

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 2-A-06

Subject: Withholding Information from Patients (Therapeutic Privilege)

Presented by: Priscilla Ray, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Joseph H. Reichman, MD, Chair)

The following recommendations were adopted as AMA Ethics Policy at the 2006 Annual Meeting of the AMA House of Delegates. The full report may be available online at <http://www.ama-assn.org/go/cejareports> or upon request by calling (312) 464-4823.

1 **RECOMMENDATIONS**

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3 The Council on Ethical and Judicial Affairs recommends:

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5 (1) That the following statement be adopted as new policy, to be subsequently issued as a new
6 ethical opinion:

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8 Withholding pertinent medical information from patients under the belief that disclosure is
9 medically contraindicated, a practice known as “therapeutic privilege,” creates a conflict
10 between the physician’s obligations to promote patients’ welfare and respect for their autonomy
11 by communicating truthfully. Therapeutic privilege does not encompass withholding medical
12 information in emergency situations, or reporting medical errors (see E-8.08, “Informed
13 Consent,” and E-8.121, “Ethical Responsibility to Study and Prevent Error and Harm”).

14
15 Withholding medical information from patients without their knowledge or consent is ethically
16 unacceptable. Physicians should encourage patients to specify their preferences regarding
17 communication of their medical information, preferably before the information becomes
18 available. Moreover, physicians should honor patient requests not to be informed of certain
19 medical information or to convey the information to a designated proxy, provided these
20 requests appear to genuinely represent the patient’s own wishes.

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22 All information need not be communicated to the patient immediately or all at once; physicians
23 should assess the amount of information a patient is capable of receiving at a given time,
24 delaying the remainder to a later, more suitable time, and should tailor disclosure to meet
25 patients’ needs and expectations in light of their preferences.

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27 Physicians may consider delaying disclosure only if early communication is clearly
28 contraindicated. Physicians should continue to monitor the patient carefully and offer complete
29 disclosure when the patient is able to decide whether or not to receive this information. This
30 should be done according to a definite plan, so that disclosure is not permanently delayed.

* Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

1 Consultation with patients' families, colleagues or an ethics committee may help in assessing
2 the balance of benefits and harms associated with delayed disclosure. In all circumstances,
3 physicians should communicate with patients sensitively and respectfully.

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5 (New HOD/CEJA Policy)

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7 (2) That amendments to Opinion E-8.08, "Informed Consent," proposed below be made at the time
8 the statement above is issued as a new opinion:

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10 E-8.08, "Informed Consent"

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12 The patient's right of self-decision can be effectively exercised only if the patient possesses
13 enough information to enable an ~~intelligent~~ informed choice. The patient should make his or
14 her own determination on treatment. The physician's obligation is to present the medical facts
15 accurately to the patient or to the individual responsible for the patient's care and to make
16 recommendations for management in accordance with good medical practice. The physician
17 has an ethical obligation to help the patient make choices from among the therapeutic
18 alternatives consistent with good medical practice. Informed consent is a basic ~~social policy in~~
19 both ethics and law that physicians must honor, for which exceptions are permitted: (1) where
20 ~~the~~ unless the patient is unconscious or otherwise incapable of consenting and harm from
21 failure to treat is imminent. In special circumstances, it may be appropriate to postpone
22 disclosure of information, (see Opinion E-8.122, "Withholding Information from Patients"). ~~or~~
23 ~~(2) when risk disclosure poses such an immediate and serious psychological threat of detriment~~
24 ~~to the patient as to be medically contraindicated Social policy does not accept the paternalistic~~
25 ~~view that the physician may remain silent because divulgence might prompt the patient to~~
26 ~~forego needed therapy. Rational, informed patients should not be expected to act uniformly,~~
27 ~~even under similar circumstances, in agreeing to or refusing treatment.~~

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29 Physicians should sensitively and respectfully disclose all relevant medical information to
30 patients. The quantity and specificity of this information should be tailored to meet the
31 preferences and needs of individual patients. Physicians need not communicate all information
32 at one time, but should assess the amount of information that patients are capable of receiving
33 at a given time and present the remainder when appropriate. (I, II, ~~III~~, IV, V, VIII)

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35 Issued March 1981. Updated June 2006, based on the Report "Withholding Information from
36 Patients (Therapeutic Privilege)."

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38 (Modify HOD/CEJA Policy)