

Lawsuit: Private Information Leaked to Family Causes Legal Headache

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Donating and receiving organs quite often involves family members partnering toward a single medical goal. Despite sharing the transplant experience, keeping personal medical information private for donor and recipient is nevertheless essential.

A 21-year-old woman contacted a hospital transplant program and expressed her desire to donate a kidney to her uncle, with whom she and her mother lived. An extensive medical workup of the young woman included a psychological evaluation and an explanation by a registered nurse of the details of the "living donor consent form" written on the hospital's letterhead.



That lengthy consent form included two passages dealing with how personal medical information would be treated. In one section, the consent stated: "All information about the donor and recipient will be kept confidential unless there is written permission from the donor or recipient that information be provided."

In a section that followed, the consent form offered the assurance that "information about your medical evaluation, diagnostic test results [sic] will not be discussed with the potential kidney transplant recipient unless you give written permission." Signing on behalf of the hospital was a registered nurse coordinator assigned specifically to the donor. (Another nurse coordinator was assigned to the uncle, per protocol.)

Medscape Editor's Key Notes:

- **When patients are family members in the same home, remain extra vigilant about keeping each patient's information private.**
- **Develop a protocol for disclosing information to cohabitating patients.**
- **Ensure that all team members understand the boundaries.**

As part of her workup over the months leading up to the donation, the young woman underwent regular pregnancy tests. During the course of her evaluation, she had two negative hCG blood tests: one shortly before signing the donor consent form and another 1 month before the scheduled transplant.

During a preoperative consult 1 week before the scheduled surgery, Dr GS, the general surgeon for the transplant, noted that the donor's last menstrual period was nearly 1 month prior. He noted his impression that the young woman was an "excellent kidney donor." On that day, the donor underwent another hCG screening and a blood cross-match.

When the hCG levels came back 4 days later, the results showed that the woman was pregnant. When the donor's nurse coordinator had the blood tested further, the results were consistent with a 4-week pregnancy.

Given the timing of the news — on the Friday before the Monday surgery — Dr GS recognized the urgency to let both parties know that the surgery could not go forward. The woman's assigned nurse made numerous unsuccessful attempts to reach the

donor. At one point, the nurse called the donor's home, where the uncle picked up the phone. During that conversation, the nurse simply asked that the uncle pass along the message that his niece should call the transplant center.

That same Friday, the nurse coordinator assigned to the uncle advised the man that the Monday surgery was being canceled. Per protocol, the coordinator did not divulge any information to the uncle about his niece's medical condition. After that conversation, the uncle called Dr GS's office wanting to know additional information. According to the uncle, at some point during that conversation, Dr GS got on the phone to say that the surgery was not going forward because "your niece is expecting."

In a subsequent lawsuit against Dr GS, the niece claimed that the disclosure of her pregnancy (divulged to the uncle before she herself learned the news) constituted a breach of contract, as well as a violation of state privacy laws. She claimed that the family's knowledge of the pregnancy prevented her from obtaining an abortion. Dr GS resolved the matter with the donor informally prior to arbitration.

One can surmise the emotional state of any individual who has waited years for a needed organ transplant, only to be advised on the eve of surgery that the procedure cannot go forward. But in such cases, disclosing the personal information of an individual, even if intended to calm the mind of another, can end up just adding to the burdens of both.

While the impending surgery may have contributed to the surgeon's feeling of pressure to give the uncle the reason for canceling the surgery, the state privacy laws need to be upheld. Even if one has good intentions, providing such information can create legal trouble.

This case comes from the "Case of the Month" column featured in the member newsletter published by the Cooperative of American Physicians, Inc. The article was originally titled "Patient Information: It's Not All in the Family."

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