

## Development of Legislation for the Mentally Ill in Hong Kong

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### *Abstract*

*The Asylums Ordinance was enacted in 1906. It contained 16 sections covering the committal procedure, safeguard of rights of persons of unsound mind and protection of persons carrying out the provisions of the Ordinance. In 1950 the Asylums Ordinance was re-named the Mental Hospitals Ordinance with provision of voluntary admission of persons over 16. The latter Ordinance was repealed with enactment of the Mental Health Ordinance in 1960 which is much more elaborate and consists of five parts. Part II is new and deals with proceedings in inquiries into mental disorder and powers of management of estates of mentally disordered persons. Part IV deals with, in detail, mental patients involved in criminal proceedings. In 1988 the Mental Health (Amendment) Ordinance has brought about major changes which are outlined in this paper.*

Hong Kong was occupied by the British in 1841. The Home Government was at first opposed to building a hospital because the territory was thought to be just “a port where they may careen and refit their ship”. In 1850 a bungalow was converted into the Government Civil Hospital<sup>1</sup>. This was later destroyed in a typhoon and a vacant hotel was used as a hospital. The latter was burnt down in a fire. Finally a purpose-built Government Civil Hospital was completed in 1874. However, even at this time there was no facility for the mentally ill. European lunatics were sent to Gaol and Chinese lunatics to Tung Wah Hospital built in 1872 where they were “confined in dark and dreary cells under Chinese native doctors’ supervision and those who were violent were chained like beasts”<sup>2</sup>.

A Lunatic Asylum, albeit a temporary one, came into existence in 1875. It was

converted by fitting up half of a building composing two semi-detached houses. However, admissions were confined to non-Chinese<sup>3</sup>. In 1885 a European Lunatic Asylum was built with a bed complement of eight. In 1891 a Lunatic Asylum for Chinese was built near the European Lunatic Asylum with a bed complement of 16. By 1894 there was consistent over-crowding and the Government arranged with the authorities in Canton to accept transfers of Chinese patients to Fong Chuen Mental Hospital. As for non-Chinese patients they were re-patriated to their countries of origin.

By the turn of the century, the population in 1901 was 300,660, facilities for the mentally ill were so rudimentary. Despite this the Asylums Ordinance was enacted in 1906 to provide for the establishment of asylums, for the detention, custody and care of persons of unsound mind,

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<sup>1</sup> Choa, G.H. “A History of Medicine in Hong Kong” in *Medical Directory of Hong Kong published by the Federation of Medical Societies of Hong Kong, 2<sup>nd</sup> Edition 1981.*

<sup>2</sup> Aryes, Philip. *Annual Report, Medical Department for 1893.*

<sup>3</sup> Halliday, P.E. *unpublished thesis.*

## Development of Legislation for the Mentally Ill in Hong Kong

and others<sup>4</sup>. It is the evolution and elaboration of this Ordinance that we have our present mental health legislation. It contained only 16 sections, but it covered the admission procedures, safe-guard of rights of persons of unsound mind and protection of persons carrying out the provisions of the Ordinance.

There were two sections dealing with the prisoners. The more important provisions of the Asylums Ordinance are quoted below:—

‘A person of unsound mind was defined as “one who is so far deranged in mind as to render it either necessary or expedient that such person, either for his own sake or in the public interest, should be placed and kept under control”’.

Any person can apply to a magistrate or a justice of peace for an order to detain in the asylum another person believed to be of unsound mind. Such an order enables the detention of such a person for observation for seven days.

A person under observation can be detained for another seven days if a magistrate makes an order upon the recommendation of two medical practitioners.

When a person under observation is certified by two medical practitioners to be of unsound mind and the certificate is countersigned by a magistrate, the person may be detained until release by order of the Governor or until discharge by the medical practitioner in charge of the asylum.

An appeal can be lodged to a Judge of the Supreme Court by or on behalf of the person ordered to be detained by the magistrate.

Visitors are appointed who visit the asylum and make reports to the Colonial Secretary.

No action would be brought against any person for anything done in good faith and with reasonable cause in pursuance of the powers conferred by the Ordinance.’

The Asylums Ordinance was amended in 1927<sup>5</sup>. Thus, in applying for the removal of a person believed to be of unsound mind to an asylum for observation an attempt must, except in case of necessity, be made to communicate with some relative of the person. One more extension of seven days might be made. Provisions with regard to prisoners of unsound mind were revised.

The Asylums Ordinance 1906 and its Amendments in 1927 and also in 1935<sup>6</sup> were consolidated in The Asylums Ordinance 1936<sup>7</sup>.

In 1950 the Asylums Ordinance 1936 became the Mental Hospitals Ordinance (Cap. 136) with a new provision for voluntary admission<sup>8</sup>. When a person not under the age of 16 years is desirous of receiving treatment in an asylum voluntarily, he may be admitted as a voluntary patient. However, no such person shall be detained for a period of more than 72 hours after he has given notice in writing of his intention to leave the asylum.

An amendment to the Ordinance in 1952 made provision for conditional discharge<sup>9</sup>. On the recommendation of a medical practitioner in charge of a mental hospital, the Governor may order the discharge of a person on conditions such as periodic mental examination and/or care or supervision by some responsible person or body.

<sup>4</sup> Ordinance No. 6 of 1906.

<sup>5</sup> Ordinance No. 11 of 1927.

<sup>6</sup> Ordinance No. 1 of 1935.

<sup>7</sup> Ordinance No. 22 of 1936.

<sup>8</sup> Mental Hospitals Ordinance Chapter 136.

<sup>9</sup> Ordinance No. 5 of 1952.

Amendments were made to the Ordinance in 1955<sup>10</sup> as follows. 'The medical superintendent may allow temporal absence of patients from the mental hospital. Proceedings against persons carrying out the provisions of this Ordinance require leave of the Court and leave shall not be given unless the Court is satisfied that there is substantial ground that the person has acted in bad faith or without reasonable care.'

The Mental Hospitals Ordinance was repealed with the enactment of the Mental Health Ordinance (Cap. 136) in 1960<sup>11</sup>. The Mental Health Ordinance is much more elaborate and consists of five parts. Part I deals with the preliminary. It defines a "mentally disordered person" as a person who is so far disabled in mind or who is so mentally ill or subnormal due to arrested or incomplete development of mind as to render it either necessary or expedient that he, either for his own sake or in the public interest, should be placed and kept under control. Part II deals with proceedings in inquiries into mental disorders and powers of management of estates of mentally disordered persons. Part III deals with reception, detention, and treatment of mentally disordered persons. This is broadly similar to the Mental Hospitals Ordinance with the following exceptions: (i) The introduction of a category called temporary patients. (Few have so far been admitted under this category. It has been deleted in the Mental Health (Amendment) Ordinance 1988.) (ii) A section which stipulates that where an alien or any person not domiciled in the Colony is detained as a mentally disordered person he may be removed to the country of which he is a native. Part IV deals with admission of patients concerned in criminal proceedings and transfer of patients under sentence. In the main, it follows the U.K. Mental Health Act 1959. For example, it makes provisions for the court or a magistrate to remand a person

charged with an offence and suspected to be a mentally disordered person to a mental hospital for the purpose of observation, investigation and treatment. The court or a magistrate may make a hospital order on a person convicted of an offence based on the recommendations of 2 medical practitioners that he is a mentally disordered person and the nature or degree of his mental disorder warrants this. The hospital order may specify a period or it may be of an indefinite period. In the latter case the medical superintendent of the mental hospital can discharge him only with prior consent from the Governor. If he feels aggrieved by the continuance of a hospital order, he may appeal to the Governor in Council and his appeal will be forwarded to the Hospital Order Appeal Tribunal for consideration. Part V contains general provisions which deal with, for example, offences against patients like ill-treatment or wilful neglect by those employed in a mental hospital as well as unlawful sexual intercourse with any female mentally disordered person.

The Mental Health Ordinance has had no major amendments until 1988 with the enactment of the Mental Health (Amendment) Ordinance, 1988<sup>12</sup>. The main amendments/provisions are described in the following paragraphs.

### Definitions

The existing definition of "mentally disordered person" is deleted and a definition of "mental disorder" is given. The latter is similar to that used in the U.K. Mental Health Act 1983 and means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind. This gives no indication of the severity of the condition nor connotation that detention or even treatment is necessary. For the purposes of certain sections in the Amendment

<sup>10</sup> Ordinance No. 56 of 1955.

<sup>11</sup> Mental Health Ordinance Chapter 136.

<sup>12</sup> Ordinance No. 46 of 1988.

## **Development of Legislation for the Mentally Ill in Hong Kong**

Ordinance one medical recommendation should be given by a medical practitioner approved by the Director of Medical and Health Services as having special experience in the diagnosis or treatment of mental disorder.

### **Admission procedures**

Application for compulsory admission may be made by a relative, a registered medical practitioner or a public officer of the Social Welfare Department (but not by any person as in the existing Ordinance). The application must be supported by a medical recommendation and the order signed by a District Judge or magistrate (but not a J.P. as in existing Ordinance). Also, the patient may request to see the judicial officer concerned.

### **Guardianship**

For persons aged under 18, guardianship is provided for in the Protection of Women and Juveniles Ordinance but there is no provision above this age. To ensure that mentally handicapped persons as well as mentally ill persons can be properly cared for, the Amendment Ordinance has made provisions for guardianship above 18. An application for guardianship may be made to the Director of Social Welfare by a relative, a doctor or a public officer of the Social Welfare Department. It must be based on two medical recommendations that it is in the interests of the person's welfare or for the protection of others that a guardian should be appointed. The powers of the guardian include the power to specify the places for residence, for medical treatment, training or occupation. All guardianship arrangements will expire in two years.

### **Conditional discharge of patients with propensity to violence**

Where a mental patient has a medical history of criminal violence or a disposition to commit such violence but, in the view of the medical superintendent he is ready for

discharge from a mental hospital. The patient may be discharged subject to conditions which may include a requirement to reside in a specified place, to attend for out-patient medical treatment, to take prescribed medicine or to be supervised by the Director of Social Welfare. Such conditions may be varied at a later date depending on the progress of patients or conditional discharge may be revoked should patients fail to comply with any such conditions.

### **Detention and recapture**

The existing Ordinance has provisions relating to detention and recapture of patients who escape from mental hospitals. These are expanded to take account of new provisions in the Amendment Ordinance in particular patients received into guardianship or conditionally discharged who fail to comply with any of the conditions imposed as well as being re-called.

### **Mental Health Review Tribunal**

The Amendment Ordinance provides for the creation of a Mental Health Review Tribunal. This consists of a legal member as chairman, medical member(s), social work member and other member(s) of suitable qualification or experience. This tribunal is empowered to review the case of a patient liable to detention in a mental hospital, a patient permitted to be absent for a trial period or conditionally discharged, or a person admitted to guardianship. An application to the tribunal may be made by the patient or his relative. However, no such application can be made within 12 months of a previous review and in the case of a hospital order, within 12 months after the patient is first liable to be so detained. If a patient or his relative does not exercise the right to apply to the tribunal within 12 months after the right becomes first available, the medical superintendent must refer the patient's case to the tribunal for an automatic review.

**Duty of medical superintendent to give information to detained patients**

The medical superintendent of the mental hospital has the duty to inform a patient and his relative the provision under which the patient is detained and his right of appeal or application for discharge.

**Warrant to search for and remove patients**

When a person believed to suffer from mental disorder is being ill-treated or neglected or in need of care or control, an approved social worker may apply to a magistrate for a warrant to enter premises and

remove him to the Accident and Emergency Department where he may be detained for up to 24 hours for the purpose of a medical examination.

**Mentally disordered persons found in need of care or control**

If a police officer finds in any place a person whom he reasonably believes to be suffering from mental disorder and to be in immediate need of care or control he may take him to the Accident and Emergency Department and be detained there for up to 24 hours for the purpose of a medical examination.