

Ethical obligations in fertility treatment when intimate partners withhold information from each other: an Ethics Committee opinion

Ethics Committee of the American Society for Reproductive Medicine

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Clinicians should encourage disclosure between intimate partners but must maintain confidentiality in cases where there is no prospect of harm to the partner and/or offspring. In cases where one member of a couple refuses to disclose relevant health information to the other partner and there exists a risk of harm to the unaware partner and/or offspring, clinicians may refuse to offer care and should decline to treat if full informed consent is not possible due to lack of disclosure. (*Fertil Steril*® 2018;110:619–24. ©2018 by American Society for Reproductive Medicine.)

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KEY POINTS

- Clinicians should encourage couples presenting for fertility treatment to disclose to one another relevant information that can affect their reproductive decision-making.
- Ideally, the reproductive dyad should sign a waiver allowing for their physician to share all clinically relevant information with both reproductive partners. This would include information provided by either member of the couple as well as information discovered during evaluation and treatment. The waiver should set forth a clinic's policy on disclosure of clinically relevant information, including disclosure in the absence of the patient or partner's further consent. If members of the dyad are unwilling to sign the waiver, physicians should explain any limits to care, including the possibility that they will be unable to provide care if protecting the confidentiality of one partner precludes informed consent on the part of the other partner.
- Cases may arise in which a patient shares information with the clinician and asks that this information not be shared with their intimate partner. In such cases, physicians are both ethically and legally bound to maintain patient confidentiality, except as otherwise provided by law.
- When confidentiality cannot be kept (for example, because of state reporting requirements), the patient should be told this, ideally before the information is even obtained. In such situations, it is ethically permissible for the clinician to decline care.
- In cases where lack of disclosure can cause harm to the patient, their intimate partner, or their offspring, the clinician should strongly encourage disclosure.
- When patients refuse to disclose information to their intimate partners, and proceeding with fertility treatment could cause harm to the patient, partner, or offspring, clinicians may refuse to offer reproductive care.
- Clinicians are ethically obligated to decline to provide care when the circumstances are such that fully informed consent for the proposed treatment cannot be given because the patient would be subjected to risks that cannot be disclosed without violating clinician-patient confidentiality.
- Lack of information sharing between intimate partners can impede a physician's ability to obtain fully informed consent from both members of the couple. Potential impacts on informed consent include the physician's inability to fully discuss the range of possible treatment options as well as the risks and benefits of the proposed treatment. In such cases, clinicians may proceed or decline to offer treatment, and should make such judgments in a non discriminatory fashion and without bias.

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- In cases where the information, if disclosed, might be relevant to the partner's decision whether to undergo fertility treatment, the clinician should also strongly encourage disclosure between intimate partners. This includes situations in which fertility treatment is required that could otherwise have been avoided if certain information had been shared.

INTRODUCTION

When couples present for fertility care, they usually do so as a unit whose interests are aligned. They have shared relevant information often with one another regarding their reproductive health and risks. Fertility care providers routinely advise couples that they are both part of the treatment dyad, and encourage open communication and honesty. In fact, many clinicians ask that couples allow information to be shared freely between the clinician and each of them, even when this information is regarding their partner. As a practical matter, providers should consider requesting their patients with partners sign a waiver of confidentiality regarding all information that is material to the provision of fertility-care services. Such a waiver would permit a provider to share relevant information with the couple as needed in the context of the treatment being sought. This would include both information shared by either member of the couple, and information that is discovered during the medical evaluation and treatment. If a couple, or one member of a couple, declines to sign such a waiver, the physician may deny treatment if he or she is unable to ensure fully informed consent in the absence of unobstructed sharing of mutually relevant information.

However, situations arise in which a couple presents to a clinician for treatment, and one member of the couple shares information with the clinician that they ask not be shared with their partner. In some cases, this information is relevant to the medical management of one or both members of the couple and may affect treatment options, outcomes, or risks of treatment. In these cases, the clinician may have serious reservations about initiating or continuing treatment for partners who do not disclose to one another. This committee opinion will address the various situations that may arise and the responsibility of the clinician to each member of the couple individually and to the couple as a whole in such cases.

The clinician has several options when asked by a patient not to disclose pertinent information to the patient's partner. One is to encourage disclosure but to continue treatment in the absence of disclosure, being careful not to share any information that he or she has been asked to keep in confidence. The second is to require disclosure between the partners prior to moving ahead with treatment, and to decline to treat a couple if they refuse to share information with each other that the clinician judges material to their care. In either case, counseling should be offered and may help couples feel more comfortable sharing mutually relevant information with one another. Of particular concern in situations where relevant clinical information is not freely shared between intimate partners is the effect this may have on informed con-

sent. The clinician's ability to obtain informed consent from the couple, and particularly from the member of the couple from whom information has been withheld, may be impeded. Such cases prove difficult as the clinician may be limited in his or her ability to explain why a given treatment is not offered, another treatment is recommended, or the recommended treatment is not optimal. Particularly when lack of disclosure between intimate partners limits the ability to obtain fully informed consent from all of the stakeholders, free information sharing should be strongly encouraged. Clinicians must decline to provide treatment when fully informed consent for the proposed treatment itself cannot be given by both partners because one partner would be subjected to risks that cannot be disclosed without violating the confidentiality of the withholding partner.

Disclosure can be complicated by the effect of learning the new information on the willingness of the patient to pursue shared reproduction. In some cases, there may be consequences of disclosure for the safety or well-being of the intimate partner. This is particularly so for women who may face violence, abuse, or rejection. As such, disclosure requires great sensitivity and must be accomplished in the manner most preferred by the patient while ensuring that it does not cause the patient harm.

When possible, providers should seek to deliver care modalities that avoid the risks concealed by nondisclosure. An example is the refusal by a male partner to disclose his HIV status. In such cases, the use of anonymous sperm donation, with the consent of the female partner, avoids any risk associated with the use of the male partner's sperm. However, if the partner insists on use of his sperm, the clinician should decline treatment if the male does not disclose his HIV status to his female partner and thus any risk associated with the use of his sperm; the clinician has a responsibility to protect the female partner's current and future choices about the risks she is willing to take for her health (1). Also and importantly, in the case of infectious disease, clinicians should be familiar with and abide by state and federal reporting requirements and should make these obligations clear to their patients.

Several broad categories of harm can occur when intimate partners fail to disclose material information regarding themselves. These will be discussed individually in the following sections.

NONDISCLOSURE OF RISKS OF PHYSICAL HARM TO THE INTIMATE PARTNER

If the male partner carries an infectious disease, there can be physical harm to the partner from infertility treatment using the partner's sperm. While strategies exist to significantly lower—and perhaps almost eliminate—transmission of HIV, no strategy can guarantee that disease transmission will not occur (2). Hepatitis C and hepatitis B are other infectious diseases that can be theoretically transmitted through reproductive treatment. It is recommended that screening for infectious disease, when available, be universal and routine, as effective treatment and consideration of alternative treatment modalities can prevent transmission to both sexual partners and offspring.

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