

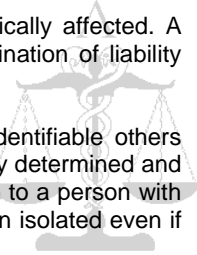
R Martyn. Medical Law Review (2006) Vol.14 p 132 – 143

The Exercise Of Public Health Powers In Cases Of Infectious Disease: Human Rights Implications

The report discusses the powers of detention in cases of contagious disease. People with an unusually virulent form of influenza could be detained in hospital as a health protection measure.

It is expected that during a flu pandemic around 20% of the population will be clinically affected. A disease that is in general circulation cannot easily be defended against and determination of liability (fault) would usually be exceptionally difficult.

Some people will develop disease that is more pathogenic and will pass it on to identifiable others before this has been determined. The spread of virus in this case would be more readily determined and defence against disease spread is more practicable. Groups of people with connection to a person with a highly pathogenic infection, or to a group of such people, would be advised to remain isolated even if they had no overt signs of disease.



Powers of detention are provided for in England and Wales: Public Health (Control of Disease) Act 1984 and Public Health (Infectious Disease) Regulations 1988. These apply only to specified diseases, including cholera, plague, relapsing fever, smallpox, typhus, acquired immune deficiency syndrome, acute encephalitis, acute poliomyelitis, meningitis, anthrax, diphtheria, leprosy, rabies, scarlet fever and tuberculosis. Detention should be in hospital. It is the local authority that is given these powers, through the authority of a Justice of the Peace. The evidence base for these choices is not clear. The JP is not provided with any measures or risk assessment tools or agreed degrees of public protection against which to assess the proportionality of the request for a detention order. Breach of Human Rights (Article 5 of the Convention) could be alleged, especially as a detention order can be made with no opportunity for defence.

Lesser measures would need to be considered before detention orders are issued. It would seem highly likely that these would include prescription of antivirals and that the exposed persons would want to accept this treatment.

Comment

Considerable judgement is required to initiate the detention order procedure. Those who advise on such matters had better have suitable financial protection even though control actions are the responsibility of public authorities.

Individual responsibilities to the general public or workmates could also be tested, as could vicarious liability.