

## **Mental Health Disorders and the Law**

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Mental health disorders can be insidious and may affect many areas of the life of an individual. They can also be devastating to the extent of destroying individuals' effective functioning in life, as well as affecting their families and the people surrounding them. Even the strongest of us is not protected against mental health disorders. Such conditions may develop in any stage of life, and affect ourselves, our relatives or friends. It is therefore important to know what to do when we suspect someone to be suffering from a mental illness.

Mental health disorders are illnesses affecting the brain and ultimately, the mind. Because people are expected to have control over their mind, suffering from mental disorders may stigmatize the affected person and his or her relatives. Just like physical illnesses, there are different levels of mental disorders. Some of them may be treated without medication while severe disorders may require medical treatment and treatment in hospital.

Under the Mental Health Ordinance of the BVI, any member of the public who reasonably suspects that a person, by reason of his general behaviour, is of unsound mind may so notify a mental health officer. A mental health officer (the "Officer") is then commissioned to carry out an investigation to determine whether the person identified might be in need of mental treatment. If the Officer is of the view that the person might be in need of mental treatment, the person may then be taken to a hospital for treatment. If the circumstances warrant it, a member of the BVI Police Force may be instructed to accompany the person to a hospital. Once the person has been admitted to a hospital, his or her relatives are informed as soon as possible.

It is also possible to be admitted to a hospital on a voluntary basis. This situation occurs when a person believes that he/she is in need of mental health treatment. When the patient is over 18 years-old, he or she may then be admitted for observation and examined by a medical practitioner at the hospital within 12 hours of admission, without other formalities. If the patient is a minor, he or she must be accompanied by a person of no less than 18 years old. A medical practitioner may decide, after 72 hours of the patient's admission, to (a) detain the patient in a hospital for further treatment and issue a medical certificate renewable every 21 day; or (b) release the patient.

A patient may also be referred to a hospital for observation by order of the court. When a court suspects that a person brought before it is of unsound mind and might be in need of mental health treatment, the court may, pending adjudication of the case, make an order that the person be remanded at a hospital for observation and, if necessary, for treatment.

The attendance of the patient is required at the hospital in order to (a) monitor his or her condition, and (b) receive treatment. However, it is still possible for a patient to be granted special leave to return home, subject to the approval of a medical practitioner. A patient may be permitted to leave the hospital facilities, provided that a relative or a friend undertakes to (i) be responsible for the patient's welfare, (ii) allow the patient to be seen at any time by a person authorized by a senior medical practitioner and (iii) report immediately to a senior medical practitioner any visible signs of deterioration in the patient's condition. If the latter occurs, the patient may then be requested to return to the hospital.

The Mental Health Ordinance also constitutes the Health Review Board (the "Board") for the purpose of dealing with applications in respect of patients admitted to a hospital on the basis that they are suspected of suffering from

mental disorder(s). The role of the Board is to review the detention of patients. If the Board is of the view that a patient is detained on unreasonable grounds, the Board shall examine his or her condition. After the examination process, the Board may (a) dismiss the application, or (b) order the immediate discharge of the patient.

### **Management of Property and Affairs of Patients**

When the High Court considers that a person is incapable of managing and administering his or her property and assets on the ground that he or she is mentally unfit, the Court may appoint someone to control and manage the patient's property and assets. This person is generally a relative who knows the patient and his/her affairs. The person becomes a guardian of the patient and has duties of care, honesty and diligence imposed on them when administering the patient's assets. The guardian is expected to act according to the best interests of the patient, and will be required to account for and value he may control whilst supervising the patient's estate.