



Tube Feeding of Residents in Care Homes – the Legal Issues

There has recently been some considerable discussion in the media about the tube feeding of people with advanced dementia; it has been reported that this practice is "widespread". New guidelines from the Royal College of Physicians have been published following the College's Working Party Report entitled "Oral feeding difficulties and dilemmas: a guide to practical care, particularly towards the end of life". This report has been prepared in response to apparent unease about the lack of consensus, including among doctors, about when artificial nutrition and hydration is appropriate. The report considers that dementia patients are often tube fed although evidence has shown that such feeding does not prolong their life and may be harmful. Concern has been raised that tube feeding may reflect a "hidden agenda" to address staffing issues and costs.

The English Community Care Association, an organisation that represents care homes, has doubted the scale of the problem. Their Chief Executive stated "I don't think it's a widespread practice...tube feeding is not an easy option for staff, because of the risk of infection. Inserting a tube would be a decision taken by a doctor, not a care home".

The Courts have held that where a person lacks mental capacity and is unable to feed themselves, artificial feeding constitutes part of the medical care of a patient [1].

Where a patient has sufficient understanding to have the mental capacity to consent to or refuse medical treatment those treating the patient must seek his/her consent to provide tube feeding. However, if the patient lacks such mental capacity, which will usually be the case in patients with advanced dementia, those treating the patient must decide whether tube feeding is in the best interests of the patient. This decision will usually be made by the person with clinical responsibility for the patient having regard to the "best interests" criteria set out in the Mental Capacity Act 2005. The person responsible for making the decision should, if it is practicable and appropriate to do so, consult various people including anyone involved in caring for the person or interested in his/her welfare and any donee of a Lasting Power of Attorney granted by the person when he or she had capacity to do so [2].

The discussions that have arisen from the publication of the report published by the Royal College of Physicians highlights the ethical difficulties in deciding whether tube feeding is appropriate for patients with advanced dementia. There is some question about the benefits of tube feeding for such patients and it has been said that the decision whether to withhold tube feeding from a patient with dementia is sometimes made without adequate information and with an overly hopeful view of the future clinical course.

The underlying purpose of tube feeding and what it is likely to achieve in terms of benefit to the patient should be considered in making the decision whether to tube feed a patient with advanced dementia.

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If there is virtually no likely benefit and such treatment is clinically regarded as futile then serious consideration should be given to withholding such treatment. In cases of doubt, or where there is a dispute with the patient's family about the decision, legal advice should be sought with a view to making an application to the Court.

The guidelines published by the Royal College of Physicians have emphasised that there should be a clear agreement about the aims to be achieved in tube feeding. Such decision should never be based on the convenience of staff or carers and in no circumstances should tube feeding be used to address staffing issues. All care homes should ensure that there are sufficient staff, especially at mealtimes, to assist and feed residents who require a longer time to eat an adequate meal. The College also recommends that when oral feeding difficulties occur a nutrition support team, ideally but not inevitably led by a doctor with special expertise in nutrition, should be made available to work with patients and their families.

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Footnotes

[1] Airedale NHS Trust v. Bland [1993] 1 All ER 821

[2] Section 4(7) of the Mental Capacity Act 2005

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