

Legal -ease

Volume 1, Issue 1

April 2008

New Legal Newsletter

This is the first edition of a newsletter providing concise updates on current legal issues which could affect the Trust. If you would like more information on any of the subjects mentioned here, or would like to provide any feed-

back or suggestions for future content, please contact any member of the legal team.

The legal department is situated on 6th Floor of the Paul O’Gorman (Old) Building. We can provide advice on any legal issue relating

to the Trust including consent, PR and court orders.

Please visit or call on 7831 or 8564

Next month’s issue will contain a profile of team members and more detail on services provided.

Inside this issue:

Recording Meetings	2
Jehovah’s Witnesses	2

Corporate Manslaughter

The **Corporate Manslaughter and Corporate Homicide Act 2007** (“Corporate Homicide” is the Scottish equivalent) was first promised by the Government in 1997. Perhaps understandably, this new statutory offence has raised concerns within the NHS.

It has been said that for some time prosecutors have looked for a suitable opportunity to prosecute an NHS Trust for corporate manslaughter. They have not succeeded in finding one, largely because of the very specific nature of the current offence which is abolished by the Act, It may be expected that, sooner rather than later, enthusiastic prosecutors will investigate an NHS Trust for a possible corporate manslaughter offence.

- *When?* Came into force on 6th April 2008
- *Who?* It provides for a new criminal offence against the Trust but not against individual members of staff
- *What?* The Trust will be guilty if the way in which it organises or manages its activities causes a death and this amounts to a gross breach of a relevant duty of care it owed to the victim– ie – staff or patients. Gross means less than that which would reasonably have been expected. This will apply to actions of senior management It is anticipated that in an NHS Trust such as GOSH this might equate to Assistant Director or department head and above in corporate areas

and to Clinical Unit Leads and above in Clinical areas although ultimately this will be a matter for a Jury.

- *Why?* Particularly relevant to Senior Managers as the Trust will only be guilty of the offence if the way its activities are organised by senior management is a substantial part of the breach
- *Penalty?* Court can order an unlimited fine, make an order for a remedy and make a publicity order (publicity orders expected to come into force as of Autumn 08). There is no provision for custodial sentences as it is a corporate offence
- *Don't forget* – there still exists an offence whereby individuals can be



Legal Facts

(not including HR claims)

- 78 new contacts from solicitors since January
- 6 new legal claims
- 28 staff witnesses in court cases

Corporate Manslaughter (continued)

prosecuted for gross negligence manslaughter where there is direct evidence of culpability

Action required? Yes!

Make sure -

1. your department is up to date on health and safety – Trusts that take their health and safety law seriously are unlikely to be prosecuted and even less likely to be convicted.

2. there are no attitudes, policies, systems or accepted practices that may encourage or tolerate serious management failures

For further information? Contact Health and Safety on ext 7885

Consent and Jehovah's witnesses

A family may be reluctant to sign an ordinary consent form because they are Jehovah's Witnesses. The following offers basic guidance but if staff are unsure what action to take please contact the Patient and Staff Safety Team or PALS:

- Jehovah's Witnesses use the same consent form as all other patients.
- Department of Health Consent Form #2 provides a box for specific instructions
- Jehovah's Witnesses often carry alert cards with specific wording and instructions as to what is and is not acceptable to them

- Full and timely discussion between consultant, team, child and family is crucial

- Staff need to be aware of what constitutes blood products. If in any doubt please contact the Hospital Transfusion Team for further advice.

The Jehovah's Witness Hospital Liaison Committee can provide valuable advice in negotiations—contact details are available from PALS Chaplaincy or Legal team

Tape recordings by patients and families—where do you stand?

Informed consent, sufficient information for a patient – call it what you will – is crucial for many reasons. Providing sufficient, accurate information for both parent and child in the time afforded is often challenging for a clinician. By the same token it may be difficult for a family to understand, remember and digest all the necessary information in just one or two appointments.

The Kennedy report in 2001 suggested patients should tape record consultations but the Department of Health did not adopt the recommendation. Where do clinicians stand if a family wish to record the consultation?

- Trying to ensure that the patient and family have enough information to make an informed choice about their care is always crucial.
- A tape recording (or mobile phone recording?) may well be a good way to ensure that a family has a record of what was said which they can then reflect on in their own time.
- If you are unhappy then it is as well to say so and explain what your reservations are.
- However given that the record of the conversation is only likely to in-

clude personal information about the patient and not the doctor then the Data Protection Act will not apply.

As always – the most important thing is to maintain good communication with your patients and their families. Anything that enhances this will be helpful.



Friend or Foe?

Next month

- Access to Health Records
- The Mental Capacity Act
- Appearing in Court
- The Legal Team



contact

If you or your staff would like training in any area relating to legal issues please contact a member of the Legal Team on 8564 or 7831

Articles featured here will be available in greater depth on the Legal Departments website from 1st May 2008