Health Service Guidelines – Patient Consent to Examination or Treatment

DEAR SIRS

The handbook *A Guide to Consent for Examination or Treatment* accompanied a communiqué (NHS Management Executive, HC [90] 22) in 1990. To eliminate misunderstandings, the Department have revised the model forms at Appendix A and B and reissued them as Health Service Guidelines (HSG [92] 32).

We deal mostly with people who lack the capacity to give consent. Our team members, comprising clinical psychologists, chiropodists, nurses, occupational therapists and physiotherapists, are independent practitioners involved in treatment methods for which client consent should be paramount when implementing regimes against their wish, or restricting their liberty. I am not sure what is expected of health professionals other than doctors and dentists under such circumstances. According to Appendix A(3), the health professional must state: "I confirm that I have explained the treatment proposed and such appropriate options as are available to the patient in terms which in my judgement are suited to the understanding of the patient and/or to one of the parents or guardians of the patient." The patient/parent/guardian also signs: "I agree to what is proposed which has been explained to me by the health professional named on this form." (HSG [92] 32, Appendix A [3]). It looks as if the parent's or guardian's consent is just as valid as the patient's consent. I doubt whether this is so when it concerns adults with mental disorder. It is a well established law that no person can give consent on behalf of a mentally handicapped adult. Although it does not automatically mean that just because a person is suffering from a mental disorder, he or she is incapable of giving consent, it may be, in certain cases, that a consent form could be signed by the patient without understanding the significance of it.

According to the Code of Practice, Mental Health Act 1983, medical treatment includes "nursing and also includes care, habilitation and rehabilitation under medical supervision" (Department of Health and Welsh Office [section 15.3, p. 52]). It also says, it is the personal responsibility of any doctor proposing to treat a patient to determine whether the patient has capacity to give a valid consent. (section 15.14, p. 55).

Although the Code of Practice is primarily intended to accommodate mentally disordered persons detained under the Mental Health Act, it accepts that much of the Code is applicable to informal patients (P. viii, 4). Although it "does not impose a legal duty to comply with the Code, failure to follow the Code could be referred to in evidence in legal proceedings." (section 1.1, p. 1).

Appendix B advises: "It is the personal responsibility of any doctor or dentist proposing to treat a patient to determine whether the patient has capacity to give a valid consent – It is good practice to consult relatives and others who are concerned with the care of the patient – Sometimes consultation with a specialist or specialists will be required." (NHS Management Executive HSG [92] 32, Appendix B).

Most forms of treatment given by health professionals could be considered an extension of medical treatment, whether the patients are detained or not, and the issue of consent should be determined according to Appendix B.

To safeguard the interests of dental and medical professionals involved with patients unable to give consent, no doubt Appendix B is sufficient where the doctor or dentist states "In my opinion [the patient] is not capable of giving consent to treatment. In my opinion the treatment proposed is in his/her best interests and should be given."

It is doubtful whether it is appropriate for other professionals to make a decision about a patient's capacity to give a valid consent. To safeguard everybody's interests, whenever treatment methods are used against the patient's wish, or to restrict his/her freedom, the patient's own general practitioner or consultant psychiatrist (if an in-patient) should be contacted and an entry made in the notes by the appropriate doctor that, in his/her opinion, the patient is incapable of giving consent to treatment, and the treatment proposed by the professional concerned is in his or her best interest and can be given.

K. NADESALINGAM

East Berkshire HNS Trust
Bracknell RG12 7EP

Evaluation of a psychiatric training scheme

DEAR SIRS

We read with interest the article 'Evaluation of a Psychiatric Training Scheme' by Khan and Oyebode (*Psychiatric Bulletin*, March 1993, **17**, 158–159). We have kept similar records for the Mersey Region Training Scheme – formerly the Liverpool Training Scheme, and have published data from them in the *Bulletin* (Birchall & Higgins, 1991). Our records now cover seven years from August 1985 to July 1992 and it is interesting to compare the two schemes.

The Mersey Region Training Scheme now covers all psychiatric units in the Mersey region and includes 37 registrar posts and 49 senior house officer posts, although 12–16 SHO posts are usually filled by general practice trainees. Most psychiatric trainees join the Mersey Scheme at SHO level, often straight from house officer posts. This results in a fairly high drop-out rate at SHO level. From a total of 112 trainees

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