

Between a Rock and a Hard Place: When Patient Confidentiality conflicts with a Physician's Duty to Warn

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Received date: October 28, 2015; Accepted date: January 08, 2016; Published date: January 11, 2016

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Keywords: Confidentiality; Autonomy

Case Scenario

Patient A is a young gentleman who is married and has recently been found to be HIV positive. The patient confides in his primary care physician and informs him that he has had several sexual partners before his marriage. He understands that this disease is life threatening if treatment is not begun. He claims that he is very happy in his marriage and that he and his wife are now expecting their first child. He does not want his HIV status to be disclosed to his wife because it will jeopardize his married life. He also says that if his wife is informed without his consent he will stop taking treatment. The physician is able to persuade A into starting his treatment. After several counseling sessions however, his physician is unable to persuade him into disclosing this to his wife. The physician tells him that his wife's HIV status should be determined so that she also begins treatment. The physician is also concerned about the impending arrival of the baby, and the need to administer prophylaxis to the mother in order to prevent HIV transmission to the baby. What does a physician do in such a situation?

Conflicting Principles and Moral Duties

Confidentiality, privacy, respect for autonomy v/s duty to inform/warn and duty to treat/care

Respect for autonomy requires that personal information should not be disclosed without the patients consent. Central to the therapeutic relationship of a physician-patient, is 'trust' [1], which is a unique privilege given to the doctors by the patient when they share their deepest most intimate matters freely and without fear of disclosure. Maintaining privacy enhances the development of trust between the two parties. However, the key word is "mutual trust" - trust in the doctor's expertise and knowledge and trust that the patient is consulting the doctor, for his/her/their own health, wellbeing and welfare, without agenda or bias [2]. The patient has indicated that he will quit treatment in case his wife is informed which will result in relapse and even death. He may also risk future sexual partners and contribute to the spread of this yet incurable disease. So the question arises, is confidentiality absolute? At best, it is contextual. The rights-based autonomy, privacy and fidelity-based arguments fail to support the absoluteness of confidentiality. In this case autonomy of another person is also an issue. The wife also has a right to making fully informed decisions about her health and lifestyle. What about her autonomy? If she doesn't even know her HIV status, how will she be able to make decisions about her health?

Not disclosing this information may limit her ability to do that. Some may argue that the duty of this physician is only toward his patient and not toward his wife. Not disclosing this information will potentially harm the wife and will go against the principle of non-maleficence. I would approach this matter with a utilitarian thought, to maximize good for the maximum number of people and not just worry about one individual's inherent right to privacy. The consequences of not telling the wife are very grave. If the wife is not aware of her risk, she will not take steps to minimize risk to her unborn child. Such steps have been shown to be very effective in reducing the transfer of the virus. For instance, to deliver by Caesarean section and knowing not to breastfeed [3]. There is a possibility that the wife may at some stage find out about her husband's health status and that will result in her losing trust in the physician and the entire health care system. The sheer coincidence that she is not my patient and only her husband has sought care, does not take away my duty of 'doing no harm' that is so ingrained in my professional oath. On the flip side, failure to maintain privacy and respect the confidentiality of HIV patients has shown to drive them away from further testing, counseling and treatment and undermines the trust they have in their physicians. Losing trust of the patient is the last thing that a physician would want.

According to Beauchamp and Childress, disclosure of information to third parties is sometimes permissible and at other times, even obligatory. If there is a high probability of a major harm to an 'identifiable' or 'known' individual such as in this case the patient's wife and unborn child, the breach of confidentiality is justified. Guidelines also propose that physicians inform the patient of the limits on confidentiality in their relationship. According to the American Psychiatric Association, if the physician has "convincing clinical information" that the patient is infected with HIV and also has good reason to believe that the patients' actions will place others at on-going risk of exposure, then 'it is ethically permissible for the physician to notify an identifiable person who the physician believes is in danger of contracting the virus' [4]. As an example of circumstances in which disclosure is considered obligatory, public health professionals have a duty to report sexually transmitted diseases. Not only that, they are duty bound to report the identity and location of all the possible sexual contacts of the infected individual. This is a standard procedure, called contact tracing. The primary justification is that health professionals are obligated to reduce risk of death [4]. There is an overarching moral duty of beneficence that is compelling enough in order to protect others from harm.

A possible way out of this dilemma is to designate the duty to inform, to public health authorities. They may inform the wife that she may have been exposed to HIV and recommend testing. Public health authorities will not inform her of the source of the infection, which she may deduce eventually in this case. In this manner, at least some

measures would be taken in order to protect the patients' confidentiality [5] while simultaneously fulfilling the duty to inform and the duty to prevent harm.

There was a similar case reported in India [6] where a young man who became HIV positive failed to inform his wife who later became pregnant. Even though she sensed his ill health and recommended waiting until his recovery to start a family, he attributed his symptoms to tuberculosis alone. She discovered his HIV positive status when she was eight months pregnant.

Multiple authors contributed to this discussion and this case raised new questions regarding the duties and responsibilities of not just the medical professionals but also the family members and the state. There is no general definitive guideline for hospitals and health care professionals concerning the extent of their duty to warn 'at risk' third parties of a patient's HIV status. If we are to contain this incurable disease, certain policies are to be formulated in order to clearly describe the limits of confidentiality. According to Kaplan, in cases where another individual's life or safety is at stake, the duty of a physician to protect life and warn possible contacts outweighs his duty to entrusted confidentiality. In such cases, the physician should transfer the information, even if the patient did not waive his right for secrecy [7]. The legal precedence of this concept was set in the case of *Tarasoff v Regents of the University of California* (1976). McWhinney, Haskins-Herkenham and Hare (1992) note that the Supreme Court "imposed an affirmative duty on therapists to warn a potential victim of intended harm by the client, stating that the right to confidentiality ends when the public peril begins [8]." This was a relationship between a psychologist and his client, where informing the police was not enough to prevent the harm.

Can we truly extrapolate the judgment on this case to physicians in medical practice? It has certainly led to legislations in US, for in

instance, the Confidentiality of HIV-Related Information Act, under which a physician may disclose confidential HIV-related information to a known contact of the patient. Contact is defined as a "sex sharing or needle sharing partner of the subject [9]." "Potential harm" can be an incurable disease like HIV and the spouse is the 'identifiable' third party directly at risk. It is imperative that potential harms of non-disclosure of HIV status to the spouse be weighed against the harms caused by breach of confidentiality. If the patient refuses to inform the spouse and cannot be persuaded to do so, then such violation of privacy and breach of confidentiality would not only be justified but obligatory upon the physician in order to avert preventable loss of life.

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