

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.