

It's a Thin Line Between Confidentiality and Disclosing Patient Information

Kerri G. Horn

University of Kansas School of Nursing

About the Author:

Kerri Horn is from Torrance California yet has called Lawrence Kansas home since 1997. She is the recipient of the Level III Clinical Excellence Award from the University Of Kansas School Of Nursing. Her future goals are to specialize in mental health after developing a well rounded medical surgical knowledge base.

She acknowledges that she did not start college until she was 21. Early in her career her younger brother developed an ear infection that infected his brain. A month later her mother's life was saved when she developed a hole in her colon requiring immediate surgery and extensive follow up. The care provided to both of her relatives was provided by KU Hospital in Kansas City, Kansas. It was these experiences that caused her to refocus her life and seek a career in nursing.

She wishes to acknowledge her mentor in nursing school, Dr. Kathleen Brewer, and Professor Mary Meyer for their positive influences, Cyndie Schudel for her continual guidance and support both before and during nursing school, and her classmates for their amazing support during all the ups and downs of college.

It's a Thin Line Between Confidentiality and Disclosing Patient Information.

Introduction

There is a fine line between maintaining confidentiality and sharing patient information in the healthcare profession. The purpose of this paper is to discuss the importance of maintaining confidentiality, as well as, discussing why it is crucial in some situations to disclose or share patient information. Confidentiality is among the eight ethical elements important to nurses. Maintaining confidentiality is important because of trust. The patient must know they can trust the healthcare team, as the majority of the information provided is very personal and private. If a patient does not trust their doctor/nurse they are likely to omit certain details of their life that may be very useful in treating their illness.

Due to the nature of the nurse-patient relationship the law seeks to protect the patients' right to confidentiality. The court considers inappropriate disclosure of health information to be detrimental to the patient and may be considered a tortuous breach of confidentiality (Beech, 2007). Various acts put in place to protect patient information will be presented to explain the importance of maintaining confidentiality, identifying the importance of disclosing patient information, and the exceptions.

Review of Literature

Confidentiality is a crucial part of the healthcare. It is a legal obligation and part of the duty to care to a patient (Beech, 2007). There are many ways the nurse may maintain patients' health information. Making sure to only disclose necessary information to healthcare team members is justified (Griffith, 2008). The nurse must be certain that patient information is not visible by anyone who does not have permission to view. For example, locking electronic devices or logging off the patients' information is not accessible. When talking to a patient or

other healthcare providers, it is essential to make certain that no one else can hear the conversation. This may be done by talking in a private room or by being aware of how loudly you are speaking. Many times as healthcare providers forget little things that can also be considered a breach in confidentiality, or the patient's right to privacy.

Confidentiality is not only a legal element for nurses but a law that is found in common principles. The Data Protection Act of 1998 began in 2000. It replaced previous legislation and includes all social services and health records. "The act requires that all data are processed fairly, legally and accurately, and that information is held for no longer than necessary" (Beech, 2007, p. 42). This includes collecting, processing, storing, and the transferring electronic and manually held data (Edwards, 2009). Patients also have the right to read their health records if they wish to do so, as the information belongs to them. The Freedom of Information Act 2000 was created to address information held by public authorities. The information of concern in the Freedom of Information Act is recorded information to allow statistics be used to improve patient outcomes. This law works separately from the Data Protection Act 1998 that exempts personal information from being used.

Unfortunately the legal obligation to maintain confidentiality is not absolute (Beech, 2007). There also is no absolute requirement for healthcare staff to disclose or not disclose information to the police which is stated under the Police and Criminal Evidence Act 1984 (Beech, 2007). This act does not include information in connection with crimes that involve terrorism, and certain sections of the Road and Traffic Act 1999 requiring the identification of people involved in accidents (Beech, 2007). The National Health Service provides guidance about assisting police with the prevention or detection of serious crimes such as murder, rape and kidnapping and allows disclosure of this information (Beech, 2007).

Minimal guidance is provided to nurses and healthcare professionals on exactly when it is considered justifiable to disclose patient information. In general the law requires that patients provide consent when disclosing information. The best form of consent occurs when the patient gives consent or is provided exactly what information will be disclosed and to whom. Explicit consent is required when the information will be used for non-health related issues, sharing with other agencies or with relatives. It is important to note that information that is already considered public knowledge is not said to be a breach in confidence (Cornock, 2009). It is also good practice that the nurse does not give a blanket statement assuring confidentiality, but rather explains that the information provided will remain confidential unless someone is at risk or a serious crime has been committed (Edwards, 2009).

In healthcare confidentiality is placed at a very high level of importance and for that reason there are very few exceptions to override a person's right to confidentiality, therefore it is important that the nurse is aware of the exceptions that allow disclosure of patient information (Fullbrook, 2007). Appropriate disclosure is a necessity for effective care and for the protection of vulnerable patients, while also avoiding any allegation of misconduct or breach in confidentiality (Griffith, 2008). One very good example is in the situation where a fifteen year old girl confided in a nurse advising that she had recently been raped. About three weeks after telling the nurse the young girl committed suicide. Due to the fact that the nurse gave her word to keep this information confidential, she did not report the incidence to police. In this situation the nurse would have been justified in breaching confidentiality. The nurse should have discussed the situation further with the patient to try and persuade the patient to seek out help and to contact the proper authorities. If the patient was unwilling to do so, it then would have

been the nurse's legal obligation to contact the police because to protect the welfare of children and vulnerable populations outweighs the duty to maintain confidentiality (Griffith, 2008).

Disclosure in the interest of justice, public good, protection of a third party, and to prevent or detect a serious crime are all exceptions that cover a broad range of situations in which confidentiality should not be maintained. *The Nursing and Midwifery Council (NMC) Code of Professional Conduct: Standards for Conduct, Performance and Ethics* (NMC 2004) states that each registered nurse, midwife, or health visitor must report to the appropriate person any circumstance that jeopardizes safe standards of practice or any circumstance in which safe and appropriate care cannot be provided to the patient (Beech, 2007). Public safety is also considered extremely important and may be a reason to override confidentiality (Fullbrook, 2007). Due to the fact that healthcare providers have a duty to care for their patients as well as causing no harm, confidentiality sometimes must be broken in order to protect the patients overall well being.

Patients disclose private and personal information because they believe that the information will be used for their benefit. Keeping information confidential is for the benefit of the individual as well as society (Cornock, 2009). Court order, statutory duty, public interest, informed consent or anonymization is the only legal reasons why confidential information can be given to secondary users. Unless disclosure is mandatory or consent has been given the legal reasons provide justification for a breach in confidentiality. The preferable way of sharing grouped National Health Service (NHS) information is done through anonymization. This replaces the need for consent and also changes the information so that it is not considered personal information, as all patient identifiers have been removed, thus this removes the legal requirement of data protection (Harris, 2009).

If the nurse or healthcare provider is unsure whether to share patient information for any reason they can contact a Caldicott Guardian. The Caldicott Guardian helps to ensure that the NHS upholds the highest standards for handling patient identifiable information. “The Guardian will actively support work to facilitate and enable lawful and ethical information sharing” (Griffith, p. 120, 2008).

Nursing Implications

Overall, confidentiality must be maintained by the nurse and healthcare providers in most situations. The nurse must assess all aspects of care, making sure to only disclose information to the necessary parties. Nurses have the duty to care for their patients and provide safe, ethical care. As stated previously the nurse must evaluate whether the patient is at risk or in immediate harm. Also the nurse must assess whether the matter is a concern for public safety.

Conclusion/Summary

Nurses and healthcare providers should use their common sense, experience, and ‘gut’ feelings to evaluate whether information should be shared. In obvious situations where patient or public safety is a concern or even a risk the nurse should at the very least notify their immediate supervisor and follow up on the decision that was made. After researching this topic it has reiterated to me how important patient confidentiality is. Also knowing the exact laws and exceptions to disclosing patient information helps guide the nurse. Confidentiality is like one of many aspects of nursing in which the nurse must take a macroscopic approach and look at the whole picture before disclosing patient information.

References

- Beech, M. (2007). Confidentiality in health care: Conflicting legal and ethical issues. *Nursing Standard*, 21(21), 42-46.
- Cornock, M. (2009). Keeping confidence. *Nursing Standard*, 23(44), 64.
- Edwards, M. (2009). Patient confidentiality and data protection. *Practice Nursing*, 20(8), 411-413.
- Fullbrook, S. (2007). Specialist healthcare law. Legal principles of confidentiality and other public interests: part 1. *British Journal of Nursing (BJN)*, 16(14), 874-875.
- Griffith, R. (2008). Patient confidentiality: Rights and duties of nurse prescribers. *Nurse Prescribing*, 6(3), 116-120.
- Harris, A. (2009). How safe is releasing anonymized confidential data? Clinicians need to understand their legal and professional duties. *Clinical Risk*, 15(5), 173-176.