3.3.3 Reporting Patients - Harm to Others (Public Safety)

Andrew McRae, MD, PhD, FRCPC

Updated December 23, 2013

Case

A 19-year old male patient has been brought to the emergency department by his friends. He has been shot in upper arm. The bullet entered the anterior aspect of the arm, lateral to the humerus, and exited posteriorly. Aside from the bullet wound, the primary and secondary trauma assessments are unremarkable. The trauma team determined that there was no significant musculoskeletal or neurovascular injury. The wounds were cleansed, irrigated, explored, and closed. The patient was given instructions for wound care and for follow-up with his family physician.

The patient refused to discuss the circumstances of the shooting, and demanded that police not be informed. Do physicians have a responsibility to report violent crime that supersedes their obligations to safeguard a patient’s privacy? Are there circumstances in which threats to the safety of others requires reporting of patients to the authorities?

Discussion

A physician’s duty to keep a patient’s personal health information in confidence is one of the fundamental obligations in medical practice. This duty is based on respect for a patient’s autonomy and the need for trust in the physician-patient relationship.

Privacy refers generally to a person’s right to be left alone. A physician’s act of keeping medical information in confidence allows a patient to protect his/her own privacy. Violating an autonomous patient’s confidentiality infringes that patient’s right to control access to their personal information. The confidentiality of the physician-patient relationship allows patients to comfortably discuss private information with their physician. The patient’s trust in the physician’s discretion is thus essential to the diagnostic process. Keeping a patient’s privacy and confidentiality is a reasonable expectation in the physician-patient relationship.

The duty to keep a patient’s health information private may occasionally conflict with a physician’s perceived duty to protect others. This duty does not stem from a particular physician-patient relationship, but rather from the physician’s professional role and membership in a community.

Commentators disagree whether physicians truly have a moral duty to protect public safety. Governments, which have a responsibility to protect the public, have enacted legislation that requires physicians, in specific circumstances, to violate a patient’s confidence for the protection of others. Specific provincial legislation requires the reporting of suspected child or elder abuse, transmissible diseases, or conditions that may impair a patient’s ability to safely operate a vehicle. For a more detailed discussion of the various statutory requirements for reporting by physicians, with references to Federal and Ontario statutes, please see reference 7, prepared by the College of Physicians and Surgeons of Ontario.

The Criminal Code of Canada has no requirement for a physician to report a patient’s criminal activities, with the exception of high treason. Many provinces have legislation requiring health care providers to inform police if a patient is treated for a gunshot or stab wound. The premise of the regulation is that a gunshot wound results either from a criminal act or as a result of inappropriate use or storage of a firearm. Any of these situations may pose an ongoing threat to others, and a police investigation is required to determine and eliminate that threat. It has been argued that mandatory reporting requires physicians to act as an agent of the police, undermining the physician-patient relationship. Supporters of the regulation argue that firearms used improperly or illegally represent a threat to public safety, and that mandatory reporting transfers the investigative role from the physician to the police who are more prepared to pursue such an investigation.

Mandatory reporting statutes vary as to whether they require the physician to disclose to the patient that a report is being submitted to the authorities. Most mandatory reporting statutes state that patients must be informed of
any mandatory report made by their physician, unless informing the patient may lead to harm either to the patient or to the physician. In addition, the physician should instruct that patient to refrain from activities that may threaten public safety (e.g. driving with a newly diagnosed seizure disorder).

The tension between a physician’s duty to protect patients’ privacy and the duty to protect others becomes more pronounced when a clearly identifiable individual is at risk. This issue was addressed in the case of *Tarasoff v. the Regents of the University of California*12. This lawsuit was brought against a clinical psychologist by the parents of a woman murdered by one of the psychologist’s patients. The patient had confided to the psychologist his intention to murder his girlfriend. The psychologist notified the University of California campus police, who apprehended and then released the patient. Two weeks following, the patient killed his girlfriend. The girlfriend’s parents successfully sued, arguing that the psychologist had a duty to warn the young woman.

The *Tarasoff* decision established in case law a physician’s obligation to violate a patient’s confidentiality in order to warn and protect a clearly identifiable third party that may foreseeably be harmed by that patient. *Tarasoff* established that this duty may be discharged by directly warning the third party, or by informing police of the possible threat (although for case-specific reasons in *Tarasoff*, notifying the campus police was not sufficient). Police notification of an imminent threat is likely the most appropriate action in this type of situation, as they are best situated to further investigate the threat and to protect the patient’s target.

It is less clear how physicians ought to react in situations where patients exhibit violent behavior, but there is no clearly identifiable target. This often occurs in the setting of mental illness, in which case threatening behavior may be an indication for detention of the patient for further psychiatric evaluation.

The willful spreading of communicable diseases has led to criminal convictions. Many communicable diseases must be reported to provincial public health authorities. The public health labs perform contact tracing to ensure that previous partners have sought testing, but they are not empowered to prevent further spread of a communicable disease.

**Resolution**

In many provinces, the physician in this clinical scenario would be required by law to inform police that a gunshot wound victim was being treated in the emergency department. The police would pursue the investigation further. Other instances requiring mandatory reporting would provoke the appropriate response from the relevant federal or provincial authorities.

In situations where no specific legislation exists, physicians are forced to assess the probability and magnitude of harm to other individuals as a result of a patient’s condition or behavior. The *Tarasoff* case clearly establishes a duty to warn individuals who are at high likelihood and magnitude of harm. There is, unfortunately, little guidance for physicians in situations where a patient’s behavior or conditions poses only a small or moderate risk to others, or when there is no clearly identifiable individual at risk. A physician can often only encourage their patients to take necessary measures to minimize risks to others.

**References**