

Psychiatry and the Law

Civil Law

Confidentiality

- should not collect information from other informants without the patient's consent
- try to act in patient's best interests
- confidentiality may be breached if:
 - concerns for public safety
 - threats to a named person

Competence/ Capacity

- issues about competence to consent to treatment arise in three groups of patients:
 1. mentally retarded people
 2. children and adolescents
 3. patients with mental illness
- the judgement of competence relies upon:
 - patient's ability to comprehend and retain information about treatment
 - to believe this information
 - to be able to use it to make an informed choice
- in the UK, the Mental Health Acts distinguish between consent to medical treatment and consent to psychiatric treatment
 - they provide for the compulsory treatment of mental disorder, but do not allow compulsory treatment for physical conditions

Consent to medical treatment

- competent adults have a right to refuse medical treatment, even if this refusal leads to death or permanent disablement
- there are several situations where consent is not needed:
 1. **Implied consent** – such as where a patient is unconscious and a reasonable person would consent
 2. **Necessity** – in which grave harm or death are likely to occur without intervention and there is doubt about the patient's competence
 3. **Emergency** – in order to prevent *immediate* serious harm to the patient or to others, or to prevent a crime
- if a patient is refusing medical treatment, two judgements have to be made before deciding that the patient has the right to refuse:
 1. Is the patient competent and does he have the mental capacity to refuse treatment?
 2. Have others influenced the patient to the extent that a refusal has been coerced and cannot be relied upon?

Testamentary Capacity

- refers to the capacity to make a valid will
- the will may still be legally valid if the testator is of 'sound disposing mind' at the time of making it
- in order to decide whether or not a testator is of sound disposing mind, the doctor should use four legal criteria:
 1. whether the testator understands **what a will is** and what the consequences are
 2. whether he knows the **nature** and extent **of his property** (though not in detail)
 3. whether he knows the **names** of close relatives and can assess their **claims** to his property
 4. whether he is free from an **abnormal state of mind** that might distort feelings or judgements relevant to making the will (a deluded person may legitimately make a will, provided that the delusions are unlikely to influence it)

Protecting patients

Court of Protection

- is an office of the Supreme Court
- it's powers are limited to dealing with the financial and legal affairs of the person concerned, it has no power to determine how patients placed under its care shall be treated

Advocacy

- an advocate enters into a relationship with a patient, to speak on their behalf and to represent their wishes or stand up for their rights
- an advocate has no legal status

Appointeeship

- an appointee is someone authorized by the Department of Social Security to receive and administer benefits on behalf of someone else, who is not able to manage their affairs
- the appointee must be aged 18 or over
- the appointee can have his or her appointment revoked at any time by the Secretary of State
- it can only be used to administer money derived from social security benefits
- if benefits accumulate application may need to be made to the Public Trust Office or the Court of Protection to gain access to the accumulated capital

Power of attorney

- allows one person (the donor) to give legal authority to another person (the attorney) to manage their affairs
- requires the patient to give written authorization for someone else to act for him during his illness
- in signing such authorization, the patient must be able to understand what he is doing
- an *Ordinary Power Of Attorney* allows the attorney to deal with the donors financial affairs generally, or it can be limited to specific matters
 - it is automatically revoked by law when the donor loses their mental capacity to manage their own affairs
 - the donor may revoke it at any time
- an *Enduring Power of Attorney* allows people to decide who should manage their affairs if they become mentally incapable
 - it continues in force after the donor has lost the mental capacity, provided it is registered with the Public Trust Office
 - it is therefore of use in patients with early dementia who can set their affairs in order early in the illness

Power of receivership

- more formal and is likely to be more in the patient's interests

- in England and Wales, an application is made to the Court of Protection, which may decide to appoint a *receiver*
 - the receiver is often a relative, friend, solicitor
 - the receiver must keep accounts and spend the patient's money on things that will benefit the patient
 - the Court must give permission before the disposal of capital assets such as the sale of property
 - most commonly required for the elderly or infirm
- only one medical certificate is required, from a GP who has examined the patient – they do not have to be approved under the MHA
- the patient should be given notice that an application has been made to the Court of Protection
 - he or she has until the hearing date, or 7 clear days (whichever is later) to write to the court
 - the patient has the right to object, preferably with medical evidence
- places special responsibility on the psychiatrist:
 - if a patient is capable of managing his affairs on admission to hospital, but later becomes incapable by reason of intellectual deterioration, then it is the doctor's duty to advise the patient's relatives about the risks to property
 - if the relatives are unwilling to take action, it is the doctor's duty to make an application to the Court of Protection

Family Law

- a marriage contract is not valid if at the time of marriage either party was so mentally disordered as not to understand its nature
- if mental disorder can be proved, a marriage may be decreed null and void by a divorce court
- if a marriage partner becomes of 'incurably sound mind' later in a marriage, this may be grounds for divorce
- other grounds for annulment of a marriage include:
 - if one partner did not disclose that they suffered from epilepsy or a communicable venereal disease before the marriage
 - if the marriage was not consummated
 - if either party was under the age of 16 at the time of marriage
 - pregnancy by another man at the time of marriage was not disclosed
 - one of the partners was forced to agree to the marriage by duress

Torts and contracts

Torts

- torts are wrongs for which a person is liable in civil law as opposed to criminal law
- includes negligence, libel, slander, trespass, and nuisance
- if such a wrong is committed by a person of unsound mind, then any damages awarded in a court of law are usually nominal

Contracts

- if a person makes a contract and later develops a mental disorder, then the contract is binding
- if a person is of unsound mind when the contract is made, a distinction is made between the 'necessaries' and 'non-necessaries' of life -
 - necessaries are legally defined as goods (or services) 'suitable to the condition of life of such person and to his actual requirements at the time' (Sale of Goods Act 1893)
 - in a particular case it is for the court to decide whether any goods or services are necessaries
- a contract made for necessaries is always binding
- in a contract for non-necessaries made by a person of unsound mind, the contract is binding unless it can be shown both
 - that he did not understand what he was doing
 - that the other person was aware of the incapacity

Voting

- Section 7 representation of the People Act 1983
- criteria:
 - broad understanding of voting process
 - must be on electoral role

- detained patients cannot vote
- patients who reside in hospital, if not detained, can vote

Fitness to drive and the DVLA

- a doctor giving an opinion on fitness to drive should consider whether any medical condition or its treatment is likely to:
 - cause loss of control
 - impair perception or comprehension
 - affect motor functions involved in handling the vehicle
- the final decision on whether the license should be granted rests with the medical advisor to the DVLA

Group 1 License (cars, motorcycles, etc.)

- issued until age 70, unless for medical reasons
- no upper age limit, but after age 70, licenses are renewable every 3 years

Group 2 License (PSVs, HGVs, etc.)

- issued at the age of 21 and valid until the age of 45
- then issued every 5 years to the age of 65 unless restricted for medical reasons
- after age 65, the license is issued annually

Neurosis (anxiety, depression)

1. Group 1
 - a) DVLA need not be notified unless there are:
 - b) serious psychoneurotic episodes affecting or likely to affect driving, when this should be notified to the DVLA and the person advised not to drive
2. Group 2
 - a) driving should cease with serious *acute* mental illness from whatever cause
 - b) driving may be permitted when the person is symptom free and stable for a period of 6 months
 - c) psychiatric reports may be required

Psychosis (schizo-affective, acute psychosis, schizophrenia)

1. Group 1
 - a) 6 months off the road after an acute episode requiring hospital admission
 - b) license is restored after freedom from symptoms during this period, and the person demonstrates that he complies safely with recommended medication
 - c) 1,2, or 3 year license with medical review on renewal
2. Group 2
 - a) recommended refusal or revocation
 - b) at least 3 years off driving, during which the person must be:
 - i) stable
 - ii) symptom free
 - iii) not on major psychotropic or neuroleptic medication, except Lithium
 - c) Consultant psychiatric examination required before restoration of license

Bipolar Illness

1. Group 1

- a) 6-12 months off the road after an acute episode of hypomania, requiring hospital admission
- b) 1,2, or 3 year license with medical review on renewal
- 2. Group 2
 - a) as above

Dementia (organic brain disorders, e.g. Alzheimer's)

- 1. Group 1
 - a) if early dementia, driving may be permitted if there is no significant disorientation in time and space
 - b) annual medical review required
- 2. Group 2
 - a) recommended permanent refusal or revocation if the condition is likely to impair driving performance

Mental Handicap

- 1. Group 1
 - a) severe mental handicap is a *prescribed disability* – license must be refused or revoked
 - b) if stable, mild to moderate handicap it may be possible to hold a license
- 2. Group 2
 - a) see group 1

Alcohol misuse

- 1. Group 1
 - a) confirmed by medical evidence, requires license revocation or refusal for a minimum of 6 months, during which time controlled drinking should be attained with normalization of blood parameters
- 2. Group 2
 - a) confirmed by medical evidence, leads to revocation or refusal for at least one year, during which time controlled drinking should be attained with normalization of blood parameters

Alcohol dependency

- 1. Group 1
 - a) requires a recommended one year period of revocation or refusal, to attain abstinence or controlled drinking and with normalization of blood parameters if relevant
- 2. Group 2
 - a) licenses will not be granted where there is a history of alcohol dependency within the past 3 years

Cannabis, Ecstasy, LSD, hallucinogens

- 1. Group 1
 - a) leads to license revocation or refusal for a six month period
 - b) independent medical assessment and urine screen arranged by DVLA may be required
- 2. Group 2

- a) as Group 1, but with a one year period of refusal or revocation

Amphetamines, Heroin, Morphine, Methadone^{*}, Cocaine, Benzodiazepines

1. Group 1

- a) revocation or refusal for at least one year
- b) independent medical assessment and urine screen arranged by DVLA may be required
- c) Consultant or Specialist report will be required on reapplication

2. Group 2

- a) revocation or refusal for a minimum 3 year period
- b) independent medical assessment and urine screen arranged by DVLA may be required
- c) Consultant or Specialist report will be required on reapplication

* Drivers on consultant supervised oral Methadone withdrawal programme may be licensed, subject to annual medical review and favourable assessment

The Mental Health Act 1983

Definitions

- the Act does not define 'mental illness', but it states that no-one should be 'treated as suffering from mental disorder by reason only of promiscuity, or other immoral conduct, sexual deviancy or dependence on alcohol or drugs
- **mental impairment** means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned
- **severe mental impairment** means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned
- **psychopathic disorder** means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned
- the Act also specifies the various people who may be involved:
 - *Responsible medical officer* - the doctor in charge of treatment; if unavailable, the doctor who for the time being is in charge of the patient's treatment may deputize
 - *Medical Treatment* – includes nursing, and care and rehabilitation under medical supervision
 - *Nearest relative* - nearest adult relative in the order of :
 - spouse
 - son or daughter
 - father or mother
 - sibling
 - grandparent
 - grandchild
 - uncle or aunt
 - nephew or niece
 - blood relatives take preference over half blood relatives, and the elder of two relatives of the same level of kinship takes preference also
 - *Approved social worker* - social workers approved by the local authority as having appropriate competence in dealing with mentally disordered persons
 - *Approved doctor* - a doctor approved under Section 12 (S.20 in the Scottish Act) of the Act by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder
- under the Mental Health Act there are three main groups of compulsory order for assessment and treatment:
 1. admission for assessment (Sections 2, 4, 5, 135, 136)
 2. treatment orders (Sections 3 and 7)

3. admission and transfer of patients concerned with criminal proceedings (Sections 35-37, 41, 47-49)
- provision for compulsory detention is also made by the Criminal Procedure (Insanity) Act 1964, which relates to people found 'not guilty by reason of insanity' or 'unfit to plead'
 - the short term orders listed in (1) above apply to any mental disorder, which need not be specified
 - for long term orders listed under (2) and (3), it must be stated that the patient suffers from one of four types of mental disorder:
 1. mental illness
 2. psychopathic disorder
 3. mental impairment
 4. severe mental impairment

Admission for assessment

Section 2: Application for admission for assessment (28 days)

- the following grounds must be satisfied:
 1. The patient suffers from a mental disorder which warrants the patient's detention in hospital for assessment (assessment followed by treatment)
 2. Admission is necessary in the interests of the patient's own health or safety or for the protection of others
- the procedure requires the following:
 1. *Application* by the patient's nearest relative, or an approved social worker who must have seen the patient within the last 14 days
 2. *Medical recommendations* by two doctors, one of whom must be approved under Section 12 of the Act - there should not be more than five days between the examinations
- patients detained under section 2 of the MHA may be discharged by:
 - the hospital managers
 - the nearest relative, although the hospital managers may prevent this if the patient is dangerous
 - their RMO
 - a Mental Health Review Tribunal

Section 4: Emergency order for assessment (72 hours)

- the grounds are as for Section 2
- Section 4 should be used only when there is insufficient time to obtain the opinion of an approved doctor who could complete Section 2
- the procedure for a Section 4 also requires the following:

1. Application by an approved social worker who must have seen the patient within the previous 24 hours, or the nearest relative
2. Medical recommendation by one doctor, who need not be approved under Section 12 of the Act. The patient must be admitted within 24 hours of the examination

Section 5: Change to compulsory detention (72 hours)

- order for the emergency detention of a patient who is already in hospital as a voluntary patient but wishes to leave
- if a Section 5 order cannot be obtained immediately, a registered mental nurse may invoke a six-hour **holding order**
 - the holding order applies only when the patient is already under treatment for a mental disorder
 - it lapses as soon as the doctor signs Section 5

Treatment orders

Section 3: Admission for treatment (6 months)

- the grounds are that the patient:
 1. is suffering from mental illness, severe mental impairment, psychopathic disorder, or mental impairment, being a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
 2. in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition; and
 3. that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he is detained under this section

Section 7: Reception into guardianship

- a guardianship application may be made in respect of a patient on the grounds that:
 - (a) he is suffering from a mental disorder, i.e. mental illness, severe mental impairment, psychopathic disorder or mental impairment, and is mental disorder is of a nature or degree that warrants his reception into guardianship under this section; and
 - (b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received
- requires 2 medical recommendations, neither of which have to be approved under the MHA
- the application may be made either by an approved social worker or by the nearest relative of a patient
- the minimum age is 16 years
- more appropriate than the provisions of Section 3 for the long-term treatment of patients living in the community
- the procedure is similar to that for Section 3

- the guardian, who is usually but not always the local Social Services Department, is given authority for supervision in the community, including power to:
 1. require the patient to live at a place specified by the guardian
 2. require the patient to attend places specified by the guardian for medical treatment, occupation, training, or education
 3. ensure that a doctor, social worker, or other person specified by the guardian can see the patient at his home

Section 135

- enables a MHO or medical practitioner to demand admission to premises or see a person he/ she believes to be mentally disordered and ill-treated or uncared for
- if refused admission, a warrant may be obtained to gain entry with help of police
- allows removal to *place of safety* and detention for up to 72 hours

Section 136

- detention of person in *public place* thought to be mentally ill and in need of safety
- enables a police officer to remove the person to a *place of safety*

Consent to treatment

- under common law, no treatment can be given to a voluntary patient without his valid consent
- no doctor should give such treatment unless the treatment is essential to safeguard the health or preserve the life of the patient

Urgent treatment

- any treatment (provided that it is not irreversible or hazardous) can be given to such a patient without his consent if:
 - it is immediately necessary to save the patient's life
 - it is to prevent a serious deterioration in his condition
 - to alleviate serious suffering
 - or to prevent violence or danger to the patient himself or to others

Section 57

- irreversible, hazardous, or non-established treatments, e.g. psychosurgery, hormone implants, or castration
- requires:
 - consent and second opinion

Section 58

- psychiatric drugs, and ECT
- requires:
 - consent only
 - consent and second opinion if the patient is detained under MHA

Hospitals and the Police

- the police are entitled to question any person, whether suspected or not, whom they think may be able to provide useful information
- the person need not say anything and cannot be compelled to go to a police station except by arrest
- the Judges' Rules state that, as far as practicable, children and young persons under the age of 17 (whether suspected of a crime or not) should be interviewed only in the presence of a parent or guardian or, in their absence, some person who is not a police officer and who is of the same sex as the child
- the hospital can act *in loco parentis* and a member of staff, of the same sex, should be present

The Mental Health (Scotland) Act 1984

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The Mental Health (Public Safety and Appeals) (Scotland) Act 1999

- amends the MH(S)A 1984
- the first act of the new Scottish Parliament, and was in direct response to the Noel Ruddell case
- this act:
 1. makes clear that the term ‘mental disorder’ in the 1984 Act includes personality disorder
 2. imposes a new duty on a sheriff to refuse an appeal by a restricted patient for discharge under the 1984 Act, if satisfied that the patient is suffering from a mental disorder, the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient should continue to be detained in hospital
 3. a similar duty is imposed on Scottish ministers in deciding whether to discharge a restricted patient under the 1984 Act
 4. the Act introduces a new right of appeal to court of session, for either the patient or Scottish ministers, against the decision of the sheriff

Categories of Mental Disorder

1. mental illness (unspecified)
2. a persistent disorder manifested only by abnormally aggressive or seriously irresponsible conduct*
3. mental impairment*
4. severe mental impairment

*treatability criteria apply

Grounds for hospital admission: S.17 MH(S)A 1984

- A) Suffering from a mental disorder of a nature or degree which makes it appropriate to receive mental treatment in hospital; and
- (i) in the case where the mental disorder is a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, such

- treatment is likely to alleviate or prevent a deterioration; or alleviate the condition
 - (ii) where the mental disorder is mental handicap, the handicap comprises mental impairment (where such treatment is likely to alleviate or prevent a deterioration of the condition) or severe mental impairment; and
- B) It is necessary for the health and safety of that person or for the protection of other persons that such treatment should be received and cannot be provided unless determined under part V

Act of Sederunt (Mental Health Rules) 1996 – Appointment of Curator Ad Litem

- to represent the interests of the patient, if:
 - prejudicial to health or treatment to have papers served by a Sheriff Officer
 - excluded from proceedings S.113(2)
- requires 2 medical certificates/ Sheriff

Guardianship

- grounds:
 - mental disorder of a nature or degree which warrants his reception into guardianship
 - necessary in the interests of welfare, e.g. early dementia, neurosis, learning disability
- powers:
 - residence
 - to attend at specified places and times for medical treatment, occupation, education, and training
 - access
- no powers to treat

Consent to treatment

1. **Most serious category of treatment**
 - a) defined in section 97
 - b) currently only psychosurgery for mental disorder, or surgical implantation of hormones to reduce male sex drive
 - c) requires:
 - i) consent of patient, and
 - ii) concurring opinion of 2 Mental Welfare Commissioners (one doctor, 2 others)
2. **Medium serious category of treatment**
 - a) defined in section 98
 - b) currently only ECT, or medicines for mental disorder given for more than 3 months
 - c) requires:
 - i) consent of patient (Form 9)

- ii) concurring opinion from doctor appointed by MWC for Scotland (Form 10)
3. **Least serious category of treatment**
- a) any other treatment for mental disorder
 - b) no consent required

Section 117

- enables a MHO or medical practitioner to demand admission to premises or see a person he/ she believes to be mentally disordered and ill-treated or uncared for
- if refused admission, a warrant may be obtained to gain entry with help of police
- allows removal to place of safety and detention for up to 72 hours

Section 118

- detention of person in *public place* thought to be mentally ill and in need of safety
- enables a police officer to remove the person to a *place of safety*

The MHA 1983 vs MH(S)A 1984

Treatment Order	MHA 1983	MH(S)A 1984
Emergency admission (patient not in hospital)	4	24
Emergency admission (change to compulsory detention)	5	25
Short-term detention	2	26
Admission for treatment	3	18
Nurses holding power	5(4) for 6 hours	25(2) for 2 hours
Guardianship	37	37
Power of entry to home and removal to place of safety	135	117
Admission by police	136	118
Irreversible, hazardous, or non-established treatments	57	97
Psychiatric drugs, and ECT	58	98
Remand for enquiry into mental condition	35	65 & 200
Remand to hospital for treatment	36	52
Interim hospital order	38	58 & 59
Restriction order	41	
Transfer of a sentenced patient to hospital	47	
Transfer of a remand patient to hospital	48	