Wednesday July 23rd 2014: Mental Capacity Act and Deprivation of Liberty Safeguards Workshop

Case 1: Consideration of complexities of Mental Capacity Act (vs. Mental Health Act)

Case discussion and helpful information/signposting

Case 2: Consideration of the use of Deprivation of Liberty Safeguards in nursing home scenario

Update and the difficulties involved in DoLS. What to consider as a GP

Case 1:

80 year old patient; Mrs. N, residing in a local nursing home.

Patient with a known diagnosis historically of depression with psychosis (historically, episodes of low mood accompanied by weight loss and apathy ++, alongside rather marked paranoia). No major physical health problems of note; occasional UTIs.

Recent presentation of 'withdrawal', patient has taken to bed, with very poor oral intake, weight loss and apparent low mood (although much less communicative, therefore difficult to assess).

Staff at home (as patient has no family, only distant LPoA) are very keen that she stays there, and keen to support her at home. She has expressed that she does NOT want to go to hospital.

Best Interest Meeting undertaken; plan to support patient at home, as physical state reasonable.

Several weeks later, both GP and Psychiatrist called as staff concerned that patient dehydrated and not eating and drinking for three full days. Looks unwell.

On review, very dehydrated, poorly communicative, and refusing to go to hospital.

For consideration:

*What next?

*What legal power is appropriate?

* Considering Hospital admission?

* Mental Capacity Act vs. Mental Health Act?

Mental Capacity Act:

Key Principles of Capacity:

*A person must be assumed to have capacity unless it is established that he lacks capacity.

*A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

*A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

*An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

*Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Assessment of Capacity:

Functional test of Capacity: A person is unable to make a decision for themselves if they are unable to understand information OR retaining that information OR use or weigh that information as part of the decision making process OR communicate their decision.

A really helpful guide: http://www.39essex.com/docs/newsletters/capacityassessmentsguide31mar14.pdf

For those LACKING Capacity: Safeguards

*Best Interest Decisions can be made (least restrictive principle, with consideration of the previous (capacitous) expressions of the person).

*Lasting Power of Attorney can be allocated to make decisions about a person's welfare or finances and property, IF the decision to allocate the LPOA was made with capacity.

*Appointment of Deputies (powers of the Court of Protection)

*Independent Mental Capacity Advocates (IMCA)

*Deprivation of Liberty Safeguards (see below)

Mental Capacity Act vs. Mental Health Act

The Mental Health Act can be used for compulsory admission to hospital for the treatment or assessment of a known or suspected mental health condition, including dementia. Capacitous patients can be detained under the MHA. Assessment and treatment OF the mental health disorder specifically.

Useful Information:

RCPsych leaflet for patients:
http://www.rcpsych.ac.uk/healthadvice/problemsdisorders/mentalcapacityandthelaw.aspx

Assessing the Mental Health needs of Older People:
http://www.scie.org.uk/publications/guides/guide03/law/capacity.asp

MCA, Government guidelines: http://www.legislation.gov.uk/ukpga/2005/9/contents

MHA, Government guidelines: http://www.legislation.gov.uk/ukpga/2007/12/section/8

Patient.co.uk information (useful for reference): http://www.patient.co.uk/doctor/consent-to-treatment-mental-capacity-and-mental-health-legislation

Key Issues to consider: It is not a straightforward area! Work with local psychiatry teams in decision making

Consider: Is the patient capacitous? Does the patient have a known mental disorder? Is there a suspicion of a mental disorder? (If yes) Does this disorder require treatment? And is the patient refusing treatment?

Considering Deprivation of Liberty Safeguards

CASE 2:

Mrs. T, 91 year old female patient, diagnosis of Alzheimer's Dementia and depression

Nursing home resident for 5 + years

Family are supportive, visiting regularly and happy with patient's placement.

On review (Psychiatry team); patient recently discharged from hospital following surgical intervention on fractured neck of femur. Weight loss and further disorientation noted in and since discharge from hospital. Nursing staff report that patient is more 'sociable' since discharge (wants to spend time in patient lounge with others).

Patient pleasant and co-operative on review, although marked disorientation and confusion. Reassurance required as patient keen to go back to patient lounge, and she becomes anxious.

When asked directly, patient said that she did not know where she was, and that she 'wanted to go home'.

For consideration:

* If so, why?

*Is this case DoLS appropriate?

*If not, why not?

DoLS: An update (In a nutshell!)

*Deprivation of Liberty Safeguards introduced in 2007, part of the MCA, following the case of HL vs. UK 2004.

*Aim of DoLS was to make sure that people lacking capacity, in a state funded placement, are looked after in a way that does not restrict their freedom, or deprive their liberty, and with consideration of the BEST INTERESTS of that person.

*Initial DoLS guidelines were deemed to be 'confusing and leading to fewer people having regular independent reviews' (Matthias Meuller, Family Law news March 2014).

*Recent Supreme Court judgements based on 2 cases (P vs. Cheshire West in particular) have CHANGED the approach to DOLS.

Now

*Consider whether the patient has capacity (Does the MCA 2005 apply?)

*If the patient *lacks* capacity: The 'Acid Test'

1. Are they under constant control and supervision?

2. If they wanted to leave their home, could they? Are they free to leave?

*** If yes to 1. And no to 2. Consideration of DoLS IS appropriate.**

***NOT relevant to the test are: patient's compliance or lack of objection, relative normalcy of the placement, reason behind a particular placement.**

So...

*The guidance is intended to make use of DoLS more simple for social and healthcare staff.

*There are a number of issues:

What is constant control and supervision?

What is meant by FREE to leave? (alone? With support?)

*New guidance has already led to a sharp rise in referrals to the Local Authorities nationwide for DoLS assessments.

*DoLS assessments require application from the care home/hospital setting, followed by assessments undertaken by at least two assessors; a best interests assessor, and a mental health assessor (appointed by the supervisory body).

'Care providers don't have to be experts about what is and is not a deprivation of liberty. They just need to know when a person might be deprived of their liberty and take action'

(Social Care Institute for Excellence, At a Glance 43 (22/07/2014))

Useful Information:

Update guidelines:
http://www.39essex.com/docs/newsletters/deprivation_of_liberty_after_cheshire_west_-_a_guide_for_front-line_staff.pdf

Details of the supreme court rulings:
http://www.familylaw.co.uk/news_and_comment/supreme-court-hands-down-judgment-in-cheshire-west?

Alzheimer's Society DoLS Factsheet:
http://www.alzheimers.org.uk/site/scripts/download_info.php?fileID=1830

SCIE 'At a Glance 43: DoLS

http://www.scie.org.uk/publications/ataglance/ataglance43.asp