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Volume VI, Number 4

Winter 1982

\$5.00 a copy

The Client's Right of Privacy and the NFP Teacher

James J. Pattee

Introduction

NNATURAL FAMILY PLANNING (NFP) is a new educational movement in the health care system. The professional and legal status of NFP teachers is developing. The purpose of this paper is to sensitize the NFP teacher to:

- the confidential nature of client information;
- the legal responsibilities of physicians, nurses, and other health professionals in handling confidential information obtained while performing their professional activities.

Privileged Communication and the Physician

In order to effectively diagnose and treat, the physician must obtain detailed, intimate information from his patient. The law recognizes the importance of this information to the physician/patient relationship. Thirty-three states have written statutes that establish this information as a privileged communication. A privileged communication may be defined as information acquired through the physician/patient relationship needed to professionally treat the patient. The purpose of the privileged communication statutes is to prevent disclosure in court of information received by the physician in a doctor/patient encounter. The

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patient has the privilege of determining to whom the physician can release information obtained in such an encounter.

In other states, the common law—which is developed on a case-by-case basis—has developed a Doctrine of Confidential Communication. This doctrine is intended to preclude a physician from disclosing information received in confidence. Therefore, in situations in which the patient's communication is deemed to be confidential, a physician shall not disclose to another person information about his patient.

Through time, physicians and others have addressed the need to respect information obtained from the patient in the course of diagnosis and treatment.

Statements on Confidentiality

1. *Oath of Hippocrates* (Greece, 5th century B.C.)
Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.
2. *Advice to Physicians*, Haly Abbas (Persian Code, 10th century A.D.)
A physician should respect confidences and protect the patient's secrets. In protecting a patient's secrets, he must be more insistent than the patient himself.
3. *Five Commandments and Ten Requirements* (China, 1617)
The secret diseases of female patients should be examined with a right attitude, and should not be revealed to anybody, not even to the physician's own wife.
4. *Code of Ethics*, American Medical Association (1847)
Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed; and the familiar and confidential intercourse to which physicians are admitted in their professional visits, should be used with discretion, and with the most scrupulous regard to fidelity and honor. The obligation of secrecy extends beyond the period of professional services; none of the privacies of personal and domestic life, no infirmity of disposition or flaw of character observed during professional attendance should ever be divulged by him except when he is imperatively required to do so. The force and necessity of this obligation are

indeed so great, that professional men have, under certain circumstances, been protected in their observation of secrecy by courts of justice. (Chapter I, Article I, Section 2)

5. *Principles of Medical Ethics*, American Medical Association (1957)

A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or the community. (Section 9)

6. *Principles of Medical Ethics*, American Medical Association (1980)

A physician . . . shall safeguard patient confidence within the constraints of the law. (Section 4)

7. *International Code of Medical Ethics*, World Medical Association (1949)

A doctor owes to his patients absolute secrecy on all which has been confided to him or which he knows because of the confidence entrusted to him.

8. *Code for Nurses*, American Nurses Association (1950)

The nurse safeguards the client's right to privacy by judiciously protecting information of a confidential nature. (Section 2)

9. *Patient's Bill of Rights*, American Hospital Association (1972)

The patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are confidential and should be conducted discreetly. Those not directly involved in his care must have the permission of the patient to be present. (Section 5)
The patient has the right to expect that all communication and records pertaining to his care should be treated as confidential (Section 6)¹

In the United States today, patients expect physicians to treat information in confidence. Dr. Barry D. Weiss states that 98% of patients surveyed expected not to be identified by name when the physician discussed their care with nonmedical personnel.²

Confidential Communication and the Health Care System

In the early twentieth century, 85% of all health care was delivered by physicians. Now physicians provide about 5% of health

care services. As a result, much of the information gathered for health care may not be legally defined as privileged. However, over the years “. . . the Court has recognized that a right of personal privacy or a guarantee of certain areas or zones of privacy does exist under the Constitution.”³ Thus, a citizen has a right to privacy guarded by the Constitution. Conflicts arise between this right to privacy and the existence of a public need to know or a public benefit from knowing.

During the mid-part of this century, the increase in insurance carriers, the involvement of the federal government through Medicare and Medicaid, and the development of many other providers of health care services (such as natural family planning teachers) have increased the number of individuals or programs involved in the health care delivery system. With this increase, there was also an increase in the necessity of obtaining access to patient information.

Computers are another factor affecting personal privacy. How much information and of what type should be placed on computers? How do we control access to such information?

NFP teachers are part of the health care delivery system. This system is no longer regarded as dealing only with illness but also has a role in promoting wellness. Health care providers help patients and clients to maintain control of their lives.

NFP teachers have a need to know intimate details concerning the lifestyles, daily activities, habits of cleanliness, and genital sexual activities of their clients. This personal information is revealed voluntarily by the client. Because of the right to privacy, the client can expect the teacher to consider this as confidential information. Keeping this confidence is an implied obligation of the teacher.

Since nurses have been the traditional assistants of physicians, they have a long history involving a patient's or client's right to privacy. Article 2 of the American Nurses Association Code states that “The nurse safeguards the client's right to privacy by judiciously protecting information of a confidential nature.”⁴ Gener-

ally, the privilege of confidential communication has not been extended to nurses unless the nurse is acting "in her professional capacity as an aide to the physician . . . and only for the purpose of diagnosis and treatment."⁵

Nursing is, therefore, a model for other health care professions which have the responsibility for protecting the privacy of the patient and preserving the integrity of the provider/client relationship. However, state statutes and common law have recognized the information obtained by a health care provider as privileged only if they are acting in a professional capacity with the physician.

Nurses, physical therapists, laboratory technicians, NFP teachers, and others represent a broad group of health care providers who must address the issue of preserving the privacy of clients while working in a system that needs a free flow of information. NFP teachers will be expected to appreciate their responsibility to preserve privacy in the teacher/client relationship and develop policies regarding the release of confidential communications.

Information possessed by the physician or NFP teacher can be released only with the patient's or client's permission and only to individuals designated by the patient or client. The most satisfactory instrument to accomplish the interchange of information is a medical release form, dated and signed by the patient or client, that explicitly authorizes what information is to be released, by whom and to whom.

The release of information over the telephone is convenient but discouraged. Physicians will discuss patients over the telephone only under very limited circumstances because they must know who is receiving the information.

The NFP teacher who understands the implications of privileged communication and the client's right to privacy, needs to formalize procedures to transfer client information. The procedures followed by a physician's office is a good model.

In formulating policy for procedures, a NFP program should

consider the five "fair information practice principles" suggested by a Privacy Protection Study Commission of the President and Congress in 1977. The principles are:

- There must be no personal data record-keeping system whose very existence is secret.
- There must be a way for an individual to find out what information about him or her is in the record and how it is used.
- There must be a way for an individual to prevent information obtained for one purpose from being used for another without consent.
- There must be a way for an individual to correct or amend records.
- An organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precaution to prevent misuse of the data.

Procedure policy must address both the procurement and release of the information.

The NFP teacher has implied authorization to intrude upon the client's privacy in the course of teaching natural family planning. This authorization carries a responsibility to treat information obtained in confidence and to protect the client's right of privacy. The common law has established this information as privileged only if the health care professional (that is, nurse, NFP teacher, physical therapist, etc.) is acting in a professional capacity as an aid to the physician.

The right to privacy is not absolute. Child abuse laws require the physician to report cases of child abuse to authorities even if the information is obtained under circumstances that ordinarily are privileged. Case law also supports professionals who release confidential information when there are compelling reasons for the safety of the patient or of society.⁶

Summary

The conflicts between a citizen's right of privacy and a society's

right to know will continue in health care. The NFP movement is part of the health care system. NFP teachers must be prepared to function professionally, legally, effectively, and efficiently within this system.

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- 5 *Minnesota v. Anderson*, 78 N.W. 2d 215 (1925).
- 6 *Tarasoff v. Board of Regents*, 551 p2D, 334 (1976).