MINORS RIGHT TO CONFIDENTIALITY AND LEGAL DEROGATIONS

Irina Georgiana IOSIF,
Graduate Student, UMF Iuliu Haţieganu, Cluj-Napoca,
Maria ALUAŞ,
Associate Professor UMF Iuliu Haţieganu, Cluj-Napoca

Abstract

INTRODUCTION: The ethical dilemmas and legal challenges that physicians are facing in their daily practice have multiplied in recent years, and when the physician has to treat minor patients these challenges are complex: conflicts between minors and parents; conflicts between minors and representatives of the educational institution; how the superior good of the minor is defined and what are the criteria on the basis of which it is established; what are the legal regulations that must be taken into account as a matter of priority.

PURPOSE: In this article we aimed to illustrate the opinion and attitude of doctors and nurses, members of the Society of Physicians from Children and Young People's Communities (SMCCT), to the problems of adolescents in school medicine offices, and their management.

MATERIAL AND METHODS: A questionnaire was distributed online, completely anonymous (distributed on the Facebook group of SMCCT members, with the support of group administrators). The design of the study is descriptive, transversal. From 1.06.2020 to 20.06.2020.

RESULTS: We analyzed the responses of 95 participants, aged between 20 and 65 years: 20 consultant physicians, 22 physicians and 53 general nurses from across the country. The participants had to analyze a case, having to choose between three answer options.

DISCUSSIONS: In this case, 42% of the participants opted for the correct option. Of these, 45% are over 50 years old, 62% are general nurses, 8% are specialists and 30% are consultant physicians.

CONCLUSIONS: This article illustrates, starting from a clinical case, specific features in the approach of minor patients in school medical offices. The emphasis is on the confidentiality of minors, as well as on the identification of ethical conflicts that may arise from the context in which the medical act takes place in school medical offices and on the complexity of identifying the correct line to follow in such situations.

KEYWORDS: **Minors, Confidentiality rights, Drugs abuse**

INTRODUCTION

One of the oldest principles of medical ethics is confidentiality. Guarding the patient' secrets is a principle that the whole doctor-patient relationship is based on. According to this rule, no information that the doctor obtains from the patient during the medical act must be disclosed to other persons, except with the patient's consent or if there are certain derogations

*** Corespondent author:** Maria ALUAŞ, Associate Professor at Iuliu Haţieganu University of Medicine and Pharmacy, Oral Health Department, Cluj-Napoca, Romania; Center for Bioethics, Babes-Bolyai University, Cluj-Napoca, Romania; Legal Advisor at College of Physicians, Alba, Romania, E-mail: maria.aluas@umfcluj.ro
Received: 24.09.2020, accepted: 29.09.2020, published: 30.09.2020

Cite: Iosif IG, Aluaş M. Minors right to confidentiality and legal derogations. Journal of School and University Medicine 2020;7(3):5-11

or legal requirements in this regard. In medical practice it is essential that the patient be able to openly discuss with the doctor aspects related to his medical situation, having the guarantee that all the details will remain secret. Otherwise, the quality of the medical act could be compromised, thus omitting details necessary for a diagnosis and for creating an appropriate treatment plan [1].

Historically, medicine was the first profession required to maintain professional secrecy [2]. The obligation of confidentiality was enunciated, for the first time, in the Hippocratic Oath, in the 5th century B.C.: "Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private." [3] .

Over the centuries, the principle of confidentiality has been adopted by Arab and Jewish medicine, while in Western civilization, it has been little known due to the lack of organization of the medical profession. Since the eighteenth century, this Hippocratic principle has generally been respected, being regulated in two different ways: deontologically and legally. In Anglo-Saxon society, medical secrecy is stipulated only in codes of ethics, and is not legally framed, according to British physicians J. Gregory and T. Percival: "discretion must be strictly observed only if circumstances so require," and if the doctor were to testify in court, "he must tell the truth, all the truth and only the truth." In France, the obligation to maintain medical secrecy was mentioned in the Penal Code in 1810, thus becoming more of a legal obligation than a moral requirement. This was later confirmed by the codes of ethics [1].

Over time, the principle of confidentiality has been taken up by most countries and has been included in international ethical documents, such as the 1948 Geneva Declaration, which is an updated form of the Hippocratic Oath, that states that secrecy must be kept even after the patient's death [4].

The International Code of Medical Ethics (AMM) also mentions the duty of the physician to maintain patient confidentiality, referring to two situations in which its violation is accepted: if the patient's consent is obtained or in cases where there is an imminent danger to the patient or other persons' lives, a danger that imposes a breach of confidentiality for it's resolution [5].

The deontological code of the Romanian College of Physicians stipulates, in chapter III, the obligation to maintain the medical secret, with some peculiarities. Article 17 establishes the obligation for the doctor to keep professional secrecy, as a form of respect for privacy. In article 18 it is stipulated that the doctor has the duty to maintain confidentiality even to family members or in the event that the person dies or ceases to be a patient. Articles 19 and 20 specify the exceptions to the rule, namely: at the request of the patient or in the case of derogations provided by law [6].

LEGAL EXCEPTIONS REGARDING CONFIDENTIALITY

Although medical secrecy is an obligation of the medical staff, both ethically and legally, it also has certain limitations, as the patient's privilege sometimes conflicts with the public interest. Thus, there are a number of legal derogations that allow, in certain specific situations, the disclosure of medical secrecy. According to the legal regulations in force in Romania, these provisions are:

1. According to article 16 of Law 119/1996, if for certain reasons the parents cannot declare the birth of the child to the City Hall, this obligation falls on the doctor, medical staff or any other person who is aware of the birth of the child [7].

2. Article 35 of the same law, paragraph (1) highlights the doctor's duty to issue and sign the medical certificate establishing the patient's death, stating the cause of death. In the absence of a doctor, this responsibility will fall on a healthcare professional present [8].

3. Government Ordinance number 53 from 2000 mentions in article 1, paragraph (1) the fact that family doctors are obliged to ensure the vaccination of children according to the national immunization scheme, and in article 5 highlights their obligation to report, in accordance with the methodology of the

Ministry of Health, all communicable and non-communicable diseases [9].

4. Law no. 319 from 14th of July 2016, article 27, paragraphs (2) and (3) indicates that any doctor, including the occupational medicine doctor who is in a contractual relationship with the employer, has the duty to declare to the territorial public health directorate, respectively the municipality of Bucharest, any suspicion of an occupational or related to the profession disease discovered during medical examinations [10].

5. Government Decision no. 589 from July 13th 2007 on establishing the methodology for reporting and collecting data for the surveillance of communicable diseases implies the obligation of the doctor to complete the single file report of a case of communicable disease, which must be registered by the county or Bucharest public health authority. Diseases that fall into this situation include HIV / AIDS, tuberculosis, tetanus, polio, syphilis, measles, hepatitis, botulism, anthrax, etc. [11].

6. Doctors responsible for medical examinations for disability pensions have the obligation to report both the new cases (monthly) and the evolution of cases that require periodic reviews (weekly) to the Territorial Pensions Institutions, which in turn report to the National House of Pensions. The data required are: the patient's identity data, the diagnosis and the degree of disability in which he/she was placed (2).

7. Doctors from school medical offices, kindergartens and universities have the task of performing regular epidemiological triage and reporting the results to the Public Health Directorate, in accordance with the Order of the Minister of Health, no. 653 from 2001 [12].

8. In the case of persons diagnosed with pathologies considered to be incompatible with driving, the doctor who diagnoses and cares for the patient (family doctor or other specialty doctor, such as neurologist, ophthalmologist, cardiologist) has the duty to refer the patient for a thorough examination to an expert comission which shall take the necessary measures for the safety of the population, including, in some cases, suspending the driver's license until the condition is resolved. The incriminated conditions include diabetes, some neurological, cardiovascular or ocular conditions. This derogation is the subject of Government Emergency Ordinance no. 195 from 2002, article 22, paragraph (6) [13].

Other justified breaches of confidentiality may be considered: the use of interpreters in situations where the patient does not speak the same language as the healthcare professionals, in which case the interpreter must be aware that he or she has an obligation to maintain confidentiality; the practice of medical students also involves the study of clinical cases, the students being subject to the rule of professional secrecy. Sometimes, during the process of diagnosis and treatment, more medical personnel should be aware of the patient's condition, and outside the health facilities, relatives may need some data about patients in order to provide them with the care they need and sometimes to protect themselves. Another situation where a breach of confidentiality is necessary and justified is that where the patient is a danger to those around him, when the doctor may have to inform those around him [14].

These derogations refer to exceptional situations, where information regarding the patient's health is no longer related only to his privacy, but also to the safety of those around him. Also, in the case of epidemics, due to the high risk to which those from the whole community are exposed, the derogation from professional secrecy is justified. At the same time, each case has its own particularity, and the doctor has the duty to weigh the risks to which the patient and those around him are subjected to. Exceptions from the rules or derogations do not generally raise ethical issues, but the patient must be informed of this act and its repercusions and his decision to allow or not to allow the doctor to disclose confidential information must be respected [2].

In conclusion, the confidentiality of medical information is seen as a fundamental right of the patient, being protected by both the law and the codes of medical ethics. However, the regulations do not provide for the case of minor patients, but since minors have the right to be treated appropriately, we deduce that they enjoy the same rights as adults, their privacy must

be protected as in the case of any patient, according to respect for human rights under international norms, such as the European Convention on Human Rights (ECHR, 1950).

PURPOSE. MATERIAL AND METHODS

The purpose of this study is to illustrate the attitude of doctors and nurses, members of the Society of Physicians from Children and Young People's Communities (SMCCT), in the face of medical problems of adolescents who adress the school medical offices, when maintaining patient confidentiality is not as simple as it might seem.

The design of the study is descriptive, transversal, and it was conducted from 01.06.2020 to 20.06.2020 by distributing a questionnaire online. The study does not include experimental research or clinical trials in minor patients. The questionnaire was completely anonymous, being distributed on the Facebook group of SMCCT members, being distributed with the support of the administrators of this group. The selection of study participants was made on the basis of inclusion and exclusion criteria without discrimination of age, sex and work experience.

Inclusion criteria: consultant or specialist physicians and general nurses who work in school medical offices across the country during the study and who are members of the online community (facebook) SMCCT.

Exclusion criteria: other categories of staff working in these institutions were excluded from the study, such as: psychologists, social workers, teachers.

Sample size: The study involved 95 participants, of whom 94 were women and one man, aged between 20 and 65, of whom: 20 are consultant physicians, 22 are specialist physicians and 53 general nurses, located anywhere throughout the country.

The data collection was carried out over a period of approximately 3 weeks, by distributing a two-part questionnaire online.

The first part contains demographic data, from which we found out: the gender and age of the participants; professional level and experience in the activity.

The second part highlights the ethical and legal aspects encountered in the practice of school medicine, illustrated in six cases. Each case is inspired by medical practice, there are situations in which the doctor has to manage a wide range of problems, dilemmas and questions of various kinds: ethical, legal, social, cultural. The participants in the study had to choose between three different answers, being able to opt for only one, the one they consider correct.

In this article we will present the first case contained in the questionnaire and the results we obtained after evaluating the participants' answers. We analyzed the case referring to the current legislation in force in Romania and in the European Union, as well as to the principles of medical ethics.

The next five cases, their results and analysis, will be the subject of further articles which, with the goodwill of the editors, will appear in this publication.

Case 1: *A 17-year-old patient has a syncopal episode during a football match. The young man has been playing in the junior team of the local sports center for 3 years, but it is the first episode of this type. He is transported to the emergency unit, where after preliminary investigations, no organic abnormalities are detected, but in the urine tests for drugs, the presence of amphetamines is detected. After further discussion with the patient, he acknowledges that he occasionally consumes methamphetamines for its energizing and euphoric effects. Thus, the syncopal episode could be explained by an arrhythmia caused by an overdose. The patient asks the doctor not to inform the parents about the test results, fearing that they would forbid him to continue sports activities.*

Possible answer options are:

a. You inform the parents about the patient's health status and about the test results.

b. You inform the parents and you report the case to the competent authorities, as this is an issue about illicit drugs.

c. You inform only the patient about the serious consequences of substance use on the possibility of deteriorating long-term health, as well as the fact that the use of substances could affect a potential sports career.

RESULTS

From the responses of the study participants, we note that 42% chose "option b", which we considered to be correct; 41% chose variant a, only informing parents; and 17% chose answer c, considering that informing the patient is sufficient (Image 1).

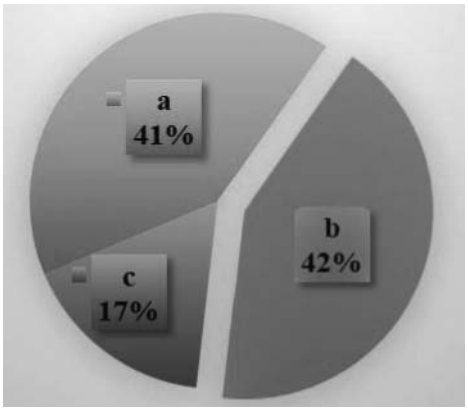

Fig. 1 – CAZUL 1 – Răspuns corect: b

Among the participants in the study who answered correctly, we can see that 7% are between 31 and 40 years old, 48% between 41 and 50 years old, and 45% over 50 years old (Image 2).

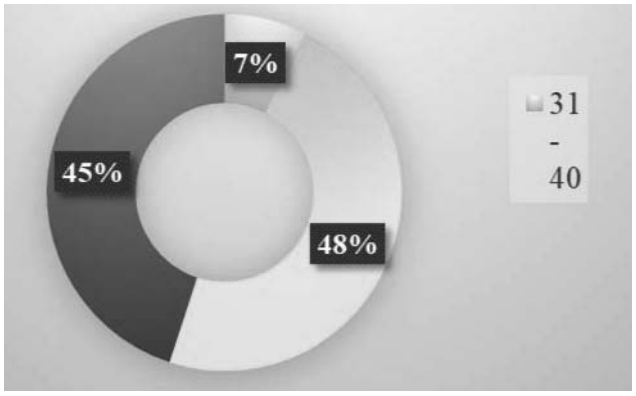

Fig. 2 – CAZUL 1 – Distribuția celor care au ales răspunsul corect, în funcție de vârstă

Also, 62% of them are general nurses, 8% specialists and 30% consultant physicians (Image 3).

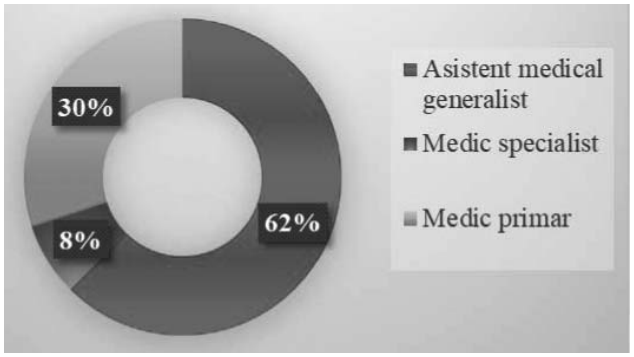

Fig. 3 – CAZUL 1 – Distribuția celor care au ales răspunsul corect, în funcție de nivelul profesional

Most of the participants who answered correctly have more than 5 years of experience in the activity (95%), only 5% having less than 5 years of experience (Image 4).

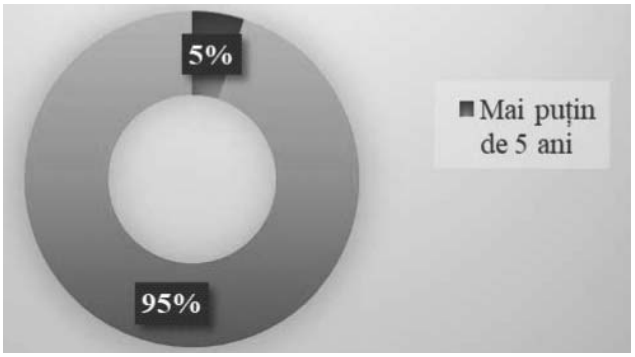

Fig. 4 – CAZUL 1 – Distribuția celor care au ales răspunsul corect, în funcție de experiența în activitate

DISCUSIONS

In Romania, the National Anti-Drug Strategy was adopted through Government Decision number 461/2011 regarding the organization and functioning of the National Anti-Drug Agency (A.N.A.), an institution mandated to ensure the coordination, at national level, of the elaboration and implementation of response policies to the drug phenomenon, an institution which operates within the Ministry of Internal Affairs [15].

According to article 1 of Law no. 143 from July 26th 2000 on preventing and combating illicit drug trafficking and use, methamphetamine is a high-risk drug. Article 4 of the same law stipulates in paragraph (1) the fact that the experimentation, production,

cultivation, manufacture, extraction, processing, preparation or possession of dangerous drugs, for the purpose of self-consumption, without right, is punishable by a fine or imprisonment for 3 months to 2 years, and in paragraph (2) it is stated that in the case of high-risk drugs, the penalty is imprisonment from 6 months to 3 years [16]. Therefore, our case is about a criminal offense, so there is an obligation to report the case to the competent authorities. In article 22 of the same law, it is provided that persons who use illegal drugs may be included, with their consent, in psychological and social therapeutic reintegration programs (16).

Also, the patient's attitude obviously puts his health in danger. Methamphetamine is a synthetic drug, part of a group of drugs called amphetamine-type stimulants, which comes in the form of tablets, powder or crystals. In terms of administration, it can be smoked, injected, snorted / inhaled or swallowed. The effects for which it is used include euphoria, joy and temporary increase in energy, helping to increase physical or intellectual performance. After the euphoric effect has passed, consumers feel tired and hungry. The risks of short-term consumption include: tachypnea, tachycardia, hypertension, sweating, agitation and irritability; in case of an overdose, convulsions, seizures or even death from stroke, respiratory failure or heart failure may occur. In the long run, methamphetamine use leads to weight loss with malnutrition and psychological dependence. In case of chronic consumption, cessation of consumption is followed by a period of sleep and then depression [17]. Due to the numerous effects, both in the short and long term, we deduce that if the patient does not stop consuming, he puts his health and life in danger.

As we are dealing with a minor, the parents or legal representatives must be informed about his condition, about the dangers to which he is exposed to by practicing intense sports activities, but also about the regular consumption of amphetamines. However, the medical staff has no guarantee that the minor will stop using amphetamines, that the parents understood the seriousness of the situation and that they will be able to face these challenges. In order to be sure that we have taken into account the well-being of our patient, even if his right to privacy is questioned, we will have to report the case to the police, who will refer the case to the Directorate for Organized Crime and Terrorism. (DIICOT).

CONCLUSIONS

Medical practice has always aimed at the well-being of the patient. The physician must act in such a way as to integrate: the optimal therapeutic conduct, the patient's preferences and wishes, the ethical and legal regulations in force. In the approach of the pediatric patient, this is a double challenge because in the act of diagnosis and treatment is involved at least one third party: the patient's parents or legal representative, which can hinder the decision-making process, their interests sometimes being contrary to the interests of the minor patient. This article illustrates, by addressing a clinical case, specific features in the approach of minor patients in school medical offices. Emphasis was placed on the issue of adolescents' right to privacy, as well as on the identification of ethical conflicts that may arise from the context in which the medical act takes place in school medical offices and on the complexity of identifying the correct path to follow in such situations. .

Practical implications of the obtained results

From analysing the results, which reflect the attitude of the medical staff towards the issue of juvenile privacy, we can see that it is not easy to respect the right to privacy of juvenile patients, nor the implementation of legal provisions and ethical principles. Doctors' decisions are often made without analyzing all the consequences that may arise from them, being influenced both by the context and the location of the activity, as well as by the experience of the medical staff.

REFERENCES

1. Cipi B. Ethical, juridical and historical aspects of medical confidentiality. *JAHR*. 2012, 3(1): 139-146

2. Aluaș M, Ana D. *The relationship between maintaining medical secrecy and malpractice* in*: Health Legislation*. București: Pro Universitaria; 2018.

3. Hippocratic Oath [Internet]. Available at https://www.nlm.nih.gov/hmd/greek/greek_oath.html accesed on 25.01.2020.

4. Curcă, GC. Medical ethic elements. Ethical guidelines in medical practice. Bioethics principles. Cluj-Napoca: Casa Cărții de Știință; 2012.

5. WMA International Code of Medical Ethics [Internet]; Text available at: https://web.archive.org/web/20100428131219/http://www.wma.net/en/30publications/10policies/c8/index.html, accesed on 20.01.2020.

6. Code of Medical Deontology of the Romanian College of Physicians fron November 4th, published in the Official Gazette, Part I no. 981 of December 7, 2016, entered into force on January 6, 2017.

7. Law no. 119 of October 16, 1996 regarding the civil status documents, art. 16 republished in the Official Gazette, Part I, no. 339 of May 18, 2012.

8. Law no. 119 of October 16, 1996 on civil status documents, art. 35 republished in the Official Gazette, Part I, no. 339 of May 18, 2012.

9. Government Ordinance no. 53 on the obligation to report diseases and carry out vaccinations. Published in the Official Gazette Part I no. 42 of January 31, 2000, in force since March 31, 2000.

10. Law no. 319 of July 14, 2006 on safety and health at work, art. 27. Published in the Official Gazette Part I no. 646 of July 26, 2006, in force since October 1, 2006.

11. Government Decision no. 589 of June 13, 2007 on establishing the methodology for reporting and collecting data for the surveillance of communicable diseases. Published in the Official Gazette no. 413 of June 20, 2007.

12. Order of the Minister of Health no. 653 of 2001 on the medical assistance of preschoolers, pupils and students. Published in the Official Gazette Part I no. 777 of 5 December 2001, in force since 5 December 2001.

13. Government Emergency Ordinance no. 195 of 2002 on traffic on public roads, art. 22, paragraph (6). Published in the Official Gazette no. 670 of August 3, 2006. Article 22 modified by Law 345 from December 27, 2018, published in the Official Gazette no. 4 of January 3, 2019.

14. Ghelase MȘ. Bioethics. Craiova: Editura Universitară Craiova; 2016.

15. Government Decision no. 461 of May 11, 2011 on the organization and functioning of the National Anti-Drug Agency, updated on July 21, 2015.

16. Law no. 143 of July 26, 2000 on preventing and combating illicit drug trafficking and consumption, art. 1, 4, 22. Published in the Official Gazette no. 362 of August 3, 2000. Updated and republished in the Official Gazette no. 163 of March 6, 2014.

17. National Institute of Public Health, "Drugs" [Internet], 2016. Text available at: http://insp.gov.ro/sites/cnepss/wp-content/uploads/2016/01/Analiza-de-situatie-droguri -2016.pdf, accessed on 24.07.2020.