Welfare provisions for the multi-handicapped

On 26 March 1986 the House of Lords debated the above subject which had particular reference to problems addressed by the Disabled Persons (Services, Consultation and Representation) Bill which was recently introduced in the House of Commons by Mr Tom Clarke, MP. The full details may be studied in *House of Lords Weekly Hansard* No. 1320.

Adjournment

The House of Commons adjourned for the Easter Recess on 27 March until 8 April 1986.

The House of Lords adjourned for the Easter Recess on 26 March until 7 April 1986.

ROBERT BLUGLASS

The College

Interim Guidelines on Consent to Medical and Surgical Treatment, Contraception, Sterilisation and Abortion in the Mentally Handicapped

Section for the Psychiatry of Mental Handicap

Questions about the ability of mentally handicapped people to give valid consent to medical and surgical treatment and the procedures to be adopted in obtaining such consent have been highlighted by the new Mental Health Act and recent court cases. As yet there are no definitive guidelines and the advice which follows is based on good and reasonable practice. In these difficult areas the principles of acting in good faith and duty of care in Common Law and, when in doubt seeking a second opinion, act to protect the individual consultant.

It should be noted that a consultant psychiatrist can only signify his agreement to treatment proposed for a patient in his care and cannot give legally valid consent. He/she should make this clear on any form signed and to the doctor who is to carry out the treatment.

The advice which follows primarily relates to mentally handicapped people resident in mental handicap hospitals or other NHS units.

Medical and surgical treatment

Many mentally handicapped people are able themselves to give valid consent to medical and surgical treatment if an explanation is given in simple terms. The legal requirements are that sufficient information has been given to the patient concerning the nature and possible complications of the treatment, having regard to the mental and physicial state of the individual. In doubtful cases it is the consultant psychiatrist's duty to make a clinical judgement as to whether or not an individual is able to give valid consent.

Where a mentally handicapped person is deemed unable to give valid consent although relatives cannot give legally valid consent for another adult, longstanding good practice has been to seek the agreement of the next of kin. If such agreement is withheld the consultant in charge of the patient should seek a second opinion from another medical colleague and then act in what he/she considers to be in the best interest of the patient. Where there is no next of kin the consultant psychiatrist in charge of the patient after consulting with other professionals involved in care and treatment should act in what he/she considers to be in the best interest of the patient.

Relatives should never be asked to sign a form of consent or agreement to emergency treatment on a 'blanket' basis. When emergency treatment is required and the patient is unable to give valid consent every effort should be made to obtain the agreement of the next of kin. If they cannot be contacted after reasonable effort the consultant in charge of the case should act in what he/she considers to be in the best interest of the patient and ensure that the relatives are informed of any treatment carried out as soon as possible.

Contraception

Contraceptive measures are only indicated in patients who are engaging in an active sex life or are deemed to run a high risk of sexual exploitation. The majority of mentally handicapped people to whom this applies are able to give valid consent to such measures. Nevertheless this is an

area where good practice strongly encourages the closest contact between the consultant, interested and concerned relatives and other involved professionals, for example, the patients general practitioner, social worker, nurse.

Where a patient is unable to give valid consent the agreement of the next of kin should be obtained. Where this is not possible the consultant in charge of the patient should, after wide consultation, act in what he/she considers to be in the best interest of the patient.

Sterilisation

In mentally handicapped individuals able to give valid consent the usual procedures for sterilisation should be followed.

In the case of severely mentally handicapped individuals unable to give valid consent and of legal minors, guidance is still awaited from the DHSS. Until this is available the consultant in charge of the patient should, after wide consultation, act in what he/she considers to be in the best interest of the patient. Agreement of the next of kin should be obtained wherever possible.

Therapeutic abortion

The grounds for therapeutic abortion are laid down in the Abortion Act 1967.

For mentally handicapped individuals able to give valid consent, the usual procedure for therapeutic abortion should be followed.

In the case of severely mentally handicapped individuals unable to give valid consent and of legal minors, the consultant in charge of the patient should, after wide consultation, act in what he/she considers to be in the best interest of the patient. Agreement of the next of kin should always be sought.

Data Protection Act: Subject Access to Personal Health Information (DA 8523): DHSS Consultation Paper

The College was not formally asked to prepare comments on the above Consultation Paper, but believed it to be of such importance to practising psychiatrists that an approach was made to the Department of Health to receive this paper and a Working Party of the Public Policy Committee was convened to prepare the College's response.

There are three options which concern personal health data, these are:

Option A—Access to personal health data;
Option B—A total exemption from personal health data;
Option C—Modified access to personal health data.

It was agreed at the meeting of Council on 19 March 1986 that the College should recommend that Option B be adopted for the following reasons:

1. All complete psychiatric records will include information about such topics as sexual relationships and delinquency of the patients themselves, their friends and relatives. There is much information in psychiatric records which will have been given to a doctor in confidence by people other than the patient, who might not have given that information if they had thought that the doctor would have to disclose it to the patient.
2. Records may include opinions which might be hurtful to the patient (who may be more sensitive than average), for example, 'She appears potentially suicidal', 'He might assault his son'.
3. They also contain a large amount of information which has been given to the psychiatrist by relatives, and information about relatives which has been given by the patient.
4. Psychiatric records may contain a vast amount of information which have been written in them by a large number of different people. In some cases the records include information written over a period of 50 years.
5. It would be time-consuming and difficult to extract patient information from case records for a patient unless it were being restricted (e.g. Korner basic data set), which would be of little value to the patient. It would be of more value for patients to see their doctor who can inform them of the general content of what is in their records. A statutory right could only impair the doctor/patient relationship.

If the Government decides that there should be modified access to health data (Option C) then it was agreed that considerable safeguards would have to be introduced into psychiatric records and the College would wish to be involved in any further discussions about this Option.

R. G. PRIEST, *Registrar*

April 1986

Foreign Language-Speaking Psychiatrists

The College maintains a list of members who are fluent in foreign languages and from time to time enquiries are received from members of the College or General Practitioners regarding patients who are unable to speak English. We are asked if we can give the name of a psychiatrist able to communicate with the patient in his native language.