Current PSYCHIATRY

MALPRACTICE VERDICTS

Confidentiality confusion, and who's at fault for fatal misdiagnosis?

Jon E. Grant, JD, MD, MPH
Assistant professor of psychiatry and human behavior
Brown Medical School, Providence, RI

Worker claims therapist disclosed confidential information

Cook County (IL) Circuit Court

A public works employee in Illinois received psychotherapy through his city's wellness program. After the man left his position, he claimed in court that the treating therapist met with his former co-workers, disclosed his receipt of therapy to them, and told them he was unstable and capable of harming himself or others. The former employee argued that the disclosures violated Illinois law, caused him emotional distress, and made him unable to trust mental health professionals.

The defense denied that the therapist had violated the law or had made any disclosures. Instead, the defense argued that the co-workers—not the therapist—had voiced concern about the plaintiff. The defense maintained that the co-workers were confused about who had discussed the plaintiff, and that the therapist had not discussed him.

• **The jury found for the defense.**

Dr. Grant's observations

The courts have recognized and protected the fundamental importance of confidentiality in the therapist/patient relationship.[1]

Confidentiality prohibits clinicians from revealing a patient's communications and treatment records to third parties. This is the patient's right, so he or she must consent to all disclosures of information. Even the act of receiving care is considered confidential.

Here, an employer hired a therapist to provide care to employees, but third-party payments do not affect confidentiality rights because the therapeutic contract remains with the patient.

If a patient's confidentiality is violated, he or she could sue for breach of confidentiality and complain to the board of licensure. Disclosing patients' personal information can have repercussions in their personal lives, and they may also seek emotional and compensatory damages.

Exceptions to confidentiality. On the other hand, you must disclose information in an emergency situation if the patient is a danger to himself or others. For example, if a patient makes suicidal comments or plans, inform the police or a hospital emergency room. You may be liable if preventive information is withheld and harm ensues.

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continued on page 94

continued from page 92

In these situations, it is appropriate to breach confidentiality only to potential victims, the police, or emergency room personnel. The patient's co-workers—unless they are in danger—are an inappropriate choice even if you are concerned about the patient's safety.

Doctors fail to diagnose fatal NMS

Middlesex County (MA) Superior Court

A 26-year-old man who had been diagnosed with depression and schizoaffective disorder was admitted to a psychiatric hospital after a suicide attempt. Four psychiatrists treated him. After he received clozapine, the man's parents claimed he refused all food, fluids, and medication, and began to behave out of character, sexually provoking and verbally abusing the hospital staff.

Two days later, the patient became noticeably weak and stiff and could not walk or stand without assistance. One psychiatrist requested a consultation with an internist, who examined the patient and concluded that he was dehydrated but ordered no further tests or interventions. That day, the psychiatrist in charge of the patient's care ordered two intramuscular injections of haloperidol.

The next day, the patient showed urinary incontinence, required full assistance with showering, and started drooling. Another consultation with an internist was ordered, but the patient was found unresponsive before it occurred. Resuscitation efforts failed.

An autopsy showed neuroleptic malignant syndrome (NMS) to be the cause of death. The plaintiffs, the man's parents, argued that the physicians and hospital were negligent in failing to promptly diagnose NMS. The defendants argued that the symptoms were atypical and could be attributed to the schizoaffective disorder.

- **A $900,000 settlement was reached.**

Dr. Grant's observations

A physician's failure to diagnose a medical problem, the inability to implement proper care, and any ensuing harm to the patient can result in a negligence suit.

In this case, the plaintiffs' claim is strengthened by the possibility that the patient's condition might have improved if properly diagnosed. For a finding of negligence, however, the doctor must have deviated from the standard of care (see "How to avoid 'foreseeable' harm," CURRENT PSYCHIATRY, March 2005, at www.currentpsychiatry.com).

Here, the request for consultation might suggest that an honest error in judgment occurred—the psychiatrist was simply puzzled by the patient's medical symptoms. Although several doctors failed to diagnose NMS, shouldn't the psychiatrists have been able to diagnose it?

Suspect NMS if high fever or severe rigidity develop in patients taking antipsychotics

NMS is a side-effect risk of atypical and conventional neuroleptics,[2] medications used almost exclusively by psychiatrists. Psychiatrists should include NMS in the differential diagnosis of any patient receiving a neuroleptic who develops a high fever or severe rigidity.[3] (See "Pearls: Identifying NMS with FEVER," page 102).

The psychiatrists in this case did not conform to the standard of care, and consulting with another doctor did not absolve them of liability.

References

1. Jaffee v. Redmond, 518 US 1 (1996).
2. Gupta S, Nihalani ND. Neuroleptic malignant syndrome: a primary care perspective. *Prim Care Companion J Clin Psychiatry* 2004;6:191-4.
3. Pelonero AL, Levenson JL, Pandurangi AK. Neuroleptic malignant syndrome: a review. *Psychiatr Serv* 1998;49:1163-72.