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Review

The Physician Fiduciary in the New and Evolving Digital Age- What Young Physicians Need to Know?

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ABSTRACT

The doctor-patient relationship is a member of a special class of legal relationships called fiduciary relations. The physician is a fiduciary to the patient and arising from this relationship is a duty to always act in the best interest of the patient. The physician-patient relationship has its foundation in the theory that the physician is knowledgeable, skilled, and experienced in health issues, a subject where the patient has limited insight. Thus, the patient places confidence and trust in the professional advice of the physician. The dynamic relationship between the physician and the patient has been evolving to emphasize the rights of patients to share in the decision - making process and to have the autonomy to accept or decline recommended treatment. The query we face is whether the fiduciary responsibilities of the physician have been altered by the patient's autonomous use of the Internet, social media, and direct-to-consumer medical testing in the new and evolving digital age of medicine. We will explore the impact upon the physician's duties as fiduciary in this changing doctor-patient relationship.

Keywords: *Direct- To consumer testing; Doctor-patient relationship; Fiduciary, Internet, Social media.*

INTRODUCTION

The idea of patient autonomy in decision - making regarding health care preferences dates back to the early 1900s as so eloquently coined by Justice Cardozo.[1] Since the 1950s there has been an increasingly strong emphasis on the rights of patients' to share in medical – decision making and have the autonomy to accept or reject recommended medical and surgical treatments.

This modification in the patient-physician relationship did not overturn physician control of the relationship. In theory, physician paternalism was dead. Paternalism does not respect the rights of adults to self-determination, and patient autonomy does not respect the principle of beneficence that leads physicians to argue that acting on behalf of others is essential to their craft. In the late 2000s, it was felt that fundamental to the patient-physician relationship was the fact that each partner understands and accept the degree of autonomy the patient desires in the decision-making process.[2] In fact despite the rhetoric of shared decision-making physicians' retained control over decision making because they controlled medical information and medical resources.

Today's patients drive the information highway becoming informed by the Internet and social media. Additionally, they have access to a large array of direct – to consumer (DTC) testing modalities.

This information highway and DTC testing raise a query as to whether patients are less dependent upon physicians for access to medical information and services/resources? Geminating from this query is the next question of whether this changes the doctor-patient relationship and the fiduciary responsibilities of the physician.

CLAIM

The new characterization of the doctor-patient relationship where patients drive the information highway and consume DTC testing so patients are no longer dependent upon physicians for access to medical information and medical services. We will argue in this manuscript that this claim is false.

HISTORICAL PERSPECTIVE

The transition from physician paternalism: the doctors knows best and decides, to an emphasis on informed patient choice with a shared decision - making became mainstream in the 1980s and has remained a staple of patient-physician interactions. Shared decision-making involves the physician and patient working cohesively together to make medical decisions that align with the patient's values and preferences. This typically involves a doctor-patient exchange where the physician provides information about all potential treatment options and the patient absorbs, digests and reflects ultimately questioning the physician

in a quest for a treatment that ally with her values and preferences. This dynamic interaction is important and supports the notion that informed medical choice is an educational process that has the potential to work to the benefit of the patient and physician. This equality in the covenant allows for informed choice. Physicians must be aware that they may need to help the patient clarify health care goals and values when decisions are difficult and patients feel regressed.

By the late 2000s,[2] there was a consensus that patients participate in and ultimately make their own decisions whenever feasible. The consensus was that with a shared decision - making physicians have a key role because of knowledge, access to medical information, clinical wisdom through experience, and medical resources not available to patients. Therefore, the paradigm shift from medical paternalism to autonomous patient decision-making did not completely transform the physician's role and the fiduciary duties remained intact.

THE DIGITAL ERA

The World Wide Web and the associated information highway introduced patient to unlimited health information including how to access medical services with a burgeoning of companies offering DTC testing and services without a physician's order.[3] This has allowed patients to arrive at the physician's office with thoroughly researched information regarding their symptoms, assumed disease state, and DTC resting results to be interpreted. This expanding marketing of DTC services to the general populace diminishes the physician's role in deciding what testing is appropriate in light of clinical symptoms, personal family history, risks factors, and pre-test probabilities. Physicians must be ready to listen carefully to identify the patient's concerns, fears, and misunderstanding generated by the ambiguity of the DTC testing.

The escalating availability of DTC tests and screening has altered the patient's access to medical resources. A flourishing market for health-related DTC genetic testing compounds this potentially low yield testing even further. The Food and Drug Administration (FDA) approved 23 and Me in 2017[4] so consumers have access to gene testing for Alzheimer disease, Parkinson disease, hereditary thrombophilia, and BRCA mutations that are associated with an increased incidence of breast and ovarian cancer to name a few. So now, we are faced with the advantages and disadvantages of DTC testing and how it influences the fiduciary duties of physicians.

THE ADVANTAGES AND DISADVANTAGES OF DTC MEDICAL TESTING

We understand this is a hotly contested topic and we will present with equipoise the advantages and disadvantages of DTC testing. When there is, an intense negotiation between competing interests of polar opposite views shared interests are the "elixir of negotiation", the salve that will appease the party's passionate debate. After exploring the advantages and disadvantages, we will survey the ways physicians may respond to the perturbations in the doctor-patient relationship and remain true to their fiduciary responsibilities.

THE ADVANTAGES OF DTC HEALTH MARKETING SERVICES

There is a strong national priority focused on containing health care costs and improving health care quality.[5] Health care providers are being asked to be responsible stewards of valuable health care resources through strict adherence to evidence-based medicine.[5]

The DTC medical marketplace offers low - value medical testing directly to consumers and stands in direct opposition to the mandate for value-based care. Companies are offering saliva, blood, urine and imaging modalities to screen for a host of diseases without prior understanding of the pre-test probabilities of the conditions being tested for.[6] Additionally, genetic testing is being offered despite low to no clinical value. The tests include genetic susceptibility testing for late-onset Alzheimer, Parkinson disease, Celiac disease, alpha 1 anti-trypsin deficiency, and hereditary hemochromatosis to name a few.[7] The companies offer no medical advice so patients must go to their physician for interpretation of the information. This approach is fraught with ambiguity. No matter what the context of genetic testing, results fall into 3 subsets:

- Positive test result usually providing diagnosis or risk information.
- Negative test results, where no genetic variation is identified, and this may rule out a condition, or suggests reduced risk
- The gray zone, where genetic Variants of Unknown Significance (VUS) are identified. This is known as genetic purgatory.

The current approach to VUS is the passing of a hot potato from the consumer –patient to the doctor and back to the patient who must now live in genetic purgatory. Thus, the private DTC companies avoid accountability for uncertain medical testing and realize enormous profits from such testing.[3] The physician and the health care systems are left to absorb the costs of medical care and testing resulting from these low-value health care services. This is why health care policy gurus must affect how these services are allowed to function.

HOW DOES THE DIGITAL AGE PHYSICIAN MEET THEIR FIDUCIARY DUTIES?

Patient access to the information highways and an exponentially increasing array of health care information, products, and marketplace DTC testing do not alter the fiduciary duties inherent in the doctor-patient relationship of the physician. While the Internet, social media, DTC laboratory and imaging tests, and genetic tests surface an assortment of medical concerns, uncertainties, and falsehoods patients will continue to seek out physicians for advice. The physicians' fiduciary duty remains unchanged - to act in the best interest of the patient. The approach to this new surfeit of information must be carefully analyzed to determine the best available way to educate the patient allowing informed medical choice. This educational process must explore the meaning of good and bad testing to allow patient choice that is concordant with their values and preferences. Physicians must be aware of the Internet, social media and DTC testing so they can educate patients regarding the low clinical value of most DTC testing for a large segment of the consuming population. Education must include teaching patients that company advertisements tend to entice consumers by appealing to fear of common diseases such as coronary artery disease, stroke, and numerous cancers. It is a physician's fiduciary duty to teach patients about the limits of DTC testing and to resist the urge to initiate a bulky cascade of unsubstantiated medical care when confronted with DTC testing results of uncertain significance. The ultimate fiduciary duty is to educate patients so they act in their own best interest. The new characterization of the doctor-patient relationship where patients drive the information highway and consume DTC testing so patients are no longer dependent upon physicians for access to medical information and medical services is wrong. Circumstances change but our duty to the patient remains untouched - act in their best interest.

CONFLICTS OF INTEREST

We hold that we have no conflicts of interest with any consistency.

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