Disclosure of confidential medical information

JM Watwe discusses the medical, social and legal aspects of this issue

Disclosure of information gained by a doctor during examination and interrogation of the patient or after laboratory tests is a tricky matter. Giving information to a patient is not normally a problem; giving information to relatives, or an unrelated third party is almost always problematic.

The widespread confusion is partly because doctors fail to realise there are two distinct ways to look at the problem: the legal angle and that related to medical ethics.

The legal perspective

The law of torts covers the topic of defamation and libel. Certain people in certain situations stand protected or are privileged. The privilege can be absolute or qualified. Proceedings in parliament, state legislatures, the military and the navy have absolute privilege. For example, a member of parliament making a defamatory statement about another member cannot be sued in a court of law.

Medical practitioners, bishops and others can claim what is called qualified privilege. The main justifications to claiming such privilege are an absence of malice, and the general welfare of society or an individual. A plea for qualified privilege can be conceded or turned down only during a court hearing of the case; whereas absolute privilege prevents even initiating a case.

The medical perspective

Medical practitioners have long been taught that what they learn about their patients should never be disclosed to another person. Indeed, it is on this understanding that the patient places full confidence in the doctor, telling him personal matters which he may not tell others. This is a prerequisite for correct diagnosis and proper treatment. It is also the basis of the doctor-patient relationship.

The code of medical ethics is formulated accordingly. However, the code has no legal standing.

Doctors also grant the word 'ethics' much respect. Even Swiss bankers have a strict code of ethics -- which requires them to maintain strict secrecy about the numbered accounts of various smugglers and scoundrels.

The problem arises when the doctor tries to observe the code of ethics as he understands it, fulfilling his duties to the larger interests of the community without paying heed to the law of the land.

Taylor's textbook of medical jurisprudence states: "If a police officer seeks information about a patient which the doctor can only disclose by a breach of professional confidence he should explain that to reveal the information would be to disclose facts that he has learnt during the course of his professional duties."

This implies that the doctors should be unwilling to give information. However, the very next sentence reads: "It should be noted, however, ... that the lord chief justice ruled that a doctor had committed an offence by refusing to give a policeman information about a patient, which might have led to identification of a car driver who was suspected of having committed a motoring offence."

So the doctor cannot refuse to give information in a court of law on the ground of confidentiality of information.

Lord Denning has observed: "The only person that I know who is given a privilege from disclosing information to a court of law is the legal profession and then it is not the privilege of the lawyer but of his client. Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer, when directed to do so by a judge."

It is not only legal provisions that come in the way of maintaining confidentiality of information betwen patient and doctor. The doctor's moral obligation to act in the larger interests of society also places him/her in a dilemma.

The driver of a vehicle in a public transport company who has developed early cataract in both eyes, impairing his vision, the college lecturer with infectious tuberculosis, the senior bank official in charge of investments showing early signs of schizophrenia.. If such patients refuse to go off duty, their doctors have a moral duty to inform their employers.

A difficult case

Not all cases are so clear-cut. Consider the case of a famjly physician who has treated a young man whose blood tests positive for the HIV antibody. Despite advice to the contrary, the boy wants to marry. Can the doctor inform the would-be wife of the boy's HIV status?

Yes, according to Parikh's textbook of forensic medicine: "Doctors have a legal as well as ethical responsibility to warn partners with the AIDS virus. Since AIDS is invariably fatal, the physician-patient relationship of confidentiality becomes secondary when it involves potential harm to another individual." However, the final test of this problem will be in the court of law.

The American Medical Association has laid down clear guidelines in this respect. "Where there is no statute that mandates or prohibits the reporting of sero-positive individuals to the public health authority and a physician knows that a sero-positive individual is endangering a third party, the physician should (1) attempt to persuade the infected person to cease

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endangering the third party; (2) if persuasion fails, notifiy authorities; and (3) if the authorities take no action, notify the endangered third party." (*JAMA*, 1988, March 4.1361) The General Medical Council of the UK has given similar advice.

One must keep in mind that the code of ethics was developed from the ideas of Hippocrates as enunciated by his oath, and not as an offshoot of the law. The code has to accommodate a changing scenario pitting community welfare against individual rights. It also can and does come in conflict with prevalent laws -- in which case the laws have the upper hand.

Blood banks and HIV-positive donors

This has been debated among blood bankers for some years. At present, all blood banks test donor blood for the presence of anti-HIV antibodies, anti-Treponema antibodies (VDRL test), and the Hepatitis B surface antigen (AuAg test).

Blood giving a positive result to any of these tests is discarded but the donors are not, as a rule, informed about the results. Some banks do write to donors whose blood is found to be AuAg positive, cautioning them not to donate blood. However, opinion is divided on the subject of intimating HIV-positive donors of their HIV status.

The case against informing

People who oppose informing HIV positive donors of their status argue that HIV testing requires specific consent, which is not obtained from the donor. Second, the test is only a screening test; for a definite diagnosis, the test must be repeated, preferably using another type of kit, and only when the diagnosis is firmly established as per diagnostic criteria should the donor be informed, after proper counselling. This is not the primary objective of blood banks, whose interest in ensuring the recipient's safety achieved by excluding 'suspect' blood.

Thirdly, blood is stored using an anonymous unlinked donation system: numbered units are tested and processed without information identifying donors.

Finally, donors told of their positive results without being properly counselled could break down and even commit suicide.

The case for informing

Those who maintain that such information must be given, argue first that no specific consent is required to carry out tests on donated blood; the donor's signature on the donation form, and the donation itself, is implied consent to carry out all necessary tests on the donated blood. If, for the sake of argument, it is conceded that a specific consent is needed, then even anonymous testing is an offense, and one that is neither mitigated nor enhanced by withholding the results from the donor. The offence is in carrying out the test without permission; the issue of 'intimation' of the result is irrelevant.

Second, while it may not be prudent to intimate a donor of his HIV status on the basis of the screening test alone, nothing stops the blood bank from repeating the test before intimating the donor after proper counseling. There is no government rule prohibiting this, and the extra expenses are marginal. Blood banks unwilling to do this cannot claim to do social work.

Third, the argument that testing is anonymous and unlinked is specious, insincere, if not outright dishonest. Banks often intimate donors in writing of positive AuAg test results, advising them not to donate blood any further. They also inform donors of their blood group, identifying them or linking the unit to them by name. One fails to understand how this plea is applicable only to the HIV test. And as for the last argument, proper counseling should prevent the shock.

There are serious repercussions to the present policy. HIV positive donors continue to donate blood regularly, in different blood banks. Apart from the wastage of plastic p[illegible] reagents, an error on the part of the operator, or the test, opens up the possibility of infected blood being accepted and issued. This possiblity is remote, but as remote as the possiblity of blood donated during the donor's window period being accepted for use.

Consider the case of a young person involved in a road accident, who is transfused with HIV-positive blood and eventually becomes HIV positive himself. If he donates blood, he will not be informed, and will therefore remain unaware of his HIV positive status. He gets married and infects his wife. The infection would be revealed only when his pregnant wife attends an antenatal clinic and undergoes routine HIV testing. The consequences of the blood bank are felt by an entire family. Had he been informed earlier, he may have acted differently.

Who would be responsible for this tragedy? If he sues the blood bank for suppressing vital information, will the doctrine of anonymous, unlinked donation hold in a court of law? More importantly, is it ethical or moral on the part of the blood bank to suppress the vital information?

In the case of directed donation (when someone donates blood meant to be used by a particular patient), even this figleaf of anonymous unlinked doctrine is not available. Yet blood banks withhold the information from the concerned donor. Can some of our legally-qualified readers comment?

The law concerning blood banks, the provisions in the Pharmacopoeia, and the executive fiats of the government aim at ensuring safe blood to patients. As social service organisations, blood banks should have a wider angle of vision and consider donors the sheet anchor of the movement. By ignoring this issue, they lose their claim to such a status.

Reference

Parikh CK. Parikh's textbook of medical jurisprudence and toxicology, 1990. 5th ed. CBS Publishers and Distributors, Delhi.