



# Ethical and Legal Concepts

# Aims of Session

This session aims to develop your understanding of ethical principles and current law affecting your clinical practice when assessing and offering treatment options to patients or service users with musculoskeletal injuries.



# Objectives

- Develop an understanding of ethical and legal issues that impact your clinical practice when assessing patients with musculoskeletal injuries.
- Develop a wider awareness of the factors that currently shape the law relevant to your clinical practice.
- Understand ethical concepts such as autonomy when obtaining consent.
- Consider the law during patient assessment and decision-making.
- Recognise ethical and legal responsibilities when assessing patients with musculoskeletal injuries.

# Topics To Be Discussed

- Legal v Ethical v Moral responsibilities
- Brief overview of the legal system: Civil v Criminal law
- Mental Capacity Act 2005
- Terminology: Accountability, Confidentiality, Duty of Care, Negligence
- Other relevant topics

# Ethical Principles

- Beneficence
- Non – maleficence
- Justice
- Autonomy

# What is an 'ethical issue'?

- When you have to judge what is right or wrong
- Choosing between options
- Deciding whether to do something or do nothing
- Should I or shouldn't I?
- Weighing up the potential impact of your decisions or actions
- A dilemma – making a difficult choice

# Ethical issues in health care

- We usually think of the 'big' issues  
e.g. definition of life, what is a person, quality of life, prolonging life, ending life, human rights.
- But day to day ethical issues can involve:
  - Respecting people
  - Treating people with dignity
  - Treating people fairly
  - Supporting patient's choices
- These 'principles' are encompassed in the NMC code
- The code is a useful source of ethical principles in health care

# Autonomy

- Respect a person's right to make their own decisions
- Teach people to be able to make their own choices
- Support people in their individual choices
- Do not force or coerce people to do things
- 'Informed Consent' is an important outcome of this principle



# Beneficence (to do good)

- Our actions must aim to 'benefit' people – health, welfare, comfort, well-being, improve a person's potential, improve quality of life
- 'Benefit' should be defined by the person themselves. It's not what we think that is important.
- Act on behalf of 'vulnerable' people to protect their rights
- Prevent harm
- Create a safe and supportive environment
- Help people in crises

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# Justice

- Treating people fairly
- Not favouring some individuals/groups over others
- Acting in a non-discriminatory / non-prejudicial way
- Respect for peoples rights
- Respect for the law

# 4 ethical rules



**Veracity** – truth telling, informed consent, respect for autonomy



**Privacy** – a persons right to remain private, to not disclose information



**Confidentiality** – only sharing private information on a 'need to know basis'



**Fidelity** – loyalty, maintaining the duty to care for all no matter who they are or what they may have done

# Ethics

## 2 broad philosophical theories

- 1) consequentialism – taking the consequences of our actions into consideration
- 2) deontology – basing our actions on a set of principles or duties

# Ethics is About Choosing Actions

- Virtue ethics: Chose actions that are inherently “good” rather than ones that are inherently “bad”.
- Deontological (duty based) ethics: Choose actions that follow an accepted set of rules.
- Consequentialist ethics: Choose actions that lead to desirable outcomes.

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# Why do we need to study Ethics

- Consider the module or pathway you are currently undertaking. What relevance does Ethics have in terms of the client group you will be managing or treating.
- Take a few minutes to look up the following
  1. Bristol Royal Infirmary Inquiry (1984 -1995)
  2. Alder Hey Hospital Inquiry (2001)

These tragedies clearly demonstrate that there is no place for ignorance in healthcare



# Critical Reflection



TAKE 5 MINUTES TO REFLECT ON YOUR OWN BELIEFS, VALUES AND KNOWLEDGE AND UNDERSTANDING OF VARIOUS SITUATIONS AND PERSONAL BEHAVIOUR.



REMEMBER, AS YOU DEVELOP ADVANCED SKILLS WITHIN YOUR CAREER , CONSIDER THE IMPLICATIONS THIS WILL HAVE FOR YOUR OWN PRACTICE.

# Example

A 16year old girl, involved in various community projects, head of various academic groups and showing potential for a promising future is rushed to hospital after multiple injuries from being hit by a car. She needs a heart andlung transplant but there are no suitable donors other than a vagrant drug addict who is being kept alive on a ventilator but who probably only has a few days to live. Without the transplant the girl will die; the vagrant will die in a few days anyway. The transplant team could hasten the death of the vagrant and carry out the transplant without anyone ever knowing. What should they do?

**Act Utilitarian** – *Never approve a general rule that lets hospitals kill patients. Highly negative consequences of public trust being undermined.*

**Rule Utilitarian** – *More difficult to answer. If secrecy of act guaranteed then actions are likely to lead to greater utility.*



# Ethical Scenario

- You have concerns around the clinical practices of a fellow colleague who is also a friend
- How should this situation be handled?

# Criminal

v

# Civil

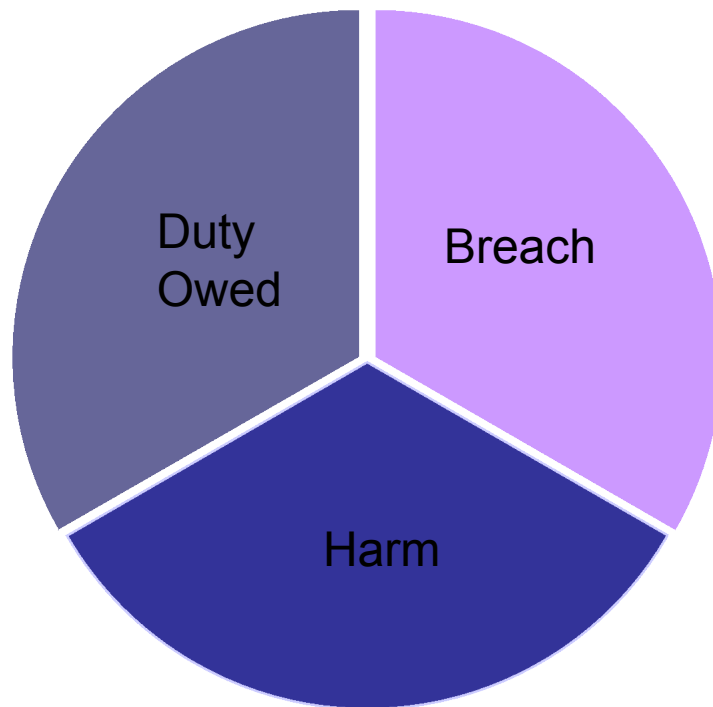
- Public law
- Against the state
- State prosecutes
- Beyond reasonable doubt – 95%
- Guilt
- Punishment
- Private law
- Against the person
- Common law
- Claimant sues
- Balance of probability- 51%
- Liability
- Compensation

To Avoid  
This.....



# Principles Of Negligence

3 criteria must be fulfilled:



# Therefore.... *areas to consider:*

Was there a duty?

Was the duty breached?

Can you prove breach caused harm?

Was the harm of a type to be compensated?

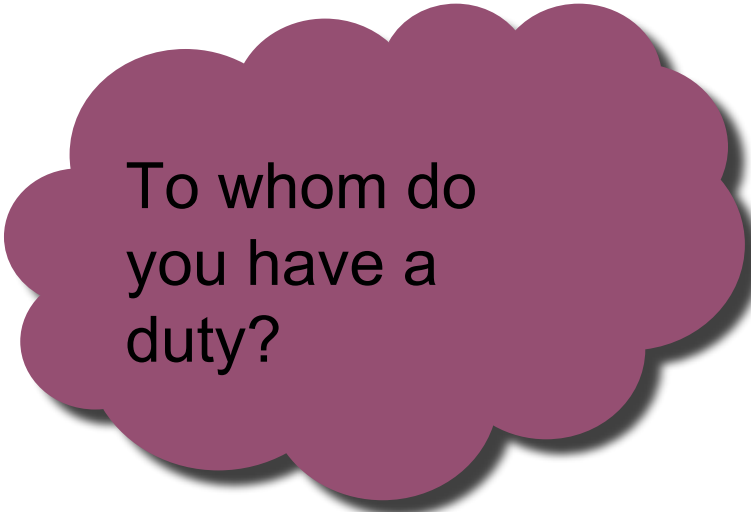
Was the harm foreseeable?

# Duty

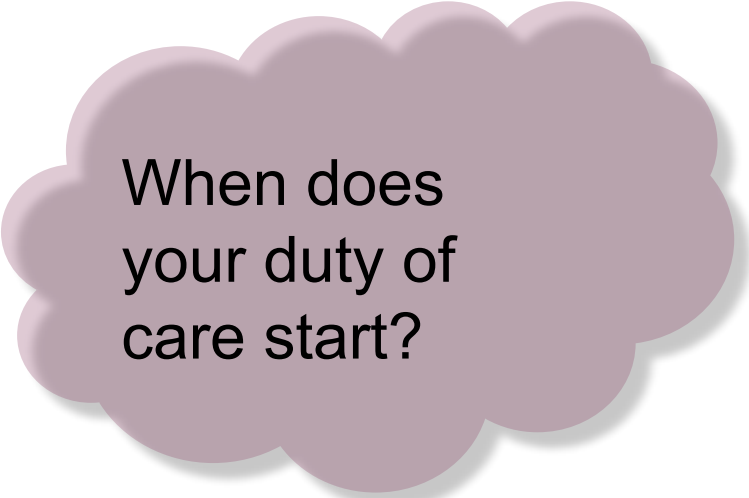
- Duty of care synonymous with the concept of 'undertaking' towards a patient to use best skill and endeavours, and an assumption of responsibility
- 'Undertaking' synonymous with duty to use diligence, care, knowledge, skill and caution in administering treatment







To whom do  
you have a  
duty?

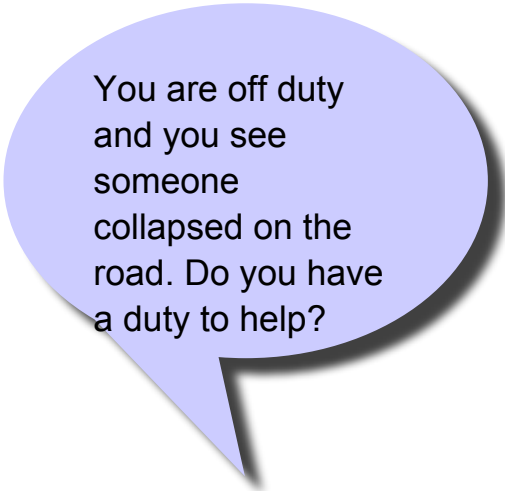


When does  
your duty of  
care start?




And in what  
circumstances?


# Duty Of Care



You are off duty  
and you see  
someone  
collapsed on the  
road. Do you have  
a duty to help?



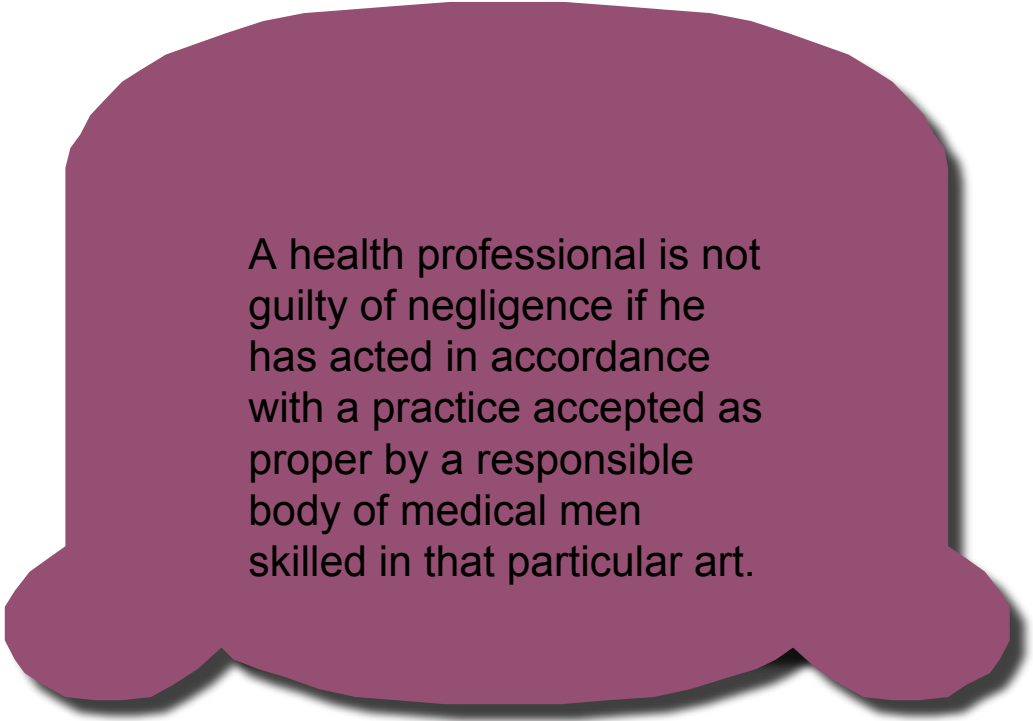
How about if  
you were in  
uniform?



What about being a  
good Samaritan? Can  
you be held  
accountable for doing  
nothing?

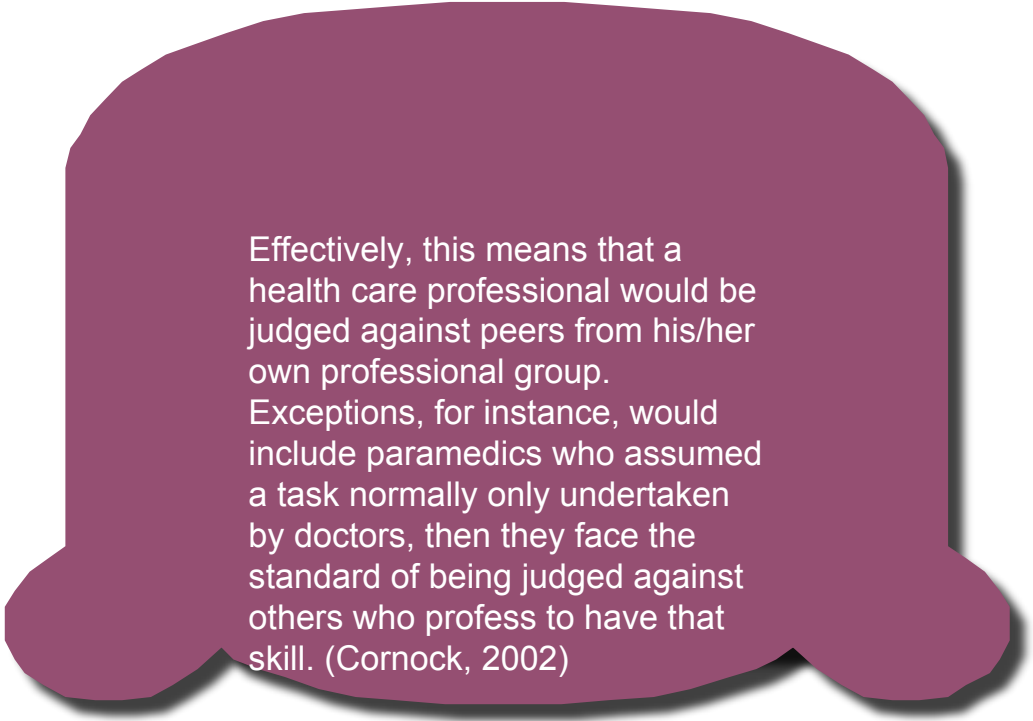


- What is the standard of care expected of you?



A health professional is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.

Bolam v Friern Hospital Management Committee [1957]



Effectively, this means that a health care professional would be judged against peers from his/her own professional group. Exceptions, for instance, would include paramedics who assumed a task normally only undertaken by doctors, then they face the standard of being judged against others who profess to have that skill. (Cornock, 2002)

## Bolam Standard

Duty of care relates not to the individual but to the post which he occupies  
ie. it is related to the skills that are needed for the job, not what skills the individual doing the job can offer.

To be inexperienced is never a defence.

The standard of care required is that of acceptable and current practice at the time of the incident.

# Wilsher v Essex AHA [1986] & [1987] CA

# Negligence

- If the patient claims he has not been sufficiently informed of the risks inherent in the treatment and the alternatives then the practitioner can be liable for negligence

# Breach

- Results from an action or failure to act. Would a reasonable person in that situation have acted in the same way?
- **NOT** a breach if:
  - action supported by responsible body accepted, approved, justifiable practice.
- Justifiable and good reason for not following accepted practice



# Implications for Practice

Know your code and use it to guide practice

Use your documentation to support your defence to negligence claims/complaints

Handle complaints sensitively


Access the relevant guidance – it is expected of you

If in doubt – check (e.g NMC/GMC/HCPC)

# SCENARIO

You are called to a 60 year old COPD patient. His family has become concerned about a recent chest infection and called the GP. On scene you are met by the GP who asks that you attempt to persuade the patient to attend A&E as he is refusing. On examination: RR 36/min and laboured, Pulse 110/min, SpO2 air 89% after oxygen nebulised salbutamol 91%. Temp 36.9. CGS 15/15. You explain to the patient the severity of the illness but he still refuses to attend and asks that you all leave him alone.

Case Scenario : Alan Rice Senior lecturer SGUL



What would you  
do?



HIS SON DEMANDS  
YOU TAKE HIM TO  
HOSPITAL. WHO DO  
YOU LISTEN TO?

# Consent – What is consent?

- The voluntary expression of willingness by a competent adult to accept treatment from doctors and nurses and other health professionals.
- Every adult has the right and capacity to decide whether or not he will accept medical treatment, even if a refusal may risk permanent injury to health.
- NO person can consent for another adult
  - No Relative
  - No Doctor
- See Department of Health Guidelines

# Battery

- Battery is non consensual touching – it does not have to harm the patient.
- A practitioner can commit battery even if they think they are acting in the best interests of the patient!
- Mohr v Williams(1905)
- Cull v Royal Surrey CountyHospital(1981)
- Devi v West Midlands (1981)

- Best interests is that the medical intervention must be therapeutic.
- Art 3 HR (...prohibits inhuman or degrading treatment)
- Art 7 HR (Right to liberty and life.....).Can parents really refuse life saving treatment for children.
- Case Histories
  - Re A
  - Re Y
  - Re W(1992) 9 BMLR 22, [1993] Fam 64

Best Interests

# Capacity

- Capacity is treatment specific as a patient can have capacity to consent to one procedure but not to another.
- Capacity can fluctuate
- What are the requirements to prove competence?
- Able to understand the information relevant to the decision
  - Able to retain the information
  - Able to weigh the information
  - Able to make a decision based on the information given
- Re C test
- Mental Health Capacity Act
- Gillick Competence and Fraser Guidelines

Doctrine of necessity:

treatment must be immediate and life-saving

*(Marshall v Curry [1933])*



Re C (Adult: refusal of treatment)  
[1994] 1 WLR 290

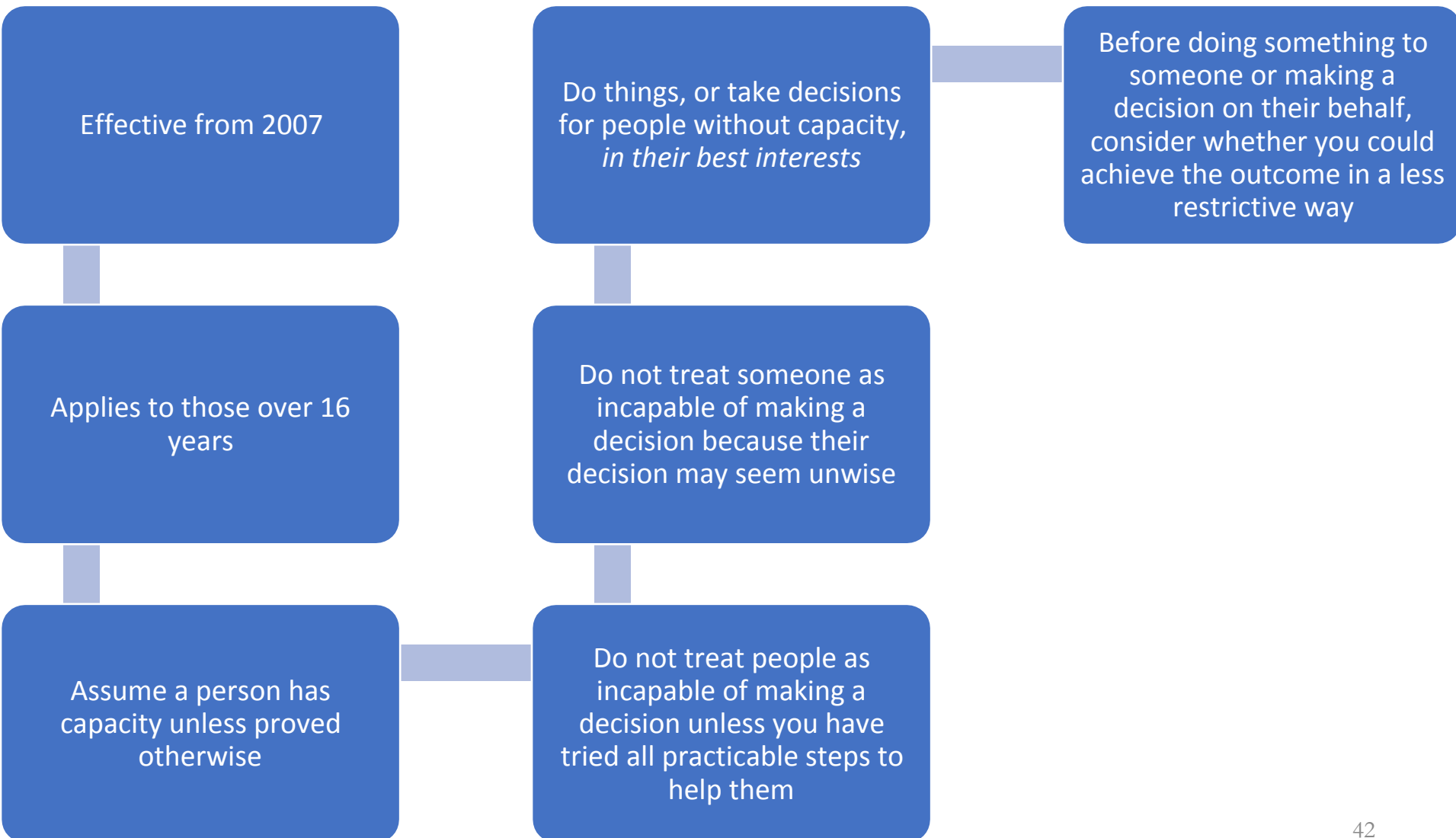
**3 stages to decision:**

To comprehend and retain  
treatment information

To believe it

To weigh that information,  
balancing risks and  
benefits.

# Mental Capacity Act 2005



You are leaving the house when the neighbour, a very kindly old lady asks after the patient. How much information do you give her?

The patients daughter who lives far away and is visiting, ask's about the patients condition. How much information do you give her?

Case Scenario : Alan Rice Senior lecturer SGUL

# Patient Confidentiality And Privacy

- “Medical information about a patient will not be shared with a third party without consent, statute, or court order
- Not all information is protected
- Defamation
  - *“Communication of false information knowing the information to be false or with reckless disregard of whether it is true or false”*
  - Slander
  - Libel
- Protected Classes/Diseases

# Confidentiality

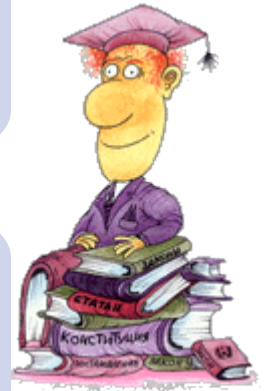
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Ref: NMC Guidelines for records and record keeping (2005)



‘record keeping is an integral part of nursing and midwifery practice. It is a tool of professional practice and one that should help the care process. It is not separate from this process and it is not an optional extra to be fitted in if circumstances allow’.



# Scenario

Ray 14yrs old attends the clinic and says he thinks he may have acquired a sexually transmitted infection. He has come on his own and does not want to let parents know. He is very reluctant to discuss his sexual history. He states he will take the necessary treatment and is happy to come back for follow up but still refuses to inform parents.

# Discussion

- What are the legal implications in this situation?
- How would you address these.
- Is there a duty to inform his parents?
- Anyone else.
- What would you consider are Ray's best interests?



# Children

- Neonatal under 16 yrs
- Adolescents on the borderline of capacity
- 16 yrs

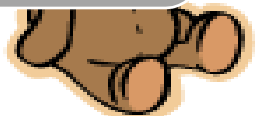
# Statutory Regulation Relating To Children

Family Law Reform Act 1969

Children Act 1989

Mental Health Act 1983

Human Rights Act 1998



- The welfare of the child is the paramount consideration in court proceedings
- Children should be kept informed about what happens to them & should participate when decisions are made about their future
- Parents continue to have parental responsibility for their children, even when their children no longer live with them. They should be kept informed about their children and participate when decisions are made about their children's future
- Mature children have the right to bring an application to court
- A number of people could hold parental responsibility for a child (s2); each one could act alone in meeting responsibilities (s3)
- S43 - first statutory right to refuse psychiatric or medical assessment, if of sufficient understanding (consent to treatment omitted)

## Children Act 1989 Main principles:

# Gillick Ruling

Children under 16 who have sufficient understanding and intelligence will have the capacity to consent.

*The central issue was not whether a child could refuse medical treatment if the parents or court consented, but whether the parents could effectively impose a veto on treatment by failing or refusing to consent to treatment to which the child might consent*

1. Gillick v West Norfolk & Wisbech Area Health Authority & Department of Health & Social Security

2. Sue Axon v Secretary of State for Health & Family Planning Association.

# Fraser Guidelines

- The doctor will be justified in proceeding without the parents' consent or even knowledge provided he is satisfied on the following: that-
- The girl (though under 16 yrs) will understand his advice
- He cannot persuade her to inform her parents or to allow him to inform the parents
- She is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment
- Unless she receives contraceptive advice or treatment her physical or mental health or both are unlikely to suffer
- Her best interests require him to give her contraceptive advice, treatment or both without the parental consent

# Gillick Competence

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- 1. Gillick v West Norfolk & Wisbech Area Health Authority & Department of Health & Social Security
- 2. Sue Axon v Secretary of State for Health & Family Planning Association.

# Refusal by a competent child

If the child is 16-18 or is under 16 but 'Fraser Competent' their decline to treatment can be overruled.

Power to overrule can be given to any one parent or person with parental responsibility or to the court.

This can only occur if shown that treatment is in child's best interest.

Re W ( A minor) Medical Treatment: Medical Treatmet)[1992] 3 WLR 758

South Glamorgan City Council v W & B [1993] 3 WLR 758

Re S ( A Minor) Medical Treatment)[1994] 2 FLR 1065

# Can Parents Refuse Treatment

Yes, e.g immunisations etc. If both parents agree with decision to refuse, they have that discretion.

No, if their course of action is against the child's best interest. If the decision might harm the child (e.g. sterilisation, refusing blood transfusion). Doctors can then seek medical approval from the court.

E.g. *Re O (A Minor) (Medical treatment)* [1993] 2 FLR 149

*Re R (A Minor) (Blood Transfusion)* [1993] 2 FLR 757

*Re J (Child's Upbringing and Circumcision)* (1999) 52 BMLR 82



# Issues Requiring Mandatory Reporting

- Domestic violence
- Child & Elder abuse
- Criminal Acts
- GSW, Stabbing & Assault
- Animal Bites
- Communicable Diseases
- Out of hospital deaths
- Possession of Controlled Substances

# INTERACTION WITH POLICE

- Crime Scenes
  - Request law enforcement
  - Await law enforcement arrival if possible
  - Minimize areas of travel and contact with scene
  - Document any alterations to the scene Minimize personnel within scene if possible
  - Document pertinent observations

# Crime Scenes – Preserving Evidence

- Avoid cutting through penetrations in the clothing
- Save everything – clothing of assault victim, items found on person, etc
- Prevent sexual assault victim from washing
- Follow sound chain of evidence procedures

# Instructor Liability

- Student discrimination
- Sexual harassment
- Student injury during laboratory
- Patient claim re. Failure to properly train graduate or supervise student
- Instructors – Follow curriculum, document student attendance & competency

# Defenses

- Good Samaritan Law ... ????
- Vicarious Liability
- Government Immunity
- Statue of Limitations
- Contributory Negligence

# Journals and Internet Databases

- **JOURNALS:**

- Clinical Ethics
- Journal of Law, Medicine and Ethics
- Journal of Law, Healthcare and Ethics
- Journal of Law and Ethics
- Medical Law and Ethics
- Medical law Review Journal
- Journal of Moral Education
- Nursing Ethics
- 

- **INTERNET RESOURCES/ DATABASES:**

- Bioethics.net<http://bioethics.net/>  
Genetic Science Learning [http://gslc.genetics.utah.edu/Citizen science project](http://gslc.genetics.utah.edu/Citizen%20science%20project)  
at Ex<http://www.at-bristol.org.uk/cz/Default.htm>

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