

**Physicians and Society Year 2  
Fall 2005**

**Medicine and confidentiality**

Time: Tuesday 2-4pm  
Location: PCTB 219

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**Summary**

Ever heard of HIPAA? Thought so. Confidentiality is an issue that both patients and health care providers take extremely seriously. The legal penalties of breaching patient confidentiality are potentially severe. But the significance of confidentiality goes well beyond how the law currently defines the ways in which you, as doctors, should handle medical information. In fact, confidentiality has been a crucial component in the history of the doctor-patient relationship. This relationship has evolved over time, and has been shaped not only by medicine, but also by wider society. In this class, we will be considering historical and contemporary debates about the doctor-patient relationship and confidentiality that illustrate these changes. We will be stressing the moral, ethical and legal considerations that physicians have to take into account when confidentiality is at stake.

**Assessment**

Choose two hypothetical cases (one contemporary and one historical) from a list distributed in Week 4. Write a 5-page summary on why you think patient confidentiality had or had not been violated in these two cases, and how you might have acted differently.

*Week 1*

**The physician-patient relationship**

The nature of the doctor-patient relationship has changed over time; the way in which physicians and patients view each other is subject to pressures that come from within medicine and from society more generally. The rise of the hospital, the advent of new drug therapies, more sophisticated technologies and the capabilities of surgery heighten expectations about what the medical profession can achieve. Patient demands are shaped by health insurance (public or private), cost-effectiveness and other factors. What happens to the physician-patient relationship as these changes take place?

Readings

Benedict Carey. In the hospital, a degrading shift from person to patient. *The New York Times*, 16 August 2005, 1.

Clement Bryce Gunn. 2002. *Leaves from the life of a country doctor*. Birlinn: Edinburgh.

Please read all the entries (31 January 1892 to 13 November 1898). Before coming to class, try to find out what 'general paralysis of the insane' is (17 December 1892); and what disease the 'consumptives' (13 November 1898) might be suffering from.

### Class discussion

What did general medical practice look like before the hospital, before medical records were routinely kept, before the dawn of immunizations and before health maintenance organizations? In what ways do factors in the delivery of health care (sources of funding, physician training, site of service) impact on the physician/patient relationship? Was there a time when physicians were closer to, and part of, the communities they served? If yes, how was professional conduct governed; where were boundary lines drawn; and how simple a matter was it for a doctor to view a neighbor disinterestedly as a patient?

### *Week 2*

#### **Reporting tuberculosis**

During the second half of the nineteenth century, governments across the world began requiring doctors to report cases of infectious disease. Many physicians believed that such reporting (notification) represented a serious threat to the doctor-patient relationship because it involved a breach of confidentiality. It was felt that notification laws might result in patients either concealing their illness for fear of publicity, hospitalization or loss of business; or prompt them to consult quacks rather than unregistered practitioners. There was also the fear of stigmatization. Confidentiality continues to be a very important issue in TB control because the diagnosis of TB is potentially damaging to patients. For some patients, a diagnosis of TB can lead to stigmatization or rejection by family, friends, and coworkers; the loss of a job; and possibly eviction from housing.

### Readings

W. F. Dearden. 1904. The compulsory notification of phthisis. *The Manchester Medical Guild Quarterly*, **23**, 9-13.

Various. 1894. Discussion on the advisability of the registration of tuberculosis. *Transactions of the College of Physicians of Philadelphia*, **16**, 1-27.

### Class discussion

Who 'owns' a clinical diagnosis? Does this ownership depend on the disease? How does the possibility of breaking confidentiality affect the physician-patient relationship? Who should be responsible for reporting disease? What are the possible consequences of reporting an infectious disease for (a) the patient; (b) the physician, and what factors control these consequences (e.g. local economy; the status of the medical profession)? In what ways might disease reporting (and consequences) change medical practice and knowledge? Why do you think tuberculosis was excluded from the early lists of reportable diseases?

### Week 3

#### **Sexually transmitted disease: from venereal disease to HIV/AIDS**

While economic considerations tended to dominate debates about reporting tuberculosis, moral issues were more significant for the reporting of sexually transmitted disease. In the early twentieth century, the notification of venereal disease became the topic of much controversy and historians frequently draw parallels between that period and that surrounding HIV/AIDS notification in the 1980s and 1990s.

#### Readings

Selected evidence from Great Britain's *Royal Commission on Venereal Disease 1914-1916*

William Edler. 1920. The reporting of venereal diseases by physicians. *Journal of the American Medical Association*, **74:26**, 1764-1767.

Jill Harsin. 1989. Syphilis, wives, and physicians: medical ethics and the family in late Nineteenth-Century France. *French Historical Studies*, **16:1**, 72-95.

Wayne King. Doctors cite stigma of AIDS in declining to report cases. *The New York Times*, 1986, 1.

Anthony J. Pinching, Roger Higgs and Kenneth M. Boyd. 2000. The impact of AIDS on medical ethics. *Journal of Medical Ethics*, **26:1**, 3-8.

S. L. Strong. 1913. A symposium on the reportability and control of venereal diseases. *Boston Medical and Surgical Journal*, **119:25**, 903-907.

#### Class discussion

What moral and ethical issues are revealed by the reporting of sexually transmitted diseases? How do these issues compare between venereal disease at the beginning of the twentieth century and HIV/AIDS at the end?

### Week 4

#### **Minors and reproductive health**

On 01 September 2005 a new law came into operation in Texas requiring girls under 18 years old seeking an abortion to get written permission from their parents. While physicians and others recognize the importance of involving parents and family in the health care of minors, there is a worry that some adolescents may choose not to seek confidential access to contraceptive or STD services if forced to involve their parents.

#### Readings

Rachel K. Jones and Heather Boonstra. 2004. Confidential reproductive health services for minors: the potential impact of mandated parental involvement for contraception. *Perspectives on Sexual & Reproductive Health*, **36:5**, 182-191.

Ann Maradiegue. 2003. Minor's rights versus parental rights: review of legal issues in adolescent health care. *Journal of Midwifery and Women's Health*, **48:3**, 170-177.

Maryland Department of Health and Mental Hygiene. 2005. *Memorandum: Maryland State Family Planning Program Clinical Guidelines*. Section on Counseling Adolescents

### Class discussion

What role does the physician play in mediating the access of minors to health care services? How does a physician decide if a minor is 'mature'? How does a physician make the decision that a minor would be at risk from a 'probable' health hazard if denied service? Under what circumstances might a physician inform minors' parents, even if not required to do so by law?

### *Week 5*

#### **Alcohol and guns**

Preserving patient confidentiality may be more challenging for physicians in emergency medicine than in other clinical settings. In the UK, the General Medical Council advises doctors working in emergency departments to report all gunshot wounds to the police. Particular questions of disclosure can arise in situations when a doctor has reason to believe a civil law has been broken, or if others may be exposed to harm.

### Readings

- A. Frampton. 2005. Reporting of gunshot wounds by doctors in emergency departments: a duty or a right? Some legal and ethical issues surrounding breaking patient confidentiality. *Emerg.Med.J.*, **22:2**, 84-86.
- C. Cotton, D. W. Crippen, F. Kapadia, A. Morgan, H. N. Murray and G. Ross. 2005. Ethics roundtable debate: is a physician-patient confidentiality relationship subservient to a greater good? *Crit.Care*, **9:3**, 233-237.
- J. C. Moskop, C. A. Marco, G. L. Larkin, J. M. Geiderman and A. R. Derse. 2005. From Hippocrates to HIPAA: privacy and confidentiality in emergency medicine--Part I: conceptual, moral, and legal foundations. *Ann.Emerg.Med.*, **45:1**, 53-59.
- J. C. Moskop, C. A. Marco, G. L. Larkin, J. M. Geiderman and A. R. Derse. 2005. From Hippocrates to HIPAA: privacy and confidentiality in emergency medicine--Part II: Challenges in the emergency department. *Ann.Emerg.Med.*, **45:1**, 60-67.

### Class discussion

Is the physician's duty to his/her patient or to the law? What is the 'public interest'? What are the possible consequences of a physician not informing the law enforcement agencies in the case of an alcohol-related motor accident or a gunshot wound?