LESSON 2: CONFIDENTIALITY

Summary

Aims

1. To increase awareness of breaches, and potential breaches, in confidentiality.
2. To enhance understanding of the basis for the importance of confidentiality. Such understanding should help:
   a. To establish what are important breaches in confidentiality and what are trivial breaches;
   b. To resolve conflict between a demand for confidentiality and other important ethical considerations.
3. To introduce the legal background of confidentiality.

Medical Confidentiality

The principle of medical confidentiality—that doctors must keep their patients’ secrets—goes back at least to the Hippocratic Oath. It is both required and limited by U.S. law (see Beauchamp and Childress, 2001; Winslade, 1995; Annas, 2003; Tarasoff). Because the information that doctors learn from and about their patients can be highly important for other people, it is widely accepted that it is morally permissible for doctors to reveal some secrets: indeed it may, in some circumstances, be morally required to share information about a patient’s health.

In practice, confidentiality is often violated for much less compelling reasons. The large number of people engaged in the medical care of each patient results in many people having access to medically confidential information. Because of this Mark Siegler has argued that medical confidentiality is a ‘decrepid concept’ (see Siegler, 1982). Most regrettably perhaps, breaches in confidentiality occur commonly through lack of awareness that a particular transfer of information would constitute a significant breach of confidentiality, through carelessness, and, of course, through the (morally suspect) belief that “no harm is done” by making oneself the exception to a well-justified rule.

Outline of philosophical basis of confidentiality

There are three main reasons for respecting medical confidences:

1. Because of the consequences of doing so. It is important that people who will benefit from medical care make use of it. Because of the private nature of much of what a patient discusses with the doctor, patients might not seek medical help, or might not provide adequate information to receive good medical care, if they did not believe that doctors would respect their confidences. Thus patients must believe that doctors are trustworthy in this respect, and the best way for physicians to create or sustain this belief is to be trustworthy in this respect.
2. *Fidelity to an implied promise.* The relationship between doctor and patient is such that, unless the doctor specifically says otherwise, there is an implied promise that the patient’s secrets will be kept confidential. The force of this argument depends on two points: firstly that there is such an implied promise (a claim most plausibly defended on the grounds that patients have expectations concerning medical confidentiality that are quite reasonable given the long, stable tradition of expressed commitment to it among physicians); and secondly that it is important to keep promises.

3. *Autonomy and respect for privacy.* The principle of autonomy requires that people should be in as much control of their lives as is possible. One way in which people control their lives is in controlling who knows what about them. It is an important part of our control of our lives that we have the right to restrict what people know about us. Thus, if the patient wants the doctor to keep some information confidential this is itself an important reason why the doctor should keep the information confidential.

**Conflict between confidentiality and the interests of others**

There are situations in which others may be harmed if the doctor does not breach confidentiality. For example, a patient with uncontrolled epilepsy may not inform the driving license authority and may continue to drive; or a patient may wish to keep the fact that he is HIV positive secret from his wife. These are, clearly, examples of potential grave harm to others. It has been argued that a physician’s duty to keep his patient’s confidences may be overridden in such cases by his more general duty to protect others from grave harm. The strongest objection to this argument is the consequentialist concern that more people will in fact suffer grave harm if patients (or potential patients) can no longer rely on their physicians to keep their secrets.

**Discussion Case**

Carol Mason

**References:**


Tarasoff v. Regents of the University of California, California Supreme Court; July 1, 1976. 131 California Reporter 14. Reprinted widely.

LESSON 2: DISCUSSION CASE

Carol Mason

Dr. Joe Wilkins delivered Carol Mason’s first daughter three years ago, and her second daughter is due in six weeks. Mrs. Mason’s pregnancy has been uncomplicated so far. At her last regular check-up a month ago, Mrs. Mason, who is now 33, asked whether Dr. Wilkins would “tie her tubes” at the time of the delivery. Dr. Wilkins agreed to do so.

At this visit, Mrs. Mason brings up the topic again and requests that Dr. Wilkins not tell her husband, John, about the tubal ligation. “I know he would like to have more children and really wants a son,” she explained.

“You’re my patient, and there is no reason for me to tell your husband,” Dr. Wilkins replies, “but you should think about the consequences of not telling him. He’ll expect you to become pregnant again and wonder why you’re not.”

“I know, but I don’t want any more children. I’m establishing a career that’s important to me. John and I have had this conversation a dozen times, and it goes nowhere. The bottom line is, it’s my body and I don’t want any more children.”

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Supplementary “cases”

For each situation described below, circle the most suitable description:

0 - No breach of confidentiality
1 - Trivial breach of confidentiality
2 - Significant breach of confidentiality
3 - Serious breach of confidentiality

A Over supper, a doctor tells his/her spouse about some of the patients seen in the clinic during the afternoon, identifying some of these patients.

0 1 2 3

B Medical students discuss ‘a case’ in the hospital elevator. Other people (strangers to the students) are in the elevator.

0 1 2 3

C A receptionist for a family practice physician sees that a neighbor has had an appointment with the physician. Suspecting the neighbor is pregnant, and wishing to congratulate her, she looks in the notes.

0 1 2 3

D You visit a friend of yours in the hospital two days after she has had a baby. On the door of her single room there is a notice: ‘barrier nursing’. You ask a nurse if you can go in the room. “Oh yes” she replies “she’s a hepatitis carrier, but there is no risk”.

0 1 2 3

E A friend of yours tells you something personal about him/herself ‘in strict confidence’. You tell another friend of yours telling him/her to tell no one else.

0 1 2 3

F In the ‘clinical details’ section of a blood form you write ‘? Alcohol abuse’. The form is placed in a routine transparent envelope together with a blood sample. The staff member who takes the blood to the laboratory notices that the sample is from someone he knows, and sees your ‘clinical details’.

0 1 2 3

G The phone rings on the floor. You answer it. The caller asks how a particular patient is doing. Since you know the patient, you tell the caller that the patient has pneumonia on top of chronic bronchitis and that IV antibiotics have been started. On putting the phone down, a nurse asks who called. You don’t know.

0 1 2 3

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