How to protect patients' confidentiality

Psychiatrist reveals patients' information to another patient

Alameda County (CA) Superior Court

For several years 2 female patients were treated by the same psychiatrist. Jane Doe, age 56, read a breach of confidentiality report alleging sexual abuse filed by another patient of the psychiatrist. Jane Doe contacted the alleged victim, who informed her that the psychiatrist had disclosed information to her (the victim) regarding Jane Doe's treatment, emotional problems, sexual preferences, and medication regimen.

Susan Doe, age 64, learned of the sexual abuse accusations against the psychiatrist in the same way and also contacted the alleged victim. She told Susan Doe that the psychiatrist had disclosed to her Susan Doe's personal information regarding her difficult relationship with her daughter, depression, and instances when she stormed out of counseling sessions.

The patients brought separate claims, and their cases were later consolidated. The psychiatrist denied that he told the alleged sexual abuse victim details of the 2 patients' treatments. The patients claimed that the victim could not have known their personal details unless the psychiatrist had told her.

> **A jury returned a verdict in favor of the 2 patients. Jane Doe was awarded $225,000, and Susan Doe was awarded $47,000.**

Dr. Grant's observations

In the case of Jane Doe and Susan Doe, disclosing a patient's personal information to another patient violates confidentiality. Patients must consent to the disclosure of information to third parties, and in this case these 2 patients apparently did not provide consent.

Medical practice—and particularly psychiatric practice—is based on the principle that communications between clinicians and patients are private. The Hippocratic oath states, "Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private."[1]

According to the American Psychiatric Association's (APA) code of ethics, "Psychiatric records, including even the identification of a person as a patient, must be protected with extreme care. Confidentiality is essential to psychiatric treatment, in part because of the special nature of psychiatric therapy. A psychiatrist may release confidential information only with the patient's authorization or under proper legal compulsion."[2]

Doctor-patient confidentiality is rooted in the belief that potential disclosure of information communicated during psychiatric diagnosis and treatment would discourage patients from seeking medical and mental health care (*Table, page 44*).

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Cases are selected by Current Psychiatry from *Medical Malpractice Verdicts, Settlements & Experts*, with permission of its editor, Lewis Laska of Nashville, TN (www.verdictslaska.com). Information may be incomplete in some instances, but these cases represent clinical situations that typically result in litigation.

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continued

Clinical Point

Some circumstances override the requirement to maintain confidentiality and do not need a patient's consent

Table

Underlying values of confidentiality

Proper doctor-patient confidentiality aims to:

- reduce the stigma and discrimination associated with seeking and receiving mental health treatment
- foster trust in the treatment relationship
- ensure individuals privacy in their health care decisions
- further individual autonomy in health care decision-making.

Source: U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General—Executive Summary.* Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999.

When to disclose

There are circumstances, however, that override the requirement to maintain confidentiality and do not need a patient's consent. Examples include:[3]

Duty to protect third parties. In 1976 the California Supreme Court ruled in the landmark Tarasoff case[4] that a psychiatrist has a duty to do what is reasonably necessary to protect third parties if a patient presents a serious risk of violence to another person. The specific applications of this principle are governed by other states' laws, which have extended or limited this duty.[5] Be familiar with the law in your jurisdiction before disclosing confidential information to third parties who may be at risk of violence.

The APA's position on this exception is consistent with legal standards. Its code of ethics states, "When, in the clinical judgment of the treating psychiatrist, the risk of danger is deemed to be significant, the psychiatrist may reveal confidential information disclosed by the patient."[6]

Emergency release of information. Psychiatrists can release confidential information during a medical emergency. Releasing the information must be in the patient's best interests, and the patient's inability to consent to the release should be the result of a potentially reversible condition that leads the clinician to question the patient's capacity to consent.[3] For example, if a patient in an emergency room is delirious because of ingesting an unknown substance and is unable to consent, a physician can call family members to ask about the patient's medical problems. Notifying family that the patient is in the hospital could violate confidentiality, however.

Reporting abuse. All clinicians are obligated to report suspected child abuse or neglect. Some state laws also may require physicians to disclose abuse of vulnerable groups such as the elderly or the disabled and report to the local department of health diagnosis of communicable diseases such as HIV.[3]

Circle of confidentiality. Certain parties—including clinical staff on an inpatient unit or a psychiatrist supervising a resident—are considered to be within a circle of confidentiality.[3] You do not need a patient's consent to share clinical information with those within the circle of confidentiality. Do not release a patient's information to parties who are not in the circle of confidentiality—such as family members, attorneys representing the patient, and law enforcement personnel—unless you've first obtained the patient's consent.

Document the reasoning behind your decision to disclose your patient's personal information without the patient's consent. Show that you engaged in a reasonable clinical decision-making process.[3] For example, record the risks and benefits of your decision and how you arrived at your conclusion.[3]

Other scenarios

Multidisciplinary teams. Members of a multidisciplinary treatment team—such as physicians, nurses, or social workers—

should only receive confidential information that is relevant to the patient's care. Other clinicians who are not involved in the case—although they may be seeing other patients on the same unit—should not have access to the patient's confidential information. Discussions with these team members must be private so that others do not overhear confidential information.

Insurance companies generally are not party to the patient's records unless the patient agrees to allow access by signing a release. If the patient's refusal to allow disclosure results in the insurance company's refusal to pay, then the patient is responsible for resolving the issue.[7]

Scientific publications and presentations. When you present a case report for a scientific publication or at a meeting, alter the patient's biographical data so that someone who knows the patient would be unable to identify him or her based on the information in the case report. If the information is so specific that you cannot prevent patient identification, either do not publish the case or offer the patient the right to veto the manuscript's distribution. If necessary, have the patient sign a consent form to allow publication or presentation of the case report.

Confidentiality violations

Breach of confidentiality may be intentional, such as disclosing a patient's personal information to a third party as in this case, or unintentional, such as talking about a patient to a colleague and having someone overhear your discussion.[8] Violating confidentiality may result in litigation for malpractice (negligence), invasion of privacy, or breach of contract, and ethical sanctions.[8]

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Clinical Point

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Closing remarks

No aspect of psychiatric practice seems to generate stronger emotions than the potential legal repercussions of our work. Keeping up with patients' needs, billing issues, and advancements in medicine leaves little time for tracking changing state and federal laws or case precedents. For the past 4 years it has been my pleasure to provide information on the legal issues psychiatrists face and provide possible means of avoiding legal pitfalls.

Although I have decided to pursue other projects, I wish to give readers my thanks and to suggest resources—only a few among many great ones—that may be useful guides for a variety of legal issues.

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Editor's note

Current Psychiatry thanks Dr. Grant for writing the *Malpractice Verdicts* column since 2004. The column will continue in a new format in the February 2008 issue.