Non-medical prescribing 2014
Legal issues

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Litigation and compensation

- Are we in a ‘compensation culture’?
- Explanations and apologies
- Compensation Act 2006
- Duty of candour
- Better communication
- Patients taking responsibility for their own health care
- Understanding why mistakes arise
- Medication errors (20% all clinical negligence claims against doctors)
Core competencies for practitioners

- A thorough grasp of fundamental legal principles around accountability and standards of care, *the assessment of capacity and law of consent*, confidentiality
- Knowledge of medicines legislation
- A clear understanding of equal opportunities, disability, human rights and (if appropriate) mental health legislation
- Knowledge of relevant professional codes of practice
- Understanding the legal and ethical issues – working together
Who owes a duty of care?

- Is it *reasonably foreseeable* that someone could be affected by your actions?
- Relevance of contract of employment in defining scope of your duty to care
- Duty of care to colleagues?
- Duty of care to non-patients?
- Delegation
- Can more than one ‘person’ be in breach of a duty to care to the same patient in relation to the same incident?
- Primary (systemic), personal and vicarious liability
Professional negligence

- Duty of care
- Breach
- Damage
- Get behind the label
Standard of care

Ordinarily competent practitioner in that particular field (Bolam) – deferring to the professional

- Common practice (Bolitho)
- Guidelines: statistical analysis is no substitute for thinking
- Innovative treatment
- Keeping up to date
- Specialist
- Inexperience
- Documentation
Typical failings giving rise to a breach of duty

- Misdiagnosis
- Failure to take a *full* and *proper* history, including review of documentation
- Failure to undertake a proper examination
- Inadequate test/s
- Failure to request appropriate tests
- Incorrect interpretation of results
- Failure to check dosage, contraindications, monitoring/follow up
- Failure to refer to more experienced colleague/specialist department
Safe prescribing

- Do you have adequate knowledge of the patient’s health?
- Have you checked the dosage (strength, frequency, route)?
- Any contraindications (allergies, other medicines or illnesses)?
- Have you obtained consent?
- Agreed follow up and monitoring?
- Written prescription – clear?
- Are your records adequate?
Record keeping

- Clinical findings
- Decisions made, actions agreed, by whom
- Patient information
- Drugs prescribed or other investigations/treatments
- Author/date of record
Summary

• The law generally doesn’t prescribe who must undertake the majority of health care procedures.

• It is concerned with the appropriate standard of care, as reflected in common practice, i.e. that which is acceptable to a responsible and relevant body of professional nursing/medical etc opinion.

• If you are confident that you have the knowledge, skills and experience to perform that task or role to the requisite standard, then there should be nothing to stop you doing so.
Relevance of indemnity arrangements?

- Legal accountability of individual practitioner
- What is vicarious liability?
- Practitioner and employer each liable for the same damage (‘joint tortfeasors’)
- Civil Liability (Contribution) Act 1978 – apportionment based on respective contributions to the damage
- Can the employer also seek an indemnity from the employee under the contract of employment? Lister v Romford Ice (1957)
- NMC requirement
- RCN scheme
Consent

- Legally competent
- Suitably informed
- Freely given
- Mental Capacity Act 2005