

The Ethics of Withholding Information about Mistakes

BY LEONARD J. WEBER, PhD

At a Morbidity and Mortality Review Committee meeting, committee members decided to bring the case of F. T. to the attention of the hospital's administrators, risk manager, and ethics committee. It was a case in which mistakes made by hospital staff members had probably led to a patient's continuing coma.

F. T., a 54-year-old woman, was admitted to the hospital after a cerebrovascular accident. She had a history of hypertension and uncontrolled diabetes. Following her initial recovery, she was transferred to the hospital's rehabilitation service. At this point she was alert and oriented, but had significant sensory and motor deficits. Rehabilitation was begun, with the staff ordered to monitor her blood pressure and blood sugar daily.

The patient attended therapy and began making progress. But three days later, F. T. experienced a severe hypoglycemic reaction. The next morning she was found to be unresponsive. Efforts to arouse her were unsuccessful, and she was transferred to intensive care.

F. T.'s course remained unchanged during the rest of her hospitalization. She was eventually discharged to a nursing home because her family was unable to care for her at home.

A routine morbidity and mortality review revealed that the physician's order for daily blood sugar monitoring had not been carried out by the rehabilitation staff. If the monitoring had been done as ordered, the severe hypoglycemic reaction would probably have been prevented.

The question was then raised: Should the family be notified of this omission and the fact that it probably contributed to the patient's present condition?



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FOCUSING THE ETHICAL QUESTION

The basic ethical question that needs to be addressed here is whether the hospital has a responsibility to tell the family in the case of a serious mistake, even if providing such information might increase the risk of a malpractice suit.

To focus this discussion, I want to avoid other questions often raised in similar situations. Sometimes we ask whether the mistake made was really a contributing factor in the patient's deterioration. That is an important question, and the answer can have serious implications for treatment of the patient, but it is not the question here. For purposes of this discussion, I ask that we accept the opinion on the case description: The omission probably did contribute to the patient's decline.

I would also like to avoid the question of whether informing the family of the mistake will increase the likelihood of a malpractice suit. That, too, is often an important question, but it is more an issue of prediction than of ethics. For purposes of focusing on the ethical question, I am assuming that informing the family *may* increase the likelihood of a suit.

So, should the family be told about the mistake? I think the answer is yes, except in unusual circumstances.

THE RESPONSIBILITY TO INFORM

Professionals and service organizations have a fundamental responsibility to provide competent service. When they fail to provide competent service and make serious mistakes that result in harm to the patient, responsible professionals and organizations will ordinarily:

- Correct the problem, if possible
- Take steps to prevent similar mistakes in the future
- Inform the patient or the patient's representative that a serious mistake has been made

In the case of F. T., it is too late to correct the mistake. Taking necessary steps to ensure that

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Coming in the
Next Issue of
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PERSONS WITH SPECIAL NEEDS

Catholic healthcare providers across the country are developing creative ways to serve persons with special needs, such as the homeless, persons with Alzheimer's disease, and persons with AIDS. November's special section highlights a few of these programs and how they have benefited their target populations.

SOCIALLY RESPONSIBLE INVESTING

What is socially responsible investing, and how do we measure its success? Brian Camey looks at the definitions, history, and varying approaches to socially responsible investing, as well as its relation to Catholic social teaching.

MISSION INTEGRATION

"Values" will remain rhetorical until they are embodied in actual programs. A feature article describes how a Canadian hospital has tried to integrate its values into a new program for mothers who have experienced miscarriages and a new protocol for physical examinations.

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similar failures do not occur in the future is, then, the most important responsibility. This concern should be immediately addressed.

The third point—informing the family of the mistake—may need more consideration here.

Something is owed to those who have been harmed because care givers have failed to live up to reasonable expectations; they have failed to meet the terms of the "contract" between providers and those being served. A possible need for compensation is one reason for informing patients or families of mistakes. More important, treating patients with dignity means being honest about what has happened in treatment. Reasonable patients would normally, and appropriately, claim a right to information about mistakes of this sort.

It is, after all, the patient's health, body, and life that are involved. The principle of informed consent requires that patients ordinarily be given important information about their illness and the treatment proposed for it. After treatment, that includes information about any serious and harmful mistakes made.

F. T.'s condition will not be directly affected by informing the family that a mistake probably contributed to her present condition. It is possible, of course, that her family might be able to provide better care for her if they were informed of the mistake and received some financial compensation. If so, the case would be even stronger for providing the information. We should recognize, however, that one has a responsibility to inform the family even if the patient is not helped.

UNUSUAL CIRCUMSTANCES

Ethical analysis is often a matter of clarifying general responsibilities—and then asking another question: Are there any reasons why the general

guideline might not apply in this particular case?

In many ethics cases, differing responsibilities need to be balanced, and a determination regarding priorities needs to be made. In regard to patient confidentiality, for example, respect for privacy generally requires that information not be acquired or shared without permission. In some situations, however, respect for patient confidentiality might put others at risk. A determination then needs to be made about how serious the risk is and whether it is sufficient to override confidentiality claims.

A similar situation exists here, I think. As indicated, the general ethical obligation is to provide information about treatment that the reasonable patient and family would expect to be given. This includes acknowledgment of serious mistakes. We do need to ask, however, whether any considerations in this situation might override this normal responsibility.

Hospitals employ risk managers, not just to protect the institution's self-interest, but to protect the institution's ability to serve the public good. If a strong case can be made that the public good would be seriously harmed by a malpractice suit, then protection of the public good might be considered an overriding responsibility that would justify withholding information. But that would, I think, be a very unusual circumstance. The burden of proof is on those who advocate withholding information.

The danger with deciding, for the public good, to withhold information is that the institution may identify its own interest with the public good too easily. At a minimum, ethical sensitivity would seem to require a review (perhaps by the ethics committee) before a decision is made to withhold information in a case like that of F. T. □