

MENTAL HEALTH REVIEW TRIBUNAL

Practice and Policy Guideline #16

DEALING WITH THE SECTION 79 HEARING PATHWAYS

Practice and Policy Guidelines provide general direction and assistance to the members and secretariat of the Review Tribunal. They may be departed from or supplemented by the Review Tribunal as circumstances require. They do not constitute legal opinions.

Introduction

1. There are 3 pathways by which reviews may be held under section 79.
2. The usual pathway is section 79(1) which provides that **any person, to whom a copy of a certificate of clinical review is sent** under section 76, may apply to the Review Tribunal for a review of the patient's condition.
3. A second pathway is section 79(2) which provides that the Review Tribunal **may at any time of its own motion** review the condition of any patient who is subject to a compulsory treatment order.
4. A third pathway is section 79(3) which provides that **where a clinical review has not taken place as required**, the Review Tribunal may review the patient's condition, either of its own motion, or on application by any person to whom a copy of a certificate of clinical review should have been sent.

Section 79 (1) applications

5. The secretariat should require a copy of the most recent section 76 certificate to accompany each application made to it pursuant to section 79(1), in order to verify entitlement to make the application. It should not set the application down for hearing unless the certificate has been supplied.
6. The Review Tribunal must proceed to conduct a review on receipt of a section 79 (1) application except if it has conducted a review of the patient's condition within the preceding 3 months, or the application is made by a relative or friend of the patient and is made otherwise than in the interests of the patient (section 79(6)(b) (i) and (ii)).

Section 79(2) applications

7. In deciding whether to utilise the power to conduct an own motion review, the Review Tribunal should have regard to the Act having prescribed a standard procedure under section 79(1). That procedure should normally be followed.
8. The Review Tribunal should not therefore conduct an own motion review unless there is reason to justify a departure from normal procedure.
9. Any request to conduct an own motion review request should be referred to the Convener who should consult with the other two other members.
10. If in the course of hearing an application purportedly pursuant to section 79(1) the hearing panel realises that the statutory requirements of that provision are not met, it may choose to proceed with the hearing pursuant to section 79(2) without reference to the Convener.
11. Although the section 79(5)(b) requirement that reviews must start as soon as practicable after the receipt of an application does not apply to own motion reviews, the time frames contained within that provision should be applied to such reviews.

Section 79(3) applications

12. Should a review be sought on the grounds that a clinical review should have been held but has not been held, the secretariat should satisfy itself that a clinical review has in fact not been held within the statutory time frame.
13. Although section 79(3) is expressed in permissive rather than mandatory terms, the Review Tribunal should conduct a review where the grounds are satisfied, unless there is sound reason why it should not. Such reasons might include that the Review Tribunal has conducted a review of the patient's condition within the preceding three months, or that the application is made by a relative or friend of the patient and is made otherwise than in the interests of the patient (section 79(6)(b)(i) and (ii)).

Last updated August 2015

NJ Dunlop

Convener