SPSO decision report

Case: **201103669, Tayside NHS Board**
Sector: health
Subject: consent
Outcome: some upheld, recommendations

Summary

Mrs C made a number of complaints about the board's care and treatment of her husband (Mr C). Mr C had been diagnosed with rectal cancer (cancer of the lower part of the large bowel) and liver metastasis (cancer that spreads to other parts of the body).

Mrs C said that her husband had cognitive defects (his understanding was limited) and the board did not take this into account when obtaining consent for surgical procedures carried out on him. She said that Mr C was not competent to give informed consent (consent for medical procedures to take place, with a proper understanding of what these involve) and that she stressed this to every health professional she came in contact with. Mrs C was both financial and welfare power of attorney for her husband (ie she could control decisions about most aspects of his life). However, when responding to her complaint, the board said that Mr C was not at any point considered to have been incapacitated to an extent where he could not sign his own consent forms.

We upheld Mrs C's complaints about Mr C's care and treatment and about the board's complaints handling, but not her other complaints. Our investigation found that, on balance, there was evidence in the case notes to show that Mr C had cognitive impairment that compromised his capacity to provide informed consent. The clinicians involved should have documented their own assessment of his capacity, but failed to do so. We, therefore, did not know what their views on this were, or how, if at all, they had

assessed Mr C's capacity to consent to medical procedures. If they believed that Mr C lacked capacity, then the provisions of the Adults with Incapacity Act should have been used, which would have ensured Mrs C's involvement as power of attorney. Mrs C's involvement in major decisions relating to Mr C's care, including consent to undergo surgery, would also have been documented. On the other hand, had the clinicians believed that Mr C did have capacity for such decision making, they should have clearly documented this. In view of this, we found that the assessment and documentation of Mr C's cognitive function and capacity to consent was below a reasonable standard.

Mr C had had a ventriculoperitoneal shunt (a device to divert fluid from the brain) inserted several years before. A central line (a tube placed by needle into a large, central vein of the body to administer drugs or take blood samples) had been placed in the same area during his treatment for cancer. Staff noted inflammation around the site of the central line and it became apparent that Mr C's confusion had worsened. Mr C's condition deteriorated and the central line was removed. A scan was then carried out, which found that there was more fluid in Mr C's brain than had previously been seen. Mr C was transferred to a neurosurgical ward (ward for surgery of the brain or other nerve tissue), but his condition continued to deteriorate and the shunt was removed. Mr C's neurosurgeon considered that his neurological deterioration was a direct result of the infected central line, although the surgical staff involved in fitting the central line disputed this. We found that the surgical staff should have avoided putting the central line in the same area as the shunt. However, there was insufficient evidence for us to decide that this caused an infection and led to Mr C's neurological deterioration. We found that the other treatment provided to Mr C was appropriate and in line with the current guidelines for the management of rectal cancer. We also found that it was reasonable to undertake keyhole surgery and that Mr C's consultant was reasonably involved in his care and treatment.

Mrs C also complained that the board did not reasonably provide information about Mr C's condition. Although this was a balanced decision, we found that the information provided had been reasonable. However, we found that the board had not responded to Mrs C's complaints within a reasonable timescale.

Recommendations

We recommended that the board:

- issue a written apology to Mrs C; and
- consider how to raise awareness amongst medical and nursing staff of the need to: objectively assess cognitive function; assess and document capacity to consent; clearly document the existence of proxy decision makers such as a power of attorney; and, document the inclusion of the power of attorney in decision making processes more explicitly than occurred in this case.