

Case-Based Teaching Guide

Confidentiality & Adolescents

Exploring the application of the duty of confidentiality when the patient is an adolescent

Overview

The duty of confidentiality has a long tradition in medicine, and it is generally assumed that medical professionals should have a strong presumption to respect confidentiality and avoid breaking confidences when at all possible.

Participants will discuss the basis of the duty of medical confidentiality and its application to the adolescent patient.

They will also identify situations in which breaking confidentiality is justified and the conditions that must be met to break confidentiality, discuss the physician's duty to the patient when confidentiality is violated and identify threats to the maintenance of adolescent confidentiality.

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Case summary

A 14-year-old, accompanied by her mother, presents with complaints of nausea and vomiting for two weeks. After her mother leaves the room, the patient admits to being sexually active and tells you that she has had unprotected intercourse recently with her boyfriend and has missed a period. Her parents do not know she is sexually active, and she does not want her mother to know either that a pregnancy test is being done or the result of that test. The pregnancy test comes back positive.

- Do you disclose the test results to the patient's mother?
- Do you disclose the test results to the patient first?
- How will you get the mother to leave the room to disclose results?
- What if the mother asks about test results?

Alternative cases

1. A 16-year-old girl sees her pediatrician without her parents' knowledge. She wants your assurance that everything will remain confidential, and she is reassured by your response.

She then discloses that she has been having a sexual affair with her step-father. There has been no force or threat on his part. She believes she has been the provocative one. When the physician tells her that they need family therapy and that he is under legal obligation to report this to social services, the girl insists that he do neither and that she would not have told him anything had she known.

Would it change anything if the boyfriend was a 21-year-old? An 18- or 16-year-old?

2. You are caring for a 17-year-old male who is HIV positive. He relates that he is having unprotected intercourse with his girlfriend who is unaware of his HIV status. As you continue to discuss this situation and the risk it poses to his girlfriend, he states that he has no intention of changing his behavior or revealing his HIV status to his girlfriend. Further discussion fails to result in changing his mind on this point. What would you do?
3. The police bring in a 15-year-old street kid for an evaluation. During the course of your exam, you notice a foreign body in the ear canal that turns out to be foil-wrapped rock cocaine. What would you do?

Learning objectives

1. Discuss the basis of the duty of medical confidentiality and its application to the adolescent patient.
2. Identify situations in which breaking confidentiality is justified and the conditions that must be met to break confidentiality.
3. Recognize the physician's duty to the patient when confidentiality is violated.
4. Identify threats to the patient's confidentiality (i.e., the bill that is to be sent to parents).
5. Discuss whether deception is justified to maintain confidentiality and any alternatives to the use of deception.

Suggested reading for instructor

Cheng TL, Savageau JA, Sattler AL, DeWitt TG. Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students. *JAMA*. 1993;269:1404-1407.

Geiderman JM, Moskop JC, Derse AR. Privacy and confidentiality in emergency medicine: obligations and challenges. *Emerg Med Clin N Am*. 2006;24:633-656.

Reddy D, Fleming R, Swain C. Effect of mandatory parental notification on adolescent girls' use of sexual health care services. *JAMA*. 2002;288:710-714.

Siegler M. Confidentiality in medicine — a decrepit concept. *New Engl J Med*. 1982;307:1518-1521.

Thrall J, McClosky L, Ettner S, et al. Confidentiality and adolescents' use of providers for health information and for pelvic examinations. *Arch Pediatr Adolesc Med*. 2000;154:885-892.

Case discussion

A 14-year-old, accompanied by her mother, presents with complaints of nausea and vomiting for two weeks. After her mother leaves the room, the patient admits to being sexually active and tells you that she has had unprotected intercourse recently with her boyfriend and has missed a period.

Her parents do not know she is sexually active, and she does not want her mother to know either that a pregnancy test is being done or the result of that test. The pregnancy test comes back positive.

This patient, a 14-year-old, has requested that you not convey to her mother that a pregnancy test has been sent. In other words, she has requested that you respect her confidentiality. We talk about confidentiality. What is the rule of confidentiality, and how does it differ from respecting someone's privacy?

Distinction between violations of confidentiality and privacy

1. Violations of privacy involve the unauthorized disclosure of someone else's private information (e.g., looking at records without authorization).
2. Violations of confidentiality involve disclosure of someone else's private information
 - That they voluntarily imparted in confidence and trust
 - When there was an implicit or explicit promise not to divulge that information without their permission
3. The ethical basis of a rule for confidentiality is embodied in the word: The Latin root of "confidentiality" is *confidere*, which means "to trust."

Maintaining confidentiality is important because someone has *confided* private information to us. When we break that confidence, we undermine that person's ability to trust. Breaking that confidence undermines their ability to trust.

Is there a general duty of confidentiality, and what is the basis for this general ethical rule?

There should always be a strong presumption to respect confidentiality and avoid breaking confidences when at all possible. The duty of confidentiality is based on four major arguments:

1. The principle of respect for autonomy or respect for persons

Respect for autonomy, or respect for persons, calls for us to allow others to decide who they want to know certain details about themselves. Respecting others and caring for them should create in us a disposition to respect their wishes that certain intimate details of their lives remain confidential. We show them disrespect when we make that decision for them by telling their “secrets” (deontological ethics).

One could ask whether good people should really even have aspects of their lives that they would not want other people to know about. Two points are worth noting. We all fall short of our ethical ideals, and we make mistakes that we prefer others not know about.

Some persons are courageous enough to be honest about these things, but most of us aren't. What is important here, however, is that respecting others requires that we let them decide whether to reveal these things and to whom they feel they need to reveal these things.

2. Implicit promise

Confidentiality in the therapeutic relationship is assumed. Therefore, an implied promise exists between the patient and her physician. Absent a prior warning by the physician to the contrary, to break confidentiality is to break a promise made to the patient.

3. Trust is undermined

Under circumstances of trust, such as disclosures made in most patient-provider relationships, the patient is betrayed when confidences are broken. They have confided in us, assuming that we will not disclose what they have told us. To do so would do violence to that trust. Trust is essential for communities of people to function effectively. Without trust and fidelity, communities (and the persons within them) suffer.

4. Consequences of not maintaining confidentiality to persons and to society

An expectation exists in society that confidence will be kept in medical settings. This expectation makes people trust those who care for them in times of illness. Because the expectation exists, and because of the inequality in intimate disclosures, medical care providers have a special obligation to be trustworthy and loyal.

The effectiveness of medicine often depends upon patients revealing intimate details and secrets of their lives. The breaking of confidences would have a negative effect on medicine because patients would be less likely to entrust these intimate details to their providers if they might be revealed to others (utilitarian ethics). Thus routinely breaking confidence harms the therapeutic relationship.

For example, people who are at risk for HIV may not seek testing if they think that information will be available to anyone other than the doctor. Without the assurance of confidentiality, no identification of people at risk can occur.

Is there an obligation to maintain confidentiality when the patient is an adolescent?

Adolescents' concerns about confidentiality can be a barrier to accessing health services (Booth, Ford, Reddy, Cheng, Klein). When they know that confidentiality will be respected, they are more likely to seek health care, return for health care, and disclose sensitive information about risky behaviors (Ford).

One study (Reddy) of girls aged 12 to 17 in the United States found that nearly 60% reported that, if their parents were notified, they would stop using all or some sexual health services or delay testing or treatment for sexually transmitted infections.

Other studies have found that about one-third of adolescents would not seek health care for sensitive health concerns if their parents could find out (Cheng, Klein).

The majority of adolescents wish to obtain health care for some or all of their health concerns without parental knowledge (Thrall).

One in 10 adolescents reported not visiting their health care provider in the previous year despite wanting to do so because of the fear that their parents would find out (Thrall). This study also found that the provision of confidential health care was a significant predictor of having discussed substance use with providers in the preceding two years.

One British survey of 188 adolescents aged 16 to 17 found that 85% of them ranked confidentiality as the first or second most important issue in seeking health services — followed by telephone advice, written information, special clinics, friendliness and magazines in waiting room (McPherson).

Another survey found that 58% of adolescents had health concerns they wished to keep private from their parents. Due to concerns about privacy, only 57% were willing to see their physician about sensitive subjects (Cheng).

Doesn't the law require we tell parents these things?

Laws regarding confidentiality vary from state to state. In Washington state, confidentiality is tied to informed consent, such that any individual who can provide informed consent (and most adolescents can provide consent for diagnosis and treatment of STDs, pregnancy, contraception and psychiatric care) is also owed the duty of confidentiality.

How will you strategize what happens next, i.e., sending a test while the girl waits, but not telling her mom what has been done?

What is perhaps most important is to make a plan with the girl. One option is to suggest that a visit to a public health clinic or Planned Parenthood might be a safer way to protect her confidentiality.

If she wishes for you to perform the pregnancy test, then she needs to be aware that her mother may have questions about what is happening and why tests are being done. It will also be necessary to plan for how the test result will be shared once the mother is back in the room.

What if her mother asks what tests you are doing?

While you have promised confidentiality to the daughter, this does not require that you lie or mislead the girl's mother. The daughter needs to understand this. If asked a question by the mother about what tests are being done, you may need to say that you cannot divulge that to her.

In that case, an uncomfortable situation may arise with the mother confronting the daughter. The physician's duty in this case is to make the daughter aware of this risk of doing the test now with her mother present.

**Is it ever appropriate to violate the duty of confidentiality?
If so, under what conditions?**

Justifiable breaches of confidentiality: Harm to Others

The clearest situations in which confidentiality can be justifiably overridden are those in which the patient places another person or the community at significant risk of serious harm.

1. Confidentiality is a *prima facie* duty. It may be validly overridden by more compelling obligations. In such cases one is obligated to violate confidentiality in order to fulfill a stronger obligation. However, the burden of proof is always on the one who seeks to justify the breaking of a confidence.

Confidentiality is limited in cases *where others may be harmed* significantly if the confidence is kept. Respect for autonomy does not extend to allowing harm to be done to others.

2. Factors to be weighed carefully include the extent and type of harm that has been confided to you (rape or murder vs. stealing a wrench), and probability that the person will actually do what they say they will (a very difficult judgment):
 - Probability of harm
 - Magnitude of harm
 - Foreseeability of harm

- Preventability of harm
 - Identifiability of victim(s)
 - Potential impact on a general policy of confidentiality
3. In these situations, three questions must be asked:
- Is there a high likelihood of significant harm?
 - Will breaking the confidence prevent the harm?
 - Are there any less intrusive alternatives which would prevent the harm and not require breaking confidentiality or some other ethical obligation?

One must always seek an alternative way of dealing with the problem which might allow you to keep confidence. Every effort must be made to get the person's consent to reveal what needs to be revealed. If people are at risk of serious harm and disclosure is necessary to prevent that harm and there is no less intrusive alternative than disclosure, disclosure is justified.

4. If confidentiality must be broken, only those with an absolute need to know should be given access to that information, and only that information which is needed to prevent harm should be revealed.
5. In most cases, the patient should be notified that confidentiality is to be violated.

What are some examples where breaking the rule of confidentiality might be justified?

- **Public health considerations**

State laws may mandate reporting of certain communicable diseases, including STDs and HIV. Beyond mandatory reporting, one's duty to protect others when your patient has an infectious disease is usually discharged by warning the patient that they are at risk to others and explaining how they can prevent spread of the disease to others.

- **When someone says that they are going to hurt someone else**
- **When certain conditions exist that pose a danger to other people, and the patient refuses to act responsibly**

These conditions may include alcoholic driving, promiscuous HIV-infected person having unprotected intercourse, an airline pilot with uncontrolled seizures. (There is a recent \$3 million tort case involving a physician who failed to report an epileptic patient to the DMV. The patient had an accident and injured a passenger.) State laws vary with regard to whether reporting of these situations is mandatory.

- **Child abuse**

Duties are to the child. To report parents is not to break confidentiality, but to uphold your duty to seek first the best interests of the child. State laws require health-care providers to report suspected neglect or abuse to child welfare authorities.

What about harm to self? Is your feeling that the adolescent might harm herself or that she might later regret her decision sufficient reason to break the rule of confidentiality?

These are referred to as paternalistic violations of confidentiality: They are done “for the patient’s own good.”

Paternalistic violations of confidentiality are rarely justified in adults, especially regarding those patients who demonstrate the capacity to make the decision in question (understanding of issues, thoughtfulness, ability to make a decision, awareness of and willingness to accept consequences).

Notice that a breach of confidentiality is not justified simply because you think it would be better for the patient if others knew about a certain condition or problem. Respect for persons requires that a person with capacity be permitted to decide whether or not it would be beneficial *to her* that others know the information in question.

Adolescents should be encouraged to consult with parents about decisions.

Confidentiality should only be violated if what the adolescent has revealed suggests there is a strong likelihood of serious harm to him or her, that the harm will most likely be prevented by breaking confidence, that all alternatives have been exhausted, that the adolescent has been given the opportunity to make the revelation him or herself, and that the adolescent has been notified of your intention to break confidentiality. This is more easily justified if there is some evidence of limited autonomy on the part of the adolescent.

If you decide you must break confidentiality, what are your obligations to the adolescent patient?

- Notify them of your obligation to make the revelation.
- Explain the reasons you feel obligated to break confidentiality.
- Offer an apology that you cannot maintain confidentiality.
- Offer them the opportunity to make the revelation themselves in your presence.

If you decide to maintain the confidentiality of your adolescent patient, what are some of the ways confidentiality still might not be maintained?

Mark Siegler has asked whether confidentiality is a “decrepit concept.” He had a patient express his concern over the number of people who appeared to have access to his inpatient chart. Siegler counted 75 to 100 people with legitimate reasons to be looking at the chart. When he informed the patient of this, his reply was: “Perhaps you should tell me just what you people mean by ‘confidentiality!’”

Likewise, when a physician at an East Coast institution had an HIV test done at his home institution, within hours he had acquaintances approaching him to offer their sympathy.

In this case, the girl was notified that her pregnancy test was positive, and she persisted in her request that her mother not be told. Does she need to know about other ways her parents may find out about the test result, even though you have promised not to divulge that information without her permission?

- If she is covered by her parents’ insurance, they will receive a bill. The bill might be itemized, including some mention of a pregnancy test.
- If her parents were to request a copy of her medical records, they would likely receive all of the information it contained. Many offices have no strategy for identifying information in the medical record that the adolescent would have wished to remain private.

Conclusion with suggestions

A standard discussion with all adolescents at the beginning of a visit (warning of the limitations on your ability to maintain confidentiality) might go something like this:

“What you tell me here is between you and me. I will not tell your parents or others about what we have discussed without your permission.

However, I want you to be aware that there are certain circumstances under which I will not be able to keep that promise. For example, if what you tell me suggests that you intend to harm yourself or place someone else at risk of serious harm, I will need to share that information.

You should also understand that your parents will get a bill for this visit and may ask you about it. That bill may have the names of tests that we do today...”

If there is no mechanism in place to restrict parental access to adolescent patients’ records, they should be warned that parents may have access to their records (if they request them), and that you may not be able to prevent that possibility (even in states that respect a minor’s desire to have records not be revealed to parents, it may happen inadvertently).

Make a plan with the adolescent regarding follow-up of lab results and billing to assure confidentiality.

Do not leave messages on answering machines. Likewise, recognize that fax and e-mail communications can easily be sent to the wrong person.

Make a plan with the adolescent regarding how she wishes to be contacted by you for follow-up on lab result.

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