

20 CONFIDENTIALITY

The concept of confidentiality is essential for all medical treatment. This is stated clearly in both the Hippocratic Oath and in the American Medical Association's (AMA's) *Principles of Medical Ethics*. Confidentiality is perhaps even more vital to the practice of psychiatry, as is evidenced by reading the APA's *Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (see Chapter 35) . Patients cannot be expected to reveal their innermost selves, their fears and passions and obsessions, unless they are certain that what they say will be held in the strictest confidence.

Within the context of the physician-patient relationship, you have a duty not to disclose information you've learned from the patient. A breach of confidentiality not only has the potential to harm your patient, it can put you at risk for a malpractice suit as well.

Most states have statutes that define the privileged nature of the physician-patient relationship, and many have enacted other statutes that more specifically confer privilege on the psychotherapist-patient relationship. This concept of privilege generally allows the patient to prevent a physician or therapist from disclosing any confidential material learned in the course of treatment in any judicial proceeding.

It is important that all staff people working in a psychiatric office understand the importance of strict confidentiality and that efforts are made to safeguard the privacy of patient records. A physician will be held responsible for any breach of confidentiality committed by a member of his or her staff.

EXCEPTIONS TO STRICT CONFIDENTIALITY

On occasion a psychiatrist will have reason to breach the concept of strict confidentiality and disclose information a patient has relayed during the course of therapy. This can only be done with the express authorization of the patient or under legal compulsion.

Consent

If a patient has given informed consent for information to be released, the psychiatrist is permitted to reveal information learned in the course of therapy. It should be noted that to be *informed* the consent must be voluntary and intentional (see Chapter 22).

Overriding Interest of the Public

Most courts have found that a physician has a duty to warn (see Chapter 21) when a patient poses a threat to a third party. In fact, the physician can be held liable for any harm that occurs if a warning has not been given. Many states also have specific waivers allowing psychiatrists to reveal confidential information in the context of civil commitment proceedings (see Chapter 23).

Patient's Interests

Disclosures can sometimes be justified on the grounds that they are necessary to protect the patient. For instance, it is generally acceptable for a psychiatrist to warn a patient's family or roommate when the patient is very depressed and has voiced suicidal thoughts.

Reporting Statutes

Almost all states have statutes requiring that certain conditions—infectious diseases, incidents of child abuse, diseases characterized by loss of consciousness, et al—be reported to government authorities. These statutes differ tremendously from state to state as to what conditions must be reported and what events trigger the duty to report. You'll need to familiarize yourself with your state laws.

MENTAL HEALTH CONFIDENTIALITY STATUTES

In recent years an increasing number of state and federal laws have been enacted that address confidentiality concerns. Some of these deal with disclosing HIV/AIDS information while others deal with the release of substance abuse information. A number of states have enacted mental health confidentiality statutes that attempt to deal comprehensively with the issue of confidentiality and spell out what a psychiatrist can and cannot safely disclose. Some of these laws establish a general rule of confidentiality and then enumerate the exceptions to that rule. If you are working in a jurisdiction that has one of these laws, you should become familiar with the relevant provisions. A call to the state agency that oversees mental health licensure should let you know if your state has a specific mental health confidentiality statute.

CONFIDENTIALITY AND MINOR PATIENTS

When your patients are minors rather than adults, the rules of confidentiality become much less clear. Parents may argue that since they are financially responsible for the care their child receives, they have the right to make all confidentiality decisions involved in that care. However, while it is clear that a psychiatrist has a duty to let parents know if there is a risk that a child may

commit suicide, it is not necessarily the case that parents should be informed of everything a child says in therapy.

Although there is no clear line as to who is a “young minor,” when treating children under twelve, you are probably safe to rely on a parent’s consent for the release of confidential information. It is important to remember that you must be careful not to disclose information to parents that would exacerbate problems in the parent-child relationship or undermine your doctor-patient relationship.

If there is any possibility of child abuse, the parent loses the right to make decisions about disclosure of information, and most states require a report to the responsible government agency and immunize the doctor making the report against charges that confidentiality has been breached.

When dealing with adolescents, the rules relating to confidentiality become even more complex. It is safe to operate under the premise that minors possess the independent right to privacy when they are legally able to consent independently to medical care (see Chapter 22).

PRACTICAL POINTERS FOR AVOIDING CONFIDENTIALTY PROBLEMS

- Follow the general principle to honor a patient’s confidences unless a legal exception applies.
- Instruct staff not to release any patient information without your advance approval.
- Have a written “Authorization for Release of Medical/Mental Health Information” form that can be tailored to specific situations. (See Appendix N).
- If you have any doubt about the validity of consent-to-release information, call the patient to discuss the information and verify consent.
- Be aware of the possible breach of confidentiality when communicating by cell phone, e-mail, fax, or voice mail. Be sure nothing is communicated that is of a confidential nature unless you can be certain of who will be reading or hearing it.
- When leaving messages for a patient with family or on a machine, leave only your name and phone number and the times you can be reached. Be sure to instruct staff to do this as well.
- When doing an evaluation (e.g., for worker’s compensation), clarify the limits of confidentiality at the outset, explaining who will and will not receive a copy of the evaluation.

-
- Obtain legal advice before releasing any information after a patient's death.
 - Inform group therapy participants about the parameters of confidentiality.
 - If you're subpoenaed to testify or release records, seek advice from the APA's Legal Consultation Plan or a local attorney.
 - Do not automatically assume that an MCO has the patient's consent to have information released to them. Try to discuss such an authorization with the patient at the beginning of treatment. Always get written consent.
 - If you need to use a collection agency or small claims court to collect on an unpaid bill, be sure to send the patient appropriate advance notice in writing and reveal the least amount of information necessary.