The College

Confidentiality

Current concerns of child and adolescent psychiatric teams

This document, by a sub-group of the Child and Adolescent Psychiatry Specialist Section Executive Committee, attempts to cover current concerns under several headings. These are:

(i) The right of an NHS patient to confidentiality.
(ii) The right of a medically qualified member of a multidisciplinary team to maintain patient confidentiality.
(iii) The right of a patient to access to information about himself as recorded by medical members of multidisciplinary teams.

Introduction

Child psychiatric teams may include, in addition to NHS employees, social workers employed by Departments of Social Services, educational psychologists and teachers employed by local authorities and additionally they may work conjointly, on specific cases, with probation officers employed by the Home Office, Guardians ad Litem, children's solicitors, etc. They may also be asked to provide expert evidence in Courts of Law.

Besides working in NHS bases such as health centres and hospitals, child and adolescent psychiatrists work in local education authority clinics and may contribute, individually or as members of multidisciplinary teams, to work in prisons or remand centres, secure units, assessment centres, children's homes and schools. They may be asked to contribute to the work of District handicap teams, teams specialising in child protection, adoption and fostering services and Divorce Court Welfare Conciliation Services. Information is sensitive and might be obtained from third parties.

Child clients

The client may be a child under the age of 16 years, a young person over 16 years of age who is a legal minor but able, within the terms of the Family Law Reform Act (England and Wales) 1969 Section 8, to give consent to medical treatment as though he had reached the age of full majority, or a parent or guardian of such a child. When a child is in the care of a local authority a social worker may, as its agent, act as guardian so far as consent is concerned. Information may be requested about such clients or consent to treatment may be requested. It is good practice to obtain the consent of a parent or guardian for any medical treatment of a young person under 16 years of age and, according to the child's age and understanding, also to obtain his consent.

Young people over 16 years of age can consent to their own treatment and, as far as possible, consent should also be sought for the active involvement of their parents and guardians. The rights of other members of family groups such as siblings and grandparents, co-habitees, step-parents, divorced non-custodial parents, etc., are less clear and should be a matter of careful evaluation at the time of professional assessment.

Confidentiality may be over-ruled where any child is considered to be or have been at risk of abuse. Standard child abuse procedures apply under such circumstances and all workers must recognise that responsibility to follow DHSS guidelines on child abuse.

Multidisciplinary teams: record keeping

Problems arise where some members of multidisciplinary teams are not employees of the National Health Service and where NHS employees work in non-NHS settings. The DHSS takes the view that, irrespective of the premises in which he works, the notes made by a health professional (that is a person employed by a health authority, doctor, clinical psychologist, child psychotherapist, etc.) are the property of the health authority and hence ultimately of the Secretary of State. Access to these notes, therefore, is identical with access to hospital records.

Where there is a component from a health professional to notes made by employees of the local authority, social workers, education psychologists, teachers, etc., permission must be obtained from the relevant health professional before information is released. If this is not forthcoming, the information must be removed from the record before access is permitted. Thus the situation seems clear as far as written notes are concerned. What is more difficult is that, for effective multidisciplinary team working, confidential information obtained by health professionals must be shared with social workers and educationists. It is essential that methods be found to ensure that such information is not disseminated without the consent of the health professional concerned and, where appropriate, the patient and/or parent or guardian.

In some areas, the employers of non-health professionals (e.g. social workers) demand, as a matter of policy, that all client/patient information obtained by their employees is made available to the local Authority. In some cases, this is computerised. It is acceptable to the General Medical Council (GMC) that information be shared with Health

Service based members of a multidisciplinary team. Good practice often requires similar sharing of information with teachers and social workers who are members of such teams but who have managers employed outside the Health Service. At present there appears to be no satisfactory solution to resultant potential breaches of confidentiality, apart from attempts to negotiate with individual local authorities. A draft DHSS document (1986) *Confidentiality of Social Services Records* does not deal with this issue.

Theoretically, it would be possible to inform all patients or their parents of this situation when social workers or teachers are involved and to obtain their consent to the disclosure of information to managers and its storage on local authority premises, but the difficulties that this would involve make this quite inappropriate in many cases, particularly with reference to the possibility of future treatment of child patients.

It is recognised that managers require appropriate data for the effective auditing of their employees' time. However, case loads may be monitored, supervision offered (for example by named managers who accept GMC guidelines on medical confidentiality), teaching commitments evaluated and research undertaken without any loss of rights by individual patients if the guidelines by the Korner Committee, the most comprehensive available, are used as a basis of negotiation by managers, doctors and other team members.

Maintenance and storage of records

These may be written case notes, computerised information and video and audio tapes. Managers and practitioners in child and adolescent psychiatric services must consider how the records are stored and maintained, how long they should be kept, bearing in mind the possibility of longitudinal research, who has access to them and with what authority. Medical records may be subpoenaed whether they are written or in the form of video or audio tapes.

Patient access to notes

It is the view of the Royal College of Psychiatrists that a patient's access to his notes (this includes parental access to records of legal minors) should be at the discretion of the doctor concerned and not allowed to the patient as of right. Care must be taken not to reveal confidential information concerning third parties or, in many cases, provided by them.

Prospective practice

The recommendations of the Confidentiality Working Group: Steering Group on Health Services information place, we note with regret, a substantial burden on individual heath authorities and local authorities. The DHSS is recommended to be involved only when research is under consideration. We feel this is insufficient and that is appropriate where legal minors are concerned, that health authorities and local authorities receive central guidance from the DHSS and the DES and that these issues be debated by professional bodies as well as by employing authorities.

Guidelines

These are available from the General Medical Council, the British Medical Association[1], from a DES/DHSS joint circular 1983[2] and from the Korner Committee 1984[3]. Guidelines from the Association of Directors of Social Services are awaited. The Royal College of Psychiatrists has made available a number of relevant discussion documents and working party reports[4,5,6]. Other helpful documents are memoranda on child abuse and non-accidental injury which have been issued and are being revised by the DHSS and regulations for children in substitute family care e.g. DHSS 1983[7]. British Agencies for Adoption and Fostering (BAAF) (1984)[8] has published a special discussion document on consent to medical treatment for children in care or placed for adoption.

References

[1] *The Handbook of Medical Ethics*. (1984) BMA House, Tavistock Square, London WC1.

[2] Department of Health and Social Security (1983) *Assessments and Statements of Special Educational Needs*. DHSS. HC (83) 3. LAC (83) 2.

[3] Korner, E. (1984) Chairman. *A Report from the Confidentiality Working Group*. Steering Group on Health Services Information NHS/DHSS.

[4] Baldwin, J., Leff, J. & Wing, J. (1976) Confidentiality of psychiatric data on medical information systems. *British Journal of Psychiatry*, **123**, 417–427.

[5] Royal College of Psychiatrists (1981) Guidelines on ethical problems of video tape and other audio-visual recording in psychiatry. Report of Audio-visual sub-committee.

[6] Royal College of Psychiatrists (1977) Confidentiality: A report to the Council by the Joint Ethical Working Party of the College. *British Journal of Psychiatry, News and Notes*, January 1977, 4–8.

[7] DHSS (1983) *Adoption Agencies Regulations*. LAC (84) 3 HC (84) 1.

[8] BAAF (1984) *Consent to Medical Treatment for Children in Care or Placed for Adoption. Practice Paper 3*. British Agencies for Adoption and Fostering, 11 Southwark Street, London SE1.