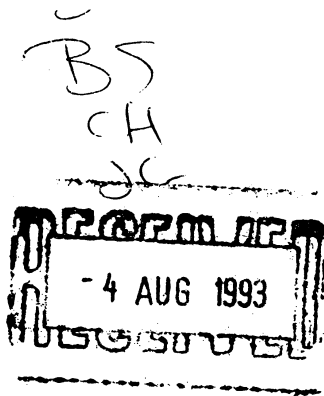


Memorandum

File reference 8/390



TO: Distribution List
FROM: Dr C Perera, Chief Psychiatrist
DATE: 30 July 1993
SUBJECT: Access to Clinical Files by the Mental Health Legal Centre

The Mental Health Legal Centre provides an advocacy service for people appearing before the Mental Health Review Board. In taking instructions for representation, the Mental Health Legal Centre staff require access to the clinical file in the presence of the patient. This is a principle of natural justice.

The Mental Health Review Board also operates within the rules of natural justice. It has determined that, save in exceptional circumstances, a patient should have the opportunity to read all documents which will be presented to the Board. This principle applies equally to the patient's legal representative.

I understand that some hospitals and clinics have expressed reluctance to permit the solicitors from the Mental Health Legal Centre to have access to clinical files for the purpose of Mental Health Review Board hearings. The reasons for this appear to relate mainly to concerns that the patient may read information in the files which could be detrimental to their treatment or the therapeutic relationship with treating staff. There are also concerns that the file might be lost or damaged in some way. I further understand that some services have directed that staff sit-in on interviews.

As a general rule, clinic/hospital staff should not sit-in on interviews between lawyers and patients. The presence of a staff member can be seen as intimidatory to the patient and contrary to the principles of natural justice.

Under no circumstances should the clinic/hospital attempt to invoice the Mental Health Legal Centre for staff time if someone does sit-in on the interview or charge for photocopying relevant parts of the file if this is necessary.

Psychiatric Services takes the view that Mental Health Legal Centre staff are professionals and will act in a responsible manner with respect to the integrity of the clinical file and outcomes for patient treatment and care.

Where there are concerns that disclosure of information on clinical files may have a detrimental effect on the patient's health, this should be discussed with the lawyer. The

lawyer may be able to give an undertaking that specific information will not be shown to the patient. If the issue can not be resolved through negotiation, then it should be referred to the Mental Health Review Board for a decision.

It is important that all staff facilitate applications by patients to the Mental Health Review Board. This includes obtaining legal advice and giving legal instructions in the manner most consistent with the principles of natural justice.

Please ensure that all staff in your service are aware of this advice.

A handwritten signature in black ink, appearing to read 'Perera', with a horizontal line underneath the name.

DR CARLYLE PERERA

Cc. Ms D Saunders, Mental Health Legal Centre
Ms B Wilson, Mental Health Review Board