Legal aspects of Geriatric Medicine in General Practice for Your Witness Magazine

The medico-legal issues relating to geriatric care in General Practice are much the same as those affecting any other medical speciality or age group. It is however important to understand that older patients often have multiple problems and multiple treatments and so the risks to them and of the clinician making mistakes can be higher. Notwithstanding, there are some important areas of medico-legal complexity worthy of discussion.

The first, and arguably most important point, relates to the issue of exclusion from treatment. There have been well documented cases when patients have been excluded from treatment on the basis of age alone and this has precipitated legal challenges. A common ethical dilemma facing clinicians is whether a specific treatment, given to an elderly patient suffering from a particular disease, may cause more problems than the disease itself. Medico-legally and ethically the appropriate action would be to have a full and open discussion with the patient, assuming they have mental capacity, regarding the risks and benefits of the treatment versus the risks of leaving the disease process untreated.

The problem becomes more complex when one considers the pitfalls of 'evidence based medicine'. An example that demonstrates this particularly well is the Scandinavian Simvastatin Survival Study (known as the 4S study). The study results provided the cornerstone of cholesterol lowering Statin therapy policy, yet the study excluded anyone aged over 70 years old. For that reason, purists of the evidence based model had used the study to justify not treating any patient over the age of 70 with Simvastatin. This went on to affect General Practice significantly as it also formed one of the criteria of assessment in the Framingham Cardiovascular risk model, widely used by GPs. Common sense, and a multitude of further studies that did include older patients has subsequently prevailed, but the example still remains a good demonstration of the pitfalls in the evidence based approach. These pitfalls can make for interesting and complex discussions between experts.

Another problem exists when a clinician chooses to treat some patients but not others, based on their perception of the potential benefit. One of the reasons a clinician may not intervene in some elderly patients is that they may consider that the patient will not benefit from the treatment. Sometimes this is an easy decision, for example an elderly patient disabled with widespread cancer, coronary heart disease and osteoarthritis of the hip is unlikely to benefit from a hip replacement. However, a lot of decisions are not clear-cut and are open to debate. Many attempts have been made to address the question of potential benefit in a scientific way, for example, the use of Quality Adjusted Life Years (QALY). However, despite this, there has been no satisfactory solution to date and the issue remains a complex one, generating much discussion in and out of the Courts.

The final area of complexity is the use of advance directives. These living wills can be made verbally or in writing, which in itself poses problems of legitimacy. Some directives are relatively simple to implement, for example refusal of treatment. However advance directives to treat are often unenforceable as they are open to all the issues as discussed above and are rarely specific enough to guarantee implementation.

Difficulties also arise if there are ambiguous instructions. It is virtually impossible for a directive to cover every possibility or eventuality. Also, patient's desires change, as does their capacity to make their decisions. Evidence suggests that less than 10% of elderly people have an advance directive, suggesting they are not a widely accepted form of decision making. If a treating clinician is not aware of an advance directive or if there is concern that capacity was compromised at the time the directive was made, then there is an ethical obligation on the clinician to treat rather than withhold. There have been a number of high profile cases in which the issues of advance directives have been debated at length and the issue remains a complex problem.

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