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The emergency treatment of overdose: a problem of consent to treatment

Tim Hardie, Kamaldeep Bhui and Phillip Brown

We surveyed 119 psychiatrists to see how they would act with a patient who has taken a potentially lethal overdose, has no mental illness, and is refusing treatment. There was substantial disagreement. There may be a risk of action under civil law whether the psychiatrist decides to treat the patient without his or her consent or not. The Law Commission are examining whether mental disorder, as defined in the Mental Health Act 1983, should be used as a test of incapacity to give consent to medical treatment. Such legislation would help doctors but may encourage a wide interpretation of the definition of mental disorder.

Psychiatrists may be called to assess patients who are refusing treatment following an overdose. If the patient is not amenable to persuasion, the psychiatrist may be asked to decide whether treatment should be given without the patient's consent. If treatment is forcibly administered, then the doctor may expose himself to a suit for trespass, assault or battery. If the doctor chooses not to treat the patient, and the patient suffers as a result, he may be sued for negligence. The main defence in the former case will be that of 'necessity' and in the latter case it will be that of *'volenti non fit injuria'*, ie. that the patient voluntarily assumed the risk of not giving consent for treatment (Korgaonkar & Tribe, 1993). In a case of alleged negligence, breach of duty of care will be judged on the "expert opinion of medical witnesses giving their views on current modes of accepted practice" (Nelson-Jones & Burton, 1990)

Although current practice regarding consent to medical treatment is governed by common law, the Law Commission are examining whether a test of incapacity to consent to

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medical treatment should be included in future statutory legislation (Law Commission, 1993). We hypothesised that psychiatrists would not agree on what was good practice because of lack of clear legislation and the conflict of interest between the patient's civil rights and a doctor's duty of care.

The study

The following vignette was sent to 119 psychiatrists in the South East Thames Region (57 consultants, 15 senior registrars, 19 registrars and 28 senior house officers).

> "A 24-year-old woman is in Accident and Emergency. Two hours earlier she had taken an overdose of 100 paracetamol tablets. She was brought into A & E by her parents and is currently refusing all treatment including stomach washout, emetics and blood tests, despite vigorous attempts to persuade her by her parents and all the staff involved. She is not attempting to leave. She is well known to the psychiatric services as she has taken 15 overdoses in the past, and been referred to the psychiatric services on each occasion. She was discharged from hospital ten days ago, having been on a psychiatric ward for two weeks. During the course of this admission and at all other times when seen by a psychiatrist there has been no evidence of affective disorder or psychotic illness. There is no current evidence of biological features of depression or psychotic symptoms."

The respondents were asked to chose their immediate management from one of four options.

(a) Continue to persuade her until the last possible moment that a stomach washout is still likely to be of benefit and then physically restrain her and administer a stomach washout using sedation if necessary, taking all necessary precautions to ensure that the patient comes to no harm.

(b) Continue to persuade her until four hours post-overdose (the usual time for checking paracetamol levels), and then physically restrain her and take a blood sample to see if she needs treatment. Then, if blood levels are within the toxic range, sedate if necessary and forcibly give all necessary treatment.

(c) Continue to persuade her until she develops any signs of paracetamol toxicity, then forcibly administer antidote using sedation if necessary and giving antidote is still considered worthwhile.

(d) Give no treatment but continue to try to persuade her to have treatment.

Paracetamol would have a high chance of being fatal at this dose and would not be expected to affect mental state until many hours after ingestion, at which point the patient would be seriously medically ill. If the doctors wait until the patient is cognitively impaired by the effects of the drug, before they disregard the patient's wishes, the patient may have liver failure and consequently a very poor prognosis (Harrison *et al*, 1990).

Findings

The response rate was 69%. Of the respondents, 35% chose option (a), 38% chose option (b), 10% chose option (c) and 17% chose option (d). The response rate was similar for all grades of doctors. There was no clear consensus as to the correct course of action, although most doctors chose to treat the patient at some point without her consent.

Comment

The problem appears to revolve around whether the patient has the "capacity to give or withhold consent to treatment". The Law Commission have suggested that, for people not to have the capacity for consent, they should at least suffer from a mental disorder as currently defined in the Mental Health Act 1983. However, referring to the judgment of Lord Donaldson M.R. in *Re T* (1992), they recommend a wide interpretation of the definition to include "the temporary effects of shock or an injury". Shock in this instance being mental shock. Lord Donaldson also stated that she "must have been anxious as to the health of her baby", and that this was one of the factors which contributed to her mental condition. It is possible, in the light of Lord Donaldson's judgment and the Law Commission's recommendations, that individuals who have severe emotional upset for any reason should be considered as potentially having impaired capacity to give consent. For the patient in the vignette, if there had been evidence of recent interpersonal or legal difficulties, then this may be considered sufficient if they caused her to be emotionally upset.

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Lord Donaldson also stated that: "The more serious the decision, the greater the capacity required." With the patient in the vignette, treatment is potentially life saving, and therefore the patient should have maximum mental capacity before her wish not to have treatment be respected.

It seems likely that if mental capacity is 'tied' to mental disorder in the way that the Law Commission are recommending, that psychiatrists will be involved in more cases where medical treatment is being refused. The responses to the vignette suggest that psychiatric opinion is currently divided about the correct course of action, and this may provide fertile ground for a major civil action. It would be good practice for doctors to consult with colleagues before embarking on any treatment without the patient's consent and to make accurate contemporaneous records of how any decision was arrived at, who made the decision and on what basis the decision was made. In these circumstances, doctors should also consider making an application to the High Court for a declaration that to carry out the proposed treatment would be lawful. If the recommendations of the Law Commission become statute, then the risk of litigation may be reduced, but doctors will be encouraged to make a wide interpretation of the meaning of mental disorder.

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