**IDIS 483**

Case Analysis #3 (Social Diversity)

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November 23, 2023 (\*received academic consideration)

1. ***What are some of the main ethical considerations that are relevant to this case?***

The first consideration is autonomy. In Canada, informed consent procedures are designed to protect autonomy, as they enable patients to make educated choices regarding medical interventions.1 However, the patient in this case may have a different understanding of healthcare, in which the family collectively decides to what extent the patient should know about her illness. Because the patient cannot speak English/French, she depends on her son-in-law to convey her wishes to the team; and although he seems to be acting in her best interests, it is difficult to confirm that his request represents the patient’s autonomous desire to rely on her family for information, rather than the family’s opinion on what is best.

Another consideration is non-maleficence: we want to protect the patient from harm. The rationale behind the request is ambiguous, but it may be due to culture: for example, some cultures believe that it is an act of protection to guard the patient from knowledge of their illness.2 Although we value self-determination, we also value social justice, and we try to protect minority groups who may be marginalized by the dominant system. In this case, it may cause more harm to “force” the patient to abide by unfamiliar values of healthcare, after her family has communicated that she does not agree with this system. On the other hand, allowing the family to withhold information may come with detrimental consequences, such as the patient having misconceptions about her diagnosis, or the patient missing the opportunity to ask important questions.3

1. ***What are the main health system factors and contextual features of the case that you and the team will need to take into account in deciding how to proceed here?***

The Health Care Consent Act sets guidelines for obtaining informed consent. The patient’s consent must be related to a treatment plan; it must be given with an understanding of the nature, benefits/risks, and consequences of treatment; it must be voluntary; and it must not be obtained through misrepresentation.1 The responsibility to obtain consent always rests with the provider who has the expertise necessary to answer the patient’s questions.1 Therefore, if the physician were to allow the family to withhold information, the criteria for informed consent would not be fulfilled because the patient would lack a full understanding of their medical options. Without informed consent, physicians cannot administer treatment.1

It is only possible for the family to make decisions on behalf of the patient if she lacks capacity.1,4 Her capacity is unclear from the case, so a capacity assessment could be used to test if she can understand and appreciate the information necessary to make medical decisions (if the option is available in the patient’s language). If she is found to be incapable, decision-making is granted to her substitute decision-maker, likely someone within the family.4 However, it is possible that the patient can understand and appreciate medical information when it is delivered in her native language. In this case, the language barrier is the only “incapacitating” factor, but language is not viewed as cognitive incapacity – it is a personal attribute that can be accommodated. Ontario’s Human Rights Code outlines that every person has a right to equal treatment, without discrimination due to place of origin.5 As such, it may be unjust to deny the patient of her capacity, on the basis that she is not from Canada and cannot speak the dominant languages.5

One other possibility in which a physician can withhold information is through “therapeutic privilege”: if the physician believes that the patient will be unable to cope with its emotional impact.1,6 The case does not provide any indication that the patient requires therapeutic privilege, as it should only be used in certain clinical circumstances, when disclosure would pose enormous danger to the patient’s recovery.1,6

1. ***How would you approach your next discussion with the son-in-law, now that you’ve received the details of the patient’s diagnosis?***

If the patient is found to be capable, I would inform the son-in-law about Ontario’s guidelines regarding informed consent, which requires the team to communicate directly with the patient. However, I would ask to learn more about the patient’s beliefs, to determine how to deliver the information in a way that is respectful and accommodating.7 Even if we must tell the patient about her diagnosis against her wishes, I would want to mitigate its negative impact, to maintain trust and rapport with the family.

Before giving the diagnosis, I would also attempt to include the interpreter at the next meeting with the patient, to ask about her wishes to receive healthcare information. If the patient confirms that she would not like to know about her illness, I could approach the hospital’s legal counsel to determine options to formalize this request. Otherwise, I would proceed with disclosing her diagnosis in a culturally sensitive manner.

References

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