

BERMUDA STATUTORY INSTRUMENT

SR&O 71/1968

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

[made under section 63 of the Mental Health Act 1968 and brought into operation on 29 June 1968]

ARRANGEMENT OF RULES

PART I

- 1 Interpretation
- 2 Atkin's Court Forms

PART II

PRELIMINARY PROCEDURE

- 3 Method of making application
- 4 Postponement of consideration of application
- 5 Notice to Medical Director
- 6 Statement of Medical Director
- 7 Notice to nearest relative
- 8 Appointment of Tribunal
- 9 More than one application pending

PART III

GENERAL PROCEDURE

- 10 Representation
- 11 Medical examination
- 12 Interview with patient

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

- 13 Disclosure to applicant
- 14 Evidence
- 15 Adjournment
- 16 Withdrawal of application

PART IV INFORMAL DETERMINATIONS

- 17 Informal determinations
- 18 References by Governor
- 19 Proceedings in private

PART V FORMAL HEARINGS

- 20 Application of Part V
- 21 Notice of hearing
- 22 Decision as to formal hearing
- 23 Privacy of proceedings
- 24 Procedure
- 25 Adjournment for further information

PART VI

- 26 Decisions
- 27 Disposal of proceedings
- 28 Time
- 29 Service
- 30 Irregularities

PART I

Interpretation

- 1 (1) In these rules, unless the context otherwise requires—
 - "the Act" means the Mental Health Act 1968 [*title 11 item 36*];
 - "applicant" means a person who under the Act is entitled to apply, or being so entitled has applied, as the case may be, to the Mental Health Review Tribunal; and
 - "application" shall be construed accordingly;
 - "Court Forms" means volume 26 of the second edition of Atkin's Court Forms, published in 1962 by Butterworths;
 - "displaced relative", in relation to a patient, means the nearest relative of the patient whose functions under the Act are exercisable by another person in pursuance of an order made under section 29 or section 30 of the Act;

"nearest relative", in relation to a patient, means the person who has for the time being the functions under the Act of the nearest relative of that patient;

"patient", in relation to an application, means the person in respect of whom the application is made;

"reference" means a reference by the Governor under section 39(6) of the Act;

"the Review Tribunal" or "the Tribunal" means the Mental Health Review Tribunal established and appointed under section 5 of the Act.

(2) [omitted]

Atkin's Court Forms

2 The forms set out in Court Forms to which reference is made in these Rules shall be used as a guide to the forms to be used in Bermuda and shall be adapted for such use so far as may be necessary.

PART II

PRELIMINARY PROCEDURE

Method of making application

3 (1) An application shall be made by an applicant, or any person authorized by him to apply on his behalf, on the appropriate form of application set out in Form 190, 191 or 192 of Court Forms and shall be sent to the Review Tribunal.

(2) The Tribunal or the Medical Director shall on request supply the appropriate form of application to an applicant.

(3) When an applicant requests a formal hearing, that fact shall be stated in his application.

Postponement of consideration of application

4 (1) Where an application by or in respect of a patient has been considered and determined by the Review Tribunal, the Tribunal or the Chairman of the Tribunal may, subject to this rule, postpone the consideration of a further application by or in respect of that patient until such time as they or he may direct, not being later than the expiration of the period of twelve months from the date on which the previous application was determined.

(2) The power of postponement conferred by paragraph (1) shall not apply to—

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

- (a) any application if the previous application was determined before a break or change in the authority for the patient's detention,,
 - (b) an application under section 19 of the Act (which relates to the reclassification of patients);
 - (c) an application under section 22 of the Act in respect of a renewal of authority for detention of the patient for a period of one year, unless the previous application was made to the Tribunal more than six months after the patient's admission to a hospital for the treatment of mental disorder;
 - (d) an application under section 23 of the Act (which authorizes the continued detention of certain psychopathic and subnormal patients); and
 - (e) an application under section 27 of the Act (which imposes restrictions on discharge by the nearest relative).
- (3) Where the consideration of the application is postponed, the Tribunal or the Chairman of the Tribunal shall so inform the applicant and any other person to whom a copy or a notice of the application has been sent.
- (4) Where the consideration of an application is postponed, any action which may have been taken on the application under rules 5 to 8 shall be disregarded, and consideration of the application shall proceed as if the application had been made at the expiration of the period of postponement, unless before that date the application has been withdrawn in accordance with rule 16, or has been determined in accordance with paragraph (5).
- (5) Where a new application is made in respect of a patient and is not postponed under this rule, the Tribunal or the Chairman of the Tribunal may direct that any postponed application in respect of the same patient shall be considered and determined at the same time as the new application,
- (6) For the purposes of this rule, a break or change in the authority for the detention of a patient shall be deemed to have occurred only—
- (a) on his admission to a hospital for the treatment of mental disorder in pursuance of an application for treatment or in pursuance of a hospital order without an order restricting his discharge; or
 - (b) on the application to him of Part II or Part III of the Act as if he had been so admitted or received following an order or direction restricting his discharge.

[rule 4 amended by 1998 : 32 effective 13 July 1998]

Notice to Medical Director

5 The Tribunal shall on receipt of an application or, where the consideration of an application has been postponed, at the end of the period of postponement send a copy of the application to the Medical Director.

Statement of Medical Director

6 (1) The Medical Director shall send to the Tribunal, as soon as practicable and in any case within three weeks of the receipt by him of the copy of the application a statement (in these Rules called "the statement of the Medical Director") containing the information referred to in Form 196 of Court Forms, so however that any part of the statement of the Medical Director which in his opinion shall be withheld from the applicant on the grounds that its disclosure would be undesirable in the interests of the patient or for other special reasons shall be made in a separate document and the Medical Director shall specify his reasons for not wishing the information contained in such document to be disclosed to the applicant.

(2) The Tribunal shall on receipt of the statement of the Medical Director send to the applicant a copy of the statement excluding any part thereof which is contained in a separate document in accordance with paragraph (1).

(3) The Tribunal shall inform the Medical Director of any comments on his statement which they may receive from the applicant and shall give the Medical Director an opportunity of considering any such comments and shall, if the Medical Director so requests, supply him with a copy thereof.

Notice to nearest relative

7 Where the applicant is the patient or the displaced relative, the Tribunal shall on receipt of the statement of the Medical Director give notice of the application to the person named in the statement of the Medical Director as exercising the functions of the nearest relative.

Appointment of Tribunal

8 (1) The Chairman or other member of the Tribunal appointed to act on his behalf in accordance with paragraph 4 of the First Schedule to the Act shall, on receipt of the statement of the Medical Director or on receipt of a reference from the Governor appoint the members of the Tribunal to consider and determine or advise on the application or reference.

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

(2) A person shall not be qualified to serve as a member of the Tribunal to consider an application or reference where he has any interest in the patient.

More than one application pending

9 The Tribunal may consider more than one application in respect to a patient at the same time and may for this purpose adjourn the proceedings relating to any application.

PART III

GENERAL PROCEDURE

Representation

10 (1) The applicant, the Medical Director and any person to whom notice of the application has been given under rule 7 may be represented by any person liable to be detained under the Act or a person receiving treatment for mental disorder at a hospital.

(2) An authorized representative may take all such steps and do all such things relating to the proceedings as the person whom he represents is by these Rules required or authorized to take or do.

(3) Unless the Tribunal otherwise direct, a patient or other person appearing before the Tribunal may be accompanied by such other person or persons as he wishes.

[rule 10 amended by 1998 : 32 effective 13 July 1998]

Medical examination

11 The Medical member of the Tribunal appointed to consider the application shall, or where there is more than one medical member the medical members may and one shall, examine the patient or take such other steps as he or they consider necessary to form an opinion of the patient's mental condition; and for this purpose the patient may be seen in private and his medical records examined.

Interview with patient

12 (1) The Tribunal may at any time before determining the application interview the patient, and shall interview him if he so requests, and such interview may take place in private or in the presence of the applicant or any other person as the Tribunal think fit.

(2) Where they think it appropriate, the Tribunal may authorize any one or more of their members to visit and interview the patient in private.

Disclosure to applicant

13 (1) Except in so far as the Tribunal consider it undesirable to do so in the interests of the patient or for other special reasons, they shall make available to the applicant any part of the statement of the Medical Director which has been withheld from him under rule 6 and shall on request make available to the applicant and the Medical Director copies of any other documents obtained by or furnished to the Tribunal for the purposes of the application and a statement of the substance of any oral information so obtained or furnished, and shall if so requested adjourn the hearing of the application so far as may in the opinion of the Tribunal be necessary to enable the applicant or the Medical Director to consider any document or information made available under this paragraph:

Provided that the Tribunal may refuse to supply copies of any document or of any part of any document, or a statement of any oral information which appears to them not to be relevant for the purposes of the application.

(2) The Tribunal may disclose to any person any information withheld under these rules on terms that the information shall not be disclosed to the applicant or the patient or to any other person or be used otherwise than in connection with the application.

Evidence

14 (1) For the purpose of obtaining information, the Tribunal may take evidence on oath and subpoena any witness to appear before them or to produce documents, and the president of the Tribunal shall accordingly have the powers of an arbitrator under sections 20(3) and 25 of the Arbitration Act 1986 [*title 8 item 75*], and the powers of a party to a submission under an arbitration agreement under section 20(4) of the Arbitration Act 1986, but no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action.

(2) The Tribunal may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law.

Adjournment

15 Subject to rule 25(2) and rule 27, the Tribunal may adjourn the hearing of any evidence or representations or the consideration of an application to such date as they may determine.

Withdrawal of application

16 An applicant may withdraw his application at any time on giving notice in writing to the Tribunal and an application shall be deemed to

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

be withdrawn if the patient ceases to be liable to be detained in Bermuda.

PART IV

INFORMAL DETERMINATIONS

Informal determinations

17 (1) Where the applicant has not requested a formal hearing, the Tribunal may, subject to this rule, determine an application in such manner as they think appropriate.

(2) Before determining the application, the Tribunal shall—

(a) take all such steps as they consider proper (including interviewing any person) to ensure that they have before them the information necessary to decide the case; and

(b) give the applicant, the Medical Director and any person to whom notice of the application has been given under rule 7, an opportunity of an interview with the Tribunal, at a time and place of which at least seven days' notice shall be given unless that person concerned has disclaimed any interest in the application; and

(c) consider any written representations made to them with reference to the application.

(3) Any person interviewed by the Tribunal shall be given the opportunity of stating his views and drawing the attention of the Tribunal to any evidence or information relevant to the application.

References by Governor

18 The Tribunal shall consider a reference by the Governor in whatever informal manner they think appropriate and may on any such reference interview the patient, and shall interview him if he so requests; and after considering the reference, the Tribunal shall give their advice thereon to the Governor.

Proceedings in private

19 All proceedings to which this Part applies shall take place in private but the Tribunal may, if they think fit, authorize any person to attend.

PART V

FORMAL HEARINGS

Application of Part V

20 This Part shall apply only to proceedings in which the applicant has requested a formal hearing.

Notice of hearing

21 The Tribunal shall give at least seven days' notice of the date, time and place fixed for the hearing to the applicant, the Medical Director, any person who has received a notice of the application under rule 7, and to any other person who, in the opinion of the Tribunal, should have an opportunity of being heard.

Decision as to formal hearing

22 Where the applicant who has requested a formal hearing is the patient, the Tribunal may, before proceeding to hear the application, consider whether a formal hearing would be detrimental to his health and shall do so if the statement of the Medical Director includes an opinion by the responsible medical officer that a formal hearing would be so detrimental; and where the Tribunal are of opinion that a formal hearing would be detrimental to the health of the patient, the application shall be determined in accordance with rule 17 as if the applicant had not requested a formal hearing.

Privacy of proceedings

23 (1) The Tribunal shall sit in private unless the applicant requests a hearing in public and the Tribunal are satisfied that a hearing in public would not be detrimental to the interests of the patient and would not for any other reason be undesirable.

(2) When sitting in private, the Tribunal may admit to the hearing any person or class of persons on such terms and conditions as they consider appropriate.

(3) The Tribunal may exclude from any hearing any person or class of persons they think fit; and may exclude the patient or any other person while they are hearing evidence if, in their opinion, it would be undesirable in the interests of the patient or for other special reasons for the patient or such other person to be present.

(4) Except in so far as the Tribunal may direct, information about proceedings before the Tribunal and the names of any persons concerned in the proceedings shall not be made public.

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

Procedure

24 (1) Subject to this rule, any person who has received notice of the hearing may appear and take such part in the proceedings as the Tribunal think proper.

(2) The Tribunal shall give an opportunity to the applicant to address the Tribunal, to give evidence and call witnesses; and the Medical Director, and with the permission of the Tribunal any other person, may put questions to the applicant or to any witness called by him or on his behalf

(3) The Tribunal shall give the Medical Director and any other person notified of the hearing under rule 21 an opportunity to address them, to give evidence and to call witnesses and may permit any other person whom they think fit to do so; and the applicant and the Medical Director, and with the permission of the Tribunal any other person, may put questions to any person giving evidence before the Tribunal.

(4) Where the patient is the applicant or is called as a witness, the Tribunal may, if they consider it desirable in the interests of the patient's health to do, interview the patient or take his evidence in private or in any manner they think appropriate.

Adjournment for further information

25 (1) Where it appears to the Tribunal that it is desirable to obtain further information on any point, the Tribunal may adjourn for the information to be obtained in such manner as they may direct or for the applicant or any other person concerned to produce the information.

(2) Where after such adjournment the Tribunal consider that a resumed hearing is desirable or where a resumed hearing is requested by the applicant or the Medical Director, not less than seven days' notice thereof (or such shorter notice as all persons concerned may agree) shall be given to the applicant, to the Medical Director and to any other person who was notified of the hearing under the provision of rule 21 and who appeared at the previous hearing.

PART VI

Decisions

26 (1) The decision of the majority of the members of the Tribunal appointed to consider an application shall be the decision of the Tribunal and in the event of an equality of votes the president of the Tribunal shall have a second or casting vote.

(2) The decision of the Tribunal on the application shall be recorded in Form 204 of Court Forms and signed by the president.

(3) The decision of the Tribunal shall be communicated in writing within seven days to the applicant, the Medical Director, the

patient (where he is not the applicant) and to such other persons as the Tribunal may direct, and the Tribunal shall at the same time inform the applicant and the Medical Director of their right to request reasons for the decision in accordance with paragraph (5) of this rule:

Provided that where the Tribunal consider that it would not be desirable to communicate their decision in writing to the patient (where he is not the applicant) it shall be communicated to him in such manner as the Tribunal think appropriate.

(4) The reasons for the Tribunal's decision shall be recorded in Form 205 of Court Forms and signed by the president.

(5) The applicant and the Medical Director may, within three weeks after receiving notice in writing of the decision, request the Tribunal to give their reasons, and the Tribunal shall comply with any such request except where they consider that it would be undesirable to do so in the interests of the patient or for other special reasons.

(6) Subject to this rule, the Tribunal may, where they think it proper to do so, prohibit the publication of the text or a summary of the whole or part of their decision or of their reasons, or direct that the text or summary may be published only to such persons and on such conditions as they may prescribe.

Disposal of proceedings

27 Where an application or reference has not been disposed of by the members of the Tribunal appointed for the purpose and the Chairman of the Tribunal is of opinion that it is not practicable or not possible without undue delay for the consideration of the application or reference to be completed by those members, he shall make arrangements for it to be disposed of by other members of the Tribunal.

Time

28 (1) *[omitted]*

(2) The time appointed by these Rules for the doing of any act may be extended by the Tribunal or the Chairman of the Tribunal on such terms, if any, as they or he may think fit and such extension may be granted although the application for extension is not made until after the expiration of the time appointed.

Service

29 Any application, notice or other document required or authorized by these Rules to be sent or given to any person may be sent by post or delivered—

(a) in the case of a document directed to the tribunal or Chairman of the Tribunal, to the address of the

MENTAL HEALTH REVIEW TRIBUNAL RULES 1968

Chairman of the Tribunal, and if that address is not known, then to the care of the Chief Secretary;

(b) in any other case, to the last known address of the person to whom the document is directed;

and if sent or given to the authorized representative of any person shall be deemed to be sent or given to that person.

Irregularities

30 Any irregularity resulting from failure to comply with these Rules before the Tribunal have reached their decision shall not of itself render the proceedings void, but the Tribunal may, and shall if they consider that any person may have been prejudiced, take such steps as they think fit before reaching their decision to cure the irregularity, whether by the amendment of any document, the giving of any notice, the taking of any steps or otherwise.

[Amended by:

1971 : 82

1998 : 32]