

RadcliffesLeBrasseur



Care Home Briefing 78

September 2009

The Liverpool Care Pathway – issues at the end of life

The Liverpool Care Pathway for the Dying Patient (LCP) has been recommended for use as a template of best practice in the last hours and days of life.

The recent publication of the Second National Care of the Dying Audit of Hospitals has recently attracted some quite considerable press publicity suggesting that patients with terminal illness are being made to die prematurely under the LCP scheme and has highlighted problems about communication with relatives and carers.

The Audit, which covered the use of the LCP in 155 hospitals, showed that patients on the LCP were receiving high quality care in their last hours and days of life. This note addresses some of the issues that have been focused on by the press in response to the publication of the Audit Report.

Withdrawal of treatment

The LCP has been criticised as providing too simplistic an approach to determining the likelihood of death in patients deemed to be terminally ill in hospitals, nursing and residential homes. Under the LCP guidelines, patients can have fluid and drugs withdrawn while on continuous sedation until they die. A number of doctors specialising in palliative care have raised concern about this system, highlighting that this approach can mask the signs of improvement.^[1]

It is a recognised ethical principle that where the burdens of treatment outweigh the benefits to the patient the healthcare practitioner may be justified in withdrawing treatment if that treatment is futile and is pointlessly prolonging the dying process. It is therefore always important to consider the respective benefits and burdens produced by the treatment and whether the treatment is continuing to give an overall benefit.

It is important for the patient to be involved in decisions about the withdrawal of treatment if the patient is mentally competent to consent to/refuse treatment. If the patient lacks capacity at the end stages of life, the decision whether to continue treatment must be taken in accordance with the patient's best interests under the Mental Capacity Act. Amongst the matters that must be considered in determining whether continued treatment is in the patient's best interests, those responsible for the decision must consider the patient's past wishes and the patient's beliefs and values that would be likely to have influenced his decision if he had had capacity. Those taking the decision must also take into account, so far as is practicable and appropriate, the views of anyone named by the patient as someone to be consulted on such matters and anyone engaged in caring for the person or interested in his welfare. This will include the family.

Continued...

Communication

It has been reported that one in four families is not told when doctors decide to place their relatives on the LCP. Communication has increasingly been recognised as an essential element of good healthcare practice, although it is important that the patient's rights to confidentiality are not overlooked in the last stages of life. Where patients cannot be involved in the decision making process due to lack of capacity, as indicated above, people close to the patient should be consulted in order to ascertain what would be in the patient's best interests and whether the patient has expressed any relevant wishes and feelings about decisions concerning the end of life.

There is no doubt that the issues arising in the context of end of life decisions are extremely complex and there is a risk that generalised guidelines may be too simplistic to address these complexities. It would be interesting to see whether the LCP guidelines are revised to take into account some of the criticisms raised.

If your policy on end of life care has not been updated recently, this should be reviewed to take account of current practice.

Alexandra Johnstone

© **RadcliffesLeBrasseur**

September 2009

If you would like further information about the contents of this briefing please contact

Alexandra Johnstone
t 020 7227 7283
e alexandra.johnstone@rlb-law.com
w www.rlb-law.com

Footnotes

1. Letter to the Daily Telegraph 2 September 2009



Disclaimer

This briefing is for guidance purposes only. RadcliffesLeBrasseur accept no responsibility or liability whatsoever for any action taken in relation to this note and recommend that appropriate legal advice be taken having regard to a clients own particular circumstances.

LONDON: 5 Great College Street, Westminster, London, SW1P 3SJ, Tel +44 (0)20 7222 7040, Fax +44 (0)20 7222 6208

LEEDS: 6-7 Park Place, Leeds, LS1 2RU, Tel +44 (0)113 234 1220, Fax +44 (0)113 234 1573

CARDIFF: 25 Park Place, Cardiff, CF10 3BA, Tel +44 (0)29 2034 3035, Fax +44 (0)29 2034 3045