

RESPONSIBLE CLINICIAN AND NOMINATED DEPUTY ALLOCATION POLICY

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Consultation Groups	Medical Managers
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Services	Applicable
Trustwide	
Mental Health and LD	x
Community Health Services	

Version Control Summary

Version	Date	Author	Status	Comment
1.3	20 th January 2016	G D - Associate Director of Mental Health Law	Final	Code of Practice references updated
1.4	11 th February 2018	G D - Associate Director of Mental Health Law	Final	2.11 amended by adding sentence on sections 2 and 3.

Executive Summary

This policy sets out the law in respect of certain clinical statutory roles as per the Mental Health Act 1983.

The policy sets out how those roles should be allocated, where information should be recorded and how eligibility to take on statutory roles is monitored.

The policy should be read in accordance with the Mental Health Act 1983 and the Mental Health Act Code of Practice 2015.

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1.0 Responsible Clinicians and Approved Clinicians

- 1.1 All patients who are subject to detention or a Community Treatment Order under the Mental Health Act 1983 must have a Responsible Clinician.
- 1.2 Responsible Clinician is defined as the approved clinician with overall responsibility for the patient's case.¹
- 1.3 An approved clinician is defined as a person approved by the secretary of state to act as an approved clinician for the purposes of the Mental Health Act.² The mechanism for approval is set out in the Mental Health Act 1983 Approved Clinician (General) Directions 2008.
- 1.4 An Approved Clinician is not the same as a section 12 approved doctor. All Approved Clinicians are section 12 approved, but not all section 12 approved doctors are Approved Clinicians.
- 1.5 Allocation of the Approved Clinician to be the Responsible Clinician is dealt with in chapter 36 of the Mental Health Act Code of Practice so organisations:
- a) ensure that the patient's Responsible Clinician is the available approved clinician with the most appropriate expertise to meet the patient's main assessment and treatment needs;
 - b) ensure that it can be easily determined who a particular patient's Responsible Clinician is;
 - c) ensure that cover arrangements are in place when the Responsible Clinician is not available (e.g. during non-working hours, leave etc)
 - d) There is a system in place for keeping the appropriateness of the Responsible Clinician under review.

1.6 Allocation

When deciding on the most appropriate person to be the Responsible Clinician, the provisions of the Code of Practice should be taken into account along with the needs of the patient, their views and those of carers and relevant professionals.

1.7 Evidence/notice

The information that the patient receives about their legal status should include the identity of their Responsible Clinician. The identity of the Responsible Clinician should also be clearly indicated in the patient's medical records.

1.8 Cover Arrangements in the absence of the 'regular' Responsible Clinician

In the absence of the regular Responsible Clinician, if situations arise, where patients subject to compulsory powers require a decision to be made by the Responsible Clinician, the on-call Consultant Psychiatrist for the particular service will assume the role of Responsible Clinician and make the final decision.

¹ Section 34(1) of the Mental Health Act 1983

² Section 145(1)

Particular Responsible Clinicians may wish to be contacted by the on-call consultant psychiatrist prior to any decisions being made and they should therefore make this known to the relevant practitioners.

Whilst the on-call consultant psychiatrist will take into account the views of the patient's regular Responsible Clinician, the final decision will be that of the on-call psychiatrist in their capacity as the covering Responsible Clinician.

1.9 Cover arrangements for leave

Prior to or upon the patient's 'regular' Responsible Clinician being on leave, he/she and/or the relevant Clinical Director should identify another Approved Clinician(s) to take responsibility for that clinician's patients when it comes to Mental Health Act matters.

This arrangement should be made known to all relevant patients and practitioners, including Mental Health Law staff (this may be aside from the cover provided by a consultant psychiatrist for general clinical matters).

1.10 Review

On-going review of the appropriateness of the Approved Clinician to be the Responsible Clinician should take place as per 1.6 above, especially when the patient's circumstances change.

2.0 Nominated Deputies

2.1 Section 5(2) of the Mental Health Act 1983 allows for an in-patient to be detained for up to 72 hours when the doctor or Approved Clinician in charge of the patient's treatment is of the opinion that the patient should be detained under either section 2 or section 3.

2.2 Section 5(3) of the Mental Health Act 1983 allows the doctor or Approved Clinician in charge of the patient's treatment, to nominate one person to act on his/her behalf.

2.3 The Nominated Deputy cannot delegate to another³ and only one person can be nominated to act during any particular period so for instance a nomination "to Dr X or, in Dr X's absence, to Dr Y" could be deemed as unlawful.

2.4 The Nominated Deputy can be another doctor or another Approved Clinician, who is employed or contracted to undertake clinical responsibilities at the hospital where the patient is receiving their care.

2.5 If the Nominated Deputy is not an Approved Clinician or section 12 approved doctor, that person should wherever possible seek advice from the person for whom they are deputising, or from someone else who is an Approved Clinician or section 12 approved doctor.⁴

2.6 Deputies can be nominated by title rather than name, for instance the 'junior doctor on call for the hospital'. As above, there can only be one Nominated

³ The legal principle of *delegatus non potest delegare*

⁴ Mental Health Act Code of Practice 18.14

Deputy for any patient at any time and it should be determined with certainty who that Nominated Deputy is.⁵

- 2.7 Apart from the John Howard Centre and the forensic directorate units outside of the John Howard Centre site, the Nominated Deputy for East London NHS Foundation Trust hospital sites is the duty doctor; 24 hours a day, 7 days a week. This means that even during a 'normal' working day, in the absence of the doctor or Approved Clinician in charge of the patient's treatment, only the duty doctor can consider exercising the power under section 5(2). Where practicable, it is expected that the duty doctor would obtain advice from the senior clinician who has knowledge of the patient.
- 2.8 At the John Howard Centre and other forensic directorate units, the nominated deputy during 'normal' working hours (9am to 5pm Monday to Friday apart from bank holidays) is the covering doctor.
- 2.9 At the John Howard Centre and other forensic directorate units, the nominated deputy outside of normal working hours (5pm to 9am from Monday to Friday, all of Saturday and Sunday, and bank holidays) is the duty doctor who also covers City and Hackney Centre for Mental Health.
- 2.10 This arrangements on all Trust sites should be made explicit on all duty doctor rotas so that all staff are aware of who the Nominated Deputy is at any particular time.
- 2.11 Nominated Deputies should report the use of section 5(2) to the person for whom they are deputising as soon as practicable. Outside of 'normal' working hours, this will be the on call Consultant Psychiatrist as per 1.8 above. Assessment for detention under sections 2 or 3 should begin as soon as practicable.

⁵ Mental Health Act Code of Practice 18.16