Medical Confidentiality and Patient Privacy: The Jewish Perspective

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Confidentiality has its roots in the human practice of sharing and keeping secrets (Bleich, 1981). The responsibilities of health professionals, as articulated in codes of professional ethics, reinforce the value of confidentiality (Winslade, 1995). For example, the Hippocratic Oath says, “I will keep to myself that which I may see or hear in the course of treatment.” The Principles of Ethics of the American Medical Association instruct physicians to “safeguard patient confidences within the constraints of the law.” The American Bar Association, in its handbook AIDS/HIV and Confidentiality Model Policy and Procedures addresses the value of confidentiality (Rennert, 1982). The American Psychiatric Association issued detailed guidelines on confidentiality (Committee on Confidentiality, 1987). Confidentiality between physicians and patients is clearly central to the physician-patient relationship; hence confidentiality of patient information must be guaranteed (Russell, 2003). The National Health Service in Britain is currently debating and will shortly issue rules about what can and cannot be done with a patient’s personal data. Major changes in practice throughout the United Kingdom will insure patient privacy and confidentiality (Chalmers and Muir, 2003).

In one of his final acts as US President, Bill Clinton unveiled the first federal rules governing medical privacy and patient confidentiality (Josefson, 2001). The new rules set national standards for protecting the privacy and distribution of American’s personal health records as well as establish fines and penalties for violating those standards. The Bush administration released its rules governing federal protection for the medical privacy of patients in the US (Josefson, 2001).

Several key concepts relate to confidentiality (Clayton, 2001). First, the concept of privacy reflects the desire of patients to limit the disclosure of personal information. Second, confidentiality is a condition in which information is shared or released in a controlled manner. Third, security involves measures to protect the integrity, confidentiality, and availability of information. By April 14, 2003, physicians in the US were required to fully comply with legislation known as the Health Insurance Portability and Accountability Act (HIPAA) privacy rule (Hoppaszalbein and Hughes, 2002). The HIPAA privacy rule creates national standards to protect individuals’ medical records and other health information. The rule gives patients more control over their health information, sets boundaries on the use and release of health records, establishes appropriate safeguards that health care providers must achieve to protect the privacy of health information. Civil and criminal penalties can be imposed for violation of the rules and standards, although some forms of patient data may be disclosed to protect the public health (Hoppaszalbein and Hughes, 2002).

CONFIDENTIALITY FOR THE GENERAL PUBLIC

For physicians, the Internet is an indispensable tool for continuing medical education, for patient care and patient education, as well as for information exchange with colleagues. For the general and Jewish public, accurate medical information is one of the major concerns relating to the Internet. There are no major ethical difficulties if physicians provide generic medical information on the Internet. However, patients’ private medical information transmitted by e-mail from patient to physician and vice-versa is accessible to many people with computer expertise, and therefore requires special and careful consideration. Patients must be told that the Internet is not a secure means of communication since Internet messages can potentially be intercepted, viewed, and altered by unauthorized individuals. “Deleted” messages may still be recoverable. Therefore, sensitive information should not be sent over the Internet. Furthermore, the Internet should not be used for urgent or emergency medical conditions; rather direct communication with the physician or ambulance service (#911) should then be used.

Other than clerical or administrative communications such as billing, appointments, and insurance matters, all e-mail communications related to patient care should be considered sensitive and confidential. Patients must also consider the security of their own home or office computers in regard to the confidentiality of their medical information since external sources can access and obtain information. The challenge to preserve confidentiality must be pursued and met by the adoption of technologically secure means of data transmission.

The obligation to maintain confidentiality is one of the cornerstones of medical ethical practice and is clearly stated in the Oath of Hippocrates and many subsequent
deontological oaths and declarations. This obligation is based on the general ethical principles of doing well for others (beneficence), not to harm others (non-maleficence), patient autonomy, and the right to privacy. This obligation is also based on the trusting relationship between patient by not disclosing private and personal information about the patient to others.

CONFIDENTIALITY FROM THE JEWISH PERSPECTIVE

Maintaining professional confidentiality is a subject which Jewish thought and literature have dealt with extensively over centuries (Cohen, 1984). In Judaism, the rights of privacy of an individual are balanced against the rights of others and society as a whole (Tendler, 1989). Jewish law regards the privacy of personal information that a person does not wish to disclose to others as inviolate. Jewish law demands that confidences be respected not only by professionals with whom one has entered into a fiduciary relationship but also by friends, acquaintances, and even strangers to whom such information has been imparted (Bleich, 2000). The obligation of confidentiality in Judaism is far broader than that of any other legal, religious, or moral system but “is neither all-encompassing in scope nor, when it does exist, is it absolute in nature” (Bleich, 1998).

There is no specific term in Jewish law for professional confidentiality since this topic is subsumed under the general obligation or prohibition against talebearing and evil gossip (Leviticus 19:16; Proverbs 25:9; Psalms 34:14). The prohibition against divulging confidential information is discussed in the Talmud (Yoma 4b) which states that if a man says something to his neighbor, the latter is not allowed to repeat it without the man’s specific consent; this conclusion is based on a biblical verse (Leviticus 1:1). Another Talmudic discussion of confidentiality (Sanhedrin 31a) states that judges may not reveal confidential discussions that take place behind closed doors. The prohibition against talebearing (Leviticus 19:16 in Proverbs 25:9) is in reference to harm. The Talmud also indicates that this prohibition has no statute of limitations. In fact, a scholar was rebuked for having revealed a secret after 22 years (Sanhedrin 31a). The biblical prohibitions against talebearing and gossip are codified by Maimonides in his Mishneh Torah (Deot 7:2).

According to these laws, a physician may not share privileged information with his colleagues, his family, or anyone else if no benefit to the patient would result therefrom. However, if the maintenance of confidence might cause harm to another person, the latter may be informed. If the individual’s right to privacy conflicts with the need of society to prevent harm to others, the prohibitions against talebearing and evil gossip are waived and the information must be disclosed to protect others. The disclosure must be factual, accurate, and not exaggerated. Specific medical situations where disclosure is required include the possible transmission of illness to another person, the presence of a serious medical condition in a potential spouse, and the reporting of certain infectious diseases to public health authorities. The overriding obligation to protect the lives of others requires that confidential information be disclosed if the withholding of that information might lead to serious harm to someone else. Judaism thus balances the obligation and duty to maintain confidentiality with the obligation and duty to protect others. Lengthy and detailed discussion of this topic is available (Bleich, 2000; Steinberg, 2003).

The most extensive discussion of confidentiality in Jewish law is that by Avraham Steinberg (2003) in his massive and now classic multi-volume reference work entitled Encyclopedia of Jewish Medical Ethics, where he expounds on general Jewish principles and specific laws relating to medical confidentiality and patient privacy, specific and special medical situations, as well as the general secular ethical views on this subject.

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REFERENCES