




Confidentiality: An Ethical Review

Michael Redinger, MD, MA
Michigan State Medical Society
A Day of Board of Medicine Renewal Requirements

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Conflicts of Interest



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Confidentiality

- “Whatever I shall see or hear in the course of my profession...if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.”

■ - Hippocratic Oath

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Philosophical Underpinnings

- Privacy as a basic human right
 - Positive right – person has the right to control access to and/or distribution of personal information, property, and /or knowledge of personal behaviors. A “zone of privacy.”
 - Negative right – protects against interference, and calls on others to leave the patient alone. For example, providing patients with secluded spaces to discuss medical decisions, knocking on a patient’s door before entering, or keeping a patient’s door closed at their request.

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Philosophical Underpinnings

- Moral Foundation
 - Trust facilitates a healthy physician-patient relationship
 - Positions a person to better express autonomy
 - Leads to better care (best interests)

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AMA Code of Medical Ethics

- Opinion 3.2.1
 - Patients need to be able to trust that physicians will protect information shared in confidence. They should feel free to fully disclose sensitive personal information to enable their physician to most effectively provide needed services. Physicians in turn have an ethical obligation to preserve the confidentiality of information gathered in association with the care of the patient.
 - In general, patients are entitled to decide whether and to whom their personal health information is disclosed. However, specific consent is not required in all situations.
 - When disclosing patients’ personal health information, physicians should:
 - (a) Restrict disclosure to the minimum necessary information; and
 - (b) Notify the patient of the disclosure, when feasible.


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AMA Code of Medical Ethics

- **Opinion 3.2.1 (continued)**
 - Physicians may disclose personal health information without the specific consent of the patient (or authorized surrogate when the patient lacks decision-making capacity):
 - (c) To other health care personnel for purposes of providing care or for health care operations; or
 - (d) To appropriate authorities when disclosure is required by law.
 - (e) To other third parties situated to mitigate the threat when in the physician's judgment there is a reasonable probability that:
 - The patient will seriously harm him/herself.
 - The patient will inflict serious physical harm on an identifiable individual or individuals.
 - For any other disclosures, physicians should obtain the consent of the patient (or authorized surrogate) before disclosing personal health information.




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Justifiable Reasons to Break Confidentiality

- Waivers
- Harm to Patient
- Harm to Third Parties



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Justifiable Reasons to Break Confidentiality

- Waivers
 - Patient Instruction
 - HIPAA
 - Worker's Comp/Disability Evaluations
 - Forensics Evaluations
 - Court Order (Not Just a Subpoena), but even then...
 - Education
- Harm to Patient
- Harm to Third Parties



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Justifiable Reasons to Break Confidentiality

- Waivers
- Harm to Patient
 - Medical Emergencies
 - Suicidal Intention
- Harm to Third Parties



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Justifiable Reasons to Break Confidentiality

- Waivers
- Harm to Patient
- Harm to Third Parties
 - Public Health and Infectious Disease
 - Mentally Ill
 - Impaired Drivers
 - Vulnerable Parties
 - Victims of Violence




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Confidentiality of Minors

- **Code of Medical Ethics Opinion 2.2.2**
 - Physicians who treat minors have an ethical duty to promote the developing autonomy of minor patients by involving children in making decisions about their health care to a degree commensurate with the child's abilities. A minor's decision-making capacity depends on many factors, including not only chronological age, but also emotional maturity and the individual's medical experience. Physicians also have a responsibility to protect the confidentiality of minor patients, within certain limits.
 - In some jurisdictions, the law permits minors who are not emancipated to request and receive confidential services relating to contraception, or to pregnancy testing, prenatal care, and delivery services. Similarly, jurisdictions may permit unemancipated minors to request and receive confidential care to prevent, diagnose, or treat sexually transmitted disease, substance use disorders, or mental illness.



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Confidentiality of Minors

Code of Medical Ethics Opinion 2.2.2 (cont)

- When an unemancipated minor requests confidential care and the law does not grant the minor decision-making authority for that care, physicians should:
 - Inform the patient (and parent or guardian, if present) about circumstances in which the physician is obligated to inform the minor's parent/guardian, including situations when:
 - Involving the patient's parent/guardian is necessary to avert life- or health-threatening harm to the patient.
 - Involving the patient's parent/guardian is necessary to avert serious harm to others.
 - The threat to the patient's health is significant and the physician has no reason to believe that parental involvement will be detrimental to the patient's well-being.
 - Explore the minor patient's reasons for not involving his or her parents (or guardian) and try to correct misconceptions that may be motivating the patient's reluctance to involve parents.
 - Encourage the minor patient to involve his or her parents and offer to facilitate conversation between the patient and the parents.

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Confidentiality of Minors

Code of Medical Ethics Opinion 2.2.2 (cont)

- When an unemancipated minor requests confidential care and the law does not grant the minor decision-making authority for that care, physicians should:
 - Inform the patient that despite the physician's respect for confidentiality the minor patient's parents/guardians may learn about the request for treatment or testing through other means (e.g., insurance statements).
 - Protect the confidentiality of information disclosed by the patient during an exam or interview or in counseling unless the patient consents to disclosure or disclosure is required to protect the interests of others, in keeping with ethical and legal guidelines.
 - Take steps to facilitate a minor patient's decision about health care services when the patient remains unwilling to involve parents or guardians, so long as the patient has appropriate decision-making capacity in the specific circumstances and the physician believes the decision is in the patient's best interest. Physicians should be aware that states provide mechanisms for unemancipated minors to receive care without parental involvement under conditions that vary from state to state.
 - Consult experts when the patient's decision-making capacity is uncertain.
 - Inform or refer the patient to alternative confidential services when available if the physician is unwilling to provide services without parental involvement.

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COVID and Confidentiality

Contact Tracing

- "Physicians involved in contact tracing should, to the greatest extent possible, protect the confidentiality of the patient by restricting disclosure to the minimum necessary information, for example, by not identifying the patient when advising third parties of their exposure.
- Physicians should notify their patients that information they provide about contacts will be shared with public health authorities for use in contact tracing to mitigate additional spread of the disease and treat those who have potentially been exposed. Opinion 3.2.1 further provides that physicians may disclose information without a patient's explicit consent to appropriate authorities under limited circumstances."

Patient Registries

- Proof of Immunity
- Research

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Other Challenges To Confidentiality

- Office Settings
- Electronic Communication
- EMRs
- Third Parties
- Psychotherapy
- Genetic Information
- Group/Family Therapy/Marital Counseling
- Reverse Confidentiality and Recording of Visits
- Post-Mortem

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Confidentiality as Habit

- Lear: "If you want to know what is the right thing to do in a particular set of circumstances, from the point of view of confidentiality, ask the person who has the virtue."

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Good Rules of Thumb

- The default position is to protect patient's privacy and confidentiality– when there is even the slightest hint that this maxim ought to be overridden, seek wise counsel: colleague, supervisor or ethics consultation.
- Protecting privacy and confidentiality is always the default position, and any deviation needs to be well-reasoned and based on a strong ethical justification.
- Clinicians should not make promises of privacy or confidentiality that they expect will be virtually impossible to keep.

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Case #1

- You are an Emergency Physician working in an emergency room when a 25 yo female patient presents from her therapist's office.
- You go to see the patient who is accompanied in the room by her sister and the patient requests the sister stay during the interview. The sister reports that she was the one who drove the patient into the ER. She reports that she was waiting in the reception area of the therapist's office when the therapist brought the patient out and instructed the sister to drive the patient to the ER. The therapist did not provide any further information to the sister.
- The patient states that she unsure why the therapist requested she go to the ER. The ER physician cannot identify any acute change in her medical status. Laboratory studies are normal. The patient denies any recent worsening of her depression, denies any suicidal or homicidal ideation, which the sister corroborates. The patient refuses to allow you to call the therapist to obtain collateral information.

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Case #2

- You are a pediatrician seeing a 17 yo female with mild intellectual impairment and ADHD in your outpatient clinic. Her primary caregiver is her adoptive mother, with whom she lives. She also spends occasional time with her adoptive father, a Vietnam veteran with PTSD who divorced the patient's mother when the patient was 10.
- On your most recent visit the patient reports that she was with her father for the afternoon when they got into a verbal altercation which culminated in the patient's father striking the patient in the head with a TV remote control. The patient scratched her father in self-defense before fleeing the apartment barefoot into the snow outside. There she ran into her mother who was coming to pick her up.
- When you invite the patient's mother into the room, she is able to corroborate that she witnessed the patient running out of the apartment and that the patient's father followed behind yelling and screaming with blood running down his arm. When you mention reporting this event to Child Protective Services, the patient's mother pleads with you to not report it as she and the patient are financially reliant on the patient's father. She states that if this gets reported, "He won't help us pay the rent and we'll be homeless."

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Case #3

- An internal medicine resident, who is asked to take a leave of absence from the residency program due to erratic behavior, must obtain a psychiatric evaluation to establish fitness-for-duty before returning to clinical duties. Which of the following best describes the ethical obligations of the treating psychiatrist?
 - A. Protect the confidentiality of the resident and reveal nothing to the residency program
 - B. Give full results of the evaluation to the residency program because they are paying for it
 - C. Establish the parameters of confidentiality with the resident prior to completing the assessment including the release of the evaluation to the residency program
 - D. Lie on the evaluation because any return to work may exacerbate the symptoms of the resident

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■ Answer:

- C. Establish the parameters of confidentiality with the resident prior to completing the assessment including the release of the evaluation to the residency program

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