

Virtual Mentor

American Medical Association Journal of Ethics
February 2003, Volume 5, Number 2: 54-56.

POLICY FORUM

Resuscitating Privacy in Emergency Settings: AMA Policy Requires Patients' Consent before Filming

Faith Lagay, PhD

Since the trend toward reality TV in medicine took off around 1997, 30 or more emergency departments have invited film crews in for live taping.¹ Many physicians and administrators at participating hospitals are pleased with the results. The live taping, they say, counteracts the glamorized portrayals in dramas such as *ER* that create unrealistic expectations for survival and recovery from trauma. They argue that the reality shows—*Trauma*, *Paramedics*, *Hopkins 24/7*, and the like—educate the public and demystify the emergency department encounter.

Not all physicians agree. Medical ethics rests on the bedrock understanding that those who are sick are vulnerable. This fundamental truth gives rise to the ethical and professional standards governing patient privacy and confidentiality as well as to a gravity of purpose and conduct that suffuses the clinical interaction.

Some physicians believe that making an entertainment of actual clinical encounters violates these ethical and professional standards. The presence of non-medical team members, they claim, invades patient privacy, exploits the sick and dying, and could compromise clinicians' abilities to perform effectively.

One physician who felt strongly about the exploitation of critically ill or injured—and therefore vulnerable—individuals was Dr. Martin Fujimura, who campaigned for AMA policy on the issue. A family practitioner in Dayton, Ohio, Dr. Fujimura began his crusade to protect emergency patients in the fall of 1999. He penned letters to the Ohio State Medical Association, published an article for *In Confidence* magazine,² and wrote to the AMA's Council on Ethical and Judicial Affairs (CEJA) requesting that the AMA develop a policy to curtail the practice of filming. "I am particularly saddened," his letter stated, "by what I perceive as the exploitation of patients who need our care and protection the most, ie, the severely injured and the dying. How is it permissible to allow camera crews to film half-naked, dying patients (even teenagers and children) prior to obtaining consent?" he challenged.

In response to Dr. Fujimura's request, CEJA drafted a recommendation, which it presented it to the AMA House of Delegates at the June 2001 annual meeting. The recommendation was approved, adopted as AMA policy by the House, and became Opinion 5.045 of the AMA's *Code of Medical Ethics*.

Opinion 5.045 states that filming patients in health care settings for the purpose of commercial broadcast without consent is a violation of the patient's privacy.³ Consent, says the policy, "is an ethical requirement for both initial filming and subsequent broadcast for public viewing." The opinion argues that, because filming cannot confer any therapeutic benefit to the patients, it is not worth the risk to patient privacy (and possibly well-being) that it entails. Therefore, "it is appropriate to limit filming to instances where the party being filmed can explicitly consent." Many trauma patients are unconscious or in distress too great to permit their giving informed consent. In such circumstances, the temptation is to allow the next of kin or other surrogate decision maker to provide consent. Opinion 5.045 says surrogate consent is not an acceptable substitute for patient consent. The role of such surrogates is to make decisions necessary for medical treatment or refusal of treatment. Consenting to or refusing to be filmed is not a medical treatment decision.

For most of the trauma and emergency room footage that has aired on television, patients' consent was received after the filming and before the broadcast. If patients did not consent, their portion of the film was not broadcast. But the filming itself had already violated their privacy. To understand why, it is necessary to differentiate between privacy and confidentiality. Patient *privacy* refers to the fact that patients have the right to be examined and observed only by those individuals involved in their medical care. AMA policy dictates that "physicians are ethically and legally required to protect the personal privacy and other legal rights of patients."⁴ *Confidentiality*, on the other hand, refers to what happens afterward to information shared in private with the physician. Patient records and conversations fall under this protection and give sanctity to the patient-physician relationship. Information that is shared with the physician should not be disclosed to others, according to AMA policy on confidentiality, without the patient's consent or unless the disclosure can be "ethically and legally justified by overriding social considerations."⁵ Examples of overriding social considerations include patient threats of harm to self or others from physical violence or communicable disease. Protection of privacy and confidentiality go hand-in-hand. If the patient-physician encounter is not private, confidentiality is far more difficult to secure.

Thus, unless a stationary camera is used or a health professional does the filming, the privacy of the clinical encounter is violated when filming takes place. Receiving consent for distributing the film after the fact avoids breaches of confidentiality but does nothing to undo the invasion of privacy. Breach of patient privacy is permissible only through expressed informed consent before filming.

It is important to recognize that, under Opinion 5.045, patients who are conscious and able to give consent may be filmed. Even here, though, the report that paved the way for the opinion warns that the time required for informing the patient fully about what the film crew may observe and record is time perhaps better spent on diagnosis and treatment.

One function of the AMA's Council on Ethical and Judicial Affairs is to receive physicians' ideas about ethical and professional dilemmas and funnel them to the House of Delegates for action. Any physician, any concerned individual, can bring a matter to the council's attention. Dr. Fujimura did so. His passion and persistence in seeking to protect vulnerable patients by ensuring privacy in the medical encounter stands as a testament to the power of advocacy.

References

1. Foubister V. Acting in the ER: participants in the documentary series "Trauma: Life in the ER" laud its educational value and positive portrayal of physicians. But critics have patient privacy concerns. *AMNews*. March 27, 2000. Accessed January 15, 2003.
2. Fujimura MK. Private matters: lights! camera! trauma! Confidentiality and new media. *In Confidence*. 2000;8:4-5.
3. Opinion 5.045 Filming Patients in Health Care Settings. American Medical Association. *Code of Medical Ethics 2002-2003 Edition*. Chicago, IL: American Medical Association; 2002.
4. Opinion 5.04 Communications Media: Standards of Professional Responsibility. American Medical Association *Code of Medical Ethics 2002-2003 Edition*. Chicago, IL: American Medical Association; 2002.
5. Opinion 5.05 Confidentiality. American Medical Association. *Code of Medical Ethics 2002-2003 Edition*. Chicago, IL: American Medical Association; 2002.

Faith Lagay, PhD is managing editor of *Virtual Mentor*.

The viewpoints expressed on this site are those of the authors and do not necessarily reflect the views and policies of the AMA.

Copyright 2003 American Medical Association. All rights reserved.