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*A full list of references is available on request from Dr Buchanan.*

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## Innovations

### Electronic alert system for mentally handicapped adults incapable of consent – civilised technology or civil rights abuse?

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It is the intention of the Mental Handicap Services of the Chichester Health Authority to implement a discrete electronic alert system for some of the patients who are incapable of consent. An activator, similar to the bar code in a library book, or tag in a clothing store will be kept in a pocket of the patient's clothing. When a patient who carries the activator walks through a magnetic field at the door of the unit, it will trigger a bleep held by the nurse in charge to inform him/her that this particular patient is leaving.

#### *Background information about Barnfield House*

Barnfield House is a 40-bedded two villa unit set up 16 years ago to house severely handicapped people from the Chichester area. The unit stands in the

middle of a campus which contains a district general hospital and a psychiatric hospital. About half a mile from the unit there are two very busy roads, while the traffic within the hospital grounds, especially near the Accident & Emergency department, can be busy.

#### *The procedure*

The unit is not locked and takes only informal patients. Some of them frequently wander away from it and have, on several occasions, almost caused a major traffic accident before staff were able to establish their whereabouts. The matter was discussed at a multidisciplinary staff meeting. It was agreed that to deal with the problem, we needed to strike a balance between the patient's civil rights and the staff's duty of care. Although increasing staff levels to provide 1:1 supervision might ensure safety and security, it

would also lead to greater dependency of the patients on the staff and so restrict freedom. As a practical way of dealing with this problem, it was suggested that an activator could be applied to the patient's clothes. Then, should the patient go through the main doors, this would trigger off the bleep of the nurse in charge as a warning that the particular patient was leaving, although the patient would not learn that opening a door triggered an alarm.

### *Discussion*

Most staff were in favour of the activator bleep alarm system, but there was some concern expressed by others on the grounds of patients' civil rights. Further discussion took place with the families of those patients who were strongly of the view that the safety of the patient should outweigh their civil rights. In discussion with the police in the Psychiatric Liaison Committee, the police indicated that they knew of no legal reason why this system should not be used, bearing in mind that it would be for the patients' and the public's safety. We decided to discuss the matter further with the health authority's solicitor, the Medical Protection Society, and the joint coordinating committee of the Medical and the Dental Defence Union of Scotland and the Medical Defence Union to consider the ethical and legal consequences.

The health authority's solicitor indicated that the use of such a system may only be undertaken without consent when it is considered to benefit an incapable patient. In such circumstances, good medical practice would involve consultation with clinical staff and patients' families, with accurate recording of all such consultations to safeguard the interests of the patients and staff. It would, however, be possible for the health authority to be found negligent if the patient subsequently wandered away from the unit and caused a road traffic accident. In the meantime, the issues of staffing levels and availability of a secure area should be raised and other reasonable precautions considered, such as providing an alternative secure unit for such patients.

The Medical Protection Society pointed out the ethical importance of considering the two major issues: the protest from the civil libertarians, and the duty of care for the safety of the patient. On legal grounds, the Medical Protection Society's solicitor considered various aspects of the rights of the patient based on the Mental Health Act for England and Wales. He stressed the importance of the system being used unobtrusively as a humane way to help handicapped patients. Assuming that the patient agrees with this proposal, there would be no legal objection; but, in practice, if the patients on the unit are not able to consent, and to safeguard their rights, there should be wide consultation to include the

patient's relatives, the staff, the administration of the unit and other agencies involved.

The Mental Health Act (1983) refers to the Detention and Control of Informal mentally disordered patients. Assuming that the patient owns clothes, there should be no legal objection to carrying an activator in the clothes, although of course, the patient cannot consent to this being done. Even if some other person did not consent, the claim would be so nominal in terms of damage done to the clothing as to be a nonsense. It may be that an electronic activator on clothing could be deemed a technical trespass, but it is unlikely the court would take this matter seriously. The Medical Protection Society concluded that the consultant in charge of the unit and the hospital authority would not be vulnerable to either an action for trespass or for the breach of psychiatric duty by fitting the patient with an electronic activator.

The British Medical Association's Ethical Committee was particularly concerned that such a scheme was not used to avoid provision of proper staffing and appropriate day activity. (The health authority had already approved an increase in staff and architectural improvements.)

In addition to taking legal advice, the ethics of the procedure were considered. The duty of care was balanced against the dignity of risk, so that a patient who normally wanders within the grounds, or was receiving specific training, would not be subject to protection. Where freedom is curtailed, the least restrictive alternative is the ethical choice. Compared to the locked ward previously experienced by some which may also deprive others unfairly, or 1:1 supervision, electronic protection does not restrict freedom.

It may still be considered an intrusion of privacy but this can be countered by a substitute judgement, that is the patient – if capable – would wish staff to know of a decision to leave the unit so that the duty of care could be exercised to prevent any accident occurring.

The patient has effectively been given the electronic ability to inform the staff of a need for protection: a donation of artificial intelligence.

### *The plan*

A letter has been sent to the relatives of each patient considered for the alert system explaining the procedure and the underlying reasons behind it and also to obtain agreement for the procedure to be instigated. We are aware of the delicate balance between civil rights and the duty of care and the concern which this procedure will create among various movements and caring agencies for people with a mental handicap, and we welcome any suggestion or comment.