Original article

Operating on patients wearing personal identity devices: a report of two cases

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We report on two patients who have recently required emergency surgery and who were wearing personal identity devices at the time of presentation. The devices bear a telephone number and a message stating that, if found, the management company should be informed of the whereabouts of their owner. We discuss the issues relating to the disclosure of information to a third party in this situation and whether there is any legal obligation to do so. The conclusion of a review of the relevant literature is that the only reason to divulge information to a third party would be if a patient posed a serious risk of death or serious harm to another party. In the majority of foreseeable circumstances, this would not be the case.

Key words: Personal identity devices – Breach of confidentiality – Consent

Curfew orders have become increasingly frequent when dealing with offenders under Sections 12 and 13 of the *Criminal Justice Act 1991*.¹ Recent technological advancements have meant that electronic personal identity devices have become more common in the management of offenders who do not require the costly services provided by the prison service.

The device comprises a battery transmitter encased in hypoallergenic plastic, waterproof to 5 m and shaped like a wristwatch. Each transmits a regular encoded signal to a site-monitoring unit managed by a variety of companies according to geographical regions in the UK. If the offender leaves a designated perimeter or the device is tampered with in any way, the monitoring unit is alerted. There is a requirement that an offender is monitored during a curfew period by a responsible officer. These details are documented in the *Curfew Order & Curfew Requirement (Responsible Officer) Order 2001*.² The onus is on the offender

to ensure that the responsible officer is aware of any situation that will lead to a breach of a curfew or other order.

We have recently treated two patients within our department wearing such devices. Both have raised interesting ethical considerations alongside their orthopaedic injuries.

Case 1

A 25-year-old man was admitted to the department with contaminated lacerations to his right upper limb. These required exploration, debridement and suturing in the operating theatre. The presence of a personal identity device around the patient's ankle was not disclosed until the patient was in the anaesthetic room. The management company felt unable to advise the operating surgeon as to the safety of operating with the device *in situ* unless the surgeon informed them of the identity of the patient.

Case 2

A 32-year-old man was admitted via the accident department with multiple injuries as a result of a motor vehicle accident. His level of consciousness precluded a discussion as to whether he would give consent to disclosure of his whereabouts. The patient failed to recover consciousness and died shortly after admission as a result of his injuries.

Discussion

As a result of these cases, we made enquiries with the management company responsible for both of these devices. The advice given was that devices should be removed prior to surgery as there is no data relating to safety in the operating theatre. In the case of elective surgery, the company stated that they would plan removal and re-fitting around the time of surgery. In the emergency situation, the company recommended that the device be removed prior to any surgery being performed. This can be done safely by cutting through the strap with a pair of scissors. The company would then arrange re-fitting of the device in the postoperative period.

The difficulty presented is whether a surgeon has an obligation to inform the company as to the whereabouts of an offender. Information that a surgeon obtains as a result of his/her relationship with a patient can be considered confidential to that individual. Surgeons should not disclose information to a third party without the patient's informed consent. Without the patient's consent, information can only be disclosed when ordered to do so by a judge or presiding officer of a court. This was not applicable in either of these cases.

An individual may be required to disclose information in accordance with statutory requirements. However, reviewing the relevant Acts of Parliament and Statutory Instruments for these devices, there is no positive obligation for a surgeon to disclose the whereabouts of either the device or the patient. Therefore, the other main consideration that a surgeon must consider is whether it is in the public interest to breach confidentiality. Upon this issue, the General Medical Council is clear:³

Disclosure of personal information without consent may be justified where failure to do so may expose the patient or others to risk of death or serious harm. Where third parties are exposed to a risk so serious that it outweighs the patient's privacy interests, you should seek consent to disclosure where practicable. If it is not practicable, you should disclose information promptly to an appropriate person or authority. You should generally inform the patient before disclosing the information.

Such circumstances may arise, for example:

Where disclosure may assist in prevention, detection or prosecution of a serious crime. Serious crimes, in this context, will put someone at risk of death or serious harm and will usually be crimes against a person, such as abuse of children.

In general, these devices are fitted to offenders at low risk of performing serious crime. It is hard to imagine circumstances where injured patients are likely to pose a serious risk to themselves or others once they have reached hospital. Our first patient was willing to consent to the disclosure of his whereabouts in view of the fact that his monitoring device would have already alerted the management company of his absenteeism. The second patient initially posed a more difficult problem as he was unable to consent to the disclosure of his whereabouts. It was decided, on balance, that his overall condition prevented him from being a serious risk to others and information was not disclosed.

Conclusions

Personal identity devices present a new dilemma when dealing with issues of confidentiality. We consider that efforts should be made to obtain a patient's consent prior to disclosure of any information to a third party. If this consent is denied, a surgeon must consider whether the patient realistically poses a significant risk to the public; this is an individual decision.

When performing surgery it is currently advised that the devices should be cut off. Surgeons should be reassured that these devices can be removed safely and without difficulty. We hope that this advice will prove useful to surgeons managing this increasingly frequent problem.

Acknowledgements

We are grateful to Dr Michael Devlin of The Medical Defence Union for advice and to Premier Geographix Ltd for providing information on their product. No benefits have been or will be received by the authors for the production of this manuscript.

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