

# **Truth Telling & Confidentiality: The Pillars of Trust**

## **Small Group Session**

### **Case 1**

A 17 year old female is brought by her father to the walk-in clinic complaining of a swollen painful knee for three days. There is no history of trauma or previous similar episodes, and no other joints involved. Her exam shows a warm, swollen knee with moderate size effusion, no other joints involved, and some erythematous skin lesions with necrotic centers. You aspirate the knee joint (a moderately painful procedure) and her father remains and comforts her while you do it. You find WBC's but no organisms on Gram stain, and send the fluid off for labs and culture. However, a Gram stain of exudates from the skin lesion shows intracellular Gram negative diplococci consistent with Neisseria gonorrhoea. This entire picture is very consistent with disseminated gonorrhoea, which responds well to treatment. You go back into the room to tell her you have discovered the cause of the knee problem and that she will be fine, and you need to take a sexual history. As you enter the room, the patient and her father look up, anxiously awaiting your words.

- 1) Does this patient have a right to confidentiality with you?**
- 2) What are some threats to confidentiality in this case?**
- 3) Is this a reportable disease? What impact will reporting have on her privacy?**

## **Case 2**

A 16 year old male is referred to you because of high blood pressure. He tells you that he has lost 15 pounds in the last 6 months. He says he is depressed about his grades and feels like he's under a lot of pressure by his parents to perform academically. He then asks you for strict confidentiality and goes on to say that he has started using amphetamines so he can stay awake and study longer hours. He says his parents would "kill him" if they found out he was using drugs but he can't imagine getting through school without them.

- 1) Can you honor his request for confidentiality? Why or why not?**
- 2) He is caught breaking and entering a home in his neighborhood. He tells the police that he is under your care for a medical problem. The police visit you and ask for medical information. What can you disclose?**

### **Case 3**

You have been caring for an elderly man for several years. He lives independently and has some chronic medical problems that are well controlled. One day you get a call from his daughter who lives several hours' drive away. She asks if you think her father is depressed, and if he is an alcoholic. She also asks if his heart is all right. You are unclear if she's expressing concern, asking for an opinion about a specific question, or is asking for medical information.

She then goes on to tell you that he "drinks like a fish" and has been complaining about chest pains but is afraid to mention it to you for fear that it might be heart disease. She wants you to talk to him about these things but makes you promise not to tell him that she called. She wants you to say that you can tell by his exam that he is drinking too much and is having chest pains.

- 1) Do you need the patient's permission before talking with his daughter about his medical problems?**
  
- 2) Should you comply with the daughter's request for confidentiality?**

## Case 4

You are seeing a patient in your preceptor's office. You learn that the patient was seen by a specialist a week ago and that a consultation letter with recommendations was dictated but it has not yet reached your preceptor's office. Your preceptor asks that you get the letter faxed to the office today, or to have someone in the consultant's office read the letter to you over the phone, before he goes in to see the patient with you.

Are the following statements about the case True or False?

**TRUE    FALSE**

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>1. The patient needs to give written consent or authorization to the consultant's office before they can release information.</b>     |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>2. The consultant's office has a right to verify your identity, location, and that the patient is in fact getting care there now.</b> |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>3. You must be a licensed physician to make this call.</b>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>4. You need the patient's permission to tell the consultant's office anything about his medical condition now.</b>                    |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>5. They can't fax the information but they can give it verbally in this case.</b>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>6. They can email the information to your preceptor's personal email account, which the preceptor can open and read at work.</b>      |

# Truth Telling & Confidentiality: The Pillars of Trust

## Small Group Session: Faculty Notes

### Case 1

#### 1. Does this patient have a right to confidentiality with you?

Where minors have the right to consent to their own care, they also have the right to confidentiality. Minors can consent to their own care if they are pregnant, parenting, married, or emancipated. "Maturity" is the most widely used justification for reproductive health care services. Most state laws are vague on the precise definition of "mature minor" and have generally upheld a physician's judgment, based on chronologic age, risk of upholding vs. not upholding confidentiality, risk and benefit of proposed treatment, and emotional and cognitive capacity for understanding the decisions. In Oregon, if the minor is 15 or over the minor can consent to his or her own medical treatment and it becomes the physician's choice whether to disclose information to the parents; you are not required to disclose information, but you may choose to do so even if the minor protests. (ORS 109.650)

#### 2. What are some threats to confidentiality in this case?

The younger the patient, the more controversial the confidentiality issue becomes. We are not told anything about her emotional and cognitive capacity for understanding what has happened. Minors 15 and older can consent to, and receive confidential treatment for STDs and HIV. However she will probably receive an itemized bill for this care. The bill will be processed through her father's insurance unless she call pay for it herself - unlikely since this visit will be expensive.

Find a way to talk with her privately. (Ideally you would address this very early on in the visit, before it had gone this far.) Empathize with her shock and embarrassment over what has happened and her views on what should be done next. Help her anticipate her parents' reactions and how she might deal with them. For example, the father seems supportive and worried. Perhaps you can help her talk with her father, directly or through a third party initially, about what is happening so they can deal with it together. Review what to do about the itemized bill and diagnostic codes that will likely be presented to them at the end of the visit, and the possible need for intravenous antibiotics. Examine and be clear about your own feelings and values about confidentiality in this case.

#### 3. Is this a reportable disease? (See ODHS link to page listing reportable infections)

Gonorrhea is reportable in most states. Physicians are required to report cases to the public health department. This is for tracking prevalence and antibiotic resistance, and to stop spread of disease since individuals may not know they are infected. A DHS or public health official will call her and ask for names of sexual contacts. Those individuals will be contacted with information that they have been exposed to a sexually transmitted disease and should be evaluated by a health care professional. Unfortunately, there is significant under-reporting of gonorrhea creating a public health problem.

## Case 2

### 1. Can you honor his request for confidentiality? Why or why not?

At less than 18 the patient is a minor. We are not told if he is married, a parent, or "emancipated" (no longer in custody of his parents by court order, enrolled in the armed services, living independently, or economically independent). We are not told how he is thinking about this problem beyond using drugs without telling his parents (a component of the physician's judgment of "maturity").

He is eligible for confidential mental health consultation, and for treatment for alcohol and drug use. However most physicians would encourage him to enlist his parents' help with this problem. In Oregon, both parents of a minor may obtain medical information on their child even if they are divorced. Since this patient is over 15, it is the physician's choice whether to disclose information to the parents; you are not required to disclose information but you may choose to do so even if the patient objects. However, confidentiality violations often come at the price of reduced trust, which can lead adolescents to withhold important information about health risks and symptoms. A legal guardian, conservator, or court order (civil not criminal court) can also force disclosure of confidential information.

The legal system regards most adolescents as having capacity to make health care decisions, and recognizes that they may face situations where parents might prevent them from seeking care, or force them to take harmful risks. For example is there actual or threatened abuse, or drug use, in the home? Would his parents force him to leave home?

### 2. He is caught breaking and entering a home in his neighborhood. He tells the police that he is under your care for a medical problem. The police visit you and ask for medical information. What can you disclose?

The police have no greater right to medical information regarding criminal suspects than

anyone else. Information relevant to a criminal trial can be introduced at trial (but not disclosed beforehand). If you receive a subpoena or other court order from a judge to testify, you are required to break confidentiality. You should consult your organization's legal counsel to discuss what you should disclose - usually only the information that is requested, rather than the entire history.

### **Case 3 (see AMA FAQs on HIPAA)**

#### **1. Do you need his permission before talking with her about his medical problems?**

The patient's written authorization is needed when someone asks for individually identifiable patient information for purposes other than treatment, payment, or health care operations. Most hospitals and physicians tell patients in advance that certain information may be released without their authorization and if the patient doesn't object or restrict the release, it is assumed that they don't object. This can be done orally. If the patient is unable to express an opinion due to incapacity, the health care professional or hospital must determine that disclosure is consistent with the patient's prior expressed preferences or is in the patient's best interest.

Usually hospitals and physicians infer from the circumstances that the patient would not object (e.g., the patient brings a spouse into the office when treatment is discussed, or when a colleague or friend brings the patient to an emergency room for treatment).

#### **2. Should you comply with the daughter's request for confidentiality?**

The daughter is not your patient, and she is requesting confidentiality about giving you information. You have no obligation to comply with her request but it would be helpful to stay on good terms with her as an involved family member. Explain that you can accept information from her but can't give out information without his permission. Explain that her concern and observations are important and that you'd like to help her talk with him about it. See if she would be willing to meet with both of you to talk about her concerns.

### **Case 4 (see AMA FAQs on HIPAA)**

#### **1. The patient needs to give written consent or authorization to the consultant's office before they can release information.**

**FALSE.** Consulting with another health care professional about a patient is within the HIPAA definition of "treatment". Disclosures for treatment purposes between health care professionals for treatment of a specific patient do not require the patient

authorization. Uses or disclosures for purposes other than treatment, payment, or health care operations generally require an authorization. In addition, HIPAA provides for conducting training programs in which students and other trainees can learn under supervision to practice or improve their skills as health care professionals. Out of ignorance, or perhaps to satisfy #2 below, many hospitals and clinics require a signed release before talking with you.

**2. The consultant's office has a right to verify your identity, location, and that the patient is in fact getting care there now.**

**TRUE.** In any situation where the staff doesn't know you, they must verify your identity and authority to request information. This includes verifying that you have a relationship with the patient that allows release of individually identifiable health care information. Protocols for verification vary among hospitals and clinics; some examples are:

- Photo Identification, if the person is present
- Asking the person to identify several facts about the patient that only someone involved in his care would know
- Obtaining a telephone number from you and calling right back
- Asking for documentation of your status as a medical student

**3. You must be a licensed physician in order to make this call.**

**FALSE.** Physicians, hospitals, and clinics can develop their own policies and procedures to permit medical trainees access to a patient's health care information.

**4. They can't fax the information but they can give it verbally in this case.**

**FALSE.** Health information may be faxed, according to university and departmental policy and procedures that address appropriate safeguards. (e.g., verification of fax number, use of an approved cover sheet).

**5. They can email the information to your preceptor's personal email account, which the preceptor can open and read at work.**

**TRUE,** but only if it is encrypted and if your preceptor has signed a confidentiality agreement with the patient that his ISP and computer meet specific technical, physical, and administrative remote access requirements for receiving protected health information.