Foreign Report

Psychiatry in the Golden State

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The issue of patients' rights, particularly with regard to psychiatric treatment, continues to be a major concern in California. There have been at least two recent pieces of legislation that restrict psychiatrists' clinical freedom in managing their patients.

Firstly, a recent court order has stated that every patient certified for grave disability must have a formal hearing within seven days. 'Grave disability' is defined as the inability to provide food, shelter and clothing independent of others. These hearings are conducted by officers of the Council of Mental Health who have had little or no psychiatric training. They are held on hospital premises but the psychiatrists do not attend. If the order is approved, the issue comes to court, but if not the patient is released immediately.

These hearings were introduced in order to prevent inappropriate cases from reaching court, but in the past most involuntary commitments have been upheld. The new procedure is unnecessary because the patient always has the right to apply for a writ of habeas corpus as well as an opportunity to object to the order when it is discussed in court. Recently, a hearing was held regarding a middle-aged woman whose untreated paranoid schizophrenia was interfering with her self-care as well as with the treatment of her advanced breast cancer. Nonetheless, the order detaining her was revoked and there is no appeal.

The second major change is a requirement from the State Department of Mental Health, which directs that patients who suffer from a primary psychiatric illness must give informed consent in writing for the administration of psychotropic drugs. Such drugs include the phenothiazines, butyrophenones, antidepressants and lithium, but not the benzodiazepines. A patient must be told the nature of his psychiatric illness, the likelihood of its improving with the suggested medication, any reasonable alternative therapy, the dose of the drug and its common side-effects. He must also be advised that he can stop taking the drug at any time. Finally, there is a section relating to tardive dyskinesia. 'You should have been advised that such side effects (with medication for at least three months) may include persistent involuntary movement of the face or mouth or might at times include similar movement of the hands and feet, and that these symptoms of tardive dyskinesia are potentially irreversible and may appear after medications have been discontinued.' Needless to say, potentially dangerous drugs prescribed for physical illnesses, such as steroids or digoxin, do not require such written consent.

It is too early to judge the full impact of these changes, but some indications can be given by the ECT laws which were introduced some time ago. Even on a voluntary basis, ECT can only be prescribed when two psychiatrists have agreed that all other treatments have either been tried or are inapplicable and that the patient is able to give informed consent. The second opinion is given by a doctor from another hospital, and the referring doctor is not allowed to nominate who that will be. If the patient is incapable of giving informed consent, a court must declare that patient to be legally incompetent. Even then, authorization for ECT is not given by the psychiatrist but by a non-psychiatric, court-appointed officer.

It is axiomatic that the more difficult it is to prescribe a form of treatment, the less often the treatment will be recommended. Already, ECT is infrequently prescribed and few psychiatric trainees have much experience with it. Yet there are few people who will defend the patient's right to treatment as vigorously as they champion the patient's right to freedom from restraint and from unwanted therapy. It is therefore left to psychiatrists to fulfil this duty.

There are signs that this is beginning to happen. The California Psychiatric Association has become concerned and is advising the Department of Mental Health to rewrite the civil commitment legislation. The Association's main objection is that the present laws do not provide for the treatment of patients who, while not certifiable, are nonetheless incapable of giving informed consent. In addition, a Bill has been put before the State Governor specifically permitting the administration of ECT to voluntary patients who do not have the capacity to give informed consent. The Bill provides for the patient's relatives to authorize the treatment, providing they agree that the patient is not able to give informed consent and that the treatment is necessary. It will be interesting to see if Governor Brown, who is known to be anti-ECT, does in fact sign this Bill.

Of what relevance is all this to psychiatric practice within the United Kingdom? A situation in which psychiatrists are accused of restricting patients' basic freedoms and are regarded as oppressors and untrustworthy, so that the public feels the need for restrictive legislation, is to be avoided. Such legislation results in detriment to the very people it was designed to protect. Certainly, there is a patients' rights movement in Britain, but it is not yet as highly organized as in California. British psychiatry still has time to avoid being placed in an adversary relationship with patients by convincing the public that the welfare of patients does come first. Unfortunately for us in the Golden State, psychiatric practice will be legally restricted for some time to come.

https://doi.org/10.1192/S0140078900012487 Published online by Cambridge University Press