
GUIDELINES FOR ENSURING COMPLIANCE WITH THE RULES OF NATURAL JUSTICE

PATIENT ACCESS TO CLINICAL FILES

1. As a general rule, Board members should ensure at the commencement of the hearing that patients have been afforded access, prior to the hearing, to the Report on Continued Detention and the clinical file produced to the Board. Where access has not been given, on the ground that the clinical staff of the mental health service consider that the patient is unable to understand the contents, the Board should satisfy itself that this is the case before conducting the hearing.
2. There may be instances in which clinical staff from the mental health service object to the disclosure to the patient of certain information on the file. It may be that disclosure of information may cause serious harm to the patient's health, or the health or safety of another person, or involve the unreasonable disclosure of information relating to the personal affairs of any person, or breach a confidentiality provision imposed by the person supplying the information. In such cases the authorised psychiatrist should apply to the Board under s26(8) of the Mental Health Act 1986 (the Act) to deny the patient access to particular materials before the commencement of the hearing. Such applications should be heard and determined in the absence of the patient, but if the patient is represented, the patient's representative should be present if he or she gives an undertaking to the Board that the patient will not be told about the material if the Board makes an order for non-disclosure.
3. Copies of the President's Practice Direction 98/2 should be distributed to members of mental health service staff who are not familiar with the requirements concerning patient access to clinical files.

RELATIVES' ACCESS TO CLINICAL FILES

4. As a general rule relatives or friends of patients should only be given access to the clinical file when the patient has consented to this course. However, there may be instances sanctioned by s120A(3)(ca) of the Act in which information can be given to a guardian, family member or the primary carer of the patient if the information is reasonably required for the ongoing care of that patient, and the person being given that information will be involved in providing that care.

ATTENDANCE OF RELATIVES AND FRIENDS AT BOARD HEARINGS

5. As a general rule relatives and friends of patients should not be permitted to be present throughout the entire hearing without the patient's consent. In those cases where the patient is unable by reason of his or her condition to give consent to the relatives and friends being present throughout the entire hearing, the Board should determine whether, and to what extent, they are present, having regard to the best interests of the patient.
6. Cases may arise in which the Board wishes to hear evidence from the relatives or friends of a patient, and the patient has objected to the presence of those persons at the hearing. In such instances the Board should invite that person into the hearing room to give evidence at an appropriate time. When that person has given evidence, he or she should be requested to leave the hearing room.

7. It is the responsibility of mental health service staff, with the patient's consent, to inform interested relatives and friends of the date of a Board hearing. This matter is referred to in the document titled "Information for authorised psychiatrists and for all medical practitioners appearing before the Mental Health Review Board", dated 10 March 1998. The Board may, of course, adjourn a hearing in order to secure the attendance of a relative or friend of the patient, but staff should be encouraged to anticipate those cases in which the Board will wish to hear from a relative or friend.

NON-ATTENDANCE OF THE PATIENT AT A BOARD HEARING

8. When a patient does not attend the hearing, the Board should satisfy itself that the patient has, of his/her own free will, made the decision not to participate in the hearing. In the case of an inpatient, this may be done by one member of the Board visiting the patient on the ward, or by hearing evidence from a staff member of the mental health service.

Julian Gardner
President
10 March 1998
