

Philosophy 105 ISSUES IN COMMUNICATION Dr. R. T. Nolan

I. Responsibility For The Decision

a. the issue: Who should make the decision, especially when a conflict exists?

b. lay attitudes toward professionals

1. unrealistic investments with total knowledge and accuracy, moral wisdom and perfection

2. willingness to delegate decision-making authority to professionals

3. "easy" for the professional; authoritarian: no ~~explanations~~ explanations, little or no accountability

4. current gradual enlightenment in terms of knowledge, accuracy, and moral perfection

c. some potentially involved persons: patient, relatives (to what extent?), physician(s), administrator(s), nurse(s), clergy, etc.

d. No matter who is involved, all are "imperfect" sources.

e. danger of absolutizing any one potential authority; instead, hierarchical (with court a prudent resource as an arbiter, if needed).

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Brody on Decision-Making

All this discussion has led to the following general conclusions about rights of participation:

1. The primary decision-making responsibility rests with the patient, so long as he is competent.
2. When the patient is incompetent, the socially designated next of kin and other close relatives should be allowed to speak for the patient.
3. If the physician has reason to doubt whether the above individuals are representing the patient's best interests, he may choose other individuals to involve in the decision process, or as a last resort may make the decision himself; however, he assumes the responsibility for demonstrating that his doubts were based on reasonable evidence.
4. Any of the above individuals, except the doctor, may opt out of the decision process by being unable to decide or by refusing to take responsibility. In such a case the doctor must seek the opinion of an alternative patient representative (such as a court order or a more distant relative) if there is time, or make the decision himself if there is not. The doctor cannot opt out of the process.
5. As a general rule, all the above individuals must act within the usual constraints imposed by society. Where these constraints have become so rigid as to constitute a conflict between society's best interests and the patient's best interests, the case must be decided individually by careful consideration of the consequences.

### g. Paternalism

1. assumed: it's for the patient's own good; and X is qualified to act for the patient.
2. Whose needs are being met, the patient's or X's?
3. Whose values are factors, the patient's or X's?

## II. Truth-Telling and Informed Consent

### a. Is it ever moral to lie?

1. two approaches:
  - i. Always tell the truth.
  - ii. the "moral lie"
2. Deceptions: communications which mislead, intentionally or unintentionally, because of a poor speaker, a poor listener, interference from noise, a complicated message, gestures, facial expressions, silence
3. A lie is a statement (made verbally or in writing whether by smoke signals, code, sign language, etc.) that intends to mislead; a deception to make others believe what we do not believe ourselves.
4. Immoral lies: misleading statements
  - i. told in malice, bringing unjust harm to others
  - ii. cruel to the innocent
  - iii. for the mere convenience of those not wishing to take responsibility for their actions
  - iv. bearing false witness
  - v. told for personal pleasure (such as, misleading boasting)
  - vi. for financial profit
  - vii. whose consequences negate or destroy human relationships (in families, in government, with oneself, etc.)
  - viii. whose consequences necessitate more and more lies of this sort
  - ix. others?
5. Moral lies: misleading statements
  - i. told for the well-being of someone (protection, survival, unnecessary anxiety, etc.)
  - ii. told to prevent harmful knowledge
  - iii. told in fun
  - iv. others?
6. The norm is truth; the moral lie is the exception. "The only way to have the sensitivity of spirit to know when a lie is called for in particular circumstances is to be habitually truthful."----- R. Preston, "Lying," Dictionary of Christian Ethics, p. 202.
7. Truth is essential to informed decision-making. Brody: "If the patient has a right to participate in decisions which are morally significant for him, and if a correct ethical decision depends on the accuracy of the relevant data, it follows that as a general rule, the patient must at all times be told the truth about his medical condition"

8. Cancer and the right to know: "Should patients be told when they have cancer? Almost 90% of U.S. physicians didn't think so 20 years ago; 97% think so today." (Science News, April 21, 1979) (a correction to Veatch, p. 146)

9. "Most patients should be told 'the truth' to the extent that they can comprehend it. Indeed, most doctors, like most other people, are uncomfortable with lies. Good physicians, aware that some may be badly damaged by being told more than they want or need to know, can usually ascertain the patient's preferences and needs. ... The crucial question is whether the deception was intended to benefit the patient or the doctor.... Judgment is often difficult and uncertain. Simplistic assertions about telling the truth may not be helpful to patients or physicians in times of trouble." (Mark Lipkin, M.D. in Newsweek, June 4, 1979)

b. Informed consent as a basic concept

1. Decision-making requires being informed with truth.

2. Consent is not consent by terror or the response to being told everything in one overwhelming sitting with professional jargon!

3. Two elements in informed consent:

i. value elements: autonomy (self-determination; personal liberty; uniqueness of each person recognized) respect for persons (persons as ends in themselves, not means to be manipulated to an end; persons are not at the disposal of other persons)

ii. legal elements (more and more supportive of informed consent by patient)

4. Patient has the right to know, unless unconscious or moral lie can be justified.

5. Brody: We can now summarize some of the major points we have made on the doctrine of informed consent.

1. *The basic purpose of informed consent is to protect patient autonomy, not to have patients make the choice that we think is best for them.*
2. *As a right within the doctor-patient relationship, informed consent may be waived. The patient may choose not to be informed about some features of the treatment, or may choose to allow others to make the decision for him.*
3. *The physician's duty includes disclosing the information that that particular patient would ideally require in order to make a reasoned choice. This will depend in part on the patient's own values. Generally this will include mention of the risks and benefits of the proposed treatment, and the risks and benefits of any alternative treatments.*
4. *Informed consent, once given, may be withdrawn.*
5. *Emotional stress or mental illness does not by itself necessarily preclude the possibility of informed consent.*

A final point worth mentioning parallels our comment on telling the true diagnosis to a terminal patient - "telling all" can be done either compassionately or brutally, depending on how well one is tuned in to the patient's state of mind. Similarly, if the patient desires to hear about the remote but disastrous risks of a treatment procedure, you may frankly describe them; but you are also free to add that these risks are highly unlikely and that you will do all in your power to prevent them. The ability to explain alternative treatments to a patient in a thorough yet sensitive manner is a valuable clinical skill, which all health professionals ought to cultivate.

### III. Confidentiality

a. Confidentiality begins when a child first experiences a desire to keep secrets. In doing so, a sense of "self" as separate from others is established. Also, it is the child's desire to establish/retain intimacy. An atmosphere of trust is needed.

#### b. Two-fold aim:

1. seeks to facilitate communication pertaining to intimate or other sensitive matters between persons standing in special relationship to each other.

2. designed to exclude unauthorized persons from access to certain information; right to privacy.

3. Thus, confidentiality is essentially linked to control the disclosure of and access to certain information.

4. Imagine a world without it!

c. See "Codes...." on separate page.

#### d. Gossip

1. professional gabbing (cafeteria as "ethical pits"; "elevator knowledge"; party chatting; indiscreet professional chatting, etc.)

2. the difference between "wanting to know" and the "right to know"

3. Is this my information to give?

#### e. Brody:

We can summarize our discussion of confidentiality. Confidentiality is a traditionally recognized and highly desirable right of the patient under the terms of the contractual model. However, the right is not absolute and may be overridden by clear and present danger to other persons or to the public welfare. Those who would overturn confidentiality in any particular case must bear the burden of demonstrating that some real and specific danger exists.

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*Confidentiality in Codes of Medical Ethics*

Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret.

—Hippocratic Oath

A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of his patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the society.

—AMA Principles of Medical Ethics, 1971

It is a practitioner's obligation to observe the rule of professional secrecy by refraining from disclosing voluntarily without the consent of the patient (save with statutory sanction) to any third party information which he has learnt in his professional relationship with the patient. The complications of modern life sometimes create difficulties for the doctor in the application of this principle, and on certain occasions it may be necessary to acquiesce in some modification. Always, however, the overriding consideration must be adoption of a line of conduct that will benefit the patient, or protect his interests.

—British Medical Association, 1959

If, in the opinion of the doctor, disclosure of confidential information to a third party seems to be in the best medical interest of the patient, it is the doctor's duty to make every effort to allow the information to be given to the third party, but where the patient refuses, that refusal must be respected.

—Addition to British Medical Association Principles, 1971

A doctor owes to his patient absolute secrecy on all which has been confided to him or which he knows because of the confidence entrusted to him.

—International Code of Medical Ethics,  
World Medical Association, 1949

I will hold in confidence all that my patient confides in me.

—Declaration of Geneva, 1948

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