

# Confidentiality and Public Health Notification

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- The dilemma of confidentiality arises in the issue of communicable disease.
- Patients are not aware and often not ready to have their personal information revealed.

- The premise for this is that the doctor-patient relationship is a fiduciary relationship.
- We are telling people, “trust me with your secret”.
- If we breach confidentiality we lose the trust of the public.

- Certainly following notification of disease notices will probably make us want to report more than we actually would like to and feel comfortable to, insofar as there may not be any danger to others in most circumstances.

# Principles

- Respect for autonomy
  - Beneficence
  - Nonmaleficence
  - Justice
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- We have to balance autonomy vs. justice

# Autonomy

- Respect for autonomy entails respecting that an individual can act autonomously in the choice and participation of his or her treatment. It means doing so with *understanding, voluntarily and without controlling influences.*

# Consenting to notification

- Mere ‘consent’ is not enough. Contemporary ethical guidelines require an *informed consent* process, which in turn requires:
  - Divulging relevant information
  - Truth
  - Understanding
  - Voluntariness
  - competence

# Example

- There is no truth in the statement, “we are taking your blood to check for HIV and Hepatitis, for your own protection and eventual treatment”, when the real reason would be to allow professionals (e.g. surgeons) to refrain from elective operations on these patients.
- *Informed consent* requires truth.

# Justice

- “Justice is conflict” (Heraclitus)
- Indeed, when invoking the principle of justice it often comes into conflict with the patient we are treating:
- Examples include:
  - Avoidance of antibiotics
  - Selection of patients for scarce resources
  - Revealing confidential information for the protection of others.

- It is often quoted that confidentiality is not absolute.
- This however cannot give us a right to breach privacy whenever we feel like it.
- A good guideline is to keep in mind that we may need to defend our action in front of a medical council.

# Confidentiality / Privacy

- Confidentiality is that information which is shared with me by a patient. It involves two people.
- Confidentiality *respects* privacy.
- Privacy is the information *which is mine* even before I share it.
- DPA protect *privacy*.

- We need as a profession to protect confidentiality as it is our entrance into the trust of patients.
- Just as the judge is appointed by society, and is the person who understands the nature of the work of the doctor and the priest, to ask for a breach of confidentiality; it is the doctor who should know and is appointed by society to breach confidentiality when in the public interest.

- There should be a clear and *serious* threat to others. Otherwise there would be no drawing of a line. Why not report influenza?
- Merely for the department to keep statistics is not a justification to reveal confidentiality; since often an identification means is necessary in order to eliminate double reporting.
- We need therefore to find a way around this dilemma.

# The question!!

- What constitutes a serious risk?
- What is the true intention?
- Is it in fact a true public interest? Or is it because suddenly we want to keep statistics and want to invoke the law. As pointed out earlier, invoking the law has inherent dangers on the trust the public puts into us.

- What to do if the patient insists he does not want to be reported and/or be bothered by telephone calls?

# The Law

- (a) There are situations where the law *obliges* the doctor to breach confidentiality.
- (b) There are situations where the law *allows* the doctor to breach confidentiality.
- In both these situations it is important that the doctor only breaches confidentiality to the relevant person(s) and/or authority(ies).

# Medical Council

- The General Medical Council (UK) provides guidelines. These do not have the force of law but are certainly respected by the courts.
- No breach has occurred if:
  - A. A patient has given consent.
  - B. the patient cannot be identified.

- Legal obligation to maintain confidentiality
  - You bump into a lady in the supermarket who inquires about the result of her daughter. Unless the daughter has given consent it is even a potential breach of confidentiality to confirm that the daughter has been to see you.

- Situations in which a legal duty exists:
  - Food poisoning
  - Notifiable diseases
  - Protecting another individual

- Situations in which doctors have discretion
  - The law recognizes confidentiality as a matter of public interest as well.
  - Courts allow doctors to use discretion.
  - As long as doctors act thoughtfully and provide a coherent explanation, the courts would not find against them for breaching *or* maintaining confidentiality.

# Interest of others

- Serious crime
- Where a colleague, who is a patient, places other patients at risk
- Driving against medical advice
- HIV/AIDS
  - Generally the GMC allows doctors not to tell the patient's GP or vice-versa, unless it is felt that a member of the health care team is at risk.

- Sharing information with other members of the healthcare team for the treatment and benefit of the patient is not viewed by the law as a breach of confidentiality.
- Sharing information to protect other members of the team from the patient may be challenged in a court; there has never been such a case as far as this author knows.

# Notification

- This is needed:
  - To protect others
  - To protect the patient
  - Health promotion
  - statistics

# Assumed consent

- Clearly assuming consent from a patient because he or she visited your clinic or because you were called is a violation of privacy and confidentiality.
- Also, reporting a patient, even if he or she has refused, and you judged that it is important for your to do so, without *telling* the patient may have legal implications.

# Communication

- The way we confront patients is critical between an outcome of informed consent and one of withdrawal and possibly doctor rejection.

- Grasp opportunities:
  - How did I get this infection?
- Use phrases such as:
  - I will ask a colleague who I know from public health to call you to give you some advice; these instances need to be reported anyway for public health interests
  - Explain that ID card numbers are necessary only to avoid repetition and that information is destroyed when not needed any longer.
  - It is morally permissible to TELL the patient rather than try to invoke permission if you feel it is important.

- Taking swabs and samples can also be a means of showing the patient that it is also about his or her care.
- It is important to explain and avoid stigma.
- For example it is important to show that the public health official is always a doctor and they will only make a phone call which is intended to help them understand the nature of spread.

# Public health officials

- It is important that public health officials are trained in how to communicate. If doctors get bad feedback it is likely they will discontinue reporting.
- Communication must be done the same day and if possible the patient should receive the call the same day.
- This takes advantage of the patient being at home and whilst the conversation with the GP is still fresh.

# Conclusion

- Clearly confidentiality is part of the nature of the doctor-patient relationship.
- Protecting the relationship is imperative unless something more important overrides it.
- But public health is also part of the ethos of medicine.