

Virtual Mentor

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FROM THE EDITOR

Defining the Limits of Confidentiality in the Patient-Physician Relationship

There is a growing need to redefine confidentiality for the twenty-first century. Illness and medical treatment can be deeply personal in nature, yet the scope and complexity of modern health care makes privacy of information difficult to achieve. Often, many parties—primary care clinicians, consulting physicians, managed care organizations, retail pharmacies, and health insurance companies—have access to an individual's health care information. Maintaining a patient's right to confidentiality amid this network can be quite challenging. As medical students and physicians, how should we help maintain patient confidentiality? Is it unreasonable to even expect confidentiality in modern medicine? Do electronic health records improve or threaten patient confidentiality? And, in cases of potential harm to self or others, when should a physician breach a patient's confidentiality? The answers to some of these are clear-cut and legally well defined, while others leave considerable room for interpretation and ethical decision making. This issue will explore these grey areas.

Confidentiality is a principal concern in relationships between patients and medical professionals and trainees, medical research and participant recruitment, and medical and pharmacy records. We begin our consideration of modern confidentiality by examining American physician and medical ethicist Mark Siegler's seminal 1982 essay in the *New England Journal of Medicine* entitled "Confidentiality in Medicine – A Decrepit Concept." In this influential article, Siegler critiqued the traditional formulation of confidentiality, arguing that "medical confidentiality, as it has traditionally been understood by patients and doctors, no longer exists" [1]. Indeed, the climate of medicine has continued to shift in the 30 years since Siegler first proffered his thesis. In this month's journal discussion, George L. Anesi, MD, MA, a resident at Massachusetts General Hospital in Boston, discusses Siegler's ideas and their relevance to contemporary health care, offering insights and pointing out weaknesses. In an ethics case commentary, Pablo Rodriguez del Pozo, MD, JD, PhD, an associate professor of ethics at Weill Medical College of Cornell University in Qatar, explores the dilemma of a physician treating an adolescent who wants to start on antidepressants without involving his parents.

The other case commentaries consider the concept of intraprofessional confidentiality. In one case, a third-year medical student with an eating disorder requires inpatient care. Georgette A. Dent, MD, associate dean for student affairs at the University of North Carolina School of Medicine, discusses how a medical school should best handle the situation, laying out specific guidelines for how to protect the student's confidentiality while supporting her education: seeking for her to receive care outside her home institution, abiding by Liaison Committee for

Medical Education standards, and addressing the break from education in the medical student performance evaluation (MSPE) for residency programs.

We ask whether there is implied intraprofessional confidentiality among medical professionals and trainees in a case in which a medical student who witnesses his attending physician's inappropriate behavior discusses it with other students. Peter A. Ubel, MD, the Madge and Dennis T. McLawhorn University Professor of Business, Public Policy and Medicine at Duke University, writes about the moral courage needed to confront bad role models. Robert M Veatch, PhD, an ethics professor at Georgetown University, differentiates patient confidentiality and confidentiality among professional colleagues and considers the moral grounds of the confidentiality duty.

Three contributions discuss confidentiality in as it pertains to records and data. This month's health law piece features the infrequently studied topic of postmortem confidentiality. Graduate students Courtney Mathews and Andreia Martinho review the legal precedents and AMA guidance concerning the permissibility of disclosing a deceased person's medical information, such as genetic disorders, research findings, and autopsy results. This month's excerpt from the American Medical Association's *Code of Medical Ethics* includes an opinion on confidentiality after death.

In the state of the art and science section, authors Laurinda B. Harman, PhD, RHIA, Cathy A. Flite, MEd, RHIA, and Kesa Bond, MHA, RHIA, PMP, of Temple University provide an excellent overview of the current priorities for making electronic health records (EHRs) ethically sound, including controlling access to maintain patients' confidentiality and maintaining data integrity and availability.

The policy forum piece by Barbara J. Evans, PhD, JD, LL.M., director of the Center on Biotechnology & Law at the University of Houston Law Center, discusses a recent push to give patients property rights over their genetic information or health records in general. She compares the benefits and pitfalls of patient ownership of data to the current system and concludes that ownership rights may not be a "fruitful path for reform."

The final two pieces this month consider the very concept of confidentiality and its origins. In the medicine and society section, Sue E. Estroff, PhD, and Rebecca L. Walker, PhD, faculty at the University of North Carolina at Chapel Hill, contribute an elegant essay on the roots and implications of medical confidentiality broadly construed. In the history of medicine section, Angus H. Ferguson, MPhil, PhD, a scholar at the University of Glasgow, considers when exceptions to absolute medical confidentiality emerged and concludes that the boundaries of confidentiality have *never* been absolute.

It was a pleasure to work on this issue of *Virtual Mentor*. The topic of confidentiality is one that permeates virtually every aspect of medical training and practice, and I

am honored to have contributed to the exploration of many nuances of confidentiality and its ethical implications.

References

1. Siegler M. Confidentiality in medicine—a decrepit concept. *N Engl J Med.* 1982;307(24):1518-1521.

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