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The ethical implications and legal aspects of patient restraint

It is arguable that the association of restraint with people who have severe mental health difficulties may cloud appreciation of its widespread use in other areas of nursing. The focus of this article will be on the use of restraint within a care setting for older people. This is an area of practice for which the RCN developed specific guidelines in 1999. The issues in the article are generic and the principles may apply to a variety of care settings.

Defining restraint

The New Shorter Oxford English Dictionary (Brown, 1993) defines restraint as ‘deprivation or restriction of liberty or freedom of action or movement’. Restraint may occur in the following ways:

- In a physical manner as in the manual restraint of one individual by others;
- By the use of apparatus such as cot-sides to keep a person within a defined area;
- By means of medication that may reduce an individual’s capacity for freedom of movement (Brennan, 1999);
- In subtle ways, such as by reducing the heating in certain rooms within a care setting to discourage the use of these areas at specific times (Clarke and Bright, 2002).
- Similarly, if a patient requires a walking aid in order to be mobile, removal of the appliance from the patient’s reach would be form of restraint.

An attempt by an individual, or group of individuals, to restrain a person is legally justifiable in certain situations, for example to prevent someone committing a crime. In such instances the minimum means of restraint should be used (Clarke and Bright, 2002). The restraint of an individual outside such extenuating circumstances, or the use of excessive force, is unjustifiable. Therefore, it is important, from a legal and moral perspective, to ensure that nursing practice does not involve unjustifiable restraint.

This article focuses on restraint within a care setting for older people and highlights the complexity of situations in which restraint may be required and the ethics governing its use.

The ethics of restraint

The following example illustrates the application of ethical principles in practice. Anne Martin (not her real name) is 87 years old and has senile dementia. She has been a resident in a care setting for older people for three years, after becoming unable to cope at home because of short-term memory loss and confusion. Her state of mind had resulted in potentially dangerous behaviour, such as wandering from her home and becoming lost, being unaware of traffic hazards when crossing roads and forgetting to eat or drink for several days at a time. In the residential care setting she has attempted to wander outside and, for this reason, a baffle lock is in place at the end of the corridor that leads from her living area to the exit. Although Ms Martin continues to wander, she is unable to leave the premises.

While this situation may not be viewed as constituting restraint in the same way that a nurse physically holding on to Ms Martin might be, the arrangement of the environment nonetheless ensures Ms Martin’s containment within a restricted area. We may question whether this is justifiable and the following discussion provides one example of how the situation might be examined.

The presence of a baffle lock appears to override Ms Martin’s autonomy. However, it may be argued that while autonomy constitutes a prima facie ethical principle, in certain circumstances it may be superseded by other principles. It can be argued that in order for an individual to be autonomous, they must possess insight into the potential or actual consequences of their actions. Ms Martin’s dementia interferes with her insight and it may be considered acceptable to override her autonomy by reference to the principle of non-maleficence – the requirement to prevent harm. If Ms Martin is allowed to wander out of the care setting she may encounter hazards such as traffic and suffer harm as a result. Interference with her autonomy may be seen as justifiable on this basis.

Furthermore, it is arguable that in care settings, there is an ethical requirement not only to avoid harm, but also to create benefit for the client. This principle is
beneficence and may also be used to justify restricting Ms Martin’s freedom of movement. It may be considered beneficial for Ms Martin to remain within the care environment, in order to maintain both her physical safety and her psychological well-being, because unfamiliar surroundings may cause her distress. The ethical principles of non-maleficence and beneficence might be used as justifications for overriding her autonomy.

Legal aspects of restraint
The fourth relevant ethical principle is that of justice. The purpose of justice is to ensure that individuals receive that to which they are entitled or deemed to deserve. It may be argued that the restriction of Ms Martin’s freedom is unjust. Older adults with senile dementia present problems that are not addressed fully by the UK mental health legislation. Unless Ms Martin is held as an involuntary patient under a section of the relevant act, she is legally entitled to leave the care setting if she so desires. Any attempt to impede her constitutes an illegal restriction of her liberty.

In England, the Bournewood judgement (named after the hospital where the issue arose) by the Court of Appeal in 1998 ruled that patients who lacked the capacity to consent to admission could not be detained within a care setting unless sectioned under the Mental Health Act (HM Government, 1983).

Before the Court of Appeal decision it was assumed that people lacking the mental capacity to make an informed choice (people with severe learning difficulties or dementia, for example) could be considered to be content with their admission – as long as they did not show signs of wanting to ‘opt out’ of treatment. If they were not actively opting out, then it was acceptable for them to be detained in hospital and be treated without a formal detention under a section of the Mental Health Act.

The Law Lords looked at two main questions: was the person involved actually detained and, if he or she was detained, was the detention lawful?

However, this judgement was subsequently overturned by the House of Lords, on the basis of the common law principle of ‘necessity’, by which health care staff are able to act in the best interest of an individual who would otherwise experience significant pain and suffering. The ruling by the House of Lords restored the status quo. Background to the case, along with the full text letter from the carers of the patient at the centre of the Bournewood case can be found at the websites shown opposite (see Further information).

There is a problem for the care team because, while restraint of Ms Martin may constitute an infringement of her legal right to freedom of movement, permitting her to wander – in the knowledge that she may come to harm – could constitute negligence. In order for a charge of negligence to be upheld in law, the following three conditions must prevail:

A duty of care must exist. Within an officially designated care setting staff owe a legal duty of care to patients/residents;

The duty of care must have been breached. It is arguable that, since staff are aware that Ms Martin has a diminished sense of danger, they should ensure that she does not wander unattended. In the event of her coming to any harm the staff would be viewed as having neglected their duty of care to Ms Martin;

Significant harm must have been sustained as a direct consequence of the neglect of the duty of care.

For the care team Ms Martin’s situation presents a dilemma. On the one hand she is legally entitled to leave the premises and any effort to physically restrain her may be regarded as assault, while on the other hand if she leaves the premises and comes to any harm the staff may be guilty of negligence.

The best option is probably to justify the restriction of Ms Martin’s autonomy in the light of her diminished insight into the potential consequences of her actions. The care team may argue that the purpose of the baffle lock is to prevent harm and that they are acting in what they perceive to be Ms Martin’s best interests.

Further issues
There are other aspects of the situation which have to be taken into account:

The use of a baffle lock may be acceptable in order to ensure Ms Martin’s safety, but not if the purpose of its installation is to allow management to reduce staffing levels;

Optimum staff-to-resident ratios would permit a member of staff to accompany Ms Martin in order to ensure that she does not come to any harm when she wishes to leave the premises;

Another consideration is that Ms Martin is not the only resident whose freedom may be restricted by the presence of the baffle lock. The needs of other residents should also be taken into account before using this measure. Such an assessment may be carried out using the same ethical principles that helped to determine whether the restraint of Ms Martin was justifiable;

In areas where baffle locks are justifiable, a written policy and procedure should be formulated by management to explain to staff, residents and their visitors the rationale for the use of the locks. This should also clearly identify the measures that should be taken to ensure that residents who do not need this form of protection are able to leave and enter the area as they please.

Conclusion
This case study demonstrates that restricting a person’s movements may not concur with commonly held perceptions of restraint as comprising dangerous behaviour on the part of the individual being restrained or those who are in a position to restrain. It should also have highlighted the complex situations in which restraint may be required and the ethical principles that may be applied to support or discourage its use.

REFERENCES

FURTHER INFORMATION
Details of the Bournewood case:
www.davesheppard.co.uk/esletter.htm
www.hyperguide.co.uk/mha/bourned.htm
The Millan Committee undertook a review of the Mental Health (Scotland) Act (HM Government, 1984) and in the light of its findings the Mental Health Bill was published in September 2002, a summary of which may be found at:
Some of the issues raised are also addressed by the law relating to adults with incapacity: www.gov.uk

For related articles on this subject and links to relevant websites see www.nursingtimes.net