

An Open Letter to Lord Colville

DEAR LORD COLVILLE

I was very interested to read your reply (*Bulletin*, January 1985, 9, 2–3) to Dr Bridges' article on psychosurgery and the Mental Health Act Commission (*Bulletin*, August 1984, 8, 146–8). I think it is unfortunate that this issue is now being debated at the level of medical etiquette rather than at the level of medical ethics or of human rights. You write of the 'complication' that the Commissioners' deliberation had to be interposed in cases already on the Unit on the occasion of their first visit. Throughout the article you appear to strive to confound two issues. The first is the problem raised by Section 57 of the Act in which for certain psychiatric treatments (to be determined by the Secretary of State, but presently only psychosurgery, and implantation of hormones are so regulated) there must be: (a) consent by the patient; (b) certification by the tribunal of capability to give consent; (c) confirmation by the independent doctor that the treatment is likely to be of benefit; and (d) a statutory obligation in making the decision (c) to consult two non-medically qualified members of the Commission.

The second issue is raised by Section 58 of the Act and concerns second opinions to ECT where consent is withheld by the patient.

My concern in this letter is with Section 57 alone, and I believe that it is quite valid, indeed essential, to deal with it in isolation, contrary to your own opinion. Let me state immediately that I have not been clinically involved in psychosurgery and that it is not psychosurgery itself which is my main concern. Neither do I have any objections to the 1983 Act on the grounds of professional 'protectionism'—on the whole I believe it is a very good Act where it gives greater protection and better rights to patients detained under its various sections. For this reason I restrict myself to Section 57. This part of the Act allows, as is probably known, for the following situation to occur:

1. A patient with severe depression (or other mental illness) who has failed to respond to more conventional treatment is referred to a specialist unit by his/her own psychiatrist for assessment of suitability for a treatment which has been specified by the Home Secretary to lie under Section 57.
2. The specialist unit agrees that the treatment is appropriate, i.e. likely to be of benefit and calls in the Commission.
3. The Commission agree the patient is capable of giving consent.
4. They refuse on the grounds that the treatment is inappropriate.

My question is, 'What are the patient's rights in this situation?' This question cannot be evaded, it seems to me, by referring to the high qualifications of medical Commissioners or to the excellence of their multidisciplinary teamwork. Nor can it be evaded by referring to the dangers and hazards of psychosurgery (which have not to my knowledge been proven). I have been careful in the example not to specify any particular treatment because no particular treatment is specified in the Act—any psychiatric (why not medical as well?) treatment may be included by the Secretary of State.

So, I return to the question 'What are the patient's rights?' Is there an appeal procedure built into the Act? As far as I am aware the answer is no. Could the patient go to law to challenge the validity of the Commissioners' decision? Presumably (I don't know), they may do so but are unlikely to because of the nature of their condition which tends to lead to feelings of hopelessness which get in the way of effective and vigorous action. An interesting question is whether the law itself could be challenged by a patient in the Court of Human Rights. Alternatively (and it appears that this is the only option which has so far been exercised), do they go away and kill themselves?

The 'right to treatment' is enshrined in State law in certain of the states of the USA, and this is a principle which, it seems to me, might profitably be considered by psychiatrists and Commissioners in Britain.

I, therefore have certain questions for the Commission, which, not being myself a lawyer, I ask in a genuine spirit of enquiry—

1. Is there any precedent in the medical law of any western country for this right to veto of treatment by an agency outside the doctor-patient relationship?
2. Is there any precedent for the clause of the Act which allows a politician to decide what non-experimental treatments may or may not be subject to outside veto?
3. Is it the opinion of the Commission that Section 57 of the Act is entirely compatible with the human rights of psychiatric patients and with the spirit of the rest of the Act? If the answer to this is 'no', then would the Commission agree that, like many other reforms before it, the effect of Section 57 of the 1983 Mental Health Act runs counter to its original intention and should therefore be repealed?

Yours sincerely,

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Foreign Speaking Psychiatrists

From time to time enquiries are received from members of the College regarding patients who are unable to speak English. We are asked if we can give the name of a psychiatrist able to communicate with the patient in his native language. We do keep a list of members who are fluent in foreign

languages and I should be grateful if any member who is able and willing to help in this way would write to me giving the relevant particulars so that this list may be expanded.

VANESSA CAMERON
Secretary