HUMBERSIDE LMCs

The professional voice of general practice

Access to Records – Serious Crimes

Extract from BMA Ethics Guidelines – Serious Crimes

Practice Management

Serious Harm

Health professionals have clear moral duties to individual patients and to colleagues which may come into conflict with wider obligations to avert serious and preventable harm to others in society. What may constitute serious harm is discussed briefly in the definitions section of this guidance although it is acknowledged that evaluations will vary according to the circumstances of the case.

In general practice, where a patient has information concerning a risk to identifiable others, the situation may be complicated by the fact that those others may also be patients of the same GP and owed a duty of care. In such cases, doctors sometimes resort to complex strategies to empower the person at risk to protect his or her own health and wellbeing, without breaching the confidentiality of the non-disclosing patient. Patients may refuse to divulge to sexual partners information about sexually transmitted diseases, for example, or refuse to share information about genetic testing with relatives who could benefit from knowing it. It may sometimes be possible to avoid the need for non-consensual disclosure by counselling and providing general information to the person who may be at risk.

Where this has not been possible, however, in some circumstances doctors will be justified in breaching confidentiality in order to prevent serious harm. The GMC, for example, advises doctors that they “may disclose information to a known sexual contact of a patient with HIV where you have reason to think that the patient has not informed that person, and cannot be persuaded to do so. In such circumstances you should tell the patient before you make the disclosure, and you must be prepared to justify a decision to disclose information”. (Serious communicable diseases, GMC, October 1997: para 22.)

The same considerations apply to circumstances where the potential disclosure relates to a colleague who poses a threat to the health of his or her patients by reason of illness, incompetence or addiction.

Serious Crime and National Security

Disclosure necessary for the prevention, detection, investigation or punishment of a serious offence is widely regarded as justifiable and desirable. The definition of what constitutes a "serious" crime is a matter of debate. The Police and Criminal Evidence Act 1985 contains some definitions of what it calls a "serious arrestable offence", that is one which has caused or may cause serious harm to the security of the state or to public order; serious interference with the administration of justice or with the investigation of an offence; death; serious injury; or substantial financial gain or serious loss. (Police and Criminal Evidence Act 1985 (s 116)). These definitions include such crimes as murder, manslaughter, rape, treason and kidnapping. Generally, crimes which may result in serious harm or loss of life for individuals can be regarded as very substantially more significant than crimes involving theft, fraud or damage to property.

The BMA recommends that in such cases, health professionals should seek advice from their professional, disciplinary

and indemnifying bodies. Further discussion, provision of counselling or therapy for the person alleging the offence, whether that person claims to be either the victim or the perpetrator, may clarify the issues.

Before disclosure of any information is made the following conditions should be satisfied:

- the crime must be sufficiently serious for the public interest to prevail
- it must be established that, without the disclosure, the task of preventing or detecting the crime would be seriously prejudiced or delayed
- the information is not available from another source which would not necessitate a breach of doctor-patient trust, and
- satisfactory undertakings must be obtained that the personal health information disclosed will not be used for any other purpose and will be destroyed if the subject is not prosecuted, or is discharged or acquitted. DNA samples, for example, may be taken as part of a criminal investigation but should not be retained by the police after an individual has been exonerated of any criminal activity

These conditions should be applied to consideration of any disclosure in connection with a crime. Commonly a source of enquiry to the BMA is the situation in which many GPs find themselves, where the police are investigating a crime near the practice premises and want to know who attended the surgery in a given time period. The fact of attendance is, in itself, confidential and should not be disclosed unless disclosure can be justified according to the criteria set out above.

Similarly, doctors are often asked to speculate on the identity of the perpetrator of a minor crime, such as theft of personal belongings from health care premises. It is unlikely that such crime would be considered to be of sufficient severity to warrant a breach of confidentiality. The police do not have an automatic right of access to information, and advice can always be sought from professional, regulatory or indemnifying bodies where there is any doubt.

Local liaison procedures for health professionals and the police would facilitate arrangements for disclosure in such circumstances and the BMA supports the development of detailed local procedures on disclosure. Such an approach would also serve as a reminder that the police do not have an automatic right of access to the information held by doctors. In the BMA's view, decisions about disclosure of health-related information should be taken by the health professional responsible for the relevant aspect of the patient's health care at the time, in consultation with an appropriate officer of the health service body. It is strongly recommended that a record of all such disclosures be kept.

Crimes in the Past

While it is widely accepted that information should be disclosed to prevent or detect a serious crime, or bring to justice the suspected perpetrator before the crime can be repeated, it is sometimes argued that the obligation to disclose is weakened if there is no continuing danger. Whereas the justification for disclosing information about a serious, current or future threat is clear, the public safety justification for doing so in regard to a past offence is less so if the individual is unlikely to repeat it. Such arguments have been raised with the BMA in relation to either confessions or allegations against others of past child abuse or "mercy killing". As in all other cases, doctors need to assess the particular situation, and may find it helpful to take advice from professional and indemnifying bodies.

In general, however, health professionals should be very wary of concealing any information of substance which would lead to the resolution of a past serious crime against a person. The public interest in ensuring that serious crimes are solved and innocent people are not wrongly punished is likely to require disclosure even in cases where there is no fear of future repetition.

Public Health

Public health doctors may need to disclose information about an individual in order to identify the source of an infection or other possible carriers. Statutory requirements for notification in such cases may not cover all of the measures necessary to protect public health but the public health doctor may decide that disclosure is justified to prevent a serious threat to other people or to protect public safety. In some cases no particular individual is perceived to be at risk from non-disclosure but there may be a generalised threat. This can be sufficient justification for disclosure if there are real grounds to suppose that harm may come if the information is not revealed.

Where there are threats to particular individuals, it is often impossible to take action to protect those individuals without revealing confidential information. For example, contact tracing in meningitis involves ensuring that close (household and kissing) contacts are identified and offered antibiotic prophylaxis or vaccination as appropriate. This activity necessarily involves revealing the diagnosis and usually the identity of the ill person too. The identities of the people to contact will usually come from the patient and the purpose of seeking these should be explained. However, if the names come from elsewhere, or the patient refuses to permit disclosure to contacts, a decision will have to be made based on the principles of avoiding serious harm discussed above.

In other cases, there may be advantages in releasing information about a lack of risk, in order to reassure and avoid unnecessary prophylaxis. If a school child has meningitis, it is common practice for public health doctors to write, in cooperation with the school, to the parents of children in the same class or year to explain the situation. Although this would not name the ill child, he or she will usually nonetheless be identifiable. Consent from the child or the parents for this will usually be forthcoming. The purpose of the disclosure is to reassure others, to avoid telephone calls to the public health service and local doctors, and to avoid inappropriate antibiotic prescription. Thus serious harm is unlikely to occur as a result of non-disclosure, and if consent is refused, for example for fear of stigmatisation, it will not be appropriate to breach confidentiality.

Public Safety

A common example of what can be categorised as public safety occurs in connection with the assessment of patients with, for example, diabetes, epilepsy, defective eyesight or serious cardiac conditions who have been advised by health professionals to discontinue driving but who nevertheless continue. (Confidentiality, GMC, October 1997: para 19 and appendix I). Where an individual has insight into the problem, it is advisable for health professionals to attempt to persuade that person to either discontinue the risky behaviour or to agree to disclosure being made to a responsible

body as one step towards a change of behaviour. In some cases, the individual is unable or unwilling to follow the recommended course of action and health professionals have to weigh up the likelihood of serious harm and the need to breach confidentiality. Health professionals must consider whether non-disclosure in relation to a foreseeable and serious threat might leave them open to a possible charge of negligence if grave harm results from the non-disclosure. In such potential cases, it is advisable to consult professional, regulatory or indemnifying bodies.

Issues of public safety may similarly arise in circumstances where an individual legitimately possessing firearms is thought by health professionals to be a risk because of drug or alcohol addiction or a medical condition such as depression (Interim firearms guidance note, BMA, 1996).

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