Law & Ethics

WORKSHEET

Page 2

Question:
What measures does your trust/hospital have in place to ensure that we 'do no harm?'

In the absence or impracticably of pre-operative visiting we are almost entirely dependent on pre-operative patient care documentation. At best this can provide us with information that allows us to address our patient's needs as part of a wider patient group.

Stop and Think:
Could there be a danger that this could lead to stereotyping?

Page 3

Question:
What do you understand by the terms 'Accountability' and 'Responsibility'?

Page 4

Question:
How might our ethical responsibilities according to our code of conduct conflict with our legal responsibilities?

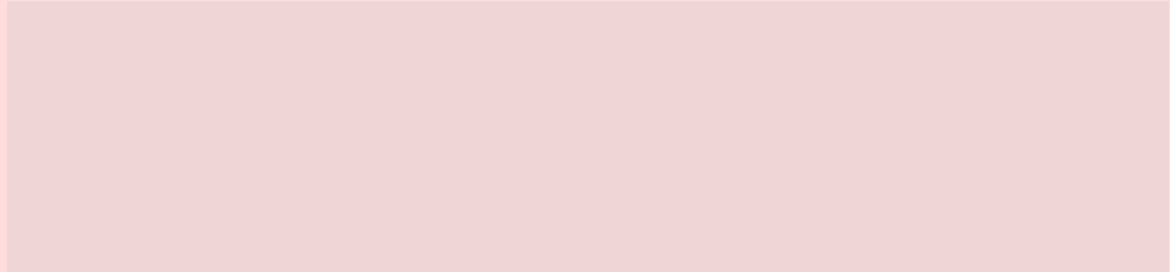
Page 6

Stop and Think:

Capacity to Consent?

- An unconscious patient is admitted as an emergency laparotomy via A&E.
- An elderly gentleman is admitted for a hemi-arthroplasty following a fall at home. He was discovered 2 days after the fall by a neighbour and seems confused.

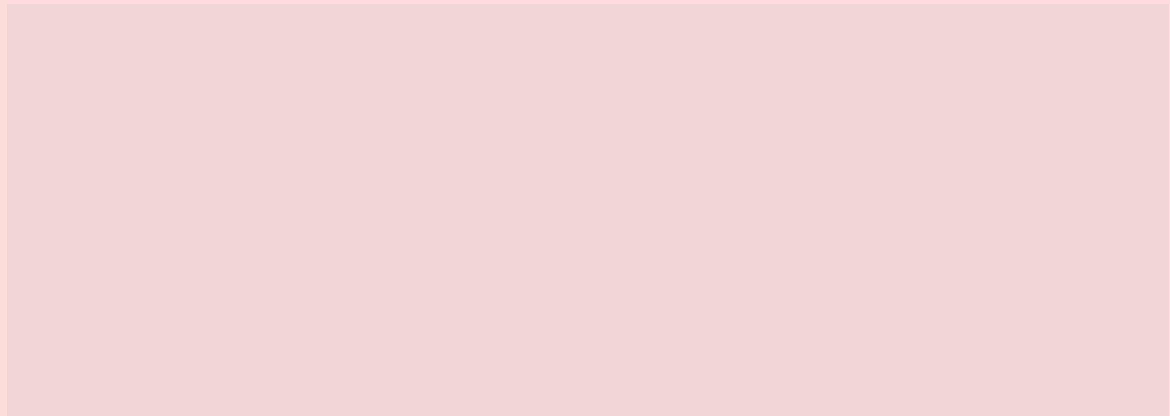
Take a look at these 2 examples - neither of these patients appear to have capacity however there is a subtle difference between them...consider the Mental Capacity Act (2005).



Stop and Think:

A minor may give consent to treatment if they demonstrate they sufficiently understand the risks and benefits...

- A minor can not refuse consent however...what questions does this raise?



Page 7

Stop and Think: Capacity to Consent?

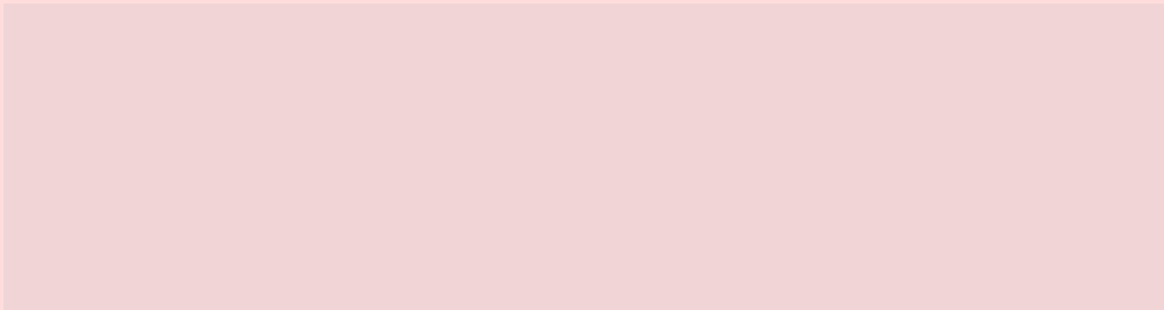
- An unconscious patient is admitted as an emergency laparotomy via A&E.
- An elderly gentleman is admitted for a hemi-arthroplasty following a fall at home. He was discovered 2 days after the fall by a neighbour and seems confused.

Page 8

An ethical approach may even conflict with law in some instances or, in other circumstances mean that we may consider working outside of procedural guidelines or policy to achieve the best possible outcome.

Stop and Think: Is this an option?

Everything we do is a matter of choice. Take another look at your code of conduct. What does it say about providing quality care?



Page 10

4 ethical Principles:

Stop and Think: The confused patient...

Consider a patient who appears confused from the point of view of the moral principles outline above. Is there any conflict here?

Page 11

Stop and Think: Advocacy...is it realistic

Given that we have approximately 5 minutes to get to know our patients' wishes ...can we claim to be truly effective advocates?

Question:
Advocacy...

It is very easy to state that we are **advocating** for the patient - but how is this advocacy enacted?

- What would you actually **do as an advocate**?

Scenario 1: **KIRSTY**

Kirsty is twenty years old, has chronic renal failure and currently has dialysis twice a week. She already has had two kidney transplants in the past, which have failed and have left her with very bad hypertrophic scarring on her abdomen. Kirsty is still on the waiting list for new transplant.

She lives with her mother and does not know her father as he left when she was very young. Therefore Kirsty and her mother are very close and she relies heavily on her mum. A donor kidney becomes available and Kirsty is called to the hospital for her third kidney transplant. Her mum is excited and tries to encourage Kirsty by telling her "third time lucky". Kirsty does not seem to share the enthusiasm and in fact is quite withdrawn because she is very much aware that this may not be successful and that she will have to go through so much including more scarring and possibly achieve very little as a result.

Kirsty and her mum arrive at the hospital and are met by the surgeon who after discussing the surgery asks Kirsty to sign her consent form. Kirsty signs the consent form but still remains very quiet and withdrawn. The surgeon tells Kirsty and her mum that he will see them both in theatre.

The theatre sends for Kirsty and she arrives in the anaesthetic room with her mum. Mum insists on coming to theatre with Kirsty. Mike the ODP greets Kirsty and her mum and proceeds to check Kirsty's details. Mum answers all of Mike's questions and Kirsty remains quite subdued. The

surgeon at this time enters the anaesthetic room and discusses with mum that Kirsty will be going to HDU as there are staffing problems on the ward. Mike asks Kirsty if she is all right and she proceeds to cry and tells Mike that she does not want to go through with the transplant.

Mike tries to reassure her and explains that he will speak to the anaesthetist. The anaesthetist arrives in the anaesthetic room and Mike proceeds to tell him what Kirsty has disclosed.

Kirsty's mum hears this and becomes furious with Kirsty telling her not to be so silly. Kirsty is very upset by this time and is adamant that she does not want the kidney transplant. The surgeon tries to console Kirsty but to no avail and then tells her that she needs to make a decision now as there are emergency cases piling up which need to be done and he is being pressurised by the other surgeons. Kirsty is so distressed and inconsolable and Mike tries to comfort her. The anaesthetist steps in and insists that Kirsty be given some time to consider her decision by going back to the ward.

PORTFOLIO 2:

Reflect on this, and the following 2 scenarios using the leading questions on the next page…this will provide you with evidence for skills sections: 4.2, 4.6, 4.7, 4.8, 4.9.

Stop and Think:

- Why has Kirsty withdrawn her consent?
- Who can consent for this operation?
- Is Kirsty able to withdraw her consent having signed the consent form?
- Can someone else consent for Kirsty?
- Does Kirsty lack the capacity to consent?
- How would **you** act as **advocate** for Kirsty?

Scenario 2: **MRS LLOYD**

Mrs Sarah Lloyd is a 38 year old married woman with 2 children, 1 boy aged 13 and a 7 year old daughter. She is employed as a Personal Assistant to the Business Manager of a large Public Relations Consultancy firm and travels with him extensively throughout Europe and America. She regularly assists him in organising the hospitality for multinational meetings.

Mrs Lloyd visited her GP for her annual check-up. The GP found a lump in her left breast on routine examination. Her Mother and Aunt had died from breast cancer, so her GP referred her to the Consultant Breast Surgeon at the local hospital, who then arranged for her to be admitted for a breast biopsy.

You meet Mrs Lloyd for the first time when she attends theatre for her surgery. The biopsy was taken and the Surgeon commented that it looked malignant and if so Mrs Lloyd would need further surgery, probably a mastectomy and axillary clearance with reconstructive surgery at a later date. The Surgeon requested for the biopsy to be reported on urgently and arranged to see Mrs Lloyd in the clinic later the same week with her husband.

The histology report confirmed the diagnosis and the patient was advised that due to her family history of breast cancer a mastectomy would be the best treatment. The surgical procedure and the postoperative care were explained to Mrs Lloyd and she appeared positive that she was going to have the surgery and beat cancer.

The patient returned home and was readmitted 4 days later and was visited by the breast care nurse who informed her about the prosthesis she would wear post operatively until reconstruction surgery could be performed.

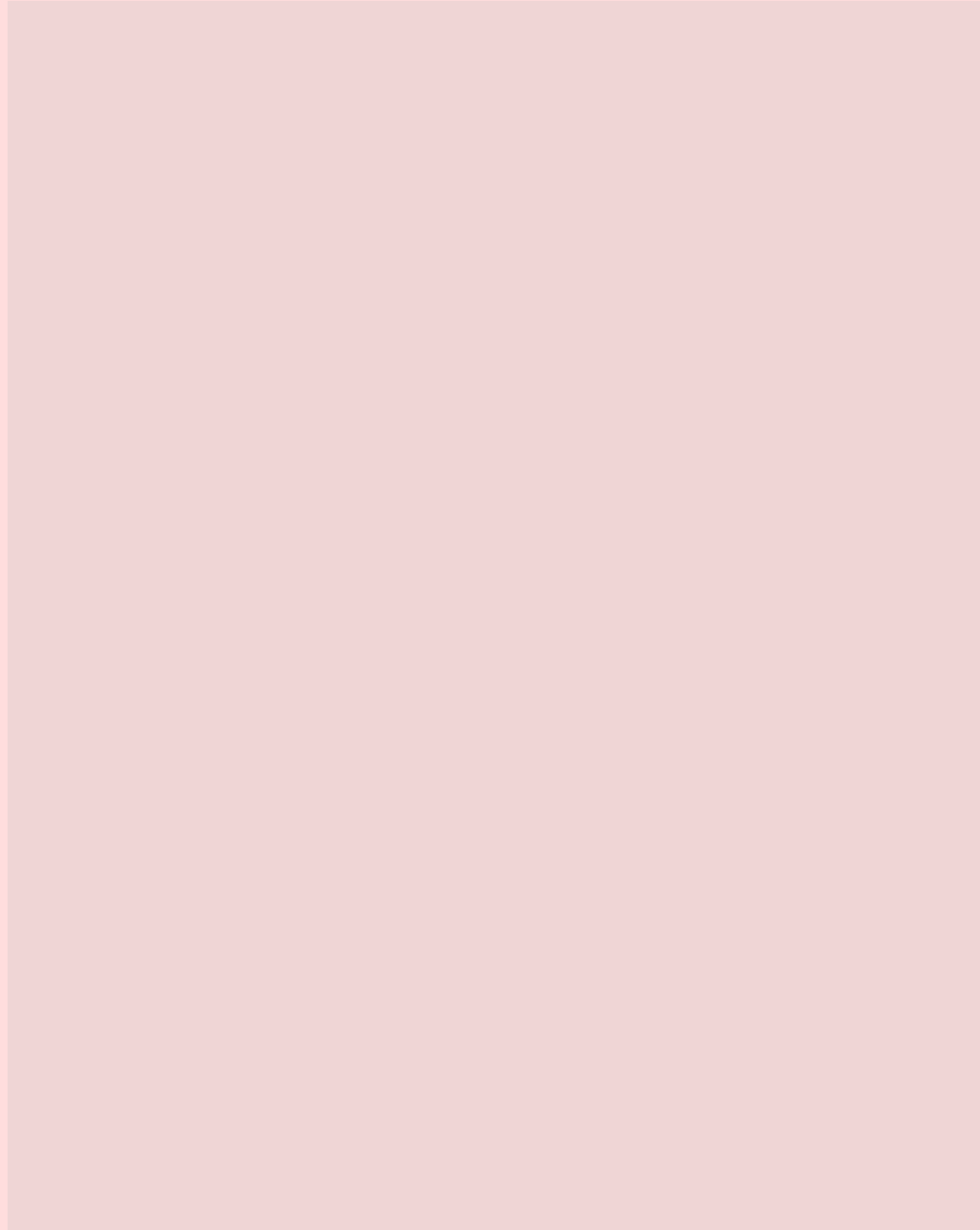
Routine ECG, chest x-ray and blood results were all within normal limits and she was passed fit to undergo surgery. Mrs Lloyd's surgery was to be performed as an urgent case on the morning operating list. All her details were checked in the reception area and she appeared to be coping well. Mrs Lloyd was then taken to the Anaesthetic room and she then informed the Anaesthetist and the Surgeon that she withdrew her consent for the operation. The Surgeon took time to try and convince the patient that this was a life threatening condition and a lot of resources had been set aside to fit her in at short notice. Mrs Lloyd would not be persuaded so she returned to the ward.

She was visited later by the Surgeon on the ward but still withdrew her consent for the operation and therefore discharged herself from hospital. The reason she gave was that she could not cope with a mastectomy and it would not be a cure anyway. Her Mother and Aunt had both undergone radical surgery and chemotherapy, which she nursed them through and she was not going to put her family through that trauma. Her husband was not present during this discussion.

18 months later the Surgeon informs you that he has to attend a Court Hearing as he is being sued for medical negligence. Mrs Lloyd had died and her husband has found out that 2 doctors could have consented for the operation, as she was obviously not in the right frame of mind to choose for herself. The theatre team are asked to be present at the hearing and may need to give evidence about Mrs Lloyd's care in the theatre.

Stop and Think:

- Can 2 doctors consent for a patient who has withdrawn consent?
- How could Mrs Lloyd's capacity to consent be assessed?
- What is negligence?
- How would **you** act as **advocate** for Mrs. Lloyd?
- How does the term ‘The Patient’ sound as you read it in this scenario?



Scenario 3: **ALBERT**

You are working as the circulating practitioner one Saturday morning. Your first patient is Albert Meakin, a 76 year old gentleman who is listed for a Hemi-arthroplasty for #®NOF. The anaesthetist, Dr. Chowdry arrives and informs you that Albert was discovered by a neighbour 2 days after having a fall in his flat. He is not very communicative and 'keeps himself to himself'. Dr. Chowdry has discussed the anaesthetic with Albert and agreed to perform a spinal with sedation.

When Albert is brought from the ward a few minutes later, you perform the usual check-in procedure and everything appears in order until you ask Albert what procedure he will be having. At this point he becomes a bit vague and seems unsure as to why he is being brought to theatre. He has signed the consent form himself. You seek advice from Dr. Chowdry as to Albert's ability to give consent and he assures you that Albert seemed to have capacity when he spoke to him on the ward. He does take your concerns on board however and checks with the surgeon, Dr. White who confirms this was also the case when she saw Albert. They agree with you that Albert does appear confused but feel that this is understandable in view of pain relief and dehydration. Both doctors agree to proceed in Albert's 'best interests'. They record this on the consent form and in the notes.

The operation proceeds without incident and Albert is returned to the ward.

6 Weeks later your manager calls you to one side and asks you for an account of what happened. You explain the circumstances and she informs you that, although nothing went wrong during surgery, Albert's son is lodging a complaint against the trust for performing surgery without proper attention to the consent process. He claims that Albert has insufficient capacity to consent and to be acting on Albert's behalf with 'powers of attorney'.

Stop and Think:

- •Is Albert's consent still valid if he was able to understand the implications earlier, whilst on the ward?
- •What should we do in the case of 'fluctuating capacity'?
- •What is Power of Attorney?
- •In what way would **you** act as **advocate** to Albert?