Involuntary admissions – clarifying the GP's role

Stephen O'Leary looks at the dos and don'ts in serious situations where GPs are asked to examine patients for involuntary psychiatric admission

IF PATIENTS REQUIRE psychiatric in-patient treatment, it is strongly preferable that they are referred and admitted on a voluntary basis. If this is not possible and involuntary admission is required under the Mental Health Act, 2001, it is undoubtedly stressful for everyone involved.

GPs will be aware that the Act is very prescriptive in what is required from both applicants and doctors, and in the timeframe in which certain steps must take place. The reason for this is obviously to protect individuals' rights due to the very serious potential consequences of being admitted to a mental health unit without consent. Every involuntary admission order is referred to a Mental Health Tribunal to be reviewed. If the process outlined in the legislation has not been strictly followed, it can lead to an involuntary admission order being revoked by a Tribunal.

Criteria for involuntary admission

In order for a person to be admitted as an involuntary patient, they must have a "mental disorder" within the meaning of section 3(1) of the Act. In order to recommend involuntary admission following an examination, a doctor must form a clinical decision that one of the two different grounds for admission are met. They are that:

a) Because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, *or*

b(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that the failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could only be given by such admission, *and*

b(ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.

While some patients will fulfil the criteria for both grounds of admission, a patient only needs to come within either (a) or (b)(i) and (ii) above in order to be admitted; ie. the patient must be at serious risk of harm to themselves/others or their condition would seriously deteriorate if not admitted, or treatment could not be administered without an admission, and admission is likely to materially alleviate the condition.

Examination

The legislation sets out four categories of people who can make an application to have a person involuntarily admitted. They are: spouses/family members, HSE authorised officers, Gardaí or members of the public.

The most critical aspect of the admission process from a GP's perspective is the examination required after being presented with an application.

The Act defines an examination as "…a personal examination carried out by a registered medical practitioner or a consultant psychiatrist of the process and content of thought, the mood and the behaviour of the person concerned."

You do not have to be the person's own GP in order to examine the patient and, if appropriate, to sign the recommendation, also known as Form 5.[1] It is important to explain at the outset the purpose of the examination, unless providing this information might be prejudicial to the patient's mental health, wellbeing or emotional condition.

The examination must be conducted within 24 hours of receiving the application. One of the issues that often arises is that a doctor can be put under significant pressure by an applicant to conduct an examination immediately. While you must have regard to the patient's condition, particularly if they pose a risk to themselves or others, the Act clearly states that a doctor has a 24-hour period from receipt of the application to conduct the examination.

The courts have recognised that it may be necessary to tailor an examination to suit the circumstances, particularly if the patient is volatile or violent. In *XY v Adelaide and Clinical Director of St Patrick's University Hospital & Anor* [2] the High Court held that some allowance may have to be made for "the existing exigencies of the situation".

The courts have also clarified that a doctor is entitled to rely on their pre-existing knowledge of the patient, as well as any information provided to them by reliable sources, when forming their opinion as to whether a patient meets the criteria for admission under the Act.[3] This does not obviate the need for a personal examination of the patient, as this is a mandatory requirement of the Act, but it can inform the examination that you conduct and form part of your clinical decision-making process.

However, there is a limit to what the courts will accept as an appropriate examination. In *S.O. v Adelaide and Meath Hospital of Tallaght*,[4] the High Court held that listening to a recording of a patient, even though they had a significant history of mental health problems, and were in urgent need of medical treatment, was not sufficient to constitute a personal examination. The court held that if it was to uphold this as a sufficient examination, it would render the protections provided by the Act to be meaningless.

While the preference under the Act and in case law is that the examination would take place in person, it may be deemed acceptable in certain limited circumstances for the examination to take place over the telephone or via video call. For instance, such situations may have arisen in the context of the Covid-19 pandemic, having regard to risk of infection.

Avoiding mistakes on Form 5

In 2020, errors on the Form 5 recommendation signed by doctors accounted for 17% of all admission orders that were revoked at a Mental Health Tribunal due to non-compliance with the legislation.[5]

It is very important when completing Form 5 to ensure firstly that the applicant has used the correct form. There is a different form for each category of applicant: family member, authorised officer, An Garda Síochana and members of the public.

It is also necessary to ensure the relevant time periods are accurately recorded. The applicant must have observed the person at some point in the 48 hours preceding their application; and the doctor must examine the patient and complete the recommendation, if appropriate to do so, within 24 hours of receiving the application. If this time period has expired before examination, a new application will be necessary. The recommendation will remain valid for a period of seven days.

Examples of queries

I have received an application to make a recommendation in respect of a patient who was previously in Garda custody, during which time another doctor had refused to make a recommendation. Can I proceed to examine the patient?

The applicant is obliged to disclose on the application form whether another doctor has refused to make an application. Provided you are satisfied following an examination that the patient meets the criteria for admission at the time you examine them, the fact that a previous doctor refused to make a recommendation does not prevent you from making a recommendation subsequently, as the patient's condition may have deteriorated in the meantime.

A HSE-authorised officer informed me that I must conduct an examination on a person who is not a patient of the practice.

The doctor making the recommendation does not need to be the person's GP. While it is far from ideal to be asked to make a recommendation in respect of a patient you do not know, it may be difficult to refuse to do so when requested, having regard to the best interests of the person and the public.

It is important to engage with the authorised officer and explain that in the first instance, the patient's GP should be asked to conduct the examination. If having made these inquiries, it transpires that it is not possible for the patient's own GP to do so, if you are available, it is open to you to proceed to examine the person and if appropriate make the recommendation.

I was asked to make a recommendation in respect of a person who is not my patient, but who is known to be violent and pose a risk to themselves and others.

The Medical Council Guide to Professional Conduct and Ethics makes clear that a doctor is not obliged to put themselves at risk in their care and treatment of a patient, but a doctor should make a reasonable effort to conduct an appropriate clinical assessment while taking appropriate measures to protect themselves and others.

If the patient is unable to, or it is unsafe for them to attend the practice and there is no one available to accompany you to the patient's house to ensure your safety, it may be appropriate to advise the applicant to contact the Gardaí. Under s.12 of the Act, the Gardaí have the power to take a person into custody where they believe the person poses an immediate risk to themselves or others, and the examination can be conducted at the Garda station.

There are a number of scenarios where queries can arise during the process and GPs should contact their indemnifiers if they are unsure how to proceed at any stage.

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References
1. Form-5 https://www.mhcirl.ie/sites/default/files/2021-11/Form-5.pdf (mhcirl.ie)
2. [2012] IEHC 224
3. [2015] IEHC 34 L.B. v The Clinical Director of Naas General Hospital
4. [2013] IEHC 132
5. Mental Health Commission Annual Report 2020