Confidentiality

To Respect Confidentiality

How Strong an Obligation?

Overview
- The way it was (Sigler)
- HIPAA: newest regulations
- Ethical reasons for respecting confidentiality
- The Tarasoff case
- Other cases

The way it was and now HIPAA
- Very little confidentiality respect in past
  - Sigler: a "decrepit concept"
  - Need for many people to have access not just for medical reasons but for insurance, managed care, etc.
- Now HIPAA: "Portability" act, but many criticize as making portability more difficult
See: http://www.hhs.gov/ocr/privacysummary.pdf
What Utilitarian Reasons for Respecting Confidentiality?

- Enhances trust of patient with doctor
- Specifically, this leads to better medical care as patient reveals information
- People might avoid care if they feared private information would be revealed

What nonconsequentialist reasons for confidentiality?

- Patients have a moral right to privacy?
- Why is privacy important? Is it overemphasized in our individualist society?
- If a moral right, then sometimes confidentiality must be respected even when consequences are worse.

Mundane but practical

- Don’t talk about patients in the elevator!
- Don’t talk with patient about condition in the lounge where others hear
- (More difficult): Devise computer systems that prevent unauthorized access.
### Reasons to violate confidentiality (if not an *absolute* right)

- To protect patient herself
  (e.g., danger of suicide)
- To protect identifiable third parties
  (e.g., violence, child abuse, AIDS)
- To protect society in general
  (e.g., communicable diseases)

### Tarasoff Case – The Cast

- Prosenjit Poddar, patient who kills
- Tatiana Tarasoff, the victim
- Psychologist and psychiatrists
  - Dr. Lawrence Moore, psychologist who saw Poddar
  - Dr. Gold and Yandell, colleagues of Moore who concurred with his view
  - Dr. Harvey Powelson, Moore's superior, who ordered Poddar released and letter to police destroyed
- Police
  - Atkinson and Teel, campus officers orally notified by Moore
  - Atkinson, Brownrigg, Halferan, took Poddar into custody and released him
  - William Beall, Police Chief notified in writing by Moore, asking for Poddar's confinement

### Legal case

- Failure to detain a dangerous person
  (Poddar released on order of Powelson)
- Failure to warn led to death
  (Did not tell Tatiana's parents of danger; led to her brother trusting Poddar and sharing an apartment)
Some ethical/legal issues

- How much care are we obligated to take to prevent unintended injury to others? (e.g., hunter knowing there are hikers and other hunters in area)
- To what extent are we responsible for not controlling harmful actions of others?
  - What must my relationship be to the person who causes harm in order for me to be liable?
  - Must I also have a relationship to the possible victim?
- How much evidence does there need to be of possible harm before I am morally blameworthy?
- How much evidence does there need to be of possible harm before I should be legally liable?

Applied to Tarasoff case

- Therapist had relationship to Poddar but not to Tatiana

  * Majority opinion: “By entering into a doctor-patient relationship the therapist becomes sufficiently involved to assume some responsibility for the safety, not only of the patient himself, but also of any third party whom the doctor knows to be threatened by the patient.” (p. 448-1)

  * How foreseeable was the danger?
    - Here therapist took action, recognizing danger.
    - What if he hadn’t acted at all? Could he claim predictions of danger are too speculative?

Minority opinion

- Without confidentiality, people in need will not seek treatment
- Without confidentiality, patient will not disclose necessary information
- Even if he/she does, treatment will suffer because of lack of trust.
Confidentiality

**Minority opinion**
- Imposing a duty to warn increases danger to society
- People will be confined who are not dangerous
- Underlying: psychiatrists cannot accurately predict dangerousness

**Psychiatrist will have this choice**
- Have patient committed. Deprives many non-violent people of freedom.
- Warn third parties. Deprives many nonviolent people of privacy.
- (Not mentioned) Warn the *patient* in advance that what (s)he says may not be kept confidential. Impairs treatment.

**Identified versus anonymous lives**
- Minority: “the majority [court opinion] contributes to the danger of violence by the mentally ill and greatly increases the risk of civil commitment—the total deprivation of liberty—by those who should not be confined.”
- Should we count more the identifiable possible victims than those victimized because people went untreated?
Confidentiality

Father seeks therapy
- Father, 35, seeks psychotherapy
- Fears he will molest his 13-year-old daughter
- Hasn’t acted on his fantasies but finds himself viewing her after she showers
- At what point, if any, should therapist breach confidentiality? Ignore law or…
- Policy issue: at what point should the law require referral to Protective Services?

What should the law be?

<table>
<thead>
<tr>
<th>It is required that therapist reveal information if</th>
<th>It is permissible, at therapist’s discretion, to reveal information if</th>
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<tbody>
<tr>
<td>Never permissible to reveal information</td>
<td></td>
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<tr>
<td>It is virtually certain a patient will kill a third party.</td>
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<tr>
<td>It is likely a patient will seriously harm an identifiable third party.</td>
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<td>There exists a strong possibility that patient will harm a third party or self?</td>
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<td>There exists a “clear and present danger of significant harm”</td>
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<td>There exists any possibility that…</td>
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<tr>
<td>(These just a few of many possibilities)</td>
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Some Variables
- What law permits (relieving therapist of danger of liability for breaching confidentiality vs what law requires).
- How much harm anticipated?
- What standard of evidence for future harm?
- Same standard for identifiable third party or any third party?
- Same standard for harm to self as others or different
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Some underlying issues

- General obligation of humans to help third parties without special relationship
- Relationship of law and morality
- Role of medical profession in society and tension between
  - Special obligation to patients over “people in general”
  - Public role of medicine, funded by society, certified, and possessing special information
- Parallel issue arises in use of scarce resources

“Where do we draw the line?”

- It’s not arbitrary even if it’s not precise or easy to determine
- Ethics and law constantly must draw lines.
- Parallel: standard for criminal guilt
- Law permitting euthanasia faces similar issue

Information about Genetic Risk

You are a family physician, and the year is 2008. In order to diagnose a disease in Ms. Susskind (the mother), you did a series of genetic tests on other family members as well, taking advantage of information gained through the Human Genome Project.

When Ms. Susskind comes to discuss your findings with you, she is relieved to learn about the results in her own case but presses you for genetic information that you have learned about other members of her family who agreed to participate in the testing. The truth is that you discovered that Peggy, the family’s 9-year-old daughter, has the “breast cancer gene,” meaning that she has an 85% chance of developing breast cancer in her life. You wonder whether you should give the mother this information.

There is no present treatment for this genetic disease, though some women have considered mastectomies as a preventive measure. Dr. Barbara Weber of the University of Pennsylvania School of Medicine, who was herself involved in discovery of the breast cancer gene, argues against giving children this information. According to the New York Times, “Dr. Weber was afraid to give children and teenagers information that might lead them to believe that they were sick, that their breasts were somehow or other going to kill them.”

[This case is based on information in a New York Times article dated September 29, 1994.]
Genetics case (continued)

On the other hand, Dr. Mary Z. Pelax, a professor of genetics and a lawyer at Louisiana State University, claims that it should not be for ethicists and geneticists to decide what information to make available. "The final decision should rest with the parents," she claims.

According to the New York Times, many psychologists point to cases where children have suffered psychologically as a result of their learning about their genetic illness. Even given this information, a majority of parents visiting prenatal testing clinics believed that parents should be permitted to have their children tested for a disease like Alzheimer's and about half thought parents should tell children the results of the tests.

Should you give Ms. Susskind the information she requests?
How should this issue be dealt with in the future, as more and more genetic tests become available for diseases for which there are no present treatments? Was it wrong to do the genetic tests on family members, even though these tests could be helpful in your diagnosing Ms. Susskind?