

Contemporary Ethical Legal Issues Reflections

Name:

Institution:

Contemporary Ethical Legal Issues Reflections

The nursing and healthcare profession is faced with increasing ethical and legal challenges as a result of increased medical technology, dynamic modes of communication and increased responsibilities for nursing professions. Most of these legal and ethical challenges are linked directly to legislative changes with regard to confidentiality matters and ethics pertaining to medical technologies. Confidentiality is an issue that has been practiced by the nursing profession for many years, but legal changes have increased the need for confidentiality to be maintained. In 1996, the introduction of Health Insurance Portability and Accountability Act (HIPAA) increased the need for protecting distribution of confidential patient information (Lachman, 2006). Several requirements of reducing the spread and login systems were implemented so that access to confidential information could be tracked. Tracking of data and usage of password systems ensured that employees could not access files of patients they were caring for.

Moffitt Cancer Centre is at the middle of controversy after it was revealed that patient consent for research study was falsified. The center is investigating if hundreds of signatures on documents were fraudulent, which enrolled patients to one of the largest cancer research study performed by the hospital (Martin, 2010). When either a physician or a healthcare provider seeks to carry out a procedure on a patient, it is the duty of a nurse to acquire an informed consent signature. This implies that the patient knows the procedure and available alternatives, has clarified with the provider about the procedure, knows the risks involved and the benefits, and is at liberty to either sign or refuse to partake in the activity. When the nurse fails to obtain and instead falsifies the signature, both the provider and the nurse can be held accountable for any damages incurred.

The president and CEO of Moffitt Cancer Centre, Dr. William Dalton, agreed that an employee had falsified a patient's signature on a consent document and the committee was

investigating 492 questionable signatures. The study, known as Total Cancer Care, is an observation trial which tracks cancer patients over a period of time but not the form of treatment they are given. Since confidentiality and proper consent from patients are crucial to the research process, the discovery led to complete audit of all employees' work on July 29 (Martin, 2010). This issue raises an ethical concern since patients' permission to be studied must be obtained, and the patients must believe that the study is a serious matter. The employee who had worked for two and a half years in the hospital as a clinical consentor was fired on July 30 due to the seriousness of his actions. Moreover, Ernest & Young, an auditing firm, was hired to begin investigations and a handwriting expert was asked to analyze 6,464 consent signatures.

Some nurses have little or lack formal education in law and ethics, thus making them unqualified to deal with such issues whenever they arise in a clinical setting (Kleiman, 2007). Ethical and legal issues such as organ donation, euthanasia, genetic engineering, physician-assisted suicide, end-of-life care, and dealing with patient confidentiality have been part of modern nursing practice, and there are legal, ethical and regulatory mandates that require healthcare professionals to be knowledgeable on these subjects. Lack of basic knowledge makes nurses feel powerless and thus withdraw from such issues, making mistakes to occur frequently. Therefore, it is of vital importance for nurses to gain this knowledge and to be guided through this vital subject in their profession.

Being aware of the deficiency in ethical knowledge on some of its staff, Moffitt Cancer Centre initiated an intensive training program on its supervisors and consentors. Moreover, it plans to revise the consent process to ensure additional assurance and accuracy. The president said that the whole process could also include a follow-up to the patient to ask them if they signed the consent form. One ethical dilemma initiated by the falsification of patient's signature is the loss of trust on the research process. The CEO agreed that the breach

could lead to a situation where patients refuse to participate in the study, leading to a failure of a process that started over four years ago and with over 60,000 participants. In addition, grant funding into the project may be suspended and according to Dr. James Omel, who is a patient in this study, the inappropriate actions of one individual could have a damaging effect on the research (Martin, 2010).

The nursing and medical profession is bound by a code of ethics which enforces its disciplinary procedure. The Nursing and Midwifery Council (NMC) regulates the professional standards under the Register of Medical Practitioners. Regulations on patient's confidentiality state that a patient has a right to expect doctors to hold their information as classified. Confidentiality enhances trust between patients and doctors, and when this is not assured patients may be forced to withhold information that is necessary in the provision of quality healthcare (Lachman, 2000). Any information obtained by a doctor in his/her professional capacity must not be disclosed without patients' consent unless under exceptional circumstances.

The principal duty of ensuring that ethical and legal issues are maintained is bestowed upon the doctor, but nurses can also be held accountable. Nurses are required to obey the directions of the doctor and adhere to lawful instructions of the organization. Apart from being under the directions of the doctor and the employer, nurses are also members of a team required to follow their professional duties and responsibility. Nurses are required to exercise skills and competencies that befit their standing and experience, and these include the accepted good practice of the nursing profession. In addition, they must adhere to the Code of Professional Conduct for a Nurse (UKCC, 1992). They are also required to be up-to-date with information from literature and training and observe the necessary safety precautions.

The right to choose what happens to an individual's body or participate in a certain study is the right to autonomy. 'Autonomy' and 'autonomous' are words used in accordance

to capacity, condition and right. In the medical profession, the right to autonomy is paramount and a medical treatment or procedure can only be imposed if there is a potential threat to other people. Moreover, it is believed that sickness is a value-laden concept and paternalism runs the risk of medical practitioners branding patients with a sickness and consequent treatment (Kleiman, 2007). In the nursing and medical practice, an ethical and possible legal dilemma occurs when a patient is denied with these rights. In medical law, the cardinal principle is that a patient must be given an informed consent whenever possible for any procedure that is about to be carried out.

To establish successful patient-doctor relationship, trust is paramount and this can only be created by respecting patient autonomy. In case of mentally incompetent adults, their in-laws or relatives can provide the consent for the patient to touch or participate in a study; and if there is a breach to this right, they can sue for trespass, battery or assault in a civil court. However, an action of negligence may be successful when a duty to care and inform the patient is breached. Moffitt Cancer Centre officials believe that no law was broken but they found it necessary to contact law enforcement authorities. In addition, the officials of the Institutional Review Board, Federal National Institutes of Health and National Cancer Institutes and the Federal Office for Human Research Protection, all of whom ensure patient safety, were informed.

It is evident by the different course of actions taken by Moffitt Cancer Centre officials that their employee was way out of line concerning ethical and professional responsibilities. His actions lacked valid consent, an ethical purpose and a legal duty to ensure patient autonomy and confidentiality of information. Apart from losing his job, he faces a potential legal liability or moral criticism for failing to observe the professional requirements of his job. Since the research lacked the principle of necessity or an act of emergency, the employee should have ensured the patients' best interest by seeking formal consent for participation in

the study. In conclusion, for understanding more about consent and confidentiality topics, a person requires not only knowledge in law but also proficiency in ethical and professional duties.

References

Kleiman, S. (2007). Revitalizing the humanistic imperative in nursing education. *Nursing Education Perspectives*, 28, 8-12.

Lachman, V. (2006). *Applied ethics in nursing*. New York: Springer

Martin, R. (2010, August 26). Moffitt Cancer Centre discovers patient consent was falsified.

St. Petersburg Times. Retrieved September 2, 2010, from

<http://www.tampabay.com/news/health/research/moffitt-cancer-center-discovers-patient-consent-was-falsified-for-study/1117483>

United Kingdom Central Council for Nursing, Midwifery, and Health Visiting (UKCC)

(1992). *Code of professional conduct for the nurse, midwife and health visitor*.

London: UKCC.