

# Medical Jurisprudence

Behavioral Sciences Term  
St. Georges University  
School of Medicine

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Segment  
7 of 8

## Confidentiality & Privacy

## Objectives

At the conclusion of  
this unit, the medical  
student should be able  
to answer the  
following 5 questions

1. Explain the **difference** between privacy, confidentiality, and privilege
2. Identify **exceptions** to the duty of confidentiality

3. What is a **Tarasoff** duty
4. Identify the scope of **HIPAA** protection
5. Under HIPAA, what disclosures can be made **without** patient authorization

## Duty of Confidentiality

**Patient's right to confidentiality**  
typically arises in a physician/patient relationship

Typically applies to information one has disclosed to a person in a **position of trust** with the expectation that the information will not be released without consent.

When a physician obtains information from a patient, or prospective patient, she is immediately under a duty of confidentiality with respect to the information disclosed to him.

A physician has a clear legal **duty to protect** patient information and keep it confidential.

A breach of that duty is a **tort** for which a physician may be sued.

**AMA Principles of Medical Ethics (III):** A physician shall . . . safeguard patient confidences **within the limits of the law.**

**Exceptions to duty of confidentiality**

Not just permissive  
Physicians are **mandatory** reporters

**1**

Gunshot wounds  
Knife Wounds

2

**Abuse or neglect**

Child

Elder (vulnerable  
adult)

Trigger is low  
“reasonable  
suspicion”

3

Communicable diseases

Neurological impairment  
affect driving

4

Patient poses  
**imminent** danger  
to others → warn  
them





Prosenjit Poddar  
Indian exchange student  
1967-1969



Poddar interested in Tatianna Tarasoff  
She is not



"I am going to kill her."

Not only **may** you breach confidentiality, you **must**  
Danger is serious  
Danger is imminent

# Privacy

The right to privacy exists on its own and does **not** require a physician/patient relationship to exist.

**The Right to Privacy** is a right that **every person** has and that right, accordingly, imposes a duty on others to respect an individual's privacy.

3 main types

Appropriate name or likeness



Intrusion upon seclusion



Public disclosure of private facts



**Confidentiality vs. Privacy**

**IME**

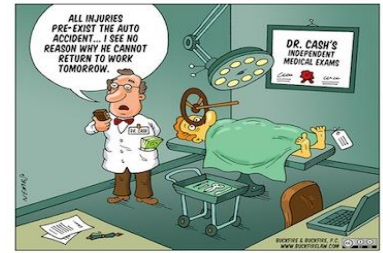
A physician conducting an insurance claims exam is **not** providing medical treatment to a patient and is not in a physician/patient relationship with the person being examined.

If that physician were to reveal purely private information about the individual he examined, that act probably would **not** be a breach of physician patient confidentiality because the obligation to “safeguard patient confidences” generally exists in a treatment relationship

Improper disclosure of that individual's private information could be treated as a violation of his **right to privacy** for which the physician could be held liable.

Claim for an invasion of privacy may have a different **statute of limitations** than a claim for a physician's wrongful disclosure of confidential information.

Insurer may pay for one claim but not the other.



TYPICAL OPINION FROM INSURANCE COMPANY DOCTOR

## Privilege

Privilege applies only in the context of court proceedings

You might be served with **subpoena** for documents or deposition

Privilege is a limit on a party's right to **obtain** your medical records or testimony

Also a limit on party's ability to **introduce** into evidence (before jury)

## HIPAA

The Health Insurance Portability and Accountability Act of 1996

Federal  
law

State law can  
be **more**  
protective

HIPAA governs  
use of PHI  
by covered  
entities

**PHI**

Health information

In any form or medium

Related to

Physical or mental health  
(past, present, future)

Provision of healthcare

Payment for healthcare

Individually identifiable

Name

SSN

VIN

Account #

Email

Biometric (fingerprint)

**Covered  
entity**

Health plans

Healthcare providers

Healthcare clearinghouses

**Not**

Employers

Worker comp carriers

Non-health plans (life,  
disability)

Child protection agency

Normally, you need patient/surrogate **authorization** to release

Uses or disclosures of PHI require either individual opportunities to object or **written authorizations** pursuant to the “anti-disclosure rule.”

**Some uses permitted without authorization**

“Except as **otherwise permitted or required** . . . , a CE may not use or disclose PHI without an authorization . . . .”

**TPO**

Treatment  
Payment  
Operations

CEs may use or disclose PHI **without** individual written authorization to carry out treatment, payment, or health care operations

**Disclosure required by law**

Child abuse  
Elder abuse  
Public health  
Imminent danger  
Law enforcement



Even if authorized  
(e.g. TPO, state  
law reporting)

### Minimum necessary

**Limit** information to that  
necessary to accomplish  
purpose

Otherwise  
get patient  
authorization

You can't talk about patients  
outside of the office with anyone

Clinicians should only access the  
medical information that is needed  
for their job/clinical experience.



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"No, they aren't medical students. It's just some of our staff that accessed your Electronic Medical Record and wanted to see that special tattoo."



"The guy with the weird skin disease forgot to sign the privacy forms."



We need patients to give  
permission before we can give  
information to others on their  
behalf.

Keep medical records in a secure  
place-both paper & electronic.

If you are using electronic medical records....

You should have a unique **password-**  
**don't share** with others

Do not access information on  
yourself, your family, your friends,  
staff or any other person.

Get your own records the way your  
patients do

You have a **duty to report** any breach in confidentiality to your supervising doctor.

Most computer systems can track all access to records.

Inappropriate access is punishable by federal and state law.

## Enforcement

No private cause of action

HIPAA Violation	Penalty Range	Annual Maximum
Individual did not know (and by exercising reasonable diligence would not have known) that he/she violated HIPAA	\$100 - \$50,000 per violation	\$1.5 million
Individual "knew, or by exercising reasonable diligence would have known" of the violation, but did not act with willful neglect	\$1,000 - \$50,000 per violation	\$1.5 million
HIPAA violation due to willful neglect but violation is corrected within the required time period	\$10,000 - \$50,000 per violation	\$1.5 million
HIPAA violation is due to willful neglect and is not corrected	\$50,000 per violation	\$1.5 million

**Presumed reportable** unless low probability compromise

1. Nature, extent PHI (sensitivity, likelihood identified)
2. Person who obtained access (e.g. independent obligation HIPAA)
3. PHI actually accessed
4. Extent mitigated (e.g confidentiality agreement)



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 "So you faxed a patient's records to a wrong number and you don't know who got it? Don't worry. It's not a HIPAA violation unless the patient finds out."

**Other  
duties  
to report**

## When

**Impaired** colleagues  
(substance abuse,  
dementia)

**Incompetent**  
colleagues

When impairment  
relates to patient  
care

# Where

Report to  
supervisor

Otherwise to  
medical board

This unit is a little  
shorter, so we will  
start death &  
dying

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