RECOVERY AND RIGHTS: WHEN VOLUNTARY TREATMENT IS NOT AN OPTION. HOW MENTAL HEALTH LAWS CAN HELP

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OVERVIEW

- Recovery and the need for services
- Consequences of untreated psychosis
- Need for and purpose of the MHA
- Involuntary Admission Criteria (Manitoba MHA)
- Involuntary Admission Procedures
- What happens at the Hospital Psychiatric Unit
- Treatment authorization
- Discharge from involuntary in-patient care
- Leave (community treatment)
- Protection and Rights
- A consumer's perspective
- A family member's perspective

Recovery and the need for services. Consequences of untreated psychosis

- Apart form "spontaneous recovery" people with severe mental illnesses need services to recover.
- Delusions or lack of insight (anosognosia), symptoms of the illness, can cause a person to refuse treatment
- Without treatment recovery does not occur or is grossly delayed
- Untreated severe illness can cause continued suffering, homelessness, stigma, unemployment, criminalization, become the victims of violence or less frequently perpetrators, and family disruption

MYTH: INVOLUNTARY ADMISSION IS NOT NEEDED, ONLY MORE USER-FRIENDLY SERVICES

- REALITY:

- *Despite the best medication and services in the World, involuntary access is essential because some people with these brain illnesses, especially when psychotic, do not believe they hare a treatable illness and therefore refuse voluntary admission and treatment.*

WHY A MENTAL HEALTH ACT?

- No Cardiac Health Act
- Schizophrenia, etc are brain illnesses that:
- Impair insight because of delusions, thought disorder, so people refuse treatment
- Untreated mental illnesses can cause serious harm to the person and to other people
- Legal basis: protection of society (*police powers)* and *parens patraie (safeguarding vulnerable people)*
- Alternative – Criminal Code (no treatment only detention) – guardianship (court, etc)
- Alternative – Advance Directive laws +

PURPOSE OF THE *MENTAL HEALTH ACT*

- To provide means of accessing needed psychiatric treatment when:
- The ill person refuses (or is not capable of) a voluntary examination or admission and is, or is likely to, cause themselves or others harm or they are at substantial risk of deteriorating
- (Families are often critical to helping the person obtain involuntary treatment)

INVOLUNTARY ADMISSION CRITERIA (Manitoba Mental Health Act)

- 1. **Not suitable as a voluntary patient** AND meets:
- 2. **Definition of mental disorder** "a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include a disorder due exclusively to a mental disability…"
- 3. **Criterion of harm/deterioration.** "because of the mental disorder, is likely to cause serious harm to himself or herself or to another person, or to suffer substantial mental or physical deterioration"

MYTH:
Only people who are a "danger" to themselves or others can be committed

- REALITY:
- Courts (McCorkell BC, Thwaites Manitoba) ruled that broad harms (psychological, etc) and substantial deterioration of the non- dangerous qualify under the Charter.

INVOLUNTARY ADMISSION PROCEDURES (Initial Examination)

- Physician's initial examinations (form 4, application)
- Justice (to take for initial physician's examination)
- Police (to take for initial physician's examination)

PHYSICIAN'S EXAMINATION APPLYING FOR INVOLUNTARY PSYCHIATRIC ASSESSMENT

- Any physician (often at Emergency Dept)
- Physician must examine and determine: meets definition of mental disorder AND meets harm or deterioration criterion AND be not capable or refuses psychiatric examination.
- Authorizes any peace officer to apprehend and take to a designated hospital unit. Valid 7 days.
- Person can be detained, restrained and observed for up to 72 hours in hospital.
- Psychiatrist examines and may authorize 21 days on same criteria.

MYTH:

If the ill person won't see a doctor voluntarily there is nothing you can do.

- REALITY:

- *A justice may initiate an initial assessment by a physician if convinced the criteria are apparently met* OR
- *A peace officer may apprehend and transport for an initial assessment by a physician if the criteria are met.*

JUSTICE ORDER FOR EXAMINATION

- "Any person may apply to a justice for an order that another person be examined involuntarily by a physician" s. 10(1) (usually family, or team)
- Application: in writing, under oath with reasons.
- Justice considers evidence including witnesses. Notice to person not required.
- Justice criteria – "Apparently" suffering from mental disorder and meets harm/deterioration criteria, needs exam and refuses to be examined.
- Authority then for peace officer to as soon as possible take person to be examined involuntarily by a physician within 24 hours.
- Order valid for 7 days.

ASSISTANCE FROM POLICE

- "A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if (a) the peace officer believes on reasonable grounds that the person
- (i) has threatened or attempted to cause bodily harm to himself or herself,
- (ii) has behaved violently towards another person or caused another person to fear bodily harm from him or her, or
- (iii) has shown a lack of competence to care for himself or herself;" s. 12(1) AND
- Person is apparently suffering from a mental disorder which likely will result in serious harm or deterioration AND
- Urgency does not allow justice route THEN may apprehend including entering a private dwelling and take for examination which must be done within 24 hours.

ASSISTANCE FROM RELATIVES IN OBTAINING TREATMENT

- Keep notes –for dr, justice or police, as evidence for
- ***a) Mental Disorder*** e.g. hallucinations, delusions, depression, extreme excitement, irrational thought, special difficulties relating to others, previous episodes
- ***b) Likely to cause serious harm to self or others*** e.g. violence, threats, paranoid, delusions, irrational wasting money, likelihood of losing job or family, deteriorating physical condition, suicidal, risking life or limb etc

ASSISTANCE FROM RELATIVES IN OBTAINING TREATMENT (cont)

- ***c) Likely to suffer substantial mental or physical deterioration*** e.g. previous episode and early symptoms are returning; current symptoms are worsening; failure to eat; extreme withdrawal etc
- ***d) Unwillingness to accept voluntary treatment***

  e.g. where you or others have tried to persuade the person to see a physician for an examination but were unsuccessful

Note: seek advice from mental health centre, gp, psychiatric unit, police, urgent teams etc

ON ADMISSION TO PSYCHIATRIC UNIT

- 1 physician's certificate "admits" for up to 72 hours
- 2nd certificate, using same criteria but by a psychiatrist holds for 21 days (then renewals)
- Rights notification to patient and nearest relative (e.g. access to Mental Health Review Board, lawyer, Ombudsman (2nd opinion on treatment in BC) etc
- Treatment authorized: by person if capable or substitute decision maker if person incapable.
- Discharge – absolute or on leave.

TREATMENT AUTHORIZATION
Competent and Not

- A patient "Mentally competent" (Capable) to make treatment decisions has the absolute right to accept or refuse
- Not competent patient has a substitute decision maker
- "Mentally competent" means the patient understands (i) the condition (ii) the nature and purpose of treatment, (iii) risks and benefits involved in undergoing and not undergoing treatment and that the condition does not affect the ability to appreciate the consequences of making the decision.

TREATMENT AUTHORIZATION

Who is the Substitute Decision Maker?

- A proxy appointed under Health Care Directives Act or Committee. If none-
- Patient's nearest relative
- Must have been in personal contact in last 12 months and willing to make treatment decisions.
- Nothing requires a physician to inquire as to whether a patient has a proxy or made a health care directive.

TREATMENT AUTHORIZATION
Rules for Substitute Decision Maker

SDM must make treatment decisions on incompetent patient's behalf

"(a) in accordance with the patient's wishes, if the person knows that the patient expressed such wishes when apparently mentally competent; or (b) in accordance with what the person believes to be the patient's best interests if (i) the person has no knowledge of the patient's expressed wishes, or (ii) following the patient's expressed wishes would endanger the physical or mental health or the safety of the patient or another person" s. 28(4) (Other provinces differ).

- If SDM refuses treatment the physician can appeal to the Review Board which can overturn on a best interests test.

CONSEQUENCES OF TREATMENT REFUSAL FOR INVOLUNTARY PATIENTS

- (Ontario studies)
- Mr Sevels – 5 years untreated, 404 days in seclusion, seriously injured nurse, finally successfully treated then on CTO in community.
- Professor Starson – 5 years untreated except initial compulsory to make fit. After Supreme Court 2 more years, delusional starvation, finally treated responded very well
- Mr Reid -15 years untreated, very violent. When treated moved to the community
- See Solomon, R., O'Reilly, R., Gray, J. and Nikolic, M. **Treatment Delayed - Liberty Denied.** The Canadian Bar Review. 2009, 87, 679-719.

DISCHARGE

- Patient may continue as voluntary if status is changed from involuntary status
- ***Physician Discharges*** –if involuntary criteria not met
- ***Review Panel Discharges***
- ***Leave*** (still a patient subject to recall to the hospital)
- ***Unauthorized Absence*** (still an involuntary or in some circumstances a voluntary patient)

Leave (community treatment)

- "allows the patient to live outside the facility" s. 46
- Pre-Conditions: In last 2 years, at least 60 days in OR 3 or more separate. Or previous Leave.
- Treatment plan must be developed with patient and others, and may include family
- Patient or SDM consents
- Criteria assessed by Psychiatrist: mental disorder, if not continuing care in the community likelihood of serious harm or deterioration.
- Patient capable of complying and services available
- Leave is up to 6 months and renewable.

PROTECTIONS & RIGHTS

- Admission procedures (2 physicians with one a psychiatrist) and criteria (not arbitrary)
- Renewal examinations (21 days, 3 months)
- Treatment authorized by self or SDM
- Review Board: admission criteria, competence and automatic reviews of in patients and on leave
- Patient provided with rights sheet on admission: (e.g. review panel, lawyer, 2nd opinion)
- Access own medical record

FAMILIES AND LEGISLATION

- Facilitate access to treatment (e.g. get to MD, judge; provide information, assist in hospitalization)
- Receive notices of admission, discharge and rights. May exercise rights on person's behalf
- Participate in treatment planning
- Evidence at Review Boards
- Discharge and post discharge involvement (e.g. leave)
- Advocate for law and systems reform