

# Mental Health Law Briefing

Number 99

## Resuscitation of mentally ill elderly patients and DNR policies

The question of whether resuscitation ought to be attempted on an elderly patient has recently been reported in the media. It obviously raises sensitive and potentially very distressing issues for both the patient and the patient's family. The cases in which such decisions have given rise to patient complaints usually involve circumstances in which the matter has been approached without appropriate sensitivity by those responsible for the patient's healthcare. Good communication with the patient is essential.

In the case of the elderly mentally ill, it is not lawful to make decisions about resuscitation based solely on age (or mental illness) as this will be likely to give rise to a breach of Article 2 of the Human Rights Act 1998, read together with Article 14 of the Act which prohibits discrimination on any ground including sex, race, birth or "other status".

Such decisions should be made on a case by case basis and should be made in advance rather than in the urgency of the event, as part of the care plan.

If the patient is competent to consent to or refuse treatment, and has an ability to understand the issues relevant to the resuscitation decision, it is essential that any such decision is discussed with the patient. It is good practice for attempts to be made to maximise the patient's potential for understanding the relevant issues, whether

this be by way of visual aids or otherwise, in the circumstances of what is obviously an extremely important decision. The Mental Capacity Act 2005 will make such efforts a legal requirement.

Consideration must also be given to whether the patient has made an applicable advance directive dealing with issues of resuscitation.

A "Do Not Resuscitate" order should be made only after relevant consultation and consideration of all aspects of the patient's condition including:

- The likely clinical outcome, including the likelihood of successfully restarting the patient's heart and breathing and the overall benefit achieved from a successful resuscitation;
- The patient's known or ascertainable wishes; and
- The patient's human rights, including the right to life and the right to be free from inhuman and degrading treatment. Will the burdens outweigh the benefits of resuscitation?

Where the patient lacks capacity it is good practice to consult the patient's relatives in the making of such a decision. The responsibility for making this decision will lie with the consultant responsible for the patient's care

but members of a multi-disciplinary team should also be consulted in the process of making the decision.

It is advisable for mental health hospitals and any other bodies involved in providing healthcare to the elderly mental ill to have in place a policy outlining the process of decision making in connection with DNR decisions.

Where a DNR order has been made, it is important that it is reviewed on a regular basis to check that there has not been a change in the condition of the patient since the making of that order. It is also essential that the reasons for the making of a DNR order are clearly recorded in the patient's notes to ensure that members of the healthcare team who review the DNR order at a later date are aware of the information on which the previous decision was based.

If a patient is not capable of being involved in the decision as to whether to resuscitate, the decision then lies with the treating healthcare professionals. As with all decisions relating to a mentally incapacitated patient, the decision is a clinical one based on the best interests of the patient. The doctor making the decision will be required

to give consideration to the benefit of potential resuscitation against the burdens to the patient of what is likely to be an onerous procedure, regard also being made to the future quality of life of the patient.

Under the present law no person has a legal right to be involved in the decisions made on behalf of an adult incapacitated patient, although the introduction of the Mental Capacity Act 2005 into English law will have an impact in this area in that patients will be entitled to appoint an "Attorney" whilst competent to make decisions about their future treatment in the event that they lose capacity. The approach to determining the "best interests" of a patient is also addressed by the Mental Capacity Act, which will therefore also be relevant in determining the contents of policies and the practices relating to the making of resuscitation decisions.

RadcliffesLeBrasseur has considerable experience in advising on issues relating to resuscitation matters, including drafting and advising on resuscitation policies. Should you require any advice on such matters you should not hesitate to contact us.

**Alexandra Johnstone**  
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## **Mental Capacity Act 2005 – Code of Practice Consultation**

Significant changes to the law and how care is provided to people lacking mental capacity are set out in a new draft Code of Practice which has just been published.

The Mental Capacity Act 2005 provides for the first time a legal framework and clear safeguards for acting and making decisions on behalf of people who are unable to do so for themselves, and for those wishing to make provision in the event they lack capacity themselves in the future. The provisions are likely to come into effect around April 2007, although this has not been finally confirmed.

The Code of Practice provides guidance and information for those working with or caring for those who cannot make decisions for themselves, or who have a limited capacity to do so without assistance. It sets out good practice in caring for those in need and covers an extensive range of different roles, circumstances and decisions that might need to be taken.

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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