

HARM

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Respect for autonomy does not entail only the right of capac - itous patients to consent to treatment. Their autonomous - right extends to control over their confidential information, and surgeons must respect their patients' privacy , not commu - nicating infor mation revealed in the course of treatment to anyone else without consent. Generally speaking, such respect means that surgeons must not discuss clinical matters with relatives, friends, employe r s and other state actors unless the patient explicitly agrees. To do otherwise is regarded by all the regulatory bodies of medicine and surgery as a grave o ff ence, incurring harsh penalties. Breaches of confidentiality are not only abuses of human dignity; they undermine the trust between surgeon and patient on which successful surgery and the professional reputations of surgeons depend. The delicacy - of this situation was amply demonstrated in a recent case. A woman (ABC) had a father (XX) who killed her mother, - 9 leading to his detention in a psychiatric facility . His clinicians tested him for Huntington's disease, which proved positive. He had capacity , and agreed to the testing only on the basis that his results were not shared with his family . In the meantime, ABC fell pregnant. Her father's doc - tors knew about the pregnancy and wanted to disclose XX's diagnosis to his daughter; from the time of his diagnosis there would have been a window of 2 months during which termi - nation of her pregnancy was feasible. XX r efused to disclose, - aware that such knowledge might have an impact on his two daughters' reproductive decision making. ABC discovered her fa - ther's diagnosis during a clinical visit when her baby was 4 months old. Shortly afterwards, she decided that her father's diagnosis should not be disclosed to her sister, now in the early stages of her own pregnancy . Four year s later, ABC tested positive for Huntington's. Feel - ing that it had been unfair to bring a child into the world in - these tragic circumstances, she claimed that the doctors should have breached her father's confidentiality and told her of his diagnosis while she had a chance to choose whether she w ould undergo termination. In making this claim, she asserted that she was owed a duty of care by the doctors who also had a duty to respect her father's confidentiality . '...duty /uni00A0 to balance the claimant's interest in being informed of her risk of a genetic disorder against her father's interest in having the confidentiality of that diagnosis preserved'. The court noted that if on that basis the clinicians properly con sidered and balanced the conflicting interests, but decided not to disclose, they would have fulfilled their obligation, provided their conclusion not to disclose the inf ormation was reason able. The judge concluded that it was just, fair and reason able to impose a legal duty to balance ABC's interest in being informed against XX's interest in maintaining his confidenti ality relating to both his diagnosis (and the public interest in maintaining medical confidentiality generally). The decision in ABC reveals that, important as respect for confidentiality is, it is not an absolute right. Sur geons are allowed to communicate private information to other profes sionals who are part of the healthcar e team, provided that the information has a direct bearing on treatment. Here, it is argued that patients have given their 'implied' consent to such communication when the y explicitly consent to a treatment plan. Whether implied consent can in any circumstances be valid is a matter for public debate, as government applies these words to tissue donation and access to

electronic health records. Academic lawyers are sceptical that it is a species of consent at all, since there is no guarantee of the now-treasured disclosure prior to agreement. Such examples of 'implied' consent are better viewed as mere acquiescence on the behalf of patients, ignorant of and not objecting to decisions made about them, in the absence of personal consultation. Patients cannot expect strict adherence to the principle of confidentiality if it poses a serious threat to the health and safety of others. There will be some circumstances in which confidentiality either must or may be breached in the public interest. For example, it must be breached as a result of court orders or in relation to the requirements of public health legislation. HARM

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