

# Virtual Mentor

American Medical Association Journal of Ethics  
February 2009, Volume 11, Number 2: 146-148.

## HEALTH LAW

### When Patient-Physician Confidentiality Conflicts with the Law

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Patient-physician confidentiality is a fundamental tenet of medical ethics. Principle IV of the American Medical Association's *Code of Medical Ethics* states, "[a] physician shall safeguard patient confidences and privacy within the constraints of the law" [1]. This duty of confidentiality is subject to certain exceptions that are ethically justified because of overriding social considerations, such as a patient's threat to inflict serious physical harm on a specific, identified person when there is reasonable probability that the patient will carry out the threat [2].

The second part of Principle IV, "within the constraints of the law," often justifies a physician's disclosure of confidential information. Physicians are required by most state laws to disclose evidence of child abuse obtained through a physical examination or conversation with a minor child [3]. Similarly, the law may demand a physician to disclose information that indicates that a crime has occurred or may occur [3]. The code advises that when, by law, patient confidentiality must be breached, the physician should notify the patient and disclose to law-enforcement authorities the minimal amount of information required [2].

Statutory exceptions to patient-physician confidentiality for reasons relating to public health and safety have existed for decades. Most states require physicians to alert law-enforcement authorities of any violence-related injuries [4]. New York Penal Code 265.25 garnered press recently because of a Columbia Hospital's apparent failure to report its emergency room treatment of a gunshot wound self-inflicted by a national football league (NFL) player [5]. Section 265.25 makes it a Class A misdemeanor for a physician or manager to fail to report a bullet wound, gunshot wound, powder burn, or other injury resulting from the discharge of a gun or firearm [6].

Most other states have similar laws and grant immunity from civil liability to physicians who report such injuries to law-enforcement authorities [4]. Hawaii has the most far-reaching statute on required disclosures. The state mandates that a physician, osteopathic physician, or surgeon report to the chief of police a knife or gunshot wound; injury that would seriously maim, produce death, or render the person unconscious; injury caused by the use of violence or sustained in a suspicious or unusual manner; or motor-vehicle collision involving serious injury or death [7]. The physician must provide the patient's name; nature, type and extent of injury; and other pertinent information [7].

The question is, where does a physician draw the line when balancing such laws and the ethical duty to maintain confidentiality? When does public safety or preventing violence justify the erosion of the patient-physician relationship by the abandonment of the otherwise-sacred principle of confidentiality? Certainly the interest of public safety is overriding when a gunshot victim arrives at the emergency room. By alerting authorities of the incident, a physician may trigger an investigation that prevents more shootings from happening and therefore protects the public. But in the case of the NFL player, the gunshot wound was self-inflicted—albeit with an illegal handgun—without indication of a suicide attempt. Do the same public-policy considerations apply when public safety is not immediately at risk? Does it matter that a law has been broken?

Justification of a breach of patient-physician confidentiality in the interest of public safety is particularly thorny in some of the cases covered by Hawaii law [7]. The provision pertaining to motor-vehicle accidents is unlike any other state statute. The statutory duty to report any injury that has rendered the patient unconscious significantly overreaches the apparent intent of such statutes to diagnose, treat, and document violence-related injuries [4]. Further, the phrase “suspicious or unusual manner” is subject to interpretation. What is it about injuries sustained in a suspicious or unusual manner that justifies forcing a doctor to breach confidentiality? Perhaps “suspicious or unusual” is easily distinguishable from the ordinary in the eyes of a physician. Most likely, a phrase so open to interpretation makes violations of this part of Hawaii’s statute difficult to enforce and subject to overreaching.

While preventing violence is inherent in physicians’ duty to patients and society, so too is the duty to safeguard patient confidence. Physicians delicately walk the line between ethics and law, particularly in the face of statutory obligations to breach the sacred duty of confidentiality—all to prevent violence.

## References

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