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## Balance Between Confidentiality and Duty to Warn: A Case Commentary on Breast Cancer

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## ABSTRACT

**Background:** Most people consider health information to be highly personal, therefore confidentiality is the main issue in physician-patient relationship. However, there are some situations that the physician may feel that another person's health or well-being is in danger and there may be a duty to warn him. Making balance between these two professional obligations is not easy in all cases.

**Case Presentation:** This case commentary is discussing about the issue of confidentiality in cancer patients, especially when the medical situation of the patient and the treatment plan could not be concealed from others. By reviewing the physician's duty of confidentiality, its importance and exceptions, the pros and cons of the issue are discussed in this paper. Controversial aspects such as the duty to warn the third party and the value of mutual arguments are also discussed.

**Conclusions:** In cases such as breast cancer, when a patient is competent and wishing not to tell any information to her family, it is the physician's obligation to acknowledge patient's preferences. However, by shaping a good therapeutic relationship and conducting effective counseling the physician may persuade patient to share her health problem by relatives.

### Case Presentation

A 22-year-old woman was referred to the breast clinic with the complaint of palpation of a large mass in her right breast. In the medical investigations, the diagnosis of breast cancer was made based on the core needle biopsy. The standard treatment plan, lumpectomy and chemotherapy, was offered. She was informed of the diagnosis, but she insisted that the diagnosis remain confidential and nothing be told to her fiancé, who planned to be her husband in the near future. In response, the surgeon explained that, in her treatment, the side effects of the procedures could not be concealed and recommended that it would be better to share the information with her fiancé, but she refused. This case raised the question whether, in this case, confidentiality is absolute or priority should be given to duty to warn?

### Introduction

“Whatever I see or hear, professionally or privately, which ought not to be divulged, I will keep it secret and tell no one.”<sup>1</sup>

#### *Confidentiality and its importance in medicine*

The above-mentioned statement is one of the pledges in Hippocratic Oath, which exists in almost all different versions of medical profession's code of conduct all over the world. Respect for confidentiality is a solid tradition in medicine. However, what is confidentiality in medicine? Generally, if a person gives some information to another in a confidence relationship, it is the person's obligation, the receiver of information, not to disclose it. This obligation can be expressed explicitly or may be implicit based on the nature of relationship.

The term confidentiality should be distinguished from privacy. Patient's interest to control their information, access to their bodies, and freedom to make decisions about health care refer to privacy concerns.<sup>2,3</sup> Based on privacy concerns, patients may choose some information to disclose to their

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physicians or may consider some to be too intimate or sensitive to disclose. On the other hand, confidentiality refers to further disclosure of patient's information. For example, a patient may decide some of her information should not be disclosed to her family, insurance company, or public health officials; therefore, the confidentiality is about what the physician may tell the third party, rather than what the patient prefers and chooses to tell the physician. When patients reveal their sensitive personal information to physicians, the presumption is that the physician should and would keep this information confidential, unless the patient consents to disclose them; thus, the duty of confidentiality provides the foundation for trust in the therapeutic relationship.<sup>4</sup>

Why is confidentiality important in medical interactions? There are some ethical foundations for confidentiality obligation in health care. First of all, keeping the medical information confidential shows respect for patients,<sup>5</sup> who expect the physicians to maintain confidentiality; this means that maintaining confidentiality in a therapeutic relationship is the clinician's duty to respect patient's autonomy. Likewise, it has some beneficial impacts for patients and physician-patient relationship. Keeping the patient's information confidential encourages people to seek medical care and disclose sensitive information, voluntarily. Furthermore, keeping confidentiality prevents patients from harmful consequences, such as discrimination and stigmatization.<sup>6</sup> Another moral justification for the importance of confidentiality in physician-patient relationship is based on the nature of the clinical encounter and duties, which are presupposed for this kind of relationship.<sup>7</sup>

Although confidentiality is an important part of the ethical code of conduct for health care providers, there are some concerns about its absoluteness. In this regard, there are counter-arguments, supporting breaching confidentiality in some situations. While the ethical principle of respecting autonomy supports the rule of confidentiality, the non-maleficence principle requires both patients and physicians to avoid harming other people and to prevent harming others. In this regard, even the principle of autonomy is not absolute, and personal autonomy may, legitimately, be constrained when the exercise of such freedom puts others at risk of harm;<sup>8</sup> in medical information confidentiality context, this means that a patient's right for not sharing her information may be overridden by an obligation in order not to harm others. Some epidemic situations, such as HIV and controversies on genetic information have shaped debates over the issue and proposed the duty to warn for keeping other people's health and life safe. Duty to warn was a fundamental issue addressed by California Supreme Court in the case of *Tarasoff* in 1976.<sup>9</sup> Although,

it was the first time that this duty was mentioned and considered in many other legislations but since then, many therapists have argued that this requirement goes too far.<sup>10</sup>

Hence, in order to provide important benefits to patients or to prevent serious harm to third parties, overriding confidentiality might be justified. These exceptions require careful justification, because not every beneficial outcome warrant the disclosure of medical information without the patient's permission.

#### *Reasons justifying exemption from confidentiality*

Reasons justifying exemption from confidentiality could be categorized as: protecting third parties, including reporting to public officials, in case of infectious disease or injuries caused by weapons, crimes, or violence by psychiatric patients. Protecting patients; for instance in case of child or elderly abuse. Partner notification by public health officials and warning by physicians to person at risk could be some other concerns in this regard.<sup>11</sup>

The balance between preventing harm to third parties and protecting patient's confidentiality needs considering some conditions. In general, all following conditions should be met, while breaching confidentiality is attempted: a) the potential harm to identifiable third party should be serious, b) the harm should be highly probable, c) there should be no less invasive and alternative way for warning or protecting the person at risk, d) breaching confidentiality could allow the third person to protect himself or take steps to prevent harm, and e) the harm of breaching confidentiality for the patient should be minimized and acceptable. In these circumstances, the general judgment is that the overall harm to another person is greater than the harm to patient resulting from overriding confidentiality.<sup>5</sup>

However, there are concerns about situations, in which the harm of the patient's disease for another person is not definite or the probable worry is emotional or in situations, such as the above-mentioned case, in which the patient's disease may affect her and her partner life.

Furthermore, while disclosing the patient's information to family members, there may be some ethical issues. Relatives and friends often ask about the patient's health condition, such as the diagnosis, therapeutic plan, or the severity of the medical condition and its outcome. Generally, patients want their relatives to be involved in their disease process; they also ask the physician to talk to their family and, in some societies, physicians may do it even without the patient's permission. In some cases, however, the patient may reject this and refuse the information to be shared with others. In this regard, some countries have different regulations. For example, based on the Health Insurance Portability and Accountability Act



(HIPAA), the United States federal government issued health privacy regulations. The HIPAA privacy regulations in injuries, such as car accident, mention that the health care providers should notify the patients that their relative would better be informed, unless the patient refuses the request;<sup>12</sup> it means that the physician can presume that the patients would desire their family members to be notified, unless advised otherwise.

In addition to the general desire of patients to inform their families, there are some ethically justified reasons in this regard; the relatives may provide valuable information about the patient previous health condition, they may know the patient's best interest, and they may assist the patient in decision making or treatment planning.

However, these presumptions can be different case by case. If the patient is oriented and the physician knows about the patients' preferences and the patient requests not to disclose the information, the physician should regard the patient's family members as estranged and not give them the information of the patient, even if the physician believes that such communication may be required to help better monitoring of the patient's condition or arrange follow-up care.

#### **Commentary on the case**

With respect to confidentiality, the above-mentioned case illustrated some moral issues. The physician knew that the patient's condition, breast cancer, would not allow her to conceal the issue from her fiancé. Moreover, due to the nature of the disease, therapeutic plan, and its prospect outcome, she would need emotional support in her life and fiancé can help her to overcome the situation. Therefore, the principle of beneficence could be the foundation of the physician's argument in sharing the information to the patient's fiancé. However, the principle of autonomy and respecting the patient's desire in not disclosing the information will oblige the physician to keep confidentiality as his duty to the patient as well as the professional code of conduct.

Yet, it is evident that the patient's fiancé will encounter some emotional suffering and financial cost. The patient's condition may influence her future life, and the situation may lead them to end their emotional relationship. The question would be: is there any "duty to warn" for the physician to divulge the situation to the patient's fiancé? Looking back at the conditional criteria for breaching confidentiality, it seems that none of the criteria is at hand in this case. Neither there is serious health harm for the patient's fiancé nor does breaching confidentiality have a health benefit for him. Therefore, the duty to warn could not be a justifying argument for disclosing patient's information. Furthermore, the patient was competent and orientated and sharing her information against her

desire would disrespect her autonomy.

However, the physician should advise her patient that her spouse need to be aware of her condition. It is important to explain the reasons why it is better to share information in this situation, as she may require ongoing treatment and need emotional support. Spending time discussing the physician's concerns about disclosing and offering support to deal with these concerns may bring about a change of mind on the patient's part. The physician should counsel the patient, regarding the importance of trust and veracity in an intimate relationship like marriage. In jurisdictions, where not telling such issues to spouse may be envisioned as deceiving, further persuasion may be needed for the patient to consent to share the information.

However, the clinicians should be aware of the local, legal, and professional standards, concerning how they should act in such situations, and appropriate psychological support should be provided for both parties.

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#### **Conflict of Interest**

No conflict of Interest.

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