

Consultation with the ‘Other’ Professional in Second Opinions under the Mental Health Act

This guidance relates to England only

Previously issued by the Mental Health Act Commission and reviewed October 2008

1. Second Opinion Appointed Doctors tasked with considering the authorisation of treatment under Section 58 of the Mental Health Act are often faced with problems in identifying appropriate consultees. The Act requires that the doctor must consult with two persons who are professionally concerned with the patient’s treatment, “and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner” (s.58(4)). A similar requirement of a second consultee is applicable for s.57 authorisations.

Registered nurses and the non-nursing professional consultee.

2. The question has often been asked whether to allow as the ‘other consultee’ a professional with a nursing qualification whose professional relationship with the patient does not involve nursing, or who is not actually employed as a nurse in the Trust. We have encountered, for example, nurses employed as care co-ordinators, or a clinical nurse specialist whose core profession remained nursing but whose professional relationship with the patient was as a therapist.
3. Care Quality Commission (CQC) has sought advice on this issue, and has decided to interpret the law as preventing someone who is *registered* as a nurse from being the ‘other’ consultee, whether or not s/he is acting as a nurse or even practising in another profession (e.g. as a psychologist or social worker). We take this view on the basis that the Act requires the person not to “*be*” a nurse, rather than specifying that the person’s professional relationship with the patient must not involve a nursing role.
4. Our interpretation, which should ensure that the second consultee is able to apply a non-medical and non-nursing perspective, is being adopted as a precautionary measure. There has been no legal ruling on this matter that would make other interpretations untenable¹. As such, we do not intend to withdraw any extant SOAD authorisations that involved consultation with ‘others’ who were qualified nurses but who were not working in a nursing capacity.

¹ For other interpretations, see, for example, Jones R (2008) *Mental Health Act Manual* (11th ed), page 298-299. This guidance has been amended in the light of Jones’ criticism (which would still reject our approach), to underline that it is having a current registration with the NMC that we consider to be an appropriate

5. We do, however, ask Approved Clinicians and administrators to note this interpretation when making the arrangements for Second Opinions. We have asked SOADs to no longer accept professionals who are registered nurses as the 'other' consultee on their Second Opinion visits.

Assistant Practitioners and the non-nursing professional consultee.

6. An Assistant Practitioner Programme was established in Greater Manchester in 2001, providing a two year training programme for mature people who will subsequently work in a range of service areas including mental health. The role of the Assistant Practitioner is described as 'a high level generalist role designed to meet the needs of patients / clients (in Agenda for Change Band 4).'
7. The question has been asked whether assistant practitioners could be eligible to serve as a consultee (non-nurse, non medical) for the purposes of s.58 (and presumably s.57). The final decision as to whether a consultee is appropriately qualified to take on the role is for the SOAD (and of course the consultee, who cannot be made to undertake the role), although we have generally advised that persons in 'assistant' roles who do not hold recognised qualifications and have little professional autonomy should not be *expected* to stand as second consultees.
8. The statutory requirement in both s.57(3) and s.58(4) in relation to the consultees (nurse and non-nurse) is that this must be 'persons who have been professionally concerned with the patient's medical treatment.'
9. Whilst the Mental Health Act Commission (Since April 2009 the responsibilities of the Mental Health Act Commission have been taken over by the Care Quality Commission) stated in their Fifth Biennial Report (1993) that it would be unnecessarily restrictive to insist that the second consultee should *invariably* be professionally qualified and included in a professional register, since the statement was first made there has been a significant extension of professional regulatory provision in health and social care, as a response to the public perception that such regulation protects patients. As such, we suggest that the basic criterion for performing the role of a second consultee should be a recognised professional qualification relevant to the patient's medical treatment, and that wherever possible SOADs should consult with qualified persons who are also subject to professional regulation.
10. The Assistant Practitioner is not yet included in such professional regulation. This means that the level and extent of professional autonomy – a crucial element, in the CQC view, for the provision of the consultee requirement in s.57 and s.58 – *may* not be achieved. As such, we would not expect assistant practitioners to be used routinely as second consultees, although individual circumstances may justify exceptions from this general approach.

threshold at which a person with nursing qualifications should not serve as the non-nursing consultee for Second Opinions.

11. Professionals who may be ideally placed as second consultees for the purposes of s.57 or s.58 include social workers, occupational therapists; music, drama or art therapists; psychologists; pharmacists; psychotherapists; and physiotherapists.

Questions or concerns about this guidance should be addressed to:

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