



OPERATIONAL CIRCULAR

Enquiries to: Janet Peacock
9222 4079

Number: OP 2057/06
Date: 13 April 2006
File No: 03-00836

Supersedes:

Subject: **COUNCIL OF OFFICIAL VISITORS ACCESS TO PERSONAL RECORDS**
MENTAL HEALTH ACT 1996

Authority

The *Mental Health Act 1996* states that:

The Chief Psychiatrist has responsibility for the medical care and welfare of all involuntary patients (section 9 (1))

In respect of other patients, the Chief Psychiatrist is required to monitor the standards of psychiatric care provided throughout the State (section 9 (2))

Role of Official Visitors

An Official Visitor (OV) or a panel appointed by the Council of Official Visitors (COV) may, whether or not notice has been given, visit a place where any 'affected person' (an involuntary patient, a mentally impaired accused person who is in an authorized hospital or a person who is socially dependant because of mental illness and who resides, and is cared for or treated, at a licensed private psychiatric hostel) is detained, cared for, or treated.

In the course of the visit the OV or any person on the panel may:

- (a) inspect any part of the place;
- (b) see any affected person at the place who has not declined to be seen;
- (c) make enquiries relating to the admission, detention, care, treatment, or control, of affected persons;
- (d) subject to the affected person's right to decline inspect:
 - (i) any medical record or other document or any thing relating to an affected person; or
 - (ii) any other record or document required by this Act to be kept at the place.

An affected person has the right to decline to be seen by an OV or any person on the panel, and the right to deny an OV or any person on the panel access to their medical records.

Access to a patient's medical records

Although an OV may inspect an affected persons medical records, the affected person (patient) has the right to decline access to those medical records.

The power given by ss.(4) to inspect medical records may be exercised only where the patient concerned has been given the opportunity to consider whether to grant or deny access to the person's medical records. A person cannot be said to have a "right" to deny access to medical records if the person has not been given the opportunity to make that decision.

Process for seeking access by an OV

The seeking of permission from the patient for an OV to have access to his or her medical record is a task for the staff of the mental health service. This places a responsibility on the staff of the mental health service to speak to the patient or affected person and inform them of the request from the OV and their right to decline that request. An information brochure outlining the role of the COV could be helpful to the patient.

To assist the patient in their decision-making it may also be necessary to seek information, either written or verbal, from the OV as to the reason for the access to the medical record. This will enable the patient to be fully informed as to why the request is being made. If necessary, patients should be given time to consider their decision.

Further Details

More detailed information about COV access to medical records can be found in the *Supplement to the Clinicians Guide, Mental Health Act 1996*. The Supplement is available on the Chief Psychiatrist's website: www.chiefpsychiatrist.health.wa.gov.au or a copy may be obtained by contacting the office on 9222 4462.

Dr Neale Fong
DIRECTOR GENERAL
DEPARTMENT OF HEALTH