RadcliffesLeBrasseur

BRIEFING

Number 44

Covert Medication and Nurse Prescribing

MENTAL HEALTH LAW

Covert Medication

The UKCC are shortly to issue guidelines on giving medication to patients in a disguised form. The guidelines envisage disguising medication in food or drink and justify this as being 'in the best interests of patients who actively refuse medication but who lack the capacity to refuse treatment'. This is not proposed to constitute regular practice but to operate as a contingency provision in appropriate cases.

The common law provides that an adult patient who is mentally competent, may refuse medication (save to the extent that this is administered pursuant to the treatment provisions of the Mental Health Act, in particular section 63). The issue of covert medication therefore does not arise in the case of the competent patient.

However, if the patient lacks capacity to make a treatment choice it may be necessary to employ covert medication techniques in order to ensure that the patient receives the treatment that he requires. A patient lacks capacity only if he is unable to understand, retain or believe treatment information or weigh it in the balance to make a choice[1] .

There has been criticism of the proposed guidelines. However, patients are given the safeguard of the fact that administration of all medication must be properly recorded. This will include the type of medication, and amount given, and the reason for it. The medication is therefore not technically "covert" but rather "unknown" to the patient.

Nurse Prescribing

The use of covert medication may increase in the light of the proposals to increase Nurse Prescribing.

In the past, the opportunity for nurses to provide medication has been very limited, control of medicines has always historically been with doctors. The expansion of nurse prescribing addresses the nature and limits of the professional role of nurses.

There have been slow advances in the development of nurse prescribing and in the 1999 Crown Report new guidelines were set out, which were further clarified in a circular from the NHS Executive (HSC 2000/026). This circular sets out guidelines for the development and use of protocols along the lines proposed by the Crown. Protocols were first brought into action through the Crown report on the 1992 Medicinal Products (Prescription by Nurses) Act. A group protocol was described as a specific written instruction for the supply and administration of named medicines in an identified clinical situation. They were to be applicable to groups of patients or other service users who may not be

[1] Re C [1994] 1 All ER 819

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

individually identified before presentation for treatment. Group protocols are now known as "**patient group directions**".

The 1999 Crown Report recommended that the broadest powers of prescription be given to the **independent prescriber**, (someone who is responsible for assessment of patients with undiagnosed conditions and for decisions on the clinical management required, including prescribing). The Report also suggested that certain medicines, such as those used to treat children and controlled drugs which are subject to the Misuse of Drugs Act 1971, would not be available for new groups of prescribers.

The Report went on to suggest the creation of another group of "**dependent prescribers**" who would be involved in continuing the care of patients who had already been seen by an independent prescriber. Importantly, the dependent prescriber would have the discretion to vary certain aspects of repeat prescription, such as the frequency or dose. There would be provision for regular clinical review by the assessing clinician and the dependent prescribers would be working under a care plan drawn up for the individual patient following full assessment by the clinician.

Patient group directions are envisaged to be suitable where patients' clinical needs are broadly similar and individual prescriptions would be impracticable, for example in mass vaccination campaigns.

The Health and Social Care Act 2001

Initial nurse prescribing is to expand to nurses working in a variety of healthcare settings. Under the Act, the Secretary of State is to be allowed to expand the categories of prescribers as set out in the Crown Report. Conditions will be allowed to be imposed on the exercise of prescribing powers and the Act provides for a new authority to approve of new prescribers. Lord Hunt announced in May that by next year, training is to have taken place of certain nurses who will have new prescribing powers. It is intended that independent nurse prescribers will be able to prescribe all medicines from general sales list and pharmacy medicines. It is also intended that they will be able to prescribe from a list of prescription only medicines required for specialist conditions.

The issue of prescribing is controversial. The new conditions are viewed by some as enhancing the role of nurses while others see it as a delegation of unwanted tasks or a cost-cutting exercise. Nurse prescribing may also result in increased litigation against nurses. However, it is clear that new measures will result in a reconsideration of the professional role of nurses and the boundaries of their profession. Protocols will assist but will need careful drafting and legal advice where appropriate.

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: andrew.parsons@rlb-law.com.

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com