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Confidentiality

Lawrence Hartmann, M.D.

The basic rule to follow about patient confidentiality is that psychiatrists should keep all patient material confidential at all times. This powerful and fundamental ethics principle sometimes clashes with other ethics standards. However, a psychiatrist should follow this rule unless there is a very strong ethical reason not to do so. Even if you think there is a reason to diverge from this rule, be careful and thoughtful about any exceptions you make to confidentiality, and from time to time, read about specific relevant areas of ethics or get consultation on the subject—or both.

Good medical care requires a high level of confidentiality. Respect for confidentiality is supported by long tradition, the Hippocratic oath, and *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (American Psychiatric Association 2001; see Appendix of this primer). For psychiatric patients, because of the widespread stigma and many cultural contexts of mental versus physical illness, confidentiality is even more important than in most areas of medicine (American Psychiatric Association Committee on Confidentiality 1987).

Section 4, Annotation 1 of the *Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (hereinafter *Principles*) defines psychiatric medical records and comments on the necessity for confidentiality: “Psychiatric records, including even the identification of a person as a patient, must be protected with extreme care. Confidentiality is essential to psychiatric treatment. This is based in part on the special nature of psychiatric therapy.” The *Principles* go on to note



that this is an era of growing concern about “the civil rights of patients and the possible adverse effects of computerization, duplication equipment, and data banks” (Section 4, Annotation 1). These advances in technology may provide relatively easy access to data, but “because of the sensitive and private nature of the information with which the psychiatrist deals, he/she must be circumspect in the information that he/she chooses to disclose to others about a patient. The welfare of the patient must be a continuing [dominant] consideration” (*Principles*, Section 4, Annotation 1).

Section 4, Annotation 2 of the *Principles* deals with how and when confidential information may be released: “A psychiatrist may release confidential information only with the authorization of the patient or under proper legal compulsion. The continuing duty of the psychiatrist to protect the patient includes fully apprising him/her of the connotations of waiving the privilege of privacy. This may become an issue when the patient is being investigated by a government agency, is applying for a position, or is involved in legal action. The same principles apply to the release of information [about a patient] to medical departments of government agencies, business organizations, labor unions, and insurance companies. [For example,] information gained in confidence about patients seen in [college] student health services should not be released without the students’ explicit permission.” A parent or legal guardian should give authorization in the case of a young child or unemancipated minor. Informed consent and competence to give consent must both be present and the authorization to give information should usually be framed narrowly and in time-limited ways.

Clinical information is often used in teaching or in publishing articles in professional journals. Section 4, Annotation 3 of the *Principles* states that “clinical and other materials used in teaching and writing must be adequately disguised in order to preserve the anonymity of the individuals involved.” Section 4, Annotation 10 of the *Principles* also deals with this issue, stating that “with regard for the person’s dignity and privacy and with truly informed consent, it is ethical to present a patient to a scientific gathering, if the confidentiality of the presentation is understood and accepted by the audience.” Section 4, Annotation 11 of the *Principles* also touches on this issue, stating that “it is ethical to present a patient or former patient to a public gathering or to the news media only if the patient is fully informed of enduring loss of confidentiality, is competent, and consents in writing without coercion.”

There is a similar ethical responsibility regarding information derived from a consultation. Section 4, Annotation 4 of the *Principles* states that “the ethical responsibility of maintaining confidentiality holds equally for the consultations in which the patient may not have been present and in which the consultee [was or] was not a physician. In such instances, the physician consultant should alert the consultee to [the consultee’s] duty of confidentiality.”

Because of the type of fantasies or historical information which may be revealed, the psychiatrist must be cautious about what to disclose, even when permission is granted. Section 4, Annotation 5 of the *Principles* states that “ethically, the psychiatrist may disclose only that information which is relevant to a given situation. He/she should avoid offering speculations as fact. Sensitive information such as an individual’s sexual orientation or fantasy material is usually unnecessary.”

When the psychiatrist is asked to examine an individual for security purposes or for other legal purposes, such as child custody or to determine job suitability or legal competence, it is incumbent on the psychiatrist to “fully describe the nature and purpose and lack of confidentiality of the examination to the examinee at the beginning of the examination” (*Principles*, Section 4, Annotation 6). The psychiatrist should also define what choices, if any, the interviewee has to accept or refuse to cooperate with such an evaluation.

Psychiatrists are sometimes asked to treat a minor. Section 4, Annotation 7 of the *Principles* states that “careful judgment must be exercised by the psychiatrist in order to include, when appropriate, the parents or guardian in the treatment of a minor. At the same time, the psychiatrist must assure the minor proper confidentiality.” Precisely what age defines “minor” in what context varies from state to state and thus requires some knowledge of local laws. Ensuring confidentiality to minors may be relatively easy clinically with young children but difficult—and important—for many teenage patients. Chapter 2 of this primer discusses this issue further.

Section 4, Annotation 8 of the *Principles* states that “psychiatrists at times may find it necessary, in order to protect the patient or the community from imminent danger, to reveal confidential information disclosed by the patient.” The area of dangerousness is in part, but not fully, covered by laws and judicial decisions in many states (e.g., *Tarasoff, Garamella v. New York Medical College, Thapar v. Zeszulka*). These have been changing in recent years. An ethical psychia-



trist should be familiar with the relevant local laws, precedents, and clinical traditions about duties to warn; should know that ethical dilemmas in this area persist; and should often ask for consultation if the question of major imminent dangerousness arises.

At times the psychiatrist is ordered by a court to reveal information about a patient. Section 4, Annotation 9 of the *Principles* takes up this issue: “When the psychiatrist is ordered by the court to reveal the confidences entrusted to him/her by patients, he/she may comply or he/she may ethically hold the right to dissent within the framework of the law. When the psychiatrist is in doubt, the right of the patient to confidentiality and, by extension, to unimpaired treatment should be given priority. The psychiatrist should reserve the right to raise the question of adequate need for disclosure. In the event that the necessity for legal disclosure is demonstrated by the court, the psychiatrist may request the right to disclosure of only that information which is relevant to the legal question at hand” (*Principles*). Young psychiatrists often do not know that a subpoena is less compelling than a court order and should ensure that they obtain legal consultation as a precaution or when faced with such issues. Furthermore, the ethical psychiatrist should anticipate, and consider in advance with the patient, some instances in which a court might at some point wish to intrude, as in the psychotherapy of a parent in a custody dispute.

Confidentiality issues related to treating severely mentally ill patients somewhat parallel the confidentiality issues related to treating children. The severely mentally ill include those who at least sometimes have significantly impaired judgment (e.g., patients with psychosis, mania, severe depression, delusions, or dementia; or who show signs of dangerousness or acute drug impairment). With these patients, thoughtful involvement of family and/or friends, institutions, or other caregivers may be an important part of good treatment. Deciding to disclose confidential information may be difficult; but, even here, some considered rationing of shared psychiatric material is usually ethically necessary. Psychiatrists frequently have questions about confidentiality in treating the severely mentally ill and are usually aided by consultation and supervision.

Managed care and insurance companies have created many ethical dilemmas for psychiatrists (see Chapter 5 of this primer). Business ethics, such as they are, often clash with medical ethics. Several components of the American Psychiatric Association, including the Ethics

Committee, have tried and are continuing to try, without great success, to define some adequately strong principles that counterbalance managed care and its often sweeping demands for patient information. Time-limited and narrowly defined releases for information are of some, but limited, help. Often driven by short-term profit thinking and not benefiting the patient in question, such demands often overpower psychiatric ethics or wear out doctors and patients—or both—to meet the goal of less payment for care. Facing the economic power of managed care and insurance companies, doctors repeatedly have to weigh the ethical protection of confidentiality against the risk that an insurer will not pay—or will pay very little without long paperwork arguments—and that a particular patient may not get care if his or her insurance company does not pay. This clash of business practice with medical treatment is an area that clearly demands further ethical work, for the health and protection of patients and the psychiatric profession. Some of the work will probably have to occur at a government and legal level.

The relationship of military psychiatry and confidentiality also remains, to many psychiatrists, an area that needs continuing review.

Some additional areas of special confidentiality pitfalls include couples therapy, family therapy, and group therapy. Some customs about confidentiality have evolved in these three areas, and forethought about confidentiality specific to these modalities will help reduce potential confidentiality problems.

Finally, in this incomplete list of potential confidentiality problem areas, comes death. Confidentiality of psychiatric information about patients remains ethically in force after the death of the patient and after the death of the psychiatrist. With only a few exceptions (e.g., those involving court orders, heirs, or executors) and despite the wishes of biographers and historians, it is important for the protection of past, present, and future patients that confidentiality does not end with their or the psychiatrist's death.

~ **Conclusion**

Let us return to our original fundamental theme: keep patient material fully confidential at all times unless there is a very strong ethical reason not to do so. And if, in a specific instance, you think there is a reason not to do so, be careful and thoughtful about any exception to patient

confidentiality you are tempted to make—and read about such ethical issues, get consultation for the issues encountered, or both.

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References

American Psychiatric Association: *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*. Washington, DC, American Psychiatric Association, 2001

American Psychiatric Association Committee on Confidentiality: Guidelines on confidentiality. *Am J Psychiatry* 144:1522–1526, 1987