

Virtual Mentor

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CASE AND COMMENTARY

Patient Confidentiality and Overriding Social Considerations

Commentary by Faith Lagay, PhD

Kathleen Wills visited a private clinic and learned that she was nearly 2 months pregnant. She and her husband were delighted to discover that they were expecting a child, their first, and shared the news with friends. About 6 weeks later, on her first regular prenatal visit, an ultrasound examination revealed that the fetus had no heartbeat. The Wills were greatly saddened by the loss. Kathleen underwent surgery for removal of the fetus.

Eight months later, Mrs. Wills received a subpoena issued by a county judge demanding that she report to the county attorney's office for questioning in a criminal investigation. The body of a 24- to 48-hour-old baby had been found abandoned in a garbage dumpster, and the clinic where Mrs. Wills received her pregnancy test had been subpoenaed for medical record information on all patients whose pregnancy tests were positive during a 9-month period that included the date of Mrs. Wills' test. The clinic had complied. It pained Mrs. Wills to recollect the facts and feelings associated with her miscarriage. But it angered her also. Why had the clinic violated patient confidentiality? Why did she have to prove, of all things, that she had not abandoned a living baby?

Questions for Discussion

1. Did the clinic act ethically in handing medical record information to the county attorney's office?¹
2. Did Mrs. Wills have a right to expect that the information about her positive pregnancy test would be kept confidential?
3. What, if anything, was mishandled here? Is anyone at fault in the breaching of Mrs. Wills' confidentiality?
4. Is the harm to Mrs. Wills and other innocent women whose names are given to the county attorney's office in this case balanced by "overriding social considerations," ie, the public's interest in finding the woman who abandoned her infant?

Analyses

This case is based on events in Buena Vista County, Iowa in 2001-2002. After receiving information on patients who had positive pregnancy tests from several private clinics in the county where the dead infant was found, the county attorney's office sought the same information from a clinic operated by Planned Parenthood of Greater Iowa, Inc. (PPGI). The PPGI president refused to release the information,

calling the subpoena an unwarranted invasion of privacy and of confidential medical information. She petitioned the judge to quash the subpoena.

The court overruled PPGI's motion to quash, holding that the subpoena violated neither federal laws nor Iowa statutes regarding physician-client privilege because no physicians or other health professionals were being asked to testify to the validity of the records. The court did limit the information that the county attorney's office could demand to names, addresses, and birth dates of women with positive pregnancy tests during the 9-month period of inquiry.

PPGI appealed to the Iowa Supreme Court for a stay of the lower court's subpoena, which the higher court granted. The Iowa Supreme Court later granted PPGI's petition to appeal its medical records privacy case.² Argument is scheduled to begin in the Iowa Supreme Court in December 2002.

The American Civil Liberties Union has filed a friend-of-the-court brief in the case, arguing that irreparable harm and suffering will come to those like the Wills who have lost a fetus or newborn and will be questioned by the attorney's office about that pregnancy. The ACLU also argues that trust in the medical profession and, hence, in people's willingness to consult physicians when necessary, will be eroded as a result of the breach of patient confidentiality that the attorney's office intends to carry out. Moreover, there is no evidence that the mother of the dead infant sought any type of care during her pregnancy, or even lived in the community or county where the infant was found.

The county attorney's office contends "that pregnancy-test information is not protected by doctor-patient privilege because it isn't 'medical' information and the test could be performed and interpreted by non-medical personnel."

References

1. Opinion 5.05 Confidentiality. American Medical Association. *Code of Medical Ethics 1998-1999 Edition*. Chicago, IL: American Medical Association; 1998:149-165. This report states, in part, "The physician should not reveal confidential communications or information without the express consent of the patient, unless required to do so by law." It states, further, that, "The obligation to safeguard patient confidences is subject to certain exceptions which are ethically and legally justified because of overriding social considerations."
2. *Planned Parenthood of Greater Iowa, Inc. v The Iowa District Court of Buena Vista County*. The ACLU brief is available at https://www.aclu.org/FilesPDFs?pp_iowa-amicus.pdf. Accessed January 30, 2009.

Faith Lagay, PhD is the managing editor of *Virtual Mentor*.

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