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CONFIDENTIALITY OF THE MEDICAL ACT - BETWEEN PATIENT PREFERENCES AND THE COLLECTIVE RISK

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Abstract

Respecting confidentiality and autonomy is the basis of the doctor-patient relationship. The health care professionals involved in the provision of medical care, have the moral obligation to maintain the professional secrecy, except the situations that involves a risk for the public health. We present the case of a 43-year-old patient who was admitted to the Pneumology Clinic with non-specific symptoms: fever, chest pain, significant weight loss and she was detected with a serologically positive result for the human immunodeficiency virus (HIV) and diagnosed with pneumonia associated with human immunodeficiency syndrome (AIDS). The patient expressed the preference to keep this information secret from her family. Shortly after hospitalization, the patient's condition deteriorates and she dies. What should the doctor do in this case, from the ethical point of view? To communicate the diagnoses to the family or to respect the patient's preferences expressed during life? How should the doctor manage the medical information after the patient's death? These are the main ethical dilemmas of the case, which require the identification of the best solution to the conflict generated by respecting the risk-benefit balance. The epidemiologist and the general practitioner must be informed, because they can recommend to the family additional tests to diagnose a possible HIV infection. The general practitioner will only communicate the patient's diagnosis if the disease is confirmed to the other family members. In medical practice, the well-being of an individual patient can be exceeded in the favor of the community's well-being. Respecting confidentiality is outweighed by the public interest in preventing serious damages.

Keywords: confidentiality, benefit, ethical conflict, HIV.

Introduction

Medical professionals are obligated to protect the confidentiality of their patients. The duty to ensure discretion and confidentiality in the medical profession is morally justified based on the rights arising from relationships, and medical practice involves trust relationships with both patients and society. This duty of confidentiality provides a fundamental basis for the existence of some level of trust in the doctor-patient relationship (Boyd, 1992; Kleinman, Baylis, Rodgers & Singer, 1997). From the ethical point of view, respect for the principles of beneficence, non-maleficence and also autonomy is recognized as a major justification for maintaining patient confidentiality, based upon a fundamental

consideration for persons (Carrese & Sugarman, 2006). Altisent (Altisent, 2011) defines it as “the moral right to assist people in maintaining the privacy of what they entrust to others, who correlatively acquire the obligation to guard secrecy”. Respect for confidentiality is important to safeguard the well-being of patients and ensure the confidence of society in the doctor-patient relationship (Shapiro, 2001).

A doctor-patient relationship is basically characterised by medical confidentiality, which means that doctors have to remain silent about any information coming to their attention in the respective context. A breach of medical confidentiality constitutes an act of misconduct relevant in terms of criminal and professional law. If a doctor has the permission or obligation to disclose confidential information, a breach of medical confidentiality is not illegitimate. A permission to disclose confidential information is given if a patient releases a doctor from his or her medical confidentiality obligation either explicitly or through coherent action. Doctors who provide concurrent or successive treatment of a patient are also released from their obligation to keep medical confidentiality towards their attending colleagues. Furthermore, doctors are allowed to disclose confidential information if disclosure is of superior interest. Those specific constellations are narrowly defined by law. Moreover, a permission to disclose confidential information can be the result of a legal provision (Striegel, 2018).

Case presentation

We present the case of a 43-year-old patient, mother of three children, who was admitted to the Pneumology Clinic with non-specific symptoms (fever, chest pain, significant weight loss) with progressive aggravation. At the oral examination there were objectified extensive lesions of oro-pharyngeal candidiasis. The patient was detected with a serologically positive result for the human immunodeficiency virus (HIV). By computed tomography (CT) and fibrobronoscopic examination the final diagnosis of pneumonia with *Pneumocystis jiroveci* associated with human immunodeficiency syndrome (AIDS) is established. The patient expressed the preference to keep this information secret from her family. She pleaded for the doctor-patient confidentiality.

Subsequent evolution was unfavorable, with severe respiratory failure, secondary to acute respiratory distress syndrome, requiring tracheal intubation and mechanical ventilation.

It was not possible to resume the discussion on the topic of the family, neither the psychological counseling. Shortly after hospitalization, the patient's condition deteriorates and she dies.

What should the doctor do in this case, from the ethical point of view? To communicate the diagnoses to the family or to respect the patient's preferences expressed during life? How should the doctor manage the medical information after the patient's death? These are the main ethical dilemmas of the case, which require the identification of the best solution to the conflict generated by respecting the risk-benefit balance.

Discussions

The epidemiologist and the general practitioner must be informed, because they can recommend to the family additional tests to diagnose a possible HIV infection. The general practitioner will only communicate the patient's diagnosis if the disease is confirmed to the other family members.

According to the law no. 46/21 January 2003 regarding the rights of the patient, chapter IV, article 21: "the data regarding the outcome of the investigations, the diagnosis, the prognosis [...] of the patient are confidential even after his death", the disclosure of this information is possible only "with the explicit consent, or if the law expressly requests it" (article 22). Also in support of confidentiality comes Decision no. 3 of March 25, 2005

regarding the adoption of the Statute and the Code of Medical Deontology of the Medical College of Romania, article 15: "... the professional secrecy also persists after the end of the treatment or the death of the patient", respectively article 16: "The professional secret must be kept also from the carers, unless the patient wishes otherwise". We observe that in this case, respecting the confidentiality of the data violates the principle of benefit for the other family members. In the context described, they could benefit from: early diagnosis, proper antiretroviral treatment, an adequate evaluation and follow-up and prophylaxis of potential complications.

When analyzing the legislation, we notice that there are a number of exceptions that allow the breach of confidentiality.

Law no. 46 of January 21, 2003 stipulates in article 23: "If the information is needed to other accredited healthcare providers involved in the treatment of the patient, consent is no longer required." Doctors of different specialties can transmit this information from one to another, if it brings a significant benefit in terms of the accuracy of the diagnosis and the correctness of the treatment applied.

Law no. 584 of October 29, 2002, regarding the measures to prevent the spread of AIDS in Romania and to protect the people infected with HIV or suffering from AIDS, supports the same idea, being specified in chapter IV, paragraph 2: "In the case of physicians, the information on the HIV / AIDS status of a patient must be communicated between the specialties, in order to ensure the accuracy of the surgical and non-surgical therapeutic diagnoses and behaviors in the different evolutionary phases of HIV / AIDS infection".

Law no. 46 of January 21, 2003, which provides in chapter IV, article 25, subparagraph 2: "Exceptions are considered in cases where the patient represents a danger to himself or to the public health", referring to the respect of the patient's consent.

It is necessary to prioritize the issue of the family's health status, considering the possibility of transmitting the infection in the community, but also the chance of initiating the specialized treatment that can improve the prognosis.

Conclusion: In this case, the well-being of an individual patient was exceeded in the favor of the community's well-being. Respecting confidentiality is outweighed by the public interest in preventing serious damages. The breach of patient confidentiality remains one of the major problems encountered in daily clinical practice.

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