A matter of privacy

The right to privacy in health-related matters, though not absolute, is one of America's most cherished. The courts have protected it in the past, and for the most part, information a patient shares with his or her physician has always been considered confidential. We physicians have traditionally seen ourselves as our patients' allies in this respect. Since 400 BC, fledgling physicians have have taken the Hippocratic Oath, which affirms: "What I may see or hear in the course of the treatment… , I will keep to myself, holding such things shameful to be spoken about."

Now we have the Health Insurance Portability and Accountability Act (HIPAA), passed in 1997, with a new privacy rule that goes into effect in April 2003. On page 182 of this issue, Nickelson, Steiner, and Mehta summarize what the practitioner needs to do to comply with this rule. The penalty aspect of the rule seems to put patients and physicians on opposite sides of the privacy issue, and this is unfortunate.

Yet, our ambivalence about this subject is considerable, arising from the conflict between the public good and the rights of the individual. In crafting the present rule, care has gone into teasing out the acceptable exceptions to the privacy of medical information, including disclosures needed for public safety and public health, peer review of quality data, law enforcement, and (to some extent) information-sharing for an effective team approach to care. They do not include the disclosure or use of such information for marketing or fund-raising, for which a patient must give explicit authorization.

Despite this care, it is almost certain that the complexity of the new rules will engender some unexpected and possibly untoward effects. What constitutes the "minimum necessary" disclosure for any particular purpose will always be subject to debate. The terms under which identifiable patient information may be used for research are clearly spelled out, but the use of aggregated, retrospectively assembled patient information for research has enough gray areas that some legal testing of specific situations may be in the cards. There are also strongly held differences of opinion about what constitutes "marketing."

The need for these regulations stems from the public's fear of computers and their mistrust of those with access to the databases where their private information resides. We must take this seriously and reaffirm our adherence to the Hippocratic Oath to protect our patients' privacy. The best way to do this now is to comply scrupulously with the new regulations, and the first step is to become familiar with them.

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