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OUR REF SAJ/SJN/40479/003/1

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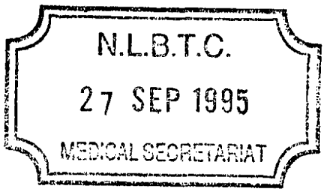
26 September 1995



Dr. P. E. Hewitt,
Acting Medical Director,
National Blood Transfusion Service,
North London Blood Transfusion Centre,
Colindale Avenue,
London. NW9 5BG

Dear Dr. Hewitt

Re: HCV look-back

Thank you for your letter of 20th September.

In my letter to Dr. Robinson of 16th December 1994, I discussed the medico-legal implications of the proposed look-back procedure and confirmed that the first approach should be to establish what is good medical practice, having regard to the interests of donors and recipients. Giving advice to recipients of HCV-infected blood was considered to be in accordance with good practice, subject of course to variation in special cases. Giving such advice is to be regarded as part of the general duty of care owed to recipients by the National Health service.

I think it is quite clear that this duty of care is not to be exercised in a uniform way in the case of each and every individual recipient. Your letter of 20th September describes patients who are obviously unsuitable for notification and counselling. In such a case, it is for the patient's medical advisers (probably the General Practitioner in most such cases) to give careful consideration as to what information should be given to the patient and how the overall care of the patient should be managed in the light of the information about possible HCV infection.

It seems to me that the principles here are similar to those which apply to other fields of medical treatment. The obvious example is where a patient is suffering from a terminal condition such as cancer, yet the judgment of his medical advisers is that the full prognosis should not be disclosed to the patient. In such cases, a balanced judgment has to be made by the medical advisers as to how much information is given to the patient.

Robert Sumerling
Stephen Janisch
Ralph Shipway
Simon Dinnick
Michael De Graeve
Nicholas Rawson
Alex Leslie
Michael Thorniley-Walker
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Christian Dingwall
Colin Brown
James Soulsby

Tim Collins
Simon Wakefield
Suzanne Bloom
Clare Brazell
Keith Mitchell
Rena Field
Catherine Williams
George Dodd
Stephen Everett
Steven Silver

DRURY HOUSE
34-43 RUSSELL STREET
LONDON WC2B 5HA
TELEPHONE 0171 836 0099
FAX 0171 831 2215
DX No 37985 KINGSWAY

ALSO AT

6-7 PARK PLACE
LEEDS LS1 2RU
TELEPHONE 0113 234 1220
FAX 0113 234 1573
DX No 14086 LEEDS PARK SQUARE

The information about the patient's condition is subject to the general medical duty of confidentiality. If, for perfectly appropriate reasons, it is not disclosed to the patient, I do not think it follows that it must (or even may) be disclosed to any other person. I do not consider that the concept of "next of kin" has any specific medico-legal significance.

Whether or not information about a patient's condition and prognosis may be disclosed to his close relatives is primarily a matter of ethics and professional conduct. I believe that the guidance given by the General Medical Council to doctors is this:

> If in particular circumstances the doctor believes it undesirable on medical grounds to seek the patient's consent [*i.e. to disclosing confidential information*] information regarding the patient's health may sometimes be given in confidence to a close relative or person in a similar relationship to the patient.

There is a qualification to this guidance, but it only refers to giving contraceptive advice to a minor and is not therefore relevant.

I therefore agree with you that it is not necessary to inform the next of kin. They may, however, be informed even though the consent of the patient has not previously been obtained, in the "particular circumstances" mentioned in the GMC's guidance. It should be emphasised that the guidance requires information to be given in confidence to the relative or other individual.

I hope that this letter covers the points of concern to you and your colleagues.

Yours sincerely,

GRO-C: S Janisch

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