of a well presented view.

The essentials of S72 for patients detained in hospital under Part II, presented as a checklist, are as follows:

   (a) Is the patient suffering from one of the S1 categories of mental disorder, and if so which (S72(1))? Does the original category under which he was detained need to be revised (S72(5))?
   (b) If the patient is suffering from a form of mental disorder, is the disorder of a

(b) nature or degree which warrants the patients continued detention in hospital (S72(1))? If 'yes':

(c) Is the continued detention in hospital required (according to the Section used) for:
assessment (S2)? (i.e. is assessment finished or still in progress? What is still needing assessment?)
Treatment? (S2:S3)
For a limited (S2)/extended (S3) period?

(d) Is continued detention in hospital justified in the interests of the patient's:
Health? OR
Safety? OR
The protection of other persons? OR
Rarely, and only when a Tribunal follows a barring order by the RMO under S66(1)(g) & S25, if released would the patient not be likely to act in a manner dangerous to himself or other persons.

(e) If he is detained under Section 3 ("otherwise than under S2"):
Is there a likelihood of medical treatment alleviating or preventing a deterioration in the patient's condition?
AND if he is suffering from mental illness or severe mental impairment what is the likelihood of the patient, if discharged, being able to:
care for himself
obtain the care that he needs, or
guard himself against serious exploitation?

(f) In certain circumstances (S72(3)) the Tribunal may also wish to know the RMO's views on:
the granting of leave
transfer to another hospital
transfer into Guardianship
discharge at a later date.

(8) The RMO should understand that the Tribunal, in certain circumstances MUST discharge the patient (S72(1)(a) & (b)) but also has the powers to discharge the patient even though the legal grounds for detention still subsist (S72(3)). Whatever the Tribunal's decision members have to be satisfied on the balance of probabilities. The distinction between ordering, in which compliance is essential, and recommending, which takes into account the views of others, is important.

(9) It may further assist the RMO, when presenting both written and verbal evidence to the Tribunal, to remember that the Tribunal can only act on evidence that is presented to them at their hearing. Facts then have to be established and opinion tested. Material evidence that is not in the reports has to be presented or elicited verbally. Only the medical member of the Tribunal will have prior knowledge of the patient, and that relatively briefly; the legal and lay members will rely entirely on reports and the verbal presentations. What may seem self-evident to a trained professional who knows his patient may not be immediately apparent to a lay person who has met the applicant only that day. At the end of the hearing the Tribunal have to reach their decision, and give reasons for it, on the basis of the evidence presented.

(10) For Guardianship, see S72(4) and for patients detained under Part III see S73, which are not here considered.

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