



A GP's duty of confidentiality

Sara Bird, MBBS, MFM (clin), FRACGP, is Medicolegal Adviser, MDA National. sbird@mdanational.com.au



Case histories are based on actual medical negligence claims, however certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

Confidentiality is an accepted and fundamental basis of the doctor-patient relationship. Patients have a right to expect that information held about them will be held in confidence by their general practitioner. This article examines the concept of doctor-patient confidentiality and outlines the exceptions to the duty of confidentiality.

Case history

The 20 year old patient saw her general practitioner to obtain the morning after pill. The patient gave a history that the night before the consultation she had been repeatedly raped by an acquaintance and several of his friends. She was very distressed but adamant that she did not want anyone to know what had happened to her.

Medicolegal issues

The GP was concerned that she may have a duty to report the sexual assault to the police. She sought advice from her medical defence organisation (MDO). The GP was told that she had a duty to protect the patient's confidentiality. There was no legal obligation to bring information about the commission of a serious offence to the attention of the police. While the GP did not have a duty to contact the police, she should counsel the patient about her options, including making a statement to the police. The MDO adviser also suggested that the GP and the patient consider seeking advice from the local sexual assault service.

Discussion

The confidentiality of the doctor-patient relationship dates back to antiquity. The Hippocratic Oath states:

'What I see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about'.¹

General practitioners have both an ethical and a legal duty to protect the confidentiality of the information acquired as a result of the

management of patients. This duty forms the basis of trust and honesty in the doctor-patient relationship. It encourages patients to disclose personal information truthfully, without fear of embarrassment, harm or discrimination that may arise from widespread dissemination of the information. A GP's duty of confidentiality extends to all information that arises out of their professional relationship with patients. The duty extends to the practice staff, including nurses, practice managers and receptionists. A patient's right to confidentiality survives the doctor-patient relationship, and the patient's death.

'I will respect the secrets which are confided in me, even after the patient has died'. Declaration of Geneva (as amended Sydney 1968)

Civil court proceedings arising out of an allegation of a breach of confidentiality are uncommon. However, a GP may become the subject of a complaint and disciplinary proceedings for a breach of confidentiality.

Risk management strategies

Over recent years, GPs have come under increasing pressure from a range of sources to release information about their patients. General practitioners receive requests for information about their patients from the courts, solicitors, employers, insurers, police

and other sources. At the same time, the recent amendments to the Privacy Act have reinforced the duty of medical practitioners to maintain the confidentiality of the information that they collect about their patients.

Exceptions to the duty of confidentiality

When is it permissible to provide information about a patient to a third party?

General practitioners can provide information to a third party without it constituting a breach of confidentiality in any of the following situations:

- the patient consents to the release of the information
- disclosure to another health professional to ensure appropriate medical care of the patient
- mandatory disclosure of information is required under law, eg. a subpoena or other court order; statutory requirements in regard to child abuse and infectious diseases
- there is an overriding duty in the 'public interest' to disclose information, eg. a patient who refuses to stop driving despite medical advice to do so; a patient who threatens harm against another person. These are often difficult and complex cases and GPs are encouraged to seek advice from colleagues and/or their MDO if faced with this type of situation.

Conflict of interest: none.

Reference

1. Cited in Mendelson D. 'Mr Cruel' and the medical duty of confidentiality. *J Law Med* 1993;1:120-9.

Correspondence

Email: afp@racgp.org.au

AFP