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Triumph at the Mental Health Review Tribunal

Mental health consumers have won another battle against the use of forced medication. Kerry O'Malley is free of the label at last. But she was only one of fifteen thousand people in NSW currently having medication enforced under a CTO, being brutalised and degraded by the health system. They may or may not be mentally ill, and may never have been dangerous to themselves or others as required by the law but the forced injection is the only expression of "care".

Legal aid was refused, so Justice Action with Dr Yolande Lucire assisted in the representation of Kerry O'Malley, a long time victim of Community Treatment Orders (CTO). The Tribunal rejected the Health Dept application. Kerry and her sister Margaret now want to help stop this abuse generally, and for her case to be a public example. She will be writing a book about her experiences.

The Mental Health Review Tribunal (MHRT) met to discuss the possible implementation of a new six-month order to enforce the use of Epilim, an anti-epileptic drug, on Kerry. She says it makes her sick, caused bleeding and lack of energy. Other drugs had induced depression and a death wish. Kerry also felt that such an order degraded her. She preferred to choose her own doctor. She had family, friends and support she trusts and wanted to be left alone by the Health system.

Kerry O'Malley's case reflects the many injustices individuals face from Health Services, the MHRT and Legal Aid. Kerry approached JA to assist her to fight against the order after her application for Legal Aid was refused. The lack of legal representation for individuals in this situation represents a serious failure. A Community Treatment Order gives psychiatrists absolute power over the patient's body and brain; informed consent to medication flies out the window.

William Pitt the Elder, Earl of Chatham and British Prime Minister from 1766 to 1778, who said in a speech to the UK House of Lords in 1770: "Unlimited power is apt to corrupt the minds of those who possess it".

JA supported Kerry through the development of her case and the tribunal hearing. In preparation, the Tribunal insisted that we attend in Penrith at the Nepean Hospital via videoconference rather than physically in the hearing at their headquarters in Gladesville Hospital. They argued that this was necessary as: "The setup of the facilities here at the Tribunal are not conducive to having a number of people attend" and later "to assist with the smooth running of the hearing". This is hardly appropriate when a Tribunal Hearing is supposed to be open to the public.

This use of an electronic hearing, distances the decision makers from the humanity of those over whom they assert very personal power and impose their reality. They control physical health and brain functioning using state enforcement. JA insisted on physical attendance at the public hearing as is Kerry's legal entitlement. We believe it is vital that the Tribunal members retain their humanity and recognise that they are wielding great power over other people. This issue was again raised during the hearing, when the video feed at Penrith was interrupted, with Margaret stating that the tribunal became very impersonal.

In a detailed report, psychiatrist Dr Yola Lucire analysed the proposed medication's potentially fatal effects already in evidence. She pointed out that the drug Epilim was "not approved" for any condition with which Kerry had been diagnosed. She reported on Kerry's past adverse drug reactions, some of which had been near fatal. She pointed out that at age sixty-five, the relative risk of death in persons taking an atypical antipsychotic is 70% higher than in persons not taking these drugs. She also pointed out that Kerry had never met the criteria for bipolar mania or for schizophrenia, yet she was being treated repeatedly with the drugs 'off label' which means that they had not ever been shown to be effective for medication-induced or stress-related problems and had never been approved for those conditions.

The Tribunal questioned Kerry herself, her sister Margaret and the Health Dept case manager Victor Borg. No evidence existed of a risk of serious harm to herself or others, despite that being a necessary condition for the CTO. According to Kerry it was a burden to keep these appointments as there had been little useful contact with the Health Dept, no useful psychiatric support or counselling, and no continuity of Case Manager.

The tribunal concluded to dismiss the Health Dept application for a CTO.

They determined that:

- Kerry appeared to be symptom-free at the time of the hearing and any possibility of relapse (medication induced!) would not be catastrophic
- The CTO was creating antagonism for Kerry with her doctors and caseworkers rather than benefit
- There is family support who were willing to encourage treatment if needed as well as a private psychologist
- The CTO, on balance, was less likely to assist her

Although this case was a success for Kerry and her family, it is always a fight to ensure cases before the MHRT are treated fairly and in the best interest of the individual. CTO's cause the stigmatisation and disempowerment of individuals despite the stated encouragement of recovery principles by the MHRT.

Although some individuals such as Kerry argue against their orders, most are entirely powerless, unrepresented and end up in positions where they no longer make decisions for themselves, or are too sedated to know what is going on. The lack of legal aid compounds this heavy-handed injustice.

By reinforcing the practice of monitoring, avoiding and fearing mental health consumers, CTO use not only increases public support for legislation but also deters the mentally ill from receiving voluntary help and treatment.

Family, friends and voluntary professional support was available for Kerry, yet the Health Dept pursued its normal approach of wanting total control over her medications failing to recognise that all her disclosed breakdowns had occurred after general anesthetics or while Kerry was taking or withdrawing from enforced medications.

Unlike Dr. Lucire, who signed the Expert Code of Conduct to give evidence as mandated for all tribunals, NSW Health was represented by a nurse. If doctors in NSW Health had to produce evidence in a Tribunal case and provide the opposing expert with records, they might think twice about making applications. Unless a person has the means and opportunity to provide a contrary opinion, a Mental Health Review Tribunal can be seen as a rubber stamp and a sham procedure.



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