

MIDNIGHT LAW: SCOTLAND



Guidance for the care of patients with a suspected mental health disorder, who refuse emergency life-saving treatment

PLEASE NOTE: Guidance does not apply for England, Wales & N Ireland

SITUATION

Managing patients who present to hospital with self-harm including overdose, who require life-saving medical treatment and who refuse care, due to an underlying mental health condition (suspected, or confirmed).

SCOPE

This may cover patients with a formal diagnosis of personality disorder (ICD-10 code F60), but can also be used to guide the care of patients with PD traits and no formal diagnosis at time of intervention.

STEPS TO CONSIDER

1. Is there an immediate threat to life i.e. airway compromise, catastrophic bleeding, evidence of clinically significant overdose (as per Toxbase/senior clinician opinion)?
 - In this circumstance, use of common law powers appropriate for ongoing care.
 - Statutory authority not required in this specific circumstance.
2. Have you formally established the patient lacks capacity?
 - An adult (i.e. >16 years old) must be assumed to have capacity and make decisions regarding their care, unless it is formally established that he lacks capacity (as per Part 1, Section 6, Adults with Incapacity Act (Scotland) 2000).
 - It is our duty to consider if there are other reasons the patient lacks capacity (e.g. intoxication, traumatic brain injury, mental health disorder).
3. Does a crisis care plan exist for the patient?
 - This may detail steps to be taken or specific personnel that should be involved during crisis hospital presentations, especially where high stakes decision making is required such as OD presentation requiring treatment.

OPTIONS FOR MANAGEMENT

1. Emergency Treatment at Common Law
 - Where there is clear threat to life, it would be reasonable to utilise common law powers in an emergency, even if there was evidence the patient could not give consent or expressed a wish that they would not want to be treated.
2. Use of Adults with Incapacity Act (AWIA)
 - This can provide authority for treatment and all types of care when an adult lacks capacity to consent. It is occasionally used in circumstances when an individual has self-harmed. If the adult is assessed to lack the capacity to provide valid consent to medical treatment, they may be treated under the AWIA with the authority of a section 47 certificate and Annex 5 treatment plan. This can authorise treatment and to cover physical ailments and pre-existing mental health disorder.
 - Treatment under AWIA does not allow for ongoing detention, or ongoing use of force or restraint and/or deprivation of liberty.
3. Emergency Detention under the Mental Health Act.
 - Main indication is where:
 - intervention required which cannot be authorised under AWIA
 - requirement to detain in hospital for treatment of mental disorder.
 - The 5 criteria must be met for use of this act and requires a registered medical practitioner (FY2 or above) to complete.

KEY POINTS

- Consider early discussion with duty mental health team.
- It is important clinicians document their findings clearly including supporting examples which may be helpful to illustrate observed difficulties.

GUIDING PRINCIPLES

1. The medical practitioner must consider it likely that the patient has a mental disorder; and because of that mental disorder, the patient's decision-making ability regarding medical treatment for that mental disorder is significantly impaired.
2. All practicable steps to support the patient in making a capacitous decision should be undertaken. This includes exploring/alleviating potential factors which may be contributing to their refusal decision, e.g. fear, anxiety, environment, misinformation.
3. The practitioner must also be satisfied that: it is necessary as a matter of urgency to detain the patient in hospital in order to determine what medical treatment should be provided to the patient for the suspected mental disorder; there would be a significant risk to the health, safety or welfare of the patient or to the safety of another person if the patient were not detained in hospital; and making arrangements with a view to granting a short-term detention certificate would involve undesirable delay.

KNOW THE LAW

1. Adults with Incapacity (Scotland) Act 2000
2. The Mental Health (Scotland) Act 2003

FURTHER READING

1. The Mental Health Act in General Hospitals. Good Practice Guide Aug 2016. www.legislation.gov.uk
2. The Adults with Incapacity Act in General Hospitals and care homes. Good practice Guide, March 2017.