



Addendum

Oral feeding difficulties and dilemmas

A guide to practical care, particularly towards the end of life

Readers are asked to note the following addendum to the Royal College of Physicians (RCP) publication: *Oral feeding difficulties and dilemmas: A guide to practical care, particularly towards the end of life*, January 2010.

Section 4, Law. It has been drawn to the attention of the RCP that the interpretation of the Mental Capacity Act (MCA) 2005 given in Section 4 of the Report differs significantly from that given by other organisations and, in particular, by the General Medical Council (GMC).

In para 4.42 of the RCP Report it is pointed out that section 4 of the Mental Capacity Act is concerned with the definition of best interests. It states that advance decisions are *considered* as part of a best interests determination. The RCP is advised that while this applies to an advance request for treatment (or even to an advance refusal where the circumstances may not be exact), it specifically does not apply to an advance refusal of treatment. Section 26 of the Act not only appears (as stated) to make compliance with an advance refusal mandatory: it actually does so.

In its recently published advice (*End of life treatment and care: good practice in decision making*, para 68), the GMC states:

...advance refusals must be respected. A valid advance refusal that is clearly applicable to the patient's present circumstances will be legally binding in England and Wales (unless it relates to life-prolonging treatment, in which case further legal criteria must be met). Valid and applicable advance refusals are potentially binding in Scotland and Northern Ireland, although this has not yet been tested in the courts.

On this basis, para 4.45 should not be applied to a valid advance *refusal* of treatment, but only to an advance request. Moreover, while the Report is correct to state that there has been no Court decision on personality changing illness, the interpretation in paras 4.49 and 4.50 cannot be

sustained if the view of the GMC (and other bodies) is correct. An advance refusal of treatment is binding where valid and applicable.

As regards application to the courts (para 4.55), the MCA Code of Practice (para 8.18) spells out which cases should routinely go before the Court of Protection for decision.

The RCP Report should not be used as a definitive guide to the law in this area and physicians faced with difficulties are advised to seek specialist legal advice, for example, from a medical defence body or their employer's solicitors.

Erratum: para 4.15 should read 'Mental Capacity Act 2005' and not 'Mental Capacity Act 2004'.