

## Nurse's power to detain a patient pending a medical examination (section 299)

- 1 Section 299 of the Act empowers certain nurses to detain an informal patient who is in hospital receiving treatment for a mental disorder but that treatment is not being given by virtue of the Act or the 1995 Act. There is only one exception to this general rule: that is where the patient is subject to a community payback order with a requirement for treatment for a mental condition in terms of section 227A(1) of the 1995 Act. In hospital means within hospital premises, including general hospital wards, accident and emergency departments and clinics held on hospital premises.
- 2 Regulations under The Mental Health (Class of Nurse) (Scotland) Regulations 2005 provide that the nurse must be registered in Sub-Part 1 of the Nursing and Midwifery Order 2001 and their field of practice in mental health or learning disabilities nursing.
- 3 The patient can be detained by the nurse for a period of up to three hours ("the holding period") for the purpose of enabling arrangements to be made for a medical examination of the patient to be carried out. Best practice is that the medical practitioner should arrive as soon as practicable and that the detention period is as short as possible. As short a detention period as possible will best reflect the principles in section 1 of the Act, in particular the principle of minimum restriction on the freedom of the patient that is necessary in the circumstances.
- 4 The nurse's holding power should not be used consecutively. If the nurse's holding period of three hours has elapsed without a medical practitioner attending, it would not be best practice to immediately redetain the patient under section 299 of the Act.
- 5 A patient may only be detained by a nurse where it is not practicable to secure the immediate medical examination of the patient by a medical practitioner and if the nurse believes that it is likely that the following conditions are met:
  - that the patient has a mental disorder;
  - that it is necessary for the protection of the health, safety or welfare of the patient or for the protection of the safety of any other person for the patient to be immediately restrained from leaving the hospital; and

- that it is necessary to carry out a medical examination of the patient to determine whether an emergency or short-term detention certificate should be granted.
- 6 Before deciding whether or not to exercise this power, a nurse should weigh up the likely arrival time of a medical practitioner against the likely intention of the patient to leave. Many patients who express a wish to leave hospital will, after discussion, agree to wait until a medical practitioner arrives to discuss the options further. The nurse should also assess the likely consequences of the patient leaving hospital immediately, taking into account factors such as, for example, the harm that might occur to the patient or others; any recently received messages from relatives or friends; any recent disturbances on the ward; or any relevant involvement of other patients. The nurse should also take into account the principles of the Act, including considering what action will be of maximum benefit to the patient, what will be the least restrictive action on the patient's freedom as is necessary in the circumstances and the views of the patient and any carer. While encouragement to remain as an informal patient is often appropriate, the nurse should be careful that the degree of pressure on the patient does not amount to 'de facto detention'. This would occur if the patient feels that they are being told that they cannot leave, or the threat of detention is being used coercively. In such a situation, the use of the holding power would better protect the patient's rights, providing a legal basis for the detention and a proper record.
  - 7 Where a nurse does exercise the power, he/she should attempt to communicate to the patient as clearly as the situation will allow what is happening and the implications for them of the power. This may include that the purpose of the use of the power is to allow a doctor to attend and conduct an examination; how long the patient is likely to be detained under the power; the reasons for using it in the patient's individual circumstance; and how the use of the power protects the patient's rights.
  - 8 The nurse who has exercised the holding power must take all reasonable steps to inform an MHO of the patient's detention as soon as practicable after the holding period begins. Although there would undoubtedly be value in the patient being assessed by an MHO with previous involvement in the patient's case history, priority should be given to securing an MHO assessment as quickly as possible. Hospital managers and local authorities should work closely together to ensure that nurses have the contact information for the duty MHO service readily to hand both during the day and out of hours. Informing an MHO as soon as practicable after

the power beginning is of maximum benefit to the patient because of the importance of the MHO role in a detention certificate.

- 9 Although it would be best practice for the patient's existing RMO or another approved medical practitioner to carry out the medical examination, this may not always be possible. A pragmatic approach should therefore be adopted, particularly where the patient requires immediate medical attention. Should a more junior doctor carry out the medical examination, then the detention options, if detention is required, will necessarily be limited to the issuing of an emergency detention certificate.
- 10 The detention under section 299 ends when one of the following occurs:
  - The medical examination has been carried out within three hours and the patient is further detained under a short term or emergency detention certificate.
  - The medical examination has been carried out within three hours and the patient either remains in hospital on a voluntary basis or chooses to leave hospital.
  - The medical examination has not been carried out within three hours.
- 11 It is not necessary for the nurse to complete a written record before the patient is detained. The nurse who exercised the holding power must make a written record of the following facts as soon as practicable after the holding period begins:
  - the fact that the patient has been detained;
  - the time at which the holding period began;
  - the nurse's reasons for believing it likely that the conditions of detention (see section 299(3)(a) to (c) of the Act as set out in paragraph 67 above) have been met.
  - It would also be best practice for the nurse to set out why it was considered that the use of the power was necessary for the protection of either the patient or any other person in the form and why the use of the holding power was necessary in that circumstance.

*(There is no form prescribed in regulations for this purpose but a pro forma (NUR1) is available on the Scottish Government's website and it is recommended that this is used)*

- 12 The nurse must ensure that this written record is given to the managers of the hospital in which the patient is held as soon as practicable after the record has been made. However, the nurse may authorise another person to carry out this task. It would also be best practice for the nurse

to make this record available to the relevant MHO. The managers of the hospital must send a copy of this record to the Commission within 14 days of their receiving it.