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Consent for treatment in mental handicap hospitals in Scotland

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Consent for operation/treatment of a mentally handicapped person has been an issue stimulating much discussion. Generally, in the past, relatives or consultants responsible for their care have given 'consent' for treatment when mentally handicapped people were unable to do so. It was appreciated that legally this was not valid once the person was over the age of 16 and so we felt that the 'consent' procedure operating at our hospital should be reviewed. We were unsure of the practices in other areas, apart from Lothian Area where we knew new 'consent' forms had been devised, and felt that a good starting point would be to contact mental handicap hospitals in Scotland to gather information regarding the present 'consent' practices overall.

The study

A letter describing the issues involved, plus a brief questionnaire and a request for copies of the current consent to treatment form, were sent to a consultant concerned with the mentally handicapped in each Health Board Area in Scotland. This letter was sent in early December 1990 and reminders made by telephone at the end of January 1991. Replies from all areas were received. Lothian Area was not circulated since we already had a copy of the forms used in that area and were aware that the issue had been dealt with.

The questionnaire consisted of two questions:
(1) Have you *recently reviewed* the issue of consent in your hospital?
(2) Have you had any *discussions* with the physicians/surgeons/anaesthetists in your area regarding the issue of consent and the mentally handicapped?

Findings

All ten consultants who were circulated responded.

To the question regarding a recent review of consent issues four answered *YES*. Of those four, all had answered YES to the second question.

One area was awaiting receipt of a revised consent form which took into account the fact that consent can only be given by the person him/herself. If a person is of age, even if mentally handicapped, relatives and staff can only record their "agreement" but cannot give valid consent.

The other three enclosed standard consent forms which required either the consent of the person or a relative (in the case of a child and presumably a person with a mental handicap). Although used in these areas these forms are probably not valid.

Six answered *NO* to the question regarding recent review.

Of these six, two had discussed matters with their surgical/anaesthetist colleagues. In one case the discussion had been over specific cases rather than the general issue and in each case an arrangement had been reached which satisfied the medical staff concerned. In the other case, discussion had resulted in a local agreement that "*if relatives' consent for a procedure is not obtainable, medical consent, hopefully that of the RMO, is accepted*". Consent forms used were standard issue and unmodified.

Of the remaining four, three had had no discussions with the physicians/surgeons/anaesthetists in their area and forms were standard and unmodified.

The remaining reply, although no consent form was supplied with it and no review or discussion with surgeons etc. had taken place, described a local practice which was satisfactory – an RMO decision was made as to whether a person was able to give valid consent. Agreement was obtained from relatives on a standard hospital consent form. If agreement was not obtained, this was noted but not necessarily respected. A written explanation of degree of handicap, nature of operation and necessity was given by the RMO and a statement from the consultant performing the operation was also obtained.

Comment

Only two out of the ten replies indicated reasonable practices which were valid but no consent forms which were appropriate were received (one is under review and awaited). It appears to be accepted practice to use relatives' consent or, failing this, RMO consent, in spite of the fact that in law this is invalid.

It is noteworthy that the consent forms received from Gogarburn Hospital are in a legally viable format.

The specimen consent forms included in the draft document circulated by the National Health Service in Scotland, based on the document *Guide to Consent for Examination and Treatment* which was issued by the Department of Health, were thought to be the best starting point available for further discussion about the consent forms for Lynebank Hospital. As a result of the discussions and perusal of the relevant literature, it was felt that the most appropriate management of this problem was that the procedure was in the *mentally handicapped person's best interest* (Ward, 1990; Gunn, 1987; Mason *et al*, 1987). Lord Brandon has stated that a procedure would be considered to be in the best interests of patients, "*if, but only if, it was carried out in order to save their lives, or to ensure improvement or prevent deterioration in their physical or mental health.*" In addition, it was felt to be good clinical practice to obtain the relatives' agreement although their lack of agreement would not necessarily mean that the procedure would not be carried out.

It was felt necessary to produce two forms.* The first form covers a statement by the doctor responsible for the mentally handicapped person's care that he/she understand the nature of the procedure, that the person is unable to comprehend the nature of the procedure due to his/her handicap, and that it is in his/her best interests to have the procedure carried out. The second part of this form records a statement by the person who is to carry out the procedure (dentist/surgeon) to the effect that he/she is aware of the person's handicap and inability to give consent and is also of the opinion that the procedure is in his/her best interests.

*Copies of Forms 1 and 2 are available on request from Dr Young.

The second form is for the relative to complete. It is based on the standard 'consent' form but notes the relative's agreement as regards the person's inability to comprehend the nature of the operation, as regards the operation being in his/her best interests, and as regard alternative procedures. In addition it confirms that the doctor has explained the procedure to the relative.

It was felt that a person who had a mental handicap should give consent if possible. If the responsible doctor felt that the person could give valid consent for the procedure, then the appropriate standard consent form should be completed and the person asked to sign or make his/her mark which could be witnessed if necessary.

It is not intended that these forms are used to cover such contentious situations as abortion or sterilisation. In these circumstances, other measures to obtain legal consent for such an intervention would have to be obtained.

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