3.3.1 Management of Medical Records

Medical records serve important patient interests for present health care and future needs, as well as insurance, employment, and other purposes.

In keeping with the professional responsibility to safeguard the confidentiality of patients' personal information, physicians have an ethical obligation to manage medical records appropriately.

This obligation encompasses not only managing the records of current patients, but also retaining old records against possible future need, and providing copies or transferring records to a third party as requested by the patient or the patient's authorized representative when the physician leaves a practice, sells his or her practice, retires, or dies.

To manage medical records responsibly, physicians (or the individual responsible for the practice's medical records) should:

(a) Ensure that the practice or institution has and enforces clear policy prohibiting access to patients' medical records by unauthorized staff.

(b) Use medical considerations to determine how long to keep records, retaining information that another physician seeing the patient for the first time could reasonably be expected to need or want to know unless otherwise required by law, including:

    (i) immunization records, which should be kept indefinitely;

    (ii) records of significant health events or conditions and interventions that could be expected to have a bearing on the patient's future health care needs, such as records of chemotherapy.

(c) Make the medical record available:

    (i) as requested or authorized by the patient (or the patient's authorized representative);

    (ii) to the succeeding physician or other authorized person when the physician discontinues his or her practice (whether through departure, sale of the practice, retirement, or death);

    (iii) as otherwise required by law.

(d) Never refuse to transfer the record on request by the patient or the patient's authorized representative, for any reason.

(e) Charge a reasonable fee (if any) for the cost of transferring the record.

(f) Appropriately store records not transferred to the patient's current physician.

(g) Notify the patient about how to access the stored record and for how long the record will be available.

(h) Ensure that records that are to be discarded are destroyed to protect confidentiality.

AMA Principles of Medical Ethics: IV,V

Opinion 3.3.1, Management of Medical Records, re-organizes guidance from multiple sources without associated background reports except as follows:

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 6-A-99 Access to medical records by nontreating medical staff

CEJA Report 8-A-94 Retention of medical records

CEJA Report 9-A-94 Patient information

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AMA Principles of Medical Ethics: IV,V

CEJA Report 6 – A-99
Access to Medical Records by Non-Treating Medical Staff

INTRODUCTION

Health care institutions are generally expected to have comprehensive policies in place to protect patients' confidential medical information. For the most part, these safeguards aim to prevent the disclosure of confidential medical information to external third parties such as insurance companies and employers. However, safeguards also are needed to prevent individuals within the health care setting from misusing their privileges to access medical records. Even in institutions where guidelines exist to limit medical personnel's access to medical records, health care professionals may be unfamiliar with the mandates of their institutional policy. For example, a study of three family medicine teaching units at a university in Canada found that only approximately 25% of hospital staff knew that physicians and nurses were not permitted free access to any medical record within the center.[1]

In this report, the Council will focus on the issue of access to medical records by medical staff not involved in the treatment or diagnosis of patients. This report does not address the need to access medical records for clinical research, epidemiological research, quality assurance, or administrative purposes. While these issues raise important concerns, they will be addressed separately either by the AMA Task Force on Privacy and Confidentiality or the Council in later reports.

CONFIDENTIALITY AND MEDICAL RECORDS

Maintaining patients' confidentiality is an essential element of the patient-physician relationship. The Council has addressed the importance of patient confidentiality, especially with regard to medical records, in several opinions. Opinion 5.05, "Confidentiality," states, in part:

> The information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services…[2]

Sensitive information that patients have disclosed to their physician, as well as details of their medical care, are often documented in patients' medical records. In addressing the confidentiality of information contained in patient medical records, the Council stated in Opinion 7.02, entitled "Records of Physicians: Information and Patients," that:

> the [medical] record is a confidential document involving the patient-physician relationship and should not be communicated to a third party without the patient's prior written consent, unless required by law to protect the welfare of the individual or the community.[3]

These opinions clearly iterate the Council's belief that maintaining patient confidentiality is an ethical duty of every physician. A physician's duty to maintain patient confidentiality rests on the premise that medical information belongs to the patient and exists for his or her benefit. Confidentiality prevents the inappropriate release of personal information since it requires the patient's permission in most circumstances. Furthermore, patients are more likely to disclose fully medical information to their physician when confidentiality is protected. Full disclosure is necessary for physicians to provide patients with the most appropriate care.

Physicians should work with health care institutions to ensure that medical records and the information contained therein are protected from breaches of confidentiality. The American Hospital Association

(AHA) suggests that policies address the "preservation, retention, retirement [removal from active use], and release and use of medical records."[4] AHA guidelines further state that *all* individuals who use or receive information from the medical record are responsible, in part, for ensuring the confidentiality of that information.[5] The Council agrees with the AHA that physicians who use or receive information from medical records share in the responsibility for preserving patient confidentiality and that they should play an integral role in designing confidentiality safeguards in health care institutions. In addition, physicians have a responsibility to be aware of the appropriate guidelines in their health care institution, as well as the applicable federal and state laws.

INFORMATION NEEDS IN THE COURSE OF PROVIDING ROUTINE CARE

In order to provide patients with comprehensive, quality medical care, physicians routinely disclose information contained in medical records to other physicians and health care professionals. For example, when dealing with an unusual or sensitive medical problem, physicians often request consultations with specialists or physicians who have more experience treating a particular condition. Second opinions and consultations are an entirely appropriate feature of the collaborative health care system. Physicians should obtain a second opinion or consultation whenever they believe it would be helpful in the care of the patient. However, as the Council states in Opinion 8.041, "Second Opinions," the physician should provide detailed information (*i.e.,* the medical record) to the second-opinion physician only "with the patient's consent."[6] Informal case consultations that involve the disclosure of detailed medical information are appropriate in the absence of consent only if the patient cannot be identified from the information.

Physicians or other health care professionals not involved directly in the patient's care who wish to gain access to confidential medical information must obtain explicit patient consent before doing so. For instance, patients admitted to a teaching hospital usually sign a consent form that grants medical students access to medical records even though those students do not play an essential role in providing care. Even in this case, the consent should ideally be limited to the individual patients to whom the medical student is assigned. Obtaining the hand-written or electronic medical information of a patient when a physician is not involved in providing care for that patient usually is not justified unless he or she has received proper authorization from the patient. The physician's intentions in accessing the information should not be an issue—it makes no difference whether the physician wants information for personal reasons or to try to help the patient. Monitoring user access to electronic medical information is an appropriate and desirable means for detecting breaches of confidentiality.

CONCLUSION

Physicians who use or receive information from medical records share in the responsibility for preserving patient confidentiality and should play an integral role in the designing of confidentiality safeguards in health care institutions. Physicians or other health care professionals not directly involved in a patient's care who wish to gain access to confidential medical information must obtain explicit patient consent before doing so.

RECOMMENDATIONS

For the foregoing reasons, the Council recommends that the following be adopted and that the remainder of this report be filed:

This report focuses on the issue of access to medical records by medical staff not involved in the treatment or diagnosis of patients. It does not address the need to access medical records for clinical research, epidemiological research, quality assurance, or administrative purposes.

1) Physicians who use or receive information from medical records share in the responsibility for preserving patient confidentiality and should play an integral role in the designing of confidentiality safeguards in health care institutions. Physicians have a responsibility to be aware of the appropriate guidelines in their health care institution, as well as the applicable federal and state laws.

2) Informal case consultations that involve the disclosure of detailed medical information are appropriate in the absence of consent only if the patient cannot be identified from the information.

3) Physicians or other health care professionals not directly involved in a patient's care who wish to gain access to confidential medical information must obtain explicit patient consent before doing so.

4) Monitoring user access to electronic or written medical information is an appropriate and desirable means for detecting breaches of confidentiality. Physicians should encourage the development and use of such monitoring system.

REFERENCES

1. Shier, Ian et al. "Knowledge of and Attitude toward Patient Confidentiality within Three Family Medicine Teaching Units" Academic Medicine June 1998;73:710-712
2. Council on Ethical and Judicial Affairs, American Medical Association. "Opinion 5.05: Confidentiality," *Code of Medical Ethics: Current opinions and annotations.* Chicago, IL, 1998.
3. Council on Ethical and Judicial Affairs, American Medical Association. "Opinion 7.02: Records of Physicians: Information and Patients," *Code of Medical Ethics: Current opinions and annotations.* Chicago, IL, 1998.
4. "Disclosure of Medical Record Information" Management Advisory, Information Management; American Hospital Association, 1990.
5. "Disclosure of Medical Record Information" Management Advisory, Information Management; American Hospital Association, 1990.
6. Council on Ethical and Judicial Affairs, American Medical Association. "Opinion 8.041: Second Opinions," *Code of Medical Ethics: Current opinions and annotations.* Chicago, IL, 1998.

information, patients must give their permission after being fully informed about the purpose of such disclosures. If permission is not obtained, physicians violate patient confidentiality by sharing specific and intimate information from patients' records with commercial interests.

Arrangements of this kind may also violate Opinion 8.061 on gifts to physicians from industry.

Finally, these arrangements may harm the integrity of the patient-physician relationship. The trust that is fundamental to this relationship is based on the principle that the physicians are the agents first and foremost of their patients.

(The Disclosure of Records to Data Collection Companies Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 5.075 and is derived from Principles I, II and IV of the Principles of Medical Ethics.)

7. PROFESSIONAL COURTESY*

HOUSE ACTION: FILED

Professional courtesy refers to the provision of medical care to physician colleagues or their families free of charge or at a reduced rate. While professional courtesy is a long-standing tradition in the medical profession, it is not an ethical requirement. Physicians should use their own judgment in deciding whether to waive or reduce their fees when treating fellow physicians or their families. Physicians should be aware that accepting insurance payments while waiving patient co-payments may violate Opinion 6.12.

(The Professional Courtesy Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 6.13 and is derived from Principles II and IV of the Principles of Medical Ethics.)

8. RETENTION OF MEDICAL RECORDS*

HOUSE ACTION: FILED

Physicians have an obligation to retain patient records which may reasonably be of value to a patient. The following guidelines are offered to assist physicians in meeting their ethical and legal obligations:

1. Medical considerations are the primary basis for deciding how long to retain medical records. For example, operative notes and chemotherapy records should always be part of the patient's chart. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time.

2. If a particular record no longer needs to be kept for medical reasons, the physician should check state laws to see if there is a requirement that records be kept for a minimum length of time. Most states will not have such a provision. If they do, it will be part of the statutory code or state licensing board.

3. In all cases, medical records should be kept for at least as long as the length of time of the statute of limitations for medical malpractice claims. The statute of limitations may be three or more years, depending on the state law. State medical associations and insurance carriers are the best resources for this information.

4. Whatever the statute of limitations, a physician should measure time from the last professional contact with the patient.

5. If a patient is a minor, the statute of limitations for medical malpractice claims may not apply until the patient reaches the age of majority.

6. Immunization records always must be kept.

7. The records of any patient covered by Medicare or Medicaid must be kept at least five years.

8. In order to preserve confidentiality when discarding old records, all documents should be destroyed.

9. Before discarding old records, patients should be given an opportunity to claim the records or have them sent to another physician, if it is feasible to give them the opportunity.

(The Retention of Medical Records Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 7.05 and is derived from Principles IV and V of the Principles of Medical Ethics.)

9. PATIENT INFORMATION*

HOUSE ACTION: FILED

It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions. Situations occasionally occur in which a patient suffers significant medical complications that may have resulted from the physician's mistake or judgment. In these situations, the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred. Only through full disclosure is a patient able to make informed decisions regarding future medical care.

Ethical responsibility includes informing patients of changes in their diagnoses resulting from retrospective review of test results or any other information. This obligation holds even though the patient's medical treatment or therapeutic options may not be altered by the new information.

Concern regarding legal liability which might result following truthful disclosure should not affect the physician's honesty with a patient.

(The Patient Information Opinion will appear in the next edition of Current Opinions with Annotations as Opinion 8.12 and is derived from Principles I, II, III and IV of the Principles of Medical Ethics.)

10. ANENCEPHALIC INFANTS AS ORGAN DONORS

HOUSE ACTION: FILED

Anencephaly is a congenital absence of a major portion of the brain, skull and scalp. Infants born with this condition are born without a forebrain and without a cerebrum. While anencephalics are born with a rudimentary functional brain stem, their lack of functioning cerebrum permanently forecloses the possibility of consciousness.

It is ethically permissible to consider the anencephalic as a potential organ donor, although still alive under the current definition of death only if (1) the diagnosis of anencephaly is certain and is confirmed by two physicians

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