Minors' request for confidentiality

SADJ July 2014, Vol 69 no 6 p279 - p280

S Naidoo

Following uncomplicated root canal treatment on a lower molar tooth, the 14 year old patient presented a few weeks later, together with her mother, complaining about an ulcer on her palate. Her mother assumed the lesion was related to the earlier dental treatment. On examination, the ulcer on the palate appeared to be a syphilitic chancre. I informed the patient that I did not think that the lesion was related to the recent RCT but rather looked very much like a sexually transmitted lesion. I then carefully asked if she had recently had oral sex and she said "Yes, with my boyfriend, but please do not tell my mother!"

COMMENTARY

Confidentiality is central to the relationship of trust between the dentist and the patient. This includes the entire dental team, who have to keep confidential all information about the patient obtained during their care. This means that the information provided by the patient is used only for the purposes for which it is given. Confidentiality is a way of respecting the patient's autonomy. Dentists explicitly or implicitly promise their patients that they will keep confidential the information confided to them. In the absence of such promises of confidentiality, patients are unlikely to divulge highly private and sensitive information that is needed for their optimal care. The patient must also be protected from the distress, and potential stigmatisation and discrimination that may be caused if their privacy is in some respects, betrayed.[1] Centuries ago, Hippocrates, the thinker, philosopher, doctor and great advocate for ethics in medicine said: "In my attendance of the sick, or even apart therefrom, whatsoever things I see or hear, concerning the life of men, which ought not to be noised abroad, I will keep silence thereon, counting such things to be as sacred secrets". More recently, the Declaration of Geneva, adopted by the World Medical Association, avows that: "I will respect the secrets which are confided in me, even after the patient has died." Rule 16 of the Health Professions Council of South Africa[2] (HPCSA) respects the patients right of privacy even after death since confidential medical information about a patient may be divulged only with the consent of the next of kin or executor of his estate.

S Naidoo: *BDS (Lon), LDS.RCS (Eng), MDPH (Lon), DDPH.RCS (Eng), MChD (Comm Dent), PhD (US), PG Dipl Int Research Ethics (UCT), DSc (UWC).* Senior Professor and Principal Specialist, Faculty of Dentistry, University of the Western Cape.

Department of Community Dentistry, Private Bag X1, Tygerberg 7505. E-mail: suenaidoo@uwc.ac.za.

Patients often disclose many things to health professionals during the course of their management and the difficulty arises when one needs to decide what information is in fact confidential and what is not? In general, it may be helpful to consider that any information given in the context of a professional relationship with a patient is bound by the ethical duty of confidentiality - even if other people could obtain this same information about the patient by other means.[1] However, one needs to be cognisant of the legal duty of confidence and what constitutes a breach of that duty.

Information must have an inherent 'quality' of confidentiality therefore information imparted by the patient in relation to their own treatment must be regarded as confidential. Information must be disclosed in circumstances implying an obligation of confidence – so if a patient gives information to us, within a dental surgery setting, and certainly in the treatment area, then circumstances would almost always imply that obligation of confidence. The unauthorised disclosure of information may cause harm and this is invariably psychological rather than physical harm… and that may be sufficient to establish a breach of the duty of confidentiality.[1] The above statements are expressed in "absolutist or near absolutist" terms. However, most arguments support *prima facie* as opposed to absolute rules of confidentiality. In other words, confidentiality is maintained almost always except in circumstances that *require* a breach of confidentiality in favour of a higher good.[3]

Justified disclosure *with* patient permission

According to the National Health Act No. 61 of 20034 all information concerning a patient, including information relating to his or her health status, treatment or stay, should remain confidential. With regard to any patient information, patient autonomy is paramount. Information about the patient 'belongs' to the patient, not to the dentist. Therefore IF the patient agrees to the disclosure of their clinical information to a third party, then this would be permissible. In many cases, the third party is a professional colleague, but can include any person authorised by the patient or, in the case of children and adults without the capacity to consent, by a parent or other responsible adult.

However, the National Health Act No 61 of 2003, Chapter 2, Section 14 clarifies the only exceptions to maintaining confidentiality as follows:

- The patient consents to the disclosure in writing
- A court order or any law requires the disclosure
- Non-disclosure of the information represents a serious threat to public health

Justified disclosure *without* patient permission

It may be justified, in exceptional circumstances, to make confidential information known without consent, but these circumstances are extremely rare especially in dentistry. In the context of the dentist-patient relationship, confidentiality is always maintained except:

- In situations where the life of a third party is at risk
- When the patient consents to the breach in confidentiality
- When one is ordered to divulge information in a court of law
- When one is compelled to breach confidentiality by an Act of Parliament as occurs in cases of child abuse
- When a doctor is a defendant or an accused, confidentiality may be breached only when pertaining to information that is material to the case against him/her
- When there is a moral or legal obligation on the doctor to make a disclosure to a person who has a reciprocal moral or legal obligation to receive that information.

In the above-mentioned scenario, while the diagnosis may be presumptive, the dentist is placed in a difficult position by the patient's request for non-disclosure: to choose between respecting her autonomy (maintaining confidentiality of the patient's diagnosis) and non-maleficence (protecting the patient from harm by disclosure to the parent). Children aged 12 years and older are legally competent to consent to medical treatment without the assistance of their parents or guardians. They are also legally competent to refuse treatment. Provided that the child is sufficiently mature to understand the nature and effect of the refusal of treatment, and the implications, risk and consequences of their refusal have been explained, understood and accepted, the refusal should be accepted.

The dentist may consider the follow options:

- Maintain confidentiality and discharge her.
- Maintain confidentiality and refer her to her general practitioner for a definitive diagnosis, advice and treatment.
- Encourage her to inform her mother, and if she agrees, inform the patients mother that in your opinion, the lesion on her palate is not related to the RCT and that the diagnosis and treatment of the ulcer is outside the scope of general dentistry and that she requires a referral to the family general practitioner for definitive diagnosis and appropriate care.
- If she does not agree to let you inform her mother, and refuses to be referred to her general practitioner, maintain confidentiality, but consider a referral to a community clinic or one that specialises in sexually transmitted infections (STIs). If the patient consents to this you can inform the mother that the ulcer is unrelated to the RCT and discharge the patient.

SUMMARY

The need to maintain confidentiality of any information given to us in our professional capacity is paramount. Patient autonomy and their absolute right to confidentiality must be ensured in almost all but the most exceptional circumstances. Patients have the ethical and legal right to expect a health professional to keep confidential the information provided during the course of their care. Disclosure of patient information is only permitted with the patient's consent or if there is an overwhelming public interest in disclosure as prescribed by the law. Dentists must be cognisant of what the law requires and how they are expected to respond. When the law does not address an issue, the dentist would need to weigh the circumstances and consequences and do what he/she thinks is ethically appropriate and acceptable.

Declaration: No conflict of interest declared.

References

1. Ethics, Values and the Law. DPL Dental Ethics Module 9: Confidentiality. 2009
2. Health Professions Council of South Africa. General Ethical Guidelines for the Health Professions. Booklet 1.Guidelines for good practice in the health care professions. Pretoria, May 2008.
3. Moodley K, Naidoo S. Ethics and the Dental Team. Van Schaik Publishers, Pretoria, 2010.
4. South African Parliament. National Health Act. No. 61 of 2003: National Health Act, 2004.

Readers are invited to submit ethical queries or dilemmas to Prof. S Naidoo, Department of Community Dentistry, Private Bag X1, Tygerberg 7505 or email: suenaidoo@uwc.ac.za

See SADA Branch contact information next to the classifieds on page 290