



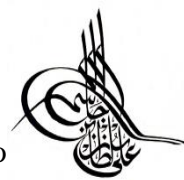
- Confidentiality:

- All these obligations must be seen not only in the context of truthfulness, but in the context of confidentiality. Indeed, it is only after we have considered confidentiality that we can tackle the difficult and often neglected questions about the health care provider's right or obligation to communicate with families and other third parties about condition of the patient.
- Confidentiality is concerned with keeping secrets. A secret is knowledge that a person has a right or obligation to conceal. In the present section, we shall concentrate on obligatory secrets. The obligation to keep secrets arises from the fact that harm will follow if the particular knowledge is revealed. There are three types of obligatory secrets which are distinguished by the types of harmful consequences that result from revelation. These are the natural secret the promised secret and the professional secret.
- The natural secret is so named because the information involved is by its nature harmful if revealed. As we saw in chapter 3, we are obliged to avoid harming others unless there is a proportionate reason for risking or permitting the harm. Because the obligation to avoid harm is universal, even a layperson is obliged to keep secret the fact that a friend has AIDS lest the person be shunned and persecuted unjustly. This obligation exists no matter how the information was obtained. Similarly, we are obliged to keep to ourselves information about the private peculiarities of people that might cause them embarrassment if revealed. We might be obliged to keep secret the fact that a person was in the hospital if revelation of the fact would hurt his or her business. Even the patient's name can be confidential if revealing it might cause either inconvenience or embarrassment to the patient. The psychiatrist who sold mailing lists of his patients certainly caused them inconvenience and may have exposed them to serious loss of reputation, even though the only thing revealed was the fact of treatment. Unfortunately, this fact has been known to stigmatize an individual in certain groups.
- It should be obvious that sometimes the harm that comes from concealing a natural secret outweighs the harm that is being avoided. In these cases, proportionality can justify revelation and at times make it a duty. If a friend with AIDS attempts to give blood even after you have argued with him, you have a proportionate reason to tell the Red Cross of his condition in order to prevent harm to recipients of his blood. On the other hand, you would not be justified in telling the Red Cross of an AIDS victim who had no intention of attempting to donate blood. In this case, there is no foreseeable harm. You would have a similar justification for telling classmates that one student insisted on attending class even though she had infectious hepatitis. You would have no justification of generally revealing her infection if she stayed away from class.
- The promised secret is knowledge that we have promised to conceal. Generally, the promise has been exacted because the matter is also a natural secret, in which case the nature of the matter makes the secret stricter. The special evil of revealing promised secrets arises from the harmful effects of breaking promises. Social life depends on people keeping promises, and we depend on social life for nearly all our basic goods. In addition, most of us are wary of the person whom we cannot trust to keep a promise. We leave that sort of person out of many social interchanges.
- Here, as the case of the natural secret, there may be proportionate reasons for revealing the secret. The good to be attained, however, must offset the evil that results from the broken promise, as well as from the nature of the information.



One will be justified in revealing the intention of someone to kill, even though one swore an oath to keep it secret. A layperson might, despite promises, be justified in revealing a friend's diabetes to a health care professional if the friend is not following medical advice and so threatening his or her health. Once again, it is a question of proportionality, that is, of the need to justify risking or permitting harm by a proportionate good.

- The professional secret is knowledge that, if revealed, will harm not only the professional's client, but will do serious harm to the profession and to the society that depends on that profession for important services. In many cases, but not all, this secret is recognized by the law so that a professional would not have to reveal "privileged communication" even in court. This means that a physician cannot disclose information learned in confidence from a patient unless the patient gives permission. Clearly, the professional secret is the most serious of all secrets, because its violation can cause the greatest harm.
- The importance of the professional secret in health care is best seen by contemplating the consequences if patients lack faith in the confidentiality of their dealings with the health care system. When the law required health care providers to report minors with sexually transmitted diseases to parents (a legal exception to confidentiality), inflected teenagers suffered without care and kept on spreading sexually transmitted diseases until the United States had an epidemic. Their district of the health care system thus led to a major health problem. A change in the law that restored the principle of confidentiality encouraged young people to go for treatment and cut the incidence of these diseases.
- Not only teenagers but all men and women rightfully feel that the condition of their bodies is private and to be shared with those that they choose to help them, but not with anyone else. We do not want to tell our secrets to someone who cannot be trusted to keep a secret. Indeed, with the exceptions noted below, the patient-provider relationship implies a promise of secrecy. For this reason, if for no other, health care providers must observe secrecy to keep their services acceptable to the people who need them.
- Society has long recognized the importance of professional secrecy. To protect confidentiality, society has even given physicians statutory immunity from testifying about their diagnosis and treatment of patients. The immunity of other health care professional differs from state to state. In general, society has, for the reasons given below, expected all health care professional to maintain confidentiality. Unfortunately, the complications introduced by third-party payers, such as Blue Cross, indicate that there is probably a need for rethinking the whole area of professional privilege (Taranto, 1986). We will say more about this later.
- The professional secret, then, must be kept because of the nature of the knowledge, the implied promise, and the good of the profession and the society.
- The patient's Bill of Rights of the American Hospital Association (1992) is quite clear about the obligation of professional secrecy in the hospital setting:
 - ✓ The patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are confidential and should be conducted discreetly. Those not directly involved in his care must have the permission of the patient to be present.
 - ✓ The patient has the right to expect that all communications and records pertaining to his care are confidential.
The application of these statements requires some amplification and explanation.



- **Familial Exceptions:**

- In the past, medical practice has generally assumed that the provider was free to reveal the condition of hospitalized patients to their families whether or not the family was a surrogate. Indeed, at one time the American Medical Association (Annas, 1975, p.124) stated that “reporting to one spouse information about the medical condition of the other is not a breach of confidentiality”. The previous paragraphs have already indicated cases in which such revelation would be neither desirable nor ethical. Ethically, it is better to insist that spouses of competent patients may not be told without the permission of the patient, which is the current position of the AMA (1996, section E-5.05). The patient who reasonably assumes a promise of confidentiality may have good reasons for keeping the matter secret from a spouse. The disclosure of the disease may cause anxiety in the spouse, promote smothering behavior, or in some cases arouse suspicion of infidelity. Annas (1975) remarks that permitting the physician to tell the spouse often, results in the patient not being told, especially when the news is very bad.
- On the other side are those who argue that compassion for the spouse and family justifies revelation. Except when dealing with surrogates, the permission of the patient should be obtained since the relationship is with the patient and the first loyalty is owed to the patient. To the extent that the spouse and family are patients because of their suffering, they should be treated with compassion and concern, but such compassion does not warrant breaking confidentiality.
- Most of the previous paragraph would have to be rewritten if the professional relationship were with the family and not the individual patient. In England, for example, the reporting of child abuse is not mandatory, and visiting nurses see their relationship as one with the family and not the individual patient. The English visiting nurses often refuse to testify in cases involving child abuse lest they damage their relationship with the family. We cannot condemn that stand as long as the terms of the relationship are clear from the beginning.

- **Exceptions in the Case of Children and Adolescents:**

- Traditionally, it was assumed that health care providers had not only a right but an obligation to report to parents on the health of their children. However, the law has provided for an increasing number of areas where the health care provider either need not or must not reveal the health problems of the child or adolescent to the parents. We have already noted the case of sexually transmitted diseases. Similar reaffirmations of the right to confidentiality exist in the areas of abortion, substance abuse, and contraception, but not in the area of sterilization. The law varies from place to place in the United States, but the underlying idea is clear. When confidentiality is necessary for the health of the patient, to protect the patient’s rights, or to protect the public health, traditional exceptions that permitted or required that parents be informed become questionable. For a full treatment of the law and the provisions in each state, the reader should consult Morrissey, Hoffmann, and Thorpe (1986).

- **Hospital Records, Research, and Confidentiality:**

- A stay in the hospital is or should be meticulously documented in both the financial and medical records of the institutions. Diagnosis, treatment, nurses’ observations, progress, and discharge are all reported and stored for future use. Implicitly, the patient has given permission for those involved in her or his direct care to see these records. The permission is on a need-to-know basis. Nurses’ aides do not need to see the records and so do not have implied permission to read them.
- It may be argued that the patient has given permission to a peer review board or another quality assurance board since these boards provide the patient with



additional protection. In practice, the billing office has enough information to allow the curious to make rather accurate deductions about the patient's illness. Aside from these individuals and the third-party payers, treated in the next section, no one else has a right to see the record without the permission of the patient.

- Although the records are made primarily for the good of the patient, they also provide a valuable source of information for health care research. The patient, even if care is provided at public expense, retains the right to privacy. The records should not be used without the informed consent of the patient. That is, the patient should know that a bit more of his or her privacy is being surrendered if consent is given. Merely having the patient sign a form on admission is not sufficiently respectful of the patient's right to privacy.
- When proper consent has been obtained and research is done on the records, two things should be kept in mind. First, only summary data with no identification should be used in publishing the research. Second, the number of people who see the record itself should be kept to a minimum. Both of these provisions help to protect confidentiality and to remind people of its importance.

- **Summary:**

- Professional secrecy is the most obligatory of all secrets, since the violation of confidentiality damages not only the patient, but also the sacredness of promise and the good of society and the profession. Professional secrets can be shared in legitimate medical consultations and revealed for proportionate. There is also an exception to confidentiality in special relationships, which are not true provider-patient relationships.