The College

Comments of the Royal College of Psychiatrists on the Mental Health Act 1983 Draft Code of Practice

1. Synopsis

Under the terms of the 1983 Mental Health Act, the Mental Health Act Commission was required to prepare a Draft Code of Practice prior to the Secretary of State issuing a definitive Code (see Section 118 of MHA 1983).

We have considered the Draft Code in great detail, and we have taken active steps to seek the opinions of the membership at large and have taken advice from leading Counsel in the field. The Draft Code is not acceptable as it goes beyond the remit of Section 118 and discusses issues outside the requirements of any Code. These features are particularly unfortunate in a document that might be regarded as a reflection of existing law and might be quoted in civil and disciplinary actions against mental health professionals. The suggested procedures might in fact inhibit mental health professionals and lead to the practise of expensive and unnecessarily 'defensive' medicine.

Where the Draft Code appears to be within the boundaries of Section 118 it remains profoundly unsatisfactory. It is unduly long, much of its contents being repetitious and, at times, contradictory. It lacks the clarity required for a day to day guide. Many of its statements are controversial and are not accepted by the vast majority of our members for reasons which are outlined in our general comments. Instead of being consistent with currently endorsed policies, it adopts in parts a proselytising tone, based more on supposition than on reality.

For these reasons, we recommend that the current Draft Code be rejected. We recommend that a Code of Practice be prepared which, in addition to covering Section 118(I)a, should, with respect to Section 118(I)b be limited, at this stage, to the medical treatment of patients admitted to hospitals and mental nursing homes. We also request that a further round of consultation takes place on this code before it is laid before Parliament.

2. Background

When new mental health legislation was being considered The Royal College of Psychiatrists pressed the Government to establish a Mental Health Commission and suggested that one of its responsibilities might be to prepare a Code of Practice. We are pleased that our recommendations were eventually accepted but we have been concerned about the eventual structure of the Commission established by the Secretary of State and the apparent scope of the proposed Code of Practice.

We note from the Biennial Report of the Commission that the Commission undertook its task by dividing itself into some 17 groups, each providing a substantial contribution to the final document which was then subject to editing. It is evident from the final Draft that no clear basic principles were established in advance from which to produce the Draft and to guide the 17 groups so that each group's interpretation of its remit was variable and inconsistent. Further, the Section on Consent to Treatment was considered initially to be too long for the Code itself and this was issued as a discussion prior to circulation of the Draft Code. The status of this document and variation from the final recommendations with respect to consent are inconsistent and unclear.

3. Purpose and Nature of the Code

The Code of Practice should be a public statement of what is reasonable practice for mental health professionals under given sets of circumstances. It should reflect current accepted practice in this country. It should be concise, clear and readable, practical and realistic. It should command ready acceptance by any representative member of the professions concerned. It should be within the remit of Section 118 of the Mental Health Act 1983. It should be clear whether it is referring to detained patients or to informal patients, to hospitalised patients or those in the community, to patients under the care of general practitioners or to those looked after by hospital consultants.

The provisions of the Code should be attainable within present manpower and financial constraints. These should be practicable within the present administrative structures and should avoid elaborate bureaucratic procedures at the expense of time which could be spent by staff on direct patient care. They should permit and encourage research and the continuation of flexible practice allowing for wide discretion of clinical judgement. The Code should enable staff to act energetically in the best interests of the patient, and should avoid encouraging the practise of defensive medicine. It should foster harmonious relationships between the various professional groups. The Code should, as far as possible, be an addition to existing documentation rather than a recapitulation of it, and should not attempt to replace text-books nor paraphrase legislation.

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In cases of litigation the Code is likely to be used as a reference source in courts of law. Mental health professionals who are held to infringe the Code may thus incur severe penalties. For this reason and others, gratuitous and redundant recommendations should find no place in it, nor should controversial interpretation of the Law, and in cases of doubt material of uncertain value should be excluded rather than included. The Code should be consistent with the existing legal obligations and statutory duties and customary terms of contract of the professions concerned and with the expectations of bodies such as the General Medical Council and the United Kingdom Central Council for Nursing, Midwifery and Health Visiting.

4. General Comments on the Present Draft Code

We are advised that the present Draft Code greatly exceeds the remit of Section 118 of the Mental Health Act, 1983. It paraphrases the Mental Health Act, its regulations, the memorandum, and other existing legislation. Many interpretations of the Common Law as presented in the Draft Code are speculative, controversial and incorrect and there is a danger that such interpretations could be taken as definitive judgements.

It would appear that the Commission has not consulted outside its own membership. For example, with regard to the interaction between the body of child law and the mental health legislation it would be advisable, in redrafting the Code, to take account of the Interdepartmental Working Party Report on Child Care Law (1985) and to consult the Law Commission, the Law Society and other appropriate academic lawyers, where such references are not beyond the remit of Section 118 of the Act. Some sections of the Draft Code contradict each other and others are incomprehensible. It is at times unclear whether the Draft Code is referring to detained patients or to informal patients, to hospitalised patients or to patients in the community.

The Draft Code is to long. It should be limited in length to be practical, realistic and comprehensible. It contains a great deal of material more suitable for textbooks on psychiatric management, political and social documents or manuals on the ethics of mental health care. Codes of practice are used in litigation and disciplinary actions. The Code may be used to identify the practices regarded as proper by a responsible body of skilled and experienced doctors and a breach of recommendation could be germane evidence. It is crucial that the Code should reflect accepted practices and irrelevant material should not be included.

The Draft Code often promotes an ideal for the future rather than accepted professional practice. It runs the risk of being potentially divisive between the medical profession and other mental health professionals. Codes of Practice must be accepted and supported by the groups to whom they apply. We do not believe that the medical profession would accept or support the Code of Practice in its present form. We would not agree with the balance of influence upheld between the various disciplines of the mental health professions nor with the balance of influence implied between them and the patient's relatives.

The emphasis on a multidisciplinary approach does not always recognise the realities of day-to-day decision making. It is a frequent finding in hospital practice that one discipline is unable to attend team meetings or ward rounds except on a sporadic or occasional basis. A further dilemma for physicians has no easy resolution: the movement towards a joint inter-professional style of decision making in recent years does not always fit happily with the doctor's legal responsibilities for his decisions, nor with the expectations of bodies such as the General Medical Council, nor in some cases with his contractual obligations. It would be intolerable if the doctor were to be held liable in law for decisions which had been made against his better judgement.

The recommendations on 'consent to treatment' in the Draft Code would if implemented have far reaching and unacceptable effects on the management of patients. The serious restrictions in Chapter 4 would have implications for research which would prevent future work on the understanding of the causes and eventual cure of serious mental illness.

There is an emphasis throughout the Code on potentially cumbersome and bureaucratic procedures. A doctor should always be prepared to have to justify his actions, but he should not be prevented from acting quickly and decisively. The suggested procedures may in fact inhibit the mental health professionals from acting in the best interests of a patient, and lead to the practice of unnecessarily 'defensive' medicine. The Draft Code has considerable financial and manpower resource implications which make many of its recommendations impracticable.

5. Recommendations

(i) The Draft Code in its present form is unacceptable and should be rejected. It needs to be totally re-drafted.

(ii) As an initial step a Code should be prepared that deals firstly with Section 118(I)a of the 1983 Mental Health Act 'admission of patients to hospitals and to mental nursing homes under the Act' and secondly, with the remainder of the remit Section 118(I)b 'medical treatment of patients suffering from mental disorder'. We recognise that Section 118(I)b could be interpreted as extending to the medical treatment of mental disorder in the community as well as in hospitals and mental nursing homes. This would involve many complex issues of practice and monitoring. We recommend therefore that the first Code should be restricted to the medical treatment to patients admitted to mental hospitals and mental nursing homes.

(iii) We would request that a further round of consultation takes place on this Code before it is laid before Parliament.

Approved by Council
THE ROYAL COLLEGE OF PSYCHIATRISTS
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