

Involuntary Admission of Patients under the Mental Health Act 2001

On occasion, doctors are asked to examine a patient for the purpose of an involuntary admission to an approved centre for treatment. An approved centre is a hospital or other in-patient facility, registered with the Mental Health Commission, to provide care and treatment to persons suffering from mental illness or mental disorder. The relevant legislation for involuntary admission is the Mental Health Act 2001 (as amended) (the "Act").

It is important to be aware of the doctor's role in this process and to ensure that the correct steps are taken if an involuntary admission is required. Limiting a patient's liberty is a serious breach of their fundamental rights and the Act is intended to protect the rights of individuals in the process. The provisions of the Act are strictly interpreted and an involuntary admission can be deemed invalid if the correct process is not followed. There have been civil claims taken against doctors by patients, in circumstances where they argue that their detention was invalid.

Application to a doctor

Firstly, a doctor must receive an application to involuntarily admit a patient under the Act. In many circumstances, this application will come from a concerned spouse or relative. The application can also come from a member of the Gardaí, an authorised officer of the HSE or a member of the public.

When a doctor receives an application, they must ensure that the applicant has completed the correct statutory form; there are different application forms, according to who is making the application, available on the Mental Health Commission's website.

A person making an application to the doctor must have observed the patient demonstrating such symptoms of a mental disorder within 48 hours prior to completing the specified form.

Certain individuals are not permitted to make an application to a doctor. They are:

- a person under 18;
- an authorised officer or member of the Gardaí who is a relative or spouse of the patient;
- a member of the governing body, staff or person in charge of the approved centre concerned;
- any person with an interest in any payments to be made for the care of the patient in the approved centre concerned;
- any registered medical practitioner who provides a regular service at the approved centre concerned; or,
- a spouse, parent, grandparent, brother, sister, uncle or aunt of any of the above disqualified persons.

A doctor cannot make a recommendation in respect of a patient if:

- he or she has an interest in the payments (if any) to be made in respect of the care of the person in the approved centre concerned;
- he or she is a member of the staff of the approved centre to which the person is to be admitted;
- he or she is a spouse or a relative of the person; or,
- he or she is the applicant.

Examination

An examination of the patient must be carried out within 24 hours of receipt of the application.

The doctor must inform the patient of the purpose of the examination, unless in the doctor's view the provision of such information might be prejudicial to the patient's mental health, well-being or emotional condition.

When examining the patient, it is important to bear in mind the definition of a "mental disorder". The Act defines "mental disorder" as *mental illness, severe dementia or significant intellectual disability where:*

(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 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 be given only by such admission,*

and:

(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.*

The Act also breaks down the above definition by defining mental illness, severe dementia or significant intellectual disability as follows:

- "*Mental illness*" means a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons.
- "*Severe dementia*" means a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression.
- "*Significant intellectual disability*" means a state of arrested or incomplete development of mind of a person which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person.

It is important to note that the Act excludes personality disorder, social deviance and drug / intoxicant addiction alone as reasons for involuntary admission.

What constitutes an examination has been considered by the Courts and if the examination is not sufficient, it can result in the detention being unlawful. The Courts have previously recognised that "*some allowance may have to be made for the existing exigencies of the situation.*"¹ However, an objective examination of the patient must take place and a doctor must be able to show that they formed their own opinion that the patient was suffering from a mental disorder.

¹ X.Y. v Clinical Director of St. Patrick's University Hospital and Dr. A.B. [2012] IEHC 224

While a face-to-face examination of the patient is always preferable, there may be certain circumstances where it could be unsafe (e.g. due to a risk of transmission of COVID-19) and therefore a video / telephone consultation may be acceptable.

Recommendation

Following the examination, where a doctor is satisfied that the patient is suffering from a mental disorder and requires involuntary admission, they must complete a Form 5 (entitled: *“Recommendation (by a registered Medical Practitioner) for Involuntary Admission of an Adult (to an Approved Centre)”*).

This recommendation remains valid for seven days.

Doctors should also take detailed contemporaneous records of the examination of the patient, clearly documenting and setting out their decision-making process.

Approved Centre

The applicant is responsible for bringing the patient (“removing” them) to the relevant approved centre. Where the applicant is unable to arrange this, the doctor who made the recommendation can request that the Clinical Director of the approved centre arrange removal of the person to the approved centre by members of staff.

Where the doctor and the Clinical Director are of the opinion that there is a serious likelihood of the person concerned causing immediate and serious harm to themselves or others, the Clinical Director may request an Garda Síochána to assist members of staff of the approved centre in removing the person to the approved centre concerned, and an Garda Síochána are obliged to assist.

A consultant psychiatrist in the approved centre must examine the patient within 24 hours of their arrival and decide whether they should be involuntarily admitted. The decision will be reviewed by a Mental Health Tribunal within 21 days of their admission.

Conclusion

It is important to remember that the correct steps must be strictly adhered to for an involuntary admission to take place. If proper procedure is not followed, it can result in the detention being deemed unlawful and could expose a doctor to a complaint or potential civil claim.

When examining a patient for the purpose of an involuntary admission to an approved centre, a sufficient examination of the patient is key. It is vital that a doctor forms their own objective opinion that the patient is suffering from a mental disorder and that they make detailed records of the examination, clearly documenting their decision-making process.

If you have any specific queries, please contact Medisec for advice.

The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice.

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