

Determining whether to consent to treatment proposed for a person with an eating disorder

Sometimes the Public Guardian is appointed as guardian of a person who has an eating disorder such as anorexia nervosa, bulimia nervosa or similar life threatening conditions involving body mass emaciation or fluctuation. A person's need for guardianship usually arises when a treating medical practitioner considers that the person is non-compliant with treatment or intervention. He/she may be objecting to treatment and is considered to be at risk of serious physical harm or death, and may have lost the capacity to make decisions in relation to the eating disorder and its treatment. Therefore, guardianship orders are usually limited to issues concerning the eating disorder and its treatment.

Fluctuations in a person's decision making capacity may occur at different stages of the disorder, and the role and authority of a guardian to make decisions needs to be regularly reviewed in line with the person's current health status and capacity to make his/her own decisions.

RELEVANT LEGISLATION

NSW Guardianship Act 1987

SECTION 4 - General principles, require that:

- the welfare and interests of such persons should be given paramount consideration;
- the freedom of decision and freedom of action of such persons should be restricted as little as possible.

Part 5 46A - power of guardian to override a patient's objection to treatment when authorised by the Guardianship Tribunal.

MENTAL HEALTH ACT NSW 1990

Note: In 1986 the Supreme Court of New South Wales found that anorexia nervosa was not in itself a mental illness as defined by the Mental Health Act 1990. However in April 1999, the Mental Health Review Tribunal noted that:

"the essential features of anorexia nervosa as described in the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition of American Psychiatric Association (DSM IV page 539) are that the individual refuses to maintain a minimally normal body weight, is intensely afraid of gaining weight, and exhibits a significant disturbance in the perception of the size and shape of his or her body. In addition, postmenarcheal females with this disorder are amenorrhoeic".

Sometimes, as a consequence of their eating disorder, a person may experience delusions, psychoses or have suicidal thoughts and behaviours to the extent that they meet the requirement for treatment as defined by the Mental Health Act. Treating professionals may use the Mental Health Act for the period of time the person is mentally ill or mentally disordered and requires in-patient care and treatment in a psychiatric hospital or psychiatric ward within a general hospital.

The provision relating to a person who is mentally disordered allows for the person to be scheduled to a psychiatric unit for up to 72 hours in any one instance and on no more than 3 occasions in one month.

POSITION STATEMENT

The Public Guardian supports and promotes the least restrictive care and treatment of a person who has an eating disorder. It is recognised however that in some circumstances, the use of more restrictive procedures, for a limited period, may be in the best interests of the person under guardianship.

The Public Guardian advocates for consideration of the widest variety of treatment options, which are individually designed in relation to the history, nature, and severity of the person's eating disorder. All

decisions in relation to care, treatment, admission to and discharge from hospital must be based on the treating medical practitioner's assessment of the risk to the person. Where the Public Guardian considers there is insufficient evidence to justify consent to the proposed course of action, a second specialist opinion may be sought.

Treatment plans

There are a range of treatments and treatment settings available for a person who has an eating disorder. These treatments may range from regular monitoring by a general practitioner, dietician, psychiatrist or psychologist in a community based setting, to admission within a general hospital for re-hydration, naso-gastric feeding, or a medium to long term admission for re-feeding and intensive group and individual counselling.

Within the specialised treatment of eating disorders, practices such as reward and punishment, confinement and limitations on access and personal liberty, may be elements of treatment and management plans. The Public Guardian considers these to be restrictive practices and where the person lacks capacity to provide his/her own consent, requires the consent of a guardian with the necessary authority given by the Guardianship Tribunal.

The distinction between admission for treatment involving special programmes, and admission to receive the standard treatment program provided to all patients in the particular hospital unit, should be made clear in any request for consent made to, or consent given by the Public Guardian.

The Public Guardian needs to be aware of the standard treatment offered by different treatment settings when considering options for admission of a person under guardianship of the Public Guardian to a hospital for treatment.

Treatment plans should be negotiated and developed for the person under guardianship, and consent to her/his admission to hospital will be considered separately from consent to specific diagnostic and medical procedures and individual behavioural programmes. If a change in the standard treatment programme involves restrictive elements, further consent must be sought from the Public Guardian.

A treatment plan must include a transition plan for preparing the person for discharge from hospital. The person under guardianship and the Public Guardian must be consulted regarding the release of any information relating to the person.

The Public Guardian's role is substitute decision making and does not include the authority or responsibility to be a case manager or counsellor.

Where there is dispute involving treatment among any relevant parties, formal consultation with the parties concerned will be undertaken before a final decision concerning the consent request is made.

Use of restrictive practices

Restrictive practices refer to the use of a broad range of techniques to manage or change a person's behaviour where, in the absence of consent, these procedures would constitute an assault or wrongful imprisonment. Restrictive practices can include the use of chemical restraint, physical restraint, loss of privileges, seclusion/confinement or denial of access.

Where restrictive elements are part of a proposed treatment plan the Public Guardian will consider whether:

- the request for consent to the use of the restrictive procedure/programme has been made to the Public Guardian in writing;
- documented evidence to support the proposed restrictive practice is required;
- a medical assessment to substantiate that further serious damage to the person's health may occur without this intervention;
- information has been provided about less restrictive options which have been tried and their effect;
- information has been provided about restrictive practices which have been tried in the past in relation to the treatment of the person's eating disorder and their effect.

Discharge plans

The Public Guardian will not agree to the discharge of the person from hospital against the advice of the treating medical practitioner if the person remains at medical risk.

There is a distinction between immediate medical risk, such as risk of cardiac arrest or risk of fitting, which are issues of concern when a person is at a very low weight, and medium to longer term risk factors such as risk of severe osteoporosis, brain atrophy or renal failure, which may result when a person has been anorexic or bulimic for a significant period of time.

Where a treating practitioner requires that a person remain as an inpatient for therapeutic reasons, although they are no longer considered to be at medical risk, the Public Guardian will ensure the person is encouraged to remain in hospital. However, if he/she leaves the hospital, the Public Guardian will generally not consent to the retrieval of the person unless significant evidence can be provided to justify this action and it would be in the best interests of the person.

Admission and re-admission to hospital against the wish of the person should only occur when he/she is considered to be at medical risk and all attempts to encourage her/him to admit her/himself voluntarily have failed.

Objections to treatment

If the person under guardianship is not in hospital, is refusing medical monitoring and there is reasonable evidence to suggest he/she could be in medical danger, the Public Guardian, if given the authority* by the Guardianship Tribunal, may consider consent to the person's admission to hospital against his/her will to enable appropriate assessment and treatment to occur.

***Note** The authority required to consent to this includes:

- an accommodation function with the additional authority of confinement, restraint, retrieval or admission against the person's will;
- authority to authorise the assistance of others, such as ambulance or police service, to transport the person, against their will, to hospital for admission;
- specific authority for the Public Guardian to override objections to treatment under Section 46(A) of NSW Guardianship Act 1987.

FACTORS CONSIDERED BY THE PUBLIC GUARDIAN BEFORE MAKING A DECISION

Views available

- Has the view of the person under guardianship been sought?
- What are the views of the person's family and others important in the person's life?
- What are the views of relevant health professionals?

Consent for Admission requests

Information from service providers concerning whether:

- the person needs regular monitoring by a medical practitioner;
- the doctor has carried out assessments relevant to the person's condition (such as weight, body mass index, general physical health, cardiac condition, mental state and regular blood tests);
- the opinion of a professional (medical practitioner, psychiatrist, dietician or psychologist) with experience in eating disorders has been sought;
- a treatment plan has been developed by the treating practitioner/team;
- previous treatment and its outcome has been taken into consideration in the proposed plan;
- the treatment plan includes factors relating to the person's individual needs and condition;
- the roles of all relevant parties and the expectations of the person under guardianship have been outlined in the treatment plan;
- outpatient treatment has been considered instead of hospital admission where appropriate;
- options been considered for hospital admission i.e. public or private eating disorder units or general hospital wards.

Discharge Plans

Information from service providers concerning whether:

- the person's progress in treatment, state of health, and the advantages of continued inpatient treatment has been included in the proposal for discharge or readmission;
- a discharge plan has been developed by relevant health professionals including outpatient treatment.

Other relevant issues

- Has the person's health insurance status been considered for private hospital admissions, ambulance transportation and treatment e.g. restrictions on the length or number of admissions, cover for private therapists or specialist?
- What means of transport will be used to take the person to hospital? If the transport is to occur against the person's will, have the specific risks (e.g. possible exacerbation of cardiac condition) of this action been taken into consideration?

OTHER RELATED OPG POSITION STATEMENTS

Determining whether to consent to an intervention and support plan concerning a person's behaviour

Determining whether to consent to proposed medical or dental treatment

Responding to proposals concerning a person living an 'at risk' lifestyle