



Invited Commentary

Commentary on 'Legal & ethical dilemmas in incidental findings during surgery'



ARTICLE INFO

Keywords:

Incidental diagnosis
 Incidental finding
 Intraoperative finding
 Medical ethics
 Medical law
 Surgery

Commentary

Incidental finding during surgery is defined as the finding of an anomaly or condition which is not expected before surgery and is not related to the condition for which the surgery was originally intended [1]. General surgeons are expected to encounter maximum number of incidental findings during surgery. The reasons could be because of the large volume of patients getting operated by general surgeons and also because general surgical procedures involve wide range of organs in the body ranging from the head to toes.

Discovering an unexpected incidental finding while performing a surgery results in many dilemmas for surgeons. The single decision can sometimes have far-reaching consequences for the surgeon as well as the patient. The ethical and legal aspects involved can confuse many surgeons, especially when the surgeon is in training or has limited experience after qualification. The situation is often worse when such a situation occurs in emergency setting, forcing the surgeon into making a very quick decision. The legal aspects are bound by the law of the land while the ethical aspect is based on autonomy, beneficence, justice, and non-maleficence for the patient, as described by Beauchamp and Childress in their landmark 'Four Principles' approach to medical ethics [2]. These principles are in turn derived from the Hippocratic oath and are intended to be 'prima facie,' implying that they are binding if they are in conflict with another principle. When such a conflict is seen, the clinician has to weigh the competing obligations against each other and determine which is most morally compelling.

It is recommended that best practices based on evidence should be considered to guide decisions regarding communicating the incidental findings [3]. Also, the patient's own preference about disclosure of the finding remains the determinant. There are no established guidelines on how to come to the best decision when faced with an incidental finding while operating on a patient. The current review article has attempted to fill this gap by reviewing the ethical and legal aspects of incidental findings during surgery [4]. The author has evaluated the use of a proposed tool to illustrate the decision-making processes in published

reports. Also, a guidance tool has been constructed to assist trainee surgeons in decision making when encountered with incidental findings during surgery. The author has taken into consideration various laws and acts which cover these aspects and also anecdotal cases which have a bearing on this subject.

The author has constructed the guidance tool involving decision-making, inferences from other medical fields, ethical and legal elements, available experience, skills and specialist knowledge at the time, best clinical practices and also post-operative management and counselling. This tool may help surgeons of all experience levels to come to the optimum decision who may find themselves in such a dilemma in the future and thereby help to improve overall patient safety. It can be assumed that the article will definitely enrich the knowledge of surgeons as well as inspire them to raise the ethical standards of surgery to greater heights.

Ethical approval

Not relevant, as this is an Invited Commentary.

Sources of funding

None.

Author contribution

Single author.

Research registration number

1. Name of the registry: Not Applicable
2. Unique Identifying number or registration ID:
3. Hyperlink to the registration (must be publicly accessible):

DOI of original article: <https://doi.org/10.1016/j.ijjsu.2020.01.141>

<https://doi.org/10.1016/j.ijjsu.2020.02.018>

Received 10 February 2020; Accepted 14 February 2020

Available online 25 February 2020

1743-9191/ © 2020 IJS Publishing Group Ltd. Published by Elsevier Ltd. All rights reserved.

Guarantor

Corresponding author is the Guarantor.

Provenance and peer review

Invited Commentary, internally reviewed.

Declaration of competing interest

None.

Acknowledgements

None.

References

- [1] L. Anderson, J. Snelling, A. van Rij, Incidental findings in surgery, *Br. J. Surg.* 102 (5) (2015 Apr) 433–435, <https://doi.org/10.1002/bjs.9719>.
- [2] T. Beauchamp, J. Childress, *Principles of Bioethics*, seventh ed., OUP, 2013.
- [3] C. Ells, B. Thombs, The ethics of how to manage incidental findings, *CMAJ (Can. Med. Assoc. J.)* 186 (9) (2014 Jun 10) 655–656, <https://doi.org/10.1503/cmaj.140136>.
- [4] Sudip K. Sarker, Legal & ethical dilemmas in incidental findings during surgery: review article, *Int. J. Surg.* (2020), <https://doi.org/10.1016/j.ijssu.2020.01.141> Available online 31 January 2020. In Press, Journal Pre-proof.

Meer M. Chisthi

*Department of General Surgery, Government Medical College, Trivandrum,
Kerala, 695011, India*

E-mail address: meerchisthi@gmail.com.