Virtual Mentor
American Medical Association Journal of Ethics
November 2003, Volume 5, Number 11: 492-495.

CASE AND COMMENTARY
Please Don't Say Anything: Partner Notification and the Patient-Physician Relationship, Commentary 3
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Case
On Dr. Singh's recommendation, one of her patients, Mr. Henry Roland, consented to be tested for HIV and had a positive test result, which he feared but suspected. Mr. Roland has a longtime girlfriend, Lisa, whom he sometimes mentions to Dr. Singh. When talking to Mr. Roland about his positive test result, Dr. Singh brought up the topic of notifying Mr. Roland's past and present partners so they could be tested themselves. Mr. Roland refused to agree to tell Lisa, or even allow Dr. Singh to notify the health department so they could call her to suggest that she be tested.

"If she's positive, she'll know it was me. Please don't say anything or she'll know I gave it to her."

Mr. Roland told Dr. Singh that he intended to continue having sexual relations with Lisa, otherwise she would suspect that something was wrong with him. He insisted he would use protection consistently. Dr. Singh explained to Mr. Roland that Lisa may already be HIV-positive and if she is, she should seek treatment.

"She'll leave me if she knows. I can't deal with this without her, Dr. Singh, I just can't."

Commentary 3
"Client-provider" confidentiality has been essential to the integrity of the learned professions for centuries, in fact dating back to a time long before the common era (BCE). Privileged communication is critical to the intimate conversations that characterize medicine, law, and religion. The earliest explicit codification of confidentiality in this context is contained in the Oath of Hippocrates (circa 400 BCE). "Whatsoever in the course of practice I see or hear, or even outside my practice in social intercourse, that ought never to be published abroad, I will not divulge, but consider such things to be holy secrets."[1] Other medical oaths, written throughout recorded history, are characterized by rich cultural diversity—emanating from Islamic, Hebrew, Hindu, and Daoist sources, for example—and agree substantively with the tenets of the Hippocratic Oath and Corpus, including agreement on the issue of confidentiality.

The confidentiality mandate has been so important that other professions have followed medicine's lead. The durability of confidentiality in patient-physician, advocate-client, and priest-penitent interactions speaks to an almost universal penetration through eastern and western culture.

Although the professional's obligation (confidentiality) to keep the secrets of the other party (their right to privacy) can be agreed upon as a common good, are there any limits? The answer to this question is the crux of any ethical discussion related to Dr. Singh and Mr. Henry Roland. Would Dr. Singh breach any of the accepted precepts of the patient-physician relationship if she contacts Lisa with the news of her intimate partner's HIV status? Let's try to answer that question.

Hipppocrates' Oath adumbrated the principle of professional privacy and influenced cultures separated widely by time and worldview perspective thinking. However, it seems that one statement in the Oath regarding privacy, namely, "Whatsoever (of what is seen or heard) … that ought never to be published abroad," implies that there are times or contents of intimate conversation that should, by their very nature, be "published abroad." If this remains true today, it suggests that a "relative" rather than absolute value be applied to the "good" of keeping confidences that arise during medical encounters. What would specifically qualify as more important than the protection of privileged information? How about the protection of life itself as a higher good? If keeping the secret endangers life, limited sharing, to those who have a valid "need to know," is an ethical imperative.

Earlier attempts to provide limits to privacy included the scholarly physician Moses Maimonides. In his Mishneh Torah, preserving life took precedence over many other "goods," even one as strict as Sabbath keeping. But for contemporary audiences, represented by many individuals who rely on legal precedent, the rationale justifying dissemination of privileged information has to be developed in more detail.

In 1969, Tatiana Tarasoff was stabbed to death by her boyfriend. Prior to her murder, the boyfriend confided to his therapist that he intended to kill Ms Tarasoff. The courts ruled that the therapist had a legal duty to warn Ms Tarasoff despite the fact the relevant information in question was considered protected by client-therapist privilege. As precedent, the judges quoted prior case law that determined that contagious diseases were to be reported if innocent parties outside the protected relationship were placed at risk.

More specifically, the courts have ruled similarly related to HIV positivity. Jennifer Lawson, a 12-year-old, was transfused with blood in 1985.[2] One day later, her physician discovered that the transfused blood was HIV-positive. The physician did not tell Jennifer or her parents about the tainted transfusion. Three years later, Jennifer became intimate with Daniel Reisner. Two more years later, Jennifer developed AIDS and told Daniel. One month after that, Jennifer died of her disease. Daniel sued Jennifer's physician. The judges ruled in favor of Daniel and against

the physician in question. The court's opinion was recorded thusly, "When the avoidance of foreseeable harm to a third person requires a defendant to control the conduct of a person with whom the defendant has a special relationship (such as physician and patient) or to warn the person of the risks involved in certain conduct, the defendant's duty extends to a third person with whom the defendant does not have a special relationship." *People v Jensen*[3] likewise decided that "HIV carriers must notify sexual partners." The duty to warn has been similarly applied in *DiMarco v Lynch Homes-Chester County*[4] concerning the sexual transmission of hepatitis-B virus to a third party.

From a strictly legal perspective, Dr. Singh is obligated to notify Mr. Roland's sexual contacts. Therefore, the Hippocratic Oath, other medical oaths from a diverse cultural sampling, Moses, Maimonides, and the courts as far back as the "Typhoid Mary" era have understood professional confidentiality as a good but a relative good. The preservation of human life is a far greater good, even if the life in question is outside the immediate context of a specific patient-physician relationship.

From a professional and logistic perspective, Dr. Singh could soften the blow a number of ways. She should encourage Mr. Roland to tell his partner because it is the loving thing to do, she has a right to know, and harm could ensue if she isn't informed. She could apprise Mr. Roland of the legal implications, for both the physician and patient, if sexual partners are not notified. She can reassure her patient that the confidence will only be shared with those who need to know, excluding all others. She could also educate Mr. Roland that "safe sex" with a condom is not a fail-safe guarantee that he will not transmit the virus to his partner. Some of the emotional stress of these particular encounters could be obviated in the future if physicians would inform their patients about the relativity of privileged sharing prior to intimate conversations. In fact, sharing diversity and worldview perspectives before contentious issues arise is good for the patient-physician relationship. To many patients, the physician's primary commitment to the protection of life should be viewed as a wonderful attribute.

References

1. Cameron NM. *The New Medicine: The Revolution in Technology and Ethics*. London, England: Hodder and Stoughton; 1991.
2. *Reisner v Regents of University of California*, 31 Cal. App 4th 1195, 37 Cal. Rptr 2d 518. Accessed October 24, 2003.
3. *People v Jensen*, 231 Mich App 439, 586 NW2d 748 (Aug 28, 1998). Accessed October 24, 2003.
4. *DiMarco v Lynch Homes—Chester County*, 583 A 2d 422 (Pa 1990).

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