

Medicolegal

Actions by psychotic patients

BY OUR LEGAL CORRESPONDENT

Doctors and nurses who treat psychiatric patients may be anxious that their protection from malicious or psychotic legal actions brought by their patients may have been reduced by a recent decision of the Court of Appeal.¹

Miss Valerie Mary Waldron applied to a judge of the Queen's Bench Division for leave to apply for judicial review by way of certiorari or declaration of an application for her admission to hospital under section 3 of the Mental Health Act 1983 by Dr Cosmo Hallstrom and Dr Rosemary Morgan. Miss Waldron contended that the doctors had acted outside the powers conferred by the Act and hence without authority. The doctors, represented by counsel, contended that section 139 of the Mental Health Act 1983 prevented the court from hearing such an application. The judge dismissed Miss Waldron's application, and she appealed to the Court of Appeal.

At the time of the hearing Miss Waldron was not actually in hospital. After admission under section 3 of the Act she was given leave of absence under section 17 to live in the community. She objected to her original detention and to the fact that her liberty was subject to a power to revoke her leave of absence.

Section 139 of the Mental Health Act 1983 grants an immunity from civil or criminal proceedings in respect of any act done under the mental health legislation. That immunity is, however, qualified, since it is granted only to "persons"; it does not benefit the Secretary of State or a health authority. It does not apply to proceedings under section 127 of the Act in respect of ill treatment of patients. It does not apply to acts done in bad faith or without reasonable care. Where it is alleged that acts were done in bad faith or without reasonable care—that is, negligently—civil proceedings may be brought (but only with the leave of the high court) and criminal proceedings may be brought (but only with the consent of the Director of Public Prosecutions).

Miss Waldron did not allege that the doctors who applied for her admission acted in bad faith or without reasonable care, so if her application for judicial review constituted "civil proceedings" it was barred by section 139 and the high court could not give leave for her to proceed.

The Court of Appeal held, however, that an application for judicial review amounted to neither criminal nor civil proceedings and hence was not barred by section 139. Leave of the high court was required because all applications for judicial review require it.

Judicial review

The remedy of judicial review does not lead to any award of damages being made against anyone, though a heavy burden in costs might result. It provides a means whereby the courts control the decisions of inferior courts, of public authorities, and indeed of almost anyone who has power given by law to make decisions affecting individuals. The purpose of the remedy is not to review the merits of the decision itself but to consider whether there was jurisdiction to make the decision and whether it was made fairly and in accordance with the rules of natural justice. The court would also intervene where an error of law was apparent in the document

expressing the decision or if the decision was so erroneous that no authority properly directing itself on the relevant law and acting reasonably could have reached that decision.

Judicial review is a remedy of limited application and subject to strict control by the courts. In relation to decisions made under the Mental Health Act its use will probably be restricted to the questioning of jurisdiction to make an order.

The decision of the Court of Appeal in Miss Waldron's case does not in practice go beyond what was envisaged by the interdepartmental committee which reviewed the law and proposed suggestions for amendments in a consultative document in 1976.² The committee stated that the immunity to be granted by a section such as section 139 of the 1983 Act "is concerned only with the protection of individuals personally against legal proceedings for alleged wrongs. The section does not, therefore, affect the right of a patient or his friends to apply to the high court at any time for discharge by means of a writ of habeas corpus so that the lawfulness of his detention can be tested."

The availability of a remedy by habeas corpus has been recognised by the courts, but it would not have been available to Miss Waldron since she was not under restraint. The immediate effect of the Court of Appeal decision is to grant a similar remedy to patients on leave of absence. Whether ingenuity will stretch the remedy further remains to be seen, but it seems unlikely.

References

- 1 Anonymous. "Mental Hospital Admission order is open to challenge," *The Times* 1985 October 8:8 (cols 1-6).
- 2 DHSS. *A Review of the Mental Health Act 1959*. London: HMSO, 1976.

A diet rich in magnesium helps to lower blood pressure. What are the important dietary sources of magnesium and what methods of cooking (or not cooking) help to preserve it?

Magnesium is widely distributed in foods, and most types of food contribute appreciably to the total dietary intake. The average intake in the United Kingdom is of the order of 250 mg/h/day.¹ Cereals are the major source, with higher extraction products being richer sources than refined, low extraction products. Green vegetables and fish are also good sources.² The magnesium in plant foods is often closely associated with the cell walls in mixed salts of phytic acid and it is also a constituent of chlorophyll. Leaching losses during cooking are relatively small and the consumption of a mixed diet containing reasonable amounts of vegetables and some high extraction cereal foods should ensure a satisfactory intake. There is no official United Kingdom recommendation on the daily amount of magnesium, but the United States recommended dietary allowance is 300 mg/h/day.³—D A T SOUTHGATE, head, nutrition and food quality division, Food Research Institute, Norwich.

- 1 Spring JA, Robertson J, Buss DH. Trace nutrients: magnesium, copper, zinc, vitamin B₆, vitamin B₁₂ and folic acid in the British household food supply. *Br J Nutr* 1979;41:487-93.
- 2 Paul AA, Southgate DAT. *McCance and Widdowson's "the composition of foods."* 4th ed. London: HMSO, 1978.
- 3 *National Academy of Sciences recommended dietary allowances*. 9th ed. Washington: National Academy of Sciences, 1980.