Privacy and Confidentiality

Case Discussions

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Study Guide

- You are not responsible for the theoretical content.
- Recognize the ethical issues in each case, identify the ethical dilemmas, and understand the justifications for each outcome.

A 19 year old women has been diagnosed with renal failure. She has been undergoing dialysis three times a week for six months. On her physician's suggestion, several of her family members undergo testing to determine whether they are compatible for organ donation. The women's older brother is found to be a match. However, when the brother meets with his sister's physician, he tells him he has decided against donating his kidney. He has considered the risks and the potential long term outcomes. He asks the physician not to tell his sister he was a match.

Confidentiality

- "The limits on the dissemination of information disclosed by a person within the doctor-patient relationship."
- A prima facie duty, not an absolute moral duty.
  - Overriding it may sometimes be justified.

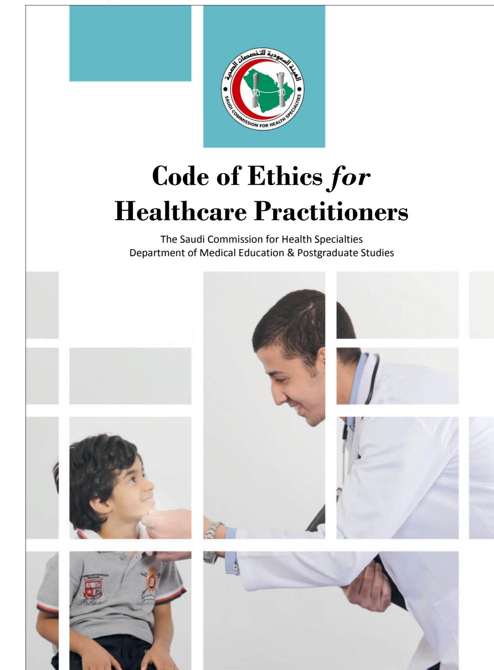
Privacy	Confidentiality	Security
Patients' interest in controlling information about themselves, access to their bodies, and freedom to make decisions about their health care.	Preventing further disclosure of information that the patient has provided to the physician.	Procedural and technical measures to prevent inappropriate access, use, and disclosures of personal information in health records.

- Privacy rule tells us what to keep secret, security rule tells us how.

Law of Practicing Healthcare Professionals

Saudi MOH

- Article 21 forbids breaching patient confidentiality and privacy except in very limited conditions.
  - This includes the obtainment of images, and video or audio recordings.
  - Patients may withdraw their approval at any time.
- Also prohibited by the SCFHS "Code of Ethics for Healthcare Practitioners."



Mr. H, a 28 year old accountant, reveals to his physician that he had a positive test for HIV antibodies at an anonymous testing center. He asks his physician not to disclose the test results to anyone, including his wife. He declares, “If she finds out, it would destroy our marriage.” Mr. H promises to use condoms but refuses to notify his wife.

Overriding Confidentiality: Justifications

"Protective privilege ends where public peril begins,"

1. Potential harm to third parties is serious.
2. The likelihood of harm is high.
3. No alternative for warning or protecting those at risk exists.
4. Harm to patient is minimized and acceptable.

When can we override a patient's right to confidentiality?

Examples

1. Reporting to public officials:
   - Infectious diseases, HIV, Impaired drivers, and injuries caused by weapons or crimes.
   - MOH requirement.
2. Partner notification by public health officials:
   - "Persons at risk for an infectious disease are warned that they have been exposed."
   - Always reveal the minimum information necessary.

3. Direct warnings to third parties at risk:
   - Reporting gunshot wounds or suspicious wounds.
   - Violence by psychiatric patients.
     - The law requires confidentiality to be violated.
     - Doctors have a duty to protect: more intensive therapy, involuntary hospitalization, notifying the police.
4. Protect Patients:
   - Child abuse, elder abuse, and domestic violence **(Reasonable suspicion)**
   - Protection from Abuse Act (2013):
     - Some victims do not want abuse reported, which can sometimes lead to retaliation on the victim. Whenever possible, try to respect victim's autonomy—e.g., delaying reporting until shelter can be found.

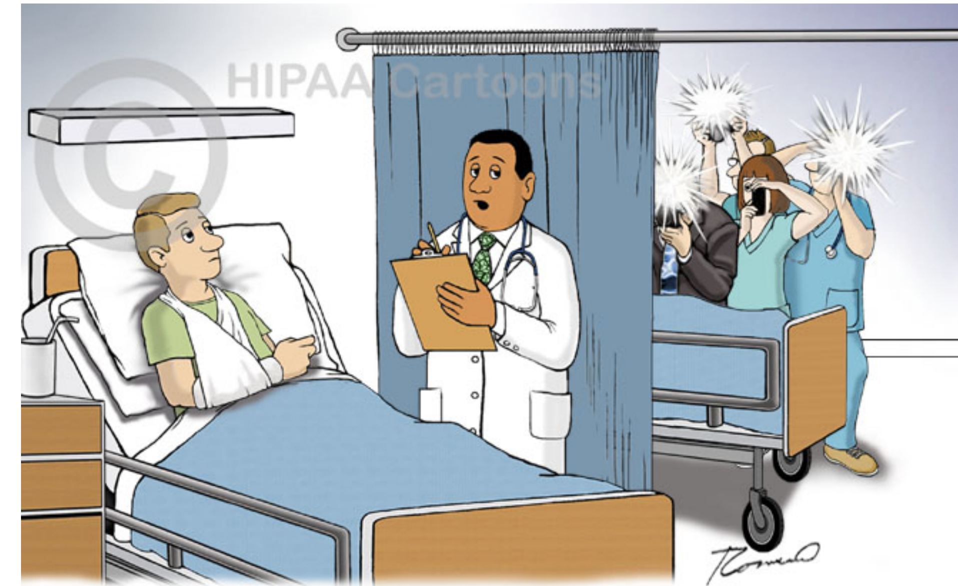
After spending the day taking care of a challenging patient, a medical resident tweets several disparaging and critical remarks about a patient they took care of. The resident does not post any identifying information.

A medical student encounters a funny looking radiological image. It reminds her of a friend. She posts it on her private snapchat account.

Patient Confidentiality and Social Media

Don't do it!!

- No educational or research related purpose.
- Even with anonymity:
  - Patient may still be identified.
  - Patient may recognize themselves.
- Undermines public trust in the medical profession:
  - Clinical encounter as a safe space.
  - Clinician as trustworthy.
  - Clinician are held to a higher set of morals.
- Remember: the internet is forever!
  - May have consequences for poster's career.
  - Negatively affect poster's reputation among patients and colleagues.



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"A celebrity? Oh, they aren't Paparazzi. Our staff likes to take interesting photos for their blogs and Facebook."

Patient Photography

Images, videos, voice recordings, scans, taken within the context of the clinical encounter.

Purposes

1. Clinical: record keeping, evaluation, post intervention comparison, follow-up.
2. Education: (journals, textbooks, video libraries) illustrate findings, techniques, post operative functions or results.
3. Research: substantiate research value.
4. Public Consumption: hospital websites, social media, advertisement.

Ethical Considerations

Informed Consent: (disclosure, comprehension, voluntariness).

Patients have autonomy over their bodies, including photography, use, storage, and access to image.

Privacy and Confidentiality:

Part of medical record, ethical duty to safeguard images.

Patient Dignity:

Ethically justified uses:

- Clinical: patient best interest.
- Academic and research: further education, medicine, and limited to professionals

Public Use of Medical Photographs:
Ethically Debatable

Inadequate Consent:

Physical, psychological, and emotional distress.

Doctor-patient power imbalance, inherent vulnerability.

Conflict of Interest:

No direct benefit to patients.

No legitimate educational or research related purpose.

Undermines Trust:

Clinical encounter as a safe space.

Clinician as trustworthy, held to a higher set of morals.

Even with anonymity, patient may still be identified, recognize themselves.

Ethical Recommendations

- Adequate informed consent for each image and purpose.
- Patients may withdraw their approval at any time.
- Identifying information must be removed. Minimal body exposure.
- Images only used for medical, educational, or research purposes.
- Images should not be obtained on personal devices.
- Images must be stored in a safe environment, with controlled access.
- Images of internal organs, histological slides, radiological scans, etc.:
  - May be shared without consent.
  - Specific medical or educational needs.

Ms. Z, a 76 year old woman, with a change in bowel habits and weight loss is found to have a carcinoma of the colon. Her daughter and son ask the physician not to tell their mother that she has cancer. They say that if Ms. Z is told she will lose hope.

Deception and Nondisclosure

Lying: statements that speaker knows are false and are intended to mislead

Example: CT scan is normal when it isn't.

Deception: broader, all statements intended to mislead whether true or not (technical jargon, misleading statistics.)

Example: CT scan shows a "growth" instead of a "tumor."

Misrepresentation: broader still, includes unintentional statements (inexperience, inattention.)

Example: Misreads CT scan as normal.

Nondisclosure: withholding information.

Example: does not tell patient diagnosis.

Lo, Resolving Ethical Dilemmas, 2020

Reasons Against Deception and Nondisclosure

1. Most patients want to know their diagnosis and options for care.
2. Patients need information to make decisions.
3. Disclosure has more beneficial than harmful consequences.
   - More likely to agree to treatment and adhere to it.
   - Often already suspect their diagnosis.
4. Deception and nondisclosure often require more deception.

Reasons Against Deception and Nondisclosure

5. Deception and nondisclosure might be impossible.
6. Slippery slopes: if justified once, may occur more easily.
7. Long term and indirect consequences:
    - MD won't take time to work through difficult situations and just avoid them through non-disclosure.

Mr. E, a 32 year old man with bipolar disorder, discontinued his medications and developed mania. He formed a specific plan to murder his father and kill himself. Mr. E's sister persuaded him to come to the emergency department, but he would not let anyone touch him or examine him and refused medications and admission. She said that previous violent confrontations with ED staff during periods of mania had caused physical and psychological injury. Mr. E's sister agreed to injecting haloperidol and lorazepam into a sealed juice container to give to Mr. E.

Times when deception or non-disclosure may be appropriate:

1. Deception prevents serious harms to patients.
   - Must be sharply circumscribed to serious and likely threats.
2. There are no other less problematic alternatives.
3. Deception may enhance patient autonomy. If they do not want to know, must not force them to.
   - The crucial question is whether the patient wants to know.
4. Intervention would restore the patient’s autonomy.

Third party deception to protect patients

- Patients can be made opt-out, which means if the hospital receives any inquiries, it will be denied that the individual is even a patient at the hospital.
- Medical staff can go to rather elaborate means to conceal information from patient’s family members.

Resolving dilemmas about deception

- What concerns are prompting the request for deception?
  - Can these be addressed without deception?
- Anticipate dilemmas.
  - Asking whether a patient wants to know results of a test *before* it is run.
- Be transparent in the medical record, explain reasons for deception for others to review.
- It's usually better to help patients cope with bad news than pursuing elaborate attempts to conceal information from them.