PHOTOS FROM “FORENSIC WORKSHOP” HELD AT THE NSW BRANCH OFFICE, MADDSON HOUSE ON THE SATURDAY 13 MARCH 2010

I am pleased to report that the first International Medical Graduate Support Workshop for 2010 was held on Friday 12th and Saturday 13th March 2010 at Maddison House. Feedback received from the 15 participants has been very positive with many attendees noting the importance of meeting and networking with colleagues.

These workshops aim to support and enhance linkages between psychiatrists in Area of Need positions and the College as well as, rural-based trainees and career medical officers within NSW (rural and metropolitan).

The workshop was on Forensic Psychiatry and related topics and we were very grateful to have Ms Sarah Hansen, Forensic Team Leader from the Forensic Division at the NSW Department of Health and Mr John Fenley, Deputy President of the Forensic Division at the NSW Mental Health Review Tribunal attend to present an information session on the new NSW Mental Health (Forensic Provisions) Act. Sarah and John provided an overview to participants on key changes to the new Act as well as explaining the legislation governing forensic patients and their care and management.

For the 2nd session of the workshop we were very pleased that Mr Colmán O’Driscoll, Service Director Mental Health from the Statewide Forensic Mental Health Office at Justice Health and Dr Stephen Allnutt, Clinical Director for the Community Forensic Mental Health Service at Justice Health were both able to attend and provide workshop sessions on key forensic topics and concepts. Both Stephen and Colmán presented interesting and engaging presentations which provided an excellent avenue for participants to raise questions for discussion. Participants commented that the workshop was “well organised, very topical and highly useful”, and that the “approach of the presenters in simplifying complex issues” was most beneficial.

We would like to extend our thanks and appreciation to Sarah, John, Colmán and Stephen for their engaging presentations and for taking time to prepare for and be apart of our workshop. I would also like to thank Dr Scott Clark, Chair NSW Branch Rural Project Steering Committee for chairing the workshop and also Maree Earle and Glenis Dickins for assisting me with facilitation and organisation of this event. I think all involved would agree that the day was a great success and we look forward to another great workshop in June 2010 – please stay tuned for further information!

Michelle Briggs, Project Officer, NSW Branch Rural Psychiatry Project

PROPOSED CHANGES TO THE FUNCTION OF THE MENTAL HEALTH ACT WILL ERODE PATIENT RIGHTS

CHRISTOPHER JAMES RYAN, SASCHA CALLAGHAN AND MATTHEW LARGE

PHOTOS FROM FORENSIC WORKSHOP HELD AT THE NSW BRANCH OFFICE, MADDSON HOUSE ON THE SATURDAY 13 MARCH 2010

Imagine for a moment, you find yourself arrested in some foreign clime – Queensland, for example. You are told you have transgressed some northern law and are looking at several weeks inside. You are anxious, to be sure, but not dismayed. You know you are innocent and you’re sure you’ll be able to persuade a judge that there has been a miscarriage of justice. You also know that under Queensland law the police must present you to court “as soon as reasonably practicable” and you know that, like all Australian jurisdictions, this time frame is normally interpreted as being within 24 hours, 365 days of the year.

All Australians enjoy a basic right to freedom of movement. Australians who find themselves detained against their will have a right to be brought before a court to ensure that the terms of the detention are lawful. This ancient right is protected by civil law through habeas corpus and is also reflected in the prompt review of criminal procedure.

Timely independent review of restrictions on liberty is also applied in the medico-legal context. For example, while the NSW Guardianship Act allows a person responsible or guardian to consent for a patient who lacks capacity, if that patient objects to the treatment, the Act stipulates that, a quasi-judicial body - the Guardianship Tribunal – must authorise this consent to check that this deprivation of freedom is justified. The Tribunal is available to hear urgent matters around the clock and urgent orders are usually made within a week.

New South Wales law also demands independent review of measures that restrict the liberty of people with mental illnesses. The Mental Health Act stipulates that people who are deemed mentally ill persons, must be taken before a magistrate “as soon as practicable”. Particularly, and since 1958, this phrase is interpreted as meaning within a week. You are innocent and you’re sure you’ll be able to persuade the magistrate that there has been a miscarriage of justice.

The number of adjournments is concerning, but rather than evidence of the system being dysfunctional, as reported, it is evidence of how few hearings are adjourned. It is true that in the last financial year, 58% of magistrate’s hearings ended in adjournment. This figure has gradually increased from 1993, when only 15% of hearings were adjourned without resumption. However to suggest that even these adjourned hearings are a “waste for the patients and the treating team” is to completely miss the point of judicial review. The magistrate’s role is to ensure that proper process is being followed, that the patient’s rights are protected and that the system is not being abused. This can be achieved as readily in an adjourned hearing as it can in a hearing where an order has been made. It can hardly be seen as a waste.

The number of adjournments is concerning, but the reason James proffers for this occurring – that early in their admission “patients were too unwell to take part or to be adequately assessed by the treating teams” – must be viewed with some skepticism. We have been unable to find any data on the rationale for adjournments in NSW. Undoubtedly some are owed to the acuity of the patient’s condition, but we suspect this is rare. After all, it rarely takes more than an interview or two for an experienced psychiatrist to come to a decision about phenomenology, risk and treatment alternatives, which is the information the magistrate requires. It is equally rare for a patient to be so

Imagine your response if you were to find that the judicial review of your Queensland detention would not take place until your third or fourth week in custody.

Interestingly, those urging this change make no mention of the cost-savings that are undoubtedly involved. Instead, James argues that the current system is dysfunctional as evidenced by the number of adjournments made at the magistrate’s hearing. It is true that in the last financial year 58% of magistrate’s hearings ended in adjournment. This figure has gradually increased from 1993, when only 15% of hearings were adjourned without resumption. However to suggest that even these adjourned hearings are a “waste for the patients and the treating team” is to completely miss the point of judicial review. The magistrate’s role is to ensure that proper process is being followed, that the patient’s rights are protected and that the system is not being abused. This can be achieved as readily in an adjourned hearing as it can in a hearing where an order has been made. It can hardly be seen as a waste.

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MENTALLY ILL FORCED TO WAIT A MONTH TO APPEAL

JOEL GIBSON
(Sydney Morning Herald March 13, 2010)

 Seriously ill psychiatric patients committed to institutions against their will have to wait up to four weeks for a hearing into their detention, from later this year.

Until now, they have appeared in person before a magistrate within a week. And many will have to state their case by audio-visual link, rather than in person as they do now.

The Greens and social justice advocates say the changes are a cost-cutting exercise that will erode the rights of patients, but doctors and the Mental Health Review Tribunal say the new system will improve the legal oversight of involuntary treatment.

Greg James, QC, the president of the tribunal, wrote to hospitals last month explaining that all patients would receive a tribunal hearing in the third or fourth week of detention.

Hearings will be held in person at two Sydney hospitals - Cumberland and Concord - but by audio-visual link with others.

“While I appreciate that these changes may cause some unease, I am confident that the new system will deliver early hearings of a high quality and provide greater continuity by having the tribunal involved at an earlier stage in a person’s detention and treatment,” Mr James wrote.

Robin Banks from the Public Interest Advocacy Centre said a week should be enough time to assess patients and there should be more research into the effect of audio-visual hearings on the mentally ill before they were adopted en masse.

“I would imagine by three to four weeks, people would already be subject to treatment they wouldn’t necessarily be happy with,” she said.

The Greens MP Lee Rhiannon said the changes were “a regressive step which winds back protections for vulnerable patients” and called for better funding to allow face-to-face hearings within a week of a admission. Terry Carney, a mental health law specialist at Sydney University, said the changes were a trade-off to save costs and give doctors more time.

The professor said funding for the tribunal was 1/16 that of its equivalent body in Ireland and did not stretch to second opinions or legal aid for more than 10 per cent of patients. “The public policy question is whether the gains outweigh the loss of the seven-day review.”

But Adrian Keller, the chairman of the NSW branch of the Royal Australian and New Zealand College of Psychiatrists, said while the delay was a compromise, patients would adjust to audio-visual hearings and tribunal members were better qualified than magistrates to hold them. “On balance, I think it won’t provide any impediment to patients getting a fair hearing,” he said.

Mr James said hospital staff might unhappy about changes to the way they worked but the new system would provide better care for seriously ill patients whom the present system was pushing out the door. “If there’s a saving it will be getting rid of [6000] useless adjournments” of reviews each year, he said.

Mr James said NSW probably had the best system in the common law world for reviewing involuntary admissions.

SILENCE ON MENTAL HEALTH DRAWS IRE

MARK METHERELL HEALTH CORRESPONDENT
March 18, 2010 (Sydney Morning Herald)

THE federal government’s refusal to declare it would take over the struggling mental health system in its health-reform blueprint has drawn fire from two psychiatric leaders, Patrick McGorry and Ian Hickie.

They are frustrated by the government’s failure to identify and take responsibility for services desperately needed by 750,000 mentally ill young Australians who miss out on treatment because of the lack of basic services.

The reform blueprint the government released this month announced plans to take up to 100 per cent of primary health care services but left open future funding control of mental health services, saying this would be negotiated with the states.

Professor McGorry, named Australian of the Year because of his leadership in developing mental health services for young people, said the government had said it would make a separate announcement on mental health reforms but the fact it had not yet done so “is of great concern”.

“We are frustrated to see both the government and the opposition focused exclusively on hospitals and physical health care without focus on mental health.”

He said mental illness among people aged 15 to 44 “dwarfs every other health problem”.

There is an urgent need for triple the number of “headspace” mental health centres for young people and for at least 10 centres specialising in early stage psychosis, said Professor McGorry, executive director of Orygen Youth Health in Melbourne.

The $400 million a year cost of a big hospital, if spent on mental health services, could reduce the pressure on hospital emergency departments, which have to deal with mentally ill people with nowhere else to go.

Professor Hickie said it now appeared Australia was going backwards from the Howard government’s 2006 federal intervention in mental health with an unprecedented $1.9 million in funding for expanded services.

“We had been expecting the Rudd government would do as well as the Howard government and take total responsibility for this national catastrophe,” said Professor Hickie, who heads University of Sydney’s brain and mind research institute.

Asked whether state or federal government would have mental health responsibility, a spokeswoman for the Health Minister, Nicola Roxon, said the government would make announcements about a range of areas in health reform.

Professor Hickie said: “It is inexplicable that a clear direction about the governance and funding of mental health has not been made yet in the reform plans.”

Professor Hickie said there were an estimated 500,000 presentations of patients with suicidal tendencies at Australian hospital emergency departments every year.

Mentally unwell that they may take no part in the magistrate’s review. We suspect that it is more likely that changes in psychiatric practice since the 1990s have seen treating teams come to anticipate discharging many mentally ill people within two weeks, and that they have come to regard an adjourned (and so sort of “short order”), more acceptable and less stigmatizing to the patient than a formal order. Though this practice may raise concerns of its own, it nonetheless allows the early judicial review so crucial in safeguarding the right to liberty.

If the changes go ahead, that safeguard will be lost. A month is a long time. Many people who are treated involuntarily will be sent home within a few weeks and will never have the opportunity to plead their case. Just occasionally someone who might have wanted to have their illness treated at home, and who may have had that right, will not have had a chance to exercise that right.

Patients’ rights to prompt independent review of detention & treatment should not be easily given away. Abuses have occurred in the past, and recalling that the Act allows for private hospitals to become declared mental health facilities, reducing our vigilance can only increase the possibility of another Chelmsford or ward 10B type scandal. Even without a recurrence of systematised abuse, the delay in independent review will mean that people with mental illnesses, and the public at large, will not be able to have the same degree of confidence that their rights will be protected in our psychiatric hospitals – and for no gain but a minimal dollar saving.