"To whom it may concern"

Patient confidentiality is a cornerstone of the doctor–patient relationship. What should a doctor do when faced with information about a patient that suggests a risk of harm to the patient or another person? What if a child is at risk of harm? Doctors may be able to disclose information in such circumstances, but it is not a straightforward decision to make. A recent complaint to HDC demonstrated some of the pitfalls of an unauthorised disclosure of patient information.

Case study
Ms M complained to HDC about a written statement made by her GP regarding the safety of her child. Ms M had been a patient of Dr A since childhood but had not seen her for six or seven years. Ms M's parents were also patients of Dr A and they, together with Ms M's ex-partner, consulted Dr A to discuss their concerns about Ms M. They told Dr A they thought Ms M was having mental problems and needed an urgent assessment as she posed a danger to herself and her son. This consultation occurred in the context of what Ms M described as a "particularly bitter relationship breakdown" between herself and her ex-partner, and Family Court proceedings regarding their son.

As a result of this consultation Dr A wrote a letter addressed "to whom it may concern", which she gave to Ms M's mother and ex-partner. The letter stated that Ms M's family and partner had come to see her expressing concern about Ms M and her care of her child. Dr A wrote that Ms M had been a patient for 23 years but had not come to see her "so I do not know her side of things". In the letter, Dr A went on to state that "*several things related to me have raised my concern about the safety of her child who is also my patient. Unfortunately I have seen neither the mother nor the child for some time so have no evidence to allay my fears. I think urgent assessment of the safety of this child is essential*."

The letter surfaced in Family Court proceedings. A very upset Ms M complained to HDC saying that she thought it unethical to jump to such conclusions without seeing the patient, noting that Dr A had not seen her for a long time and had never seen her son. I sought a response from Dr A, who said that she had checked with both the paediatric department and psychiatric services about the best way to proceed. She acknowledged that she could not ascertain from the consultation whether Ms M was likely to harm her child by way of neglect but had been advised that she needed to protect the child and leave it to the court to decide whether he was at risk. Dr A had not written the letter lightly, but had done so to ensure the safety of Ms M's child.

Whilst accepting that Dr A's concerns for the child were genuine, I thought she had been rather precipitate in her response. Child abuse is, of course, a serious concern for health professionals, and legal protection attaches to any *reporting to CYPFS or the Police* of ill-treatment or neglect of a child, where the reporter believes that the child "has been, or is likely to be harmed".[1] Given that Dr A did not consider there to be an immediate risk to the child, I suggested that an initial response could have been to contact Ms M and invite her to come in to a consultation with her son. Writing an open "to whom it may concern" letter was unjustified — it was both too hasty and too broad a disclosure. Had the mother rejected the invitation to come to a consultation or to discuss the matter, if the GP still had genuine concerns about the child's safety, she could then have contacted CYPFS or the Police.

Interested in the views of those on the front line, I discussed the case (which was from another part of the country) with a group of central Otago GPs at a CME evening. They agreed with my stance, thinking that while some action or disclosure may have been warranted, they would not have written such an open letter.

[1] Children, Young Persons, and Their Families Act 1989, s 16.

… and damned if you don't?

Situations such as that faced by Dr A are undoubtedly tricky and require a delicate balancing act. Doctors who fail to act when a child is at risk of immediate harm may be censured. While Dr A was complained about for taking action on concerns about her patient's ability to care for her child, other complaints have related to doctors failing to act. An example in 2001 involved a GP who saw a seven-year-old girl with vaginal gonorrhoea but did not report the case to anyone, even when she came back a second time with gonorrhoea, indicating continuing sexual abuse. I found that the GP had breached an ethical responsibility and a professional duty in not reporting suspected child abuse.[2]

Legal considerations

In addition to a doctor's ethical duty of confidentiality, privacy legislation also sets limits on the collection, use and disclosure of personal information. The Health Information Privacy Code specifically permits health practitioners to disclosure health information without consent if disclosure is "necessary to prevent or lessen a serious and imminent threat to … the life or health of the individual concerned or another individual". In a similar vein, the Children, Young Persons, and Their Families Act protects people who report (in good faith) harm or likely harm to a child. While it is not mandatory for doctors to report actual or potential abuse, in my view there is a strong ethical duty to do so, and a failure to act may amount to a breach of the Code.

Guidance

Helpful sources of guidance are available to doctors. The Medical Council statement on "Confidentiality and public safety" sets out relevant considerations, noting the value of consulting colleagues, the desirability of discussing intended disclosures with the patient where possible, and the need to ensure that the disclosure is made to an appropriate person. DSAC (Doctors for Sexual Abuse Care) have good resources for doctors and patients. Seeking guidance from a specialist (such as a local paediatrician) is also a good idea.

Sometimes doctors need to exercise the wisdom of Solomon. It is good to be alert to allegations of neglect or harm to a child, but it is sensible to pause and ask: is there an immediate risk of harm? If yes, and the harm cannot be avoided any other way, disclose to a responsible authority (eg, CYPFS); if no, take counsel, and try intermediate steps to clarify and/or avert the risk.

Ron Paterson
Health and Disability Commissioner

New Zealand Doctor, 11 October 2007

[2] The opinion and casenote (reference 01HDC01802) can be viewed on the HDC website: www.hdc.org.nz