

# the mrcp guide

## Brief overview of ethics for Station 4 PACES



## **Ethics for Station 4 of MRCP(UK) PACES: An overview**

A good sounding in medical ethics plus a working knowledge of medical law is critical to be a good doctor.

The GMC historically given much of the responsibility for policing the profession GMC published 'Duties of a Doctor'.

Royal College of Physicians demonstrated the significance of medical law and ethics by introducing ethical problems in MRCP PACES Exam.

### **Sources of law**

Recently the courts have been more involved. The common law is continually established by previous cases that have come to court and the rulings that were made Statute laws passed by parliament in Acts for example the Human Rights Act (1998) and the Mental Health Act (1983).

In addition to these 'four pillars', it has become increasingly recognized that the patient (and the person treating the patient) have the right to dignity. Furthermore, the patient should never be lied to, and deserves to know the whole truth about their illness and treatment.

### **Approaching a scenario**

First of all, you are supposed to recognize that there is a dilemma, if there is one. You should be able to understand the current legal situation surrounding your problem and understand different, often conflicting, legal and ethical perspectives.

### **Beauchamp and Childress' four ethical principles**

These four principles derive from Beauchamp and Childress (1979), and are:

*Autonomy:* This literally means self-rule, and means in practice respecting and following the patient's decisions in the management of their condition. Competent patients have the capacity to think, decide and act on the basis of such thought and decision, freely and independently. Respect for patient autonomy requires that health professionals (and others, including the patient's family) help patients to make their own decisions (e.g. by providing appropriate information), and respect to follow these decisions (even when the health professional believes the patient's decision is wrong).

*Beneficence:* This means promoting what is in the patient's best interests. In most situations, respect for the principle of beneficence and for the principle of respect for patient autonomy will lead to the same conclusion. The two principles conflict when a competent patient chooses a course of action that is not in his or her own best interests. However, a patient can be advised that a course of treatment in her best interests if there is evidence to do so (e.g.. sub-cutaneous heparin in a young pregnant lady with a suspected pulmonary embolism, who is beyond the first trimester.)

*Non-maleficence:* This means avoiding harm. The potential good and harms and their probabilities must be weighed up to decide what is in the patient's best interests. Sometimes it means that appropriate safety measures are taken to perform certain essential investigations, e.g. using an x-ray shield for a CT scan of the chest in a pregnancy lady.

*Justice and sharing:* doing what is good for the population as a whole in terms of time and treatments. In real terms, this may mean distributing resources fairly in the provision of care; health professionals have to decide how much time to spend with different patients, and decisions must be made about limitations on the treatments that can be offered at various levels within a health care system.

## **Informed consent**

This PACES station is not intended as a test of medicolegal issues, but obviously candidates need to be roughly aware of them. The main issues candidates are expected to know about are expressed consent (consent either oral or in writing), statutory requirements (where law requires particular consent for particular treatment), and implied consent. At present, consent forms are used if a patient is exposed to any invasive procedure. After providing the patient with adequate information about the procedure, as well as risks and benefits, doctors should document what has been said on the consent form. The patient then reads the consent form with the doctor and signs accordingly. The consent form provides a mechanism to ensure that consent is obtained, and also to communicate the fact to other members of the health team. Consent forms are not, themselves, absolute proof that valid consent was obtained to the treatment specified on the form. These tasks may be delegated to a person who is suitably trained and qualified, with appropriate knowledge.

From a legal point of view, lack of consent engages two key aspects:

**Assault and battery:** non-fatal offences against the person. A procedure or treatment that is performed without consent.

**Negligence:** Harm caused by a doctor acting outside accepted medical opinion or practice (*the Bolam principle*). If a patient does not receive certain relevant information when consented for a procedure, a doctor may be found negligent. It is advisable to tell the patient of all potential serious complications and those with an incidence of at least 1%.

## **Situations where consent is not possible**

A doctor, by acting in the patient's best interests, can treat a patient against their will under common law. The **doctrine of necessity** which underpins the treatment of patients lacking capacity, is made up of the necessity to act and the action being in the best interests of the patient, where a patient is unable to give the necessary consent required for treatment. If relatives are available for discussion, they should be informed rather than opinions canvassed. It is advisable that they remain well informed. The patient has the right to be free from discrimination, have privacy, have confidentiality of personal health information with information disclosed only to the nominated next of kin,

liberty (i.e. free from interventions that inhibit liberty), and continue dignity (according to social and cultural views). Legally, when consent is not available and there is no advanced directive, the responsibility for emergency operations rests with the consultant in charge particularly if the team believes this is in the patient's best interests.

An **advance directive** is that a person can anticipate losing the mental capacity to decide or communication how she wishes to be treated by drawing up a formal advance statement of her values and preferences or by naming a person who can be consulted. Whilst advance directives may not always be legally binding or unambiguous, it will be increasingly unwise to ignore these directives, and they can be helpful to clinicians. If there is disagreement, a second opinion can be arranged. Views about the patient's preferences given by a third party who may have more knowledge of the patient should be taken into account. There are different types of advance directive.

If mental impairment is suspected, a psychiatrist may be consulted to make the diagnosis. Medical staff may be required to make decisions which are deemed to be in the best interests of the patient.

Be aware of the meaning of the following specific terms used in relation to consent:

Proxy consent: a relative cannot consent on behalf of an incompetent patient.

Implied consent: by going to hospital a patient should expect a nurse to take their blood pressure and therefore consent for this procedure should not necessarily be sought.

**Emergency consent** where consent cannot be obtained, medical treatment can be provided to anyone who needs it.

**Advanced decisions or living wills:** a patient makes a choice on their future medical care before they become incompetent. A doctor that treats a patient in the face of an advanced directive could be liable in battery.

**Power of attorney:** a patient nominates a person (usually a relative) whilst competent to make decisions on their behalf if they were to become incompetent. However, this does not include medical management decisions. With an increasingly elderly population, there is growing need for people to delegate control of financial and legal affairs to others close to them. A power of attorney is a legal document enabling this to be done, allowing, for instance, someone to sign cheques and letters on another's behalf if he or she were going abroad for some time; or if you became seriously ill, or were mentally incapacitated, business and personal interests could be looked after.

**Ward of court:** a doctor may apply to a judge to make medical decisions on behalf of the patient. This is advisable if it is not clear what the correct course of management should be and there is opposition from colleagues or relatives against the intended treatment.

## **Mental Health Act**

The **Mental Health Act** [1983] (but please note **Mental Health Act** [2007]) can be used to treat psychiatric illness in non-consenting patients. This may be useful in patients who present with deliberate self harm either due to a temporary or permanent illness. Factors suggesting suicidal intent include act in isolation, precautions to avoid discovery, preparation made in anticipation of death, active preparation for the event, leaving a suicide note; consider the events preceding the act, concomitant psychiatric illness, personal and family history, coping resources and the risk of suicide (male, <19, >45, separate, living alone, chronic physical health, problems with alcohol and drugs, psychiatric disorder including depression, schizophrenia and alcoholism). They can be detained/restrained for varying periods, depending on the clause of the Act, and can be given treatment, but only for their mental illness, which is deemed in the best interests for themselves or the public.

**Section 5(2):** emergency doctor's holding power

Applied by one physician or an inpatient to enable a psychiatric assessment to be made. 72 hours' duration. Good practice to convert this to a Section 2.

**Section 2:** admission for assessment order

Applied by two written medical recommendations (usually a psychiatrist and a GP) and an approved social worker or relative, on a patient in the community. 28 days' duration. May be converted to a Section 3. The patient has a right of appeal to a tribunal within 14 days of detention.

**Section 3:** admission for treatment order

Applied as in a Section 2 on a patient already diagnosed with a mental disorder. 3 months' duration and then reviewed.

**Section 4:** emergency admission to hospital order

Applied by one doctor (usually a GP) and an approved social worker or relative. Urgent necessity is demonstrable. May be converted to a Section 2 or 3.

## **Mental capacity act [2005]**

This is an Act of the UK that came into force in April 2007. It applies to everyone over the age of 16 in England and Wales. Its primary purpose is to provide a legal framework for acting and making decisions on behalf of individuals who lack the capacity to make particular decisions for themselves. The five principles are outlined in the Section 1 of the Act. It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

These are interesting factsheets published by the UK charity "Alzheimer's Society":

### Mental capacity act 2005

[http://alzheimers.org.uk/site/scripts/documents\\_info.php?categoryID=200137&documentID=354&pageNumber=1](http://alzheimers.org.uk/site/scripts/documents_info.php?categoryID=200137&documentID=354&pageNumber=1)

### Advance directives

[http://alzheimers.org.uk/site/scripts/documents\\_info.php?categoryID=200167&documentID=549&pageNumber=1](http://alzheimers.org.uk/site/scripts/documents_info.php?categoryID=200167&documentID=549&pageNumber=1)