Reviewer's report

Title: Disclosure to genetic relatives without consent – Australian genetic professionals' awareness of the health privacy law

Version: 0 Date: 05 Nov 2019

Reviewer: Naomi Hawkins

Reviewer's report:

This is a paper that focuses on a topic of interest to the readers of BMC Medical Ethics, namely disclosure to genetic relatives without consent. This topic is gaining prominence in practice and in the literature, especially in light of the ongoing case of ABC v St George's, which the authors allude to. The paper gives a novel perspective on the question, exploring the particular situation in one state in Australia where a statutory provision clarifies the legal duty of confidence in relation to disclosure of genetic information to third parties. The discussion is helpful and relevant, but in my view the paper would benefit from some minor revisions to enhance the clarity of the argument and its relevance to the readers of the journal.

The main issue which in my view should be clarified relates to the distinction between the duty to warn/duty of care to third parties as opposed to the duty of confidence. The two duties are related, and are a corollary of each other, but they are legally distinct. Moreover, the existence of grounds to breach a duty of confidence and disclose to a third party does not necessarily create a duty of care to that third party. The authors should be mindful of this important legal distinction, and ensure that it is reflected in the discussion in the paper.

Secondly, whether the main focus of the paper is the legal duty of confidence or the ethical duty is at times unclear. The paper does, and should, address both the legal and ethical issues. Some further clarification in the abstract and introduction about the relationship between the legal and ethical duties here would be helpful.

Thirdly, the authors refer to the ABC v St George case, which is important and relevant to the discussion (subject to the earlier comments about the distinction between the duty of confidence and the duty of care). In the past few years, since the first instance decision, and the appeal, there was been interesting and useful academic commentary, from legal and medical scholars. It may be helpful to consider and reference more of that academic commentary, including by legal commentators such as Victoria Chicco, Colin Mitchell, Michael Fay and others which has recently been published in relation to this case.
Finally, although this paper focuses on the situation in one Australian State, it has relevance beyond that particular context, and provides insight into a problem which is likely to become increasingly pressing in the clinical context internationally. It would be beneficial to consider and highlight more the broader international relevance of the findings in the discussion and conclusions.

Specifically:

Active non-disclosure and passive non-disclosure are terms that are used throughout the manuscript. It would be worthwhile defining these terms for those less familiar with genetic counselling terminology. They are briefly defined in ln 64-66, but a clearer, and perhaps slightly expanded definition might be valuable.

Ln 83-113

This section is somewhat convoluted and unnecessarily confusing, especially for international readers less familiar with the structure of the Australian healthcare system. It might be helpful to restructure to explain the relevance and focus of the paper upfront, then include the detail of the overlapping legal and policy regimes.

Ln 114-120

In this paragraph, you reference studies from the USA and UK, but do not explore or question the applicability of these studies to the Australian healthcare system context. It may be worth considering how transferrable the conclusions of these studies are to the Australian context, or whether there are relevant differences in healthcare practice between these jurisdictions that might affect the applicability of the findings, and how they relate to your study.

For example, later in the paper, you explore the difficulties in contacting at risk relatives. This is less an issue in the UK context, with a National Health Service, and more an issue in the USA. Such issues might be interesting to explore, space permitting.

Ln 213

See my comments on distinguishing the duty to warn from the duty of confidence above

Ln 324

Typographical error 'NSW. Especially in circumstances' should read 'NSW, especially in circumstances'

Ln 329

This statement needs references.

Ln 355-363
Again, the discussion of the case of ABC v St George conflates the questions of the duty to warn (the subject matter of the case) and the duty of confidence (which was not considered by the court). The issues are linked, but there needs to be greater clarity in the discussion in this paper about the relationship between the two duties.

**Are the methods appropriate and well described?**
If not, please specify what is required in your comments to the authors.

Yes

**Does the work include the necessary controls?**
If not, please specify which controls are required in your comments to the authors.

Yes

**Are the conclusions drawn adequately supported by the data shown?**
If not, please explain in your comments to the authors.

Yes

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If an additional statistical review is recommended, please specify what aspects require further assessment in your comments to the editors.

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