

**MENTAL HEALTH LAW:
A MEMORANDUM ON CONDITIONAL DISCHARGE
AND MENTAL HEALTH REVIEW TRIBUNAL**

The Mental Health Law Committee of the Law Society (the “Committee”) has issued this Memorandum to share its experience with the general membership on two practice areas, viz. the conditional discharge provisions and the Mental Health Review Tribunal. The Committee welcomes exchanges of views and discussion on the above as, at the moment, there are very little case law and the related legislation does not cover all possible scenarios.

This Memorandum represents only the Committee’s views on the subject matter and is not binding on any court, does not have the force of law and should not be interpreted in a way that would override the provision of any law. Further, this Memorandum is not intended to be, or be interpreted to be, a guide issued by the Law Society, and does not constitute legal advice.

In reading this Memorandum, members may wish to, at the same time, check for any updates in the relevant legislation and case law.

The Committee reserves the right to review, amend, supplement or update this Memorandum, especially in light of the evolving case law or updating legislation.

CONDITIONAL DISCHARGE

Under s42B of the Mental Health Ordinance (Cap 136) (“MHO”), certain patients may be discharged from a mental hospital subject to conditions. This applies only to patients who have been compulsorily detained in a mental hospital and who have a history of criminal violence or a disposition to commit violence. Conditions that may be imposed include residing in a specified place, attending an outpatient clinic for treatment, taking medications as prescribed and being under the supervision of the Director of Social Welfare. A patient who fails to comply with one or more of the conditions can be recalled to the mental hospital if it is deemed necessary in the patient's interests or to protect others. Once recalled, the patient will automatically be deemed to be compulsorily detained under s31 of the MHO.

The MHO does not cover all possible scenarios which may arise. It is the experience of the Committee that the Hospital Authority doctors apply their interpretation when dealing with situations which are not clearly set out in the MHO. It is important for members to be aware of the practice and interpretation of the conditional discharge provisions.

Members may be approached by patients or their relatives who seek to vary the terms of the conditional discharge or who may seek to terminate the conditional discharge.

To assist, the Committee sets out below a few Frequently Asked Questions, together with the understanding of the Committee of what the answers to these questions could be:

1. Is a Conditional Discharge (“CD”) order no longer valid if a patient has been compulsorily admitted into a mental hospital?

Yes. A CD order will cease to be effective if the patient has been compulsorily admitted into a mental hospital, but not if the patient has been admitted informally,¹ voluntarily,² or into a non-psychiatric ward. New CD orders can only be issued where the patient has been compulsorily detained in a mental hospital.

2. How can a CD order be discharged or cancelled?

The MHO does not provide to the medical superintendent or the clinician responsible for the case any legal authority or power to discharge a CD order. Only the Mental Health Review Tribunal has the power to discharge a CD order, pursuant to s59E (1) of the MHO. However, the medical superintendent or clinician responsible for the case can vary the terms of a CD order.

3. What happens if a patient fails to return or be taken into custody within 28 days of him/her being recalled to hospital?

According to section 43(6) of the MHO, the patient can no longer be taken into custody after the expiration of the 28 days.

MENTAL HEALTH REVIEW TRIBUNAL (“MHRT”)

The MHRT comprises a chairman with legal experience, a doctor, a social worker, and one lay member who is not a doctor or a social worker. Applications can be made to the MHRT for review of compulsory admissions to a mental hospital, conditional discharge and other cases under s59B (2).³ Patients under compulsory detention in a mental hospital can make an application once every 12 months and if not exercised, an automatic application is made after 12 months of compulsory detention. Thereafter, automatic application is made every 2 years. There is no automatic application for patients under conditional discharge.

Application can be made by the patient or a relative. Legal representation is permitted. The Committee understands that legal aid is available for the above.

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¹ This refers to a patient who is admitted into a psychiatric ward of a public hospital other than the wards listed in the Declaration of Mental Hospital (Consolidation) Order (Cap 136B).

² This refers to a patient who is admitted voluntarily pursuant to section 30 of the MHO.

³ While applications can theoretically be made to the MHRT during detention under s31 and s32, the length of the application process is such that a MHRT hearing will not be convened in time for the patient to have his/her case reviewed prior to the end of the detention period.