Reviewer's report

Title: Interpretations of legal criteria for involuntary psychiatric admission: a qualitative analysis

Version: 2 Date: 10 September 2014

Reviewer: Jennifer Moore

Reviewer's report:

It was interesting to read the extracts from the interviews with clinicians. It is also interesting to read research from another jurisdiction. However, BMC Health Services Research asks reviewers to consider whether the article makes a "sound contribution to scientific knowledge". Regrettably, my view is that this article does not do so, for numerous reasons:

1. The method adopted does not provide adequate answers to the main research question. A qualitative research method is generally appropriate for exploring decision making. However, in the area that the authors are exploring, the international literature consistently reports that decision making is complex in the mental health (and mental health law) arena and a deductive method, which applies preconceived categories, is unlikely to capture this complexity. A deductive approach, by its very nature, will produce results that fit into preconceived categories. As the authors say "data was fit into the preconceived analytical frame." This importation limitation is not acknowledged in the limitations section of the article. The authors do not justify why a deductive approach was taken. It would be important to do so given that a deductive approach arguably does not suit the principal research question.

2. The authors conclude that the participants/respondents/interviewees (hereafter participants) primarily adopted paternalistic approaches in their decision making. That is not a surprising finding given that the authors applied a narrow preconceived categorisation. Also, the international literature has replete with discussion about paternalism in this field. Therefore, the article does not add any new information to the field.

3. Qualitative methods generally do not seek to generalise. Generalisable samples are not the aim of qualitative research, in general. However, this article only analyses interviews with 10 clinicians. That is a very small number, even for qualitative research. It is unlikely that "data saturation" would have been reached after 10 interviews. Was data saturation that approach applied? The article does not say. The methods section provides no explanation of the procedure that was used or a justification about why interviewing ceased after 10 interviews.

4. The literature review is not sufficiently thorough, key literature is omitted and, therefore, the claim that "no qualitative studies have been undertaken" is not entirely accurate. See, for example, Professor John Dawson’s empirical and theoretical research on mental health law. Empirical research indicates that a variety of factors (such as clinicians’ characteristics, service user variables,
patients’ symptoms) act on clinical decision making at the time of imposition of civil commitment e.g. see Engleman’s research. Involuntary treatment (for mental and/or physical conditions) and civil commitment are inconsistent with Anglo-American traditions respecting principles of individual autonomy and self-determination. Therefore, there is a significant literature (empirical and theoretical) on this topic.

5. A key purpose of the research is to investigate the “legal criteria”. However, the data (only 10 interviews) is arguably insufficient to undertake a thorough investigation of the interpretation of legal criteria. The authors’ best analysis of a legal criterion was the discussion of “mental disorder”. However, their analysis of the other legal criteria rests solely on a very small number of interviews, with limited or no discussion of the legal interpretation of the legal criteria which would enable answers to the main research question posed. The authors should also have included a discussion of the spirit of the Norwegian mental health law legislation. Presumably it is consistent with other jurisdictions which have shifted towards a human rights focused approach which prefers treatment in the least restrictive environment. The authors should also have mentioned the international regulatory tools which are applicable to this field e.g. the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

The authors also state that the Norwegian legislation is “vague”. Given that the article is about legal criteria, citations from the Act would have been helpful and are, arguably, essential. The authors did not include sufficient extracts from the primary source (i.e. the Norwegian Mental Health Act) for me to assess their statement that the legislation is “vague”. In some jurisdictions, such as Australia, the legislation is deliberately drafted to allow psychiatrists to decide who falls without statutory definitions and patients’ rights are protected by review bodies. In other jurisdictions, the mental health legislation includes legal controls designed to protect patients’ rights while using definitions which do not depend on psychiatric diagnosis. Sometimes a single Act will adopt both approaches, for different legal definitions. The severity of risk to self that justifies involuntary admission or (re)admission varies between jurisdictions and within a single jurisdiction through time as case law develops.

On the basis of the above comments, my view is that this article in its current form should not be published by BMC Health Services. The editors could suggest that the authors undertake additional data collection, and justify their methods, then conduct major revisions and re-submit or, alternatively, submit to another journal.

Level of interest: An article of limited interest

Quality of written English: Needs some language corrections before being published

Statistical review: No, the manuscript does not need to be seen by a statistician.
Declaration of competing interests:

I declare that I have no competing interests.