Sexually transmitted diseases: consent and confidentiality

Consent

Any medical investigations require a valid consent and this is true for investigation of sexually transmitted diseases. Under English law adults (age 16 and over) are presumed to have capacity and therefore able to give consent. Information is required for the consent to be valid and the doctor should provide sufficient information for the patient to make a decision taking into account the consequences of having and not having the investigation. The standard of care for information provision is usually considered to be that level of information which a reasonable patient might wish to know, or even more stringently, what this particular patient may wish to know. Thus for example if you are taking blood to test for sexually transmitted diseases such as HIV or Hepatitis B it is likely that the patient would wish to know this in order to make a decision as to whether to have the investigation. Not informing the patient that you are performing these tests would be considered a breach of your duty to inform patients appropriately. If a patient refuses to give consent for such investigations their decision must be respected.

If a patient lacks capacity to consent to investigation (for example if they are unconscious) then any investigations can only be carried out if they are in the best interests of the patient, that is necessary for the welfare of this particular patient. Testing a patient for the benefit of another person, for example after a needle stick injury sustained by a member of staff, would not fulfil this requirement. The treatment of adults who lack capacity, and removal and use of tissue including blood from adults who lack capacity, is governed by the Mental Capacity Act 2005 and the Human Tissue Act 2004. If you think that an investigation is required to inform the appropriate treatment for the patient then you should do it. If it is not necessary for the immediate treatment and the patient is likely to regain capacity, and will therefore be able to make an informed decision for medium to long term treatment, you should wait until the patient has capacity before doing the test. The question you need to ask is, how will this investigation affect my management of this patient?

GMC guidance on consent

Mental Capacity Act

Confidentiality

The GMC guidance on confidentiality emphasises the importance of the doctor’s duty of confidentiality while recognising that in some circumstances sharing of information with others is necessary for either the benefit of the patient or in the public interest. The supplementary guidance on disclosing information about serious communicable diseases makes the following points:

If a patient refuses to allow you to inform someone outside the healthcare team of their infection status, you must respect their wishes unless you consider that failure to disclose the information will put healthcare workers or other patients at risk of infection. But such situations are likely to be very rare, not least because of the use of universal precautions to protect healthcare workers and patients, particularly during exposure-prone procedures. (para 4)
You may disclose information to a known sexual contact of a patient with a sexually transmitted serious communicable disease if you have reason to think that they are at risk of infection and that the patient has not informed them and cannot be persuaded to do so. In such circumstances, you should tell the patient before you make the disclosure, if it is practicable and safe to do so. You must be prepared to justify a decision to disclose personal information without consent. (para 10)

You should ask for the patient’s consent to disclose their infection status after exposure to a serious communicable disease. If the patient cannot be persuaded to consent to disclosure, or if it is not safe or practicable to ask for their consent, you may disclose information in the public interest. This could be, for example, if the information is needed for decisions about the continued appropriateness of post-exposure prophylaxis. (para 18)

Thus informing patients GP when a patient has asked you not to do so on the basis of protecting GP practice staff is unlikely to be justified but informing a health care worker following a needle stick injury may be justified.