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BIOETHICS ON NBC'S ER

Betraying Trust or Providing Good Care? When is it okay to break confidentiality?

This episode raises issues about the nature of confidentiality in health care, and the possible reasons why confidentiality may be broken.

by Pamela G. Nathanson

Feb. 24, 2000 - In this week's episode of ER, nurse Carol Hathaway promises two young patients who are reluctant to enter into care that no matter what they tell her, she will not divulge any information to the patient's parents or to anyone else. Unfortunately, when it turns out that one patient has a severe medical problem, Hathaway faces the dilemma of breaking her promise of confidentiality in order to ensure proper medical care and support for her young patient. This dilemma raises issues about the nature of confidentiality in health care, and the possible reasons why confidentiality may be broken.

During this episode, two 14 year old girls present to the ER when they suspect that they might have been exposed to a sexually transmitted disease (STD). Both girls are tested for STDs and receive Pap tests to detect cervical changes. One patient, Andrea, is diagnosed with human papillomavirus - HPV - an extremely common viral sexually transmitted disease. In most states, minors are allowed to consent for STD testing without parental consent. In this case, nurse Hathaway promised these girls that their parents would not have to be informed of the results of the STD testing.

The CDC estimates that approximately half of the sexually active population in the United States has been infected with HPV, the virus that can cause genital warts, at some time in their life. In most women an HPV infection is asymptomatic, which helps the disease spread rapidly undetected. The greatest danger posed by HPV infection is its link to cervical cancer. There are over 85 types of HPV infection, with 9 of those types considered to be high-risk types which lead to cervical cancer. It is now known that approximately 95% of cervical cancers are linked to HPV infection, making cervical cancer the first sexually transmitted cancer to be identified. When found early and treated properly, cervical cancer has very high treatment and survival rates.

While in the ER, Andrea is also diagnosed with cervical cancer. When Hathaway attempts to talk to Andrea about telling her sex partner about her diagnosis, she finds out that both girls have been participating in "party sex" with multiple partners. Hathaway is then advised by a physician that not only should she inform Andrea's parents of her diagnosis, but that she should also inform the girls' school since it has become a "public health issue". It is at this point that Hathaway faces her ethical dilemma. Should she break the promise she made to this young girl in order to ensure that she receives the best care possible and the support necessary in fighting her cancer? Should she inform the school in order to bring attention to the dangerous behavior of the students? Or is it more important to maintain the clinician/patient confidentiality that is a central part of our health care system.

It is important to explore the background of confidentiality policies, and reasons why confidentiality can be broken, in order to determine what course of action Hathaway should take. Confidentiality is a very old concept, reaching back even to the Hippocratic oath. There are several arguments for the need to maintain confidentiality in medicine:

- 1) If confidentiality is breached, patients may be reluctant to disclose full information to physicians, or even avoid seeking care. In order for medicine to be practiced and for therapy to be effective, patient trust in the confidential nature of the information revealed during an examination.
- 2) Respect for the individual patient should lead to respect for confidentiality. Breaches of confidentiality are disrespectful of individual privacy and autonomy rights.

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3) Fidelity of the physician-patient relationship requires respect for confidentiality. When patients enter a relationship with a medical professional, an implied promise of confidentiality is made. The physician's obligation to live up to the patient's expectations of privacy and to earn the patient's trust.

While each of these arguments make a strong case for maintaining confidentiality, there are cases where confidentiality may be broken, and in fact there are circumstances where a physician has an obligation to break confidentiality. There are laws in the United States which require physicians to report certain infectious diseases to public health authorities, in order to protect the health of the community. Similar laws hold physicians responsible when physicians suspect child abuse in a minor patient.

The landmark case that explores the obligation of physicians to break confidentiality is *Tarasoff v. Regents of the University of California*. In *Tarasoff*, a psychologist failed to warn a woman or her family when his patient threatened to murder the woman. The court in *Tarasoff* found that in spite of the need to protect confidentiality, especially in therapeutic settings, that the therapist had an obligation to warn the potential victim of violence. One standard set forth in *Tarasoff* is that physicians have a duty to breach confidentiality in cases where harm to the patient or harm to the community may result from maintaining confidentiality. *Tarasoff* may be helpful in looking at the circumstances of nurse Hathaway and her patient.

In the case of the Andrea, who has cervical cancer, nurse Hathaway has made a promise of confidentiality which may have helped Hathaway gain the trust of the patient and encouraged the patient to consent to treatment in the first place. Unless there are circumstances which present harm to the patient or harm to the community, Hathaway should maintain confidentiality.

One possible breach of confidentiality would be informing Andrea's parents. In this case, Hathaway knows that harm will come to her patient unless the parents are informed of the diagnosis of cervical cancer. Since she leaves the ER, Hathaway has no means to follow up on Andrea to ensure that she receives proper treatment for her disease. Since the patient is a minor, the responsibility for the follow-up lies not with the patient herself, but with her parents. In addition, in our health care system, it would be very difficult for Andrea to receive treatment for the cervical cancer without parental consent. Therefore, in order to prevent further harm from coming to her patient, Hathaway has both a right and an obligation to break confidentiality and inform Andrea's parents of her condition. Of course, Andrea should be given counseling and support to help her inform her parents herself. If she refuses, Hathaway should inform the parents of the diagnosis.

Another possible breach would be informing the school of the girls' behavior. In this case, I believe that Hathaway makes the wrong choice in informing the school. There is no benefit to Andrea in divulging information to the school. In fact, after Andrea finds out that the school knows about her situation, she may attempt suicide. In addition, HPV and cervical cancer are not legally reportable sexually transmitted diseases. Unlike STDs such as syphilis, gonorrhea or chlamydia, which are legally reportable to public health departments, HPV is not easily traceable, there are no routine tests available to detect HPV in men, and there is no recommended treatment for asymptomatic HPV infection. The most important prevention is for women to receive routine Pap tests in order to detect cervical cancer at its earliest stages. Because of these factors, informing the school of Andrea's diagnosis is inappropriate, and may even be illegal. An alternate route that Hathaway could have taken would be to have informed the school that she has reason to believe that there are "sex parties" going on, without disclosing how she came to know this information.

This episode of ER helps us to explore the many reasons why confidentiality policies are important in health care, and the circumstances under which confidentiality may and may not be broken. The decision to break confidentiality should never be taken lightly. Especially when dealing with teenagers and sensitive information such as sexually transmitted diseases, it is vitally important that adolescents have trust in the health care system in order for them to seek care. But even under these delicate circumstances where confidentiality is so vital, risks to the health and life of the patient must be central in making the decision to break such a valuable trust.

Selected readings on confidentiality:

Tarasoff v Regents of the University of California, 551 Pacific Reports, 2nd Series (1976), p. 334-61.

Mark Siegler, "Confidentiality in Medicine: A Decrepit Concept", *New England Journal of Medicine*, vol. 307, no. 24, (December 8, 1982), p. 1518-21.

Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 4th Ed., Oxford University Press, 1994.

Press (1994), p. 418-29.

For more information on HPV infection and other sexually transmitted diseases:

CDC STD website at: www.cdc.gov/nchstp/dstd/dstdp

American Social Health Association website at: www.ashastd.org

Or phone the National STD Hotline - 1-800-227-8922

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