Medical Secrecy: Some Moral Aspects

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times, and that the observations of 2000 years ago deviate very little from the basic medical concepts we hold today. Study of the Bible reveals an extraordinary concordance between data of the Scriptures and many of the modern and most recent discoveries in the biological and medical fields. To quote Sir Isaac Newton: "The Scriptures are the most sublime philosophy. I find more works of authenticity in the Bible than in profane history anywhere.

A survey conducted among some hundred English and Welsh physicians a few years ago revealed a marked difference of opinion regarding the practical obligations of medical secrecy. The questionnaire submitted to these doctors took the form of a series of imaginary cases in which either the common good or the rights of individuals seemed to argue in favor of a doctor's divulging certain information acquired in the course of his professional practice. The doctors were asked to express their personal opinions as to proper procedure in each instance, whether to disclose or to withhold the information in question.

Some of the problems posed are quite provocative — and perhaps the divergence of opinions expressed would be considered even more so. If a physician, for example, as a private practitioner, should discover that a railroad engineer, whom he has diagnosed as epileptic, intends neither to inform his employers of his condition nor to give up his work, should the doctor himself report the case to railway authorities? Answers were almost seven to one in favor of divulging the information. Should the doctor report to the police the identity of a criminal abortionist, whose name he has learned from a woman patient who forbids him to make use of the knowledge? A slight majority favored reporting the culprit, while a strong minority declared for the contrary. A workman is receiving industrial insurance compensation for an injury alleged to have been received in the course of his work. Would his personal physician be justified in revealing to authorities that the disability was actually incurred prior to his employment and that the claim is therefore fraudulent? By approximately two to one, the doctors decided against the propriety of revealing this medical information.

The results of such a poll might easily provoke doctors to any one of several adverse reactions — either consternation at the number who would countenance an apparent breach of professional ethics in certain situations; or impatience with the insistence of some on the absolute sacredness of the medical secret regardless of all circumstances; or chagrin at the failure of doctors to agree on so basic a question; or perhaps resentment towards medical soci-
eties whose stringent ethical codes seem to create the dilemmas which occasion such uncertainties. Which, if any, is the proper reaction in the light of sound moral principles?

In its ultimate refinements, the moral question of professional secrecy is complex to the extreme, and does not lend itself easily to exhaustive treatment within the limits of a single article. But there is a certain minimum of basic principles which can be stated more or less briefly and which may serve to remove at least the major doubts which are likely to occur in this regard. So, in the interests of practicality, these are the principal points upon which solution will depend when problems of medical secrecy present themselves:

1) The doctor's obligation of medical secrecy is a serious duty arising from the natural-law right of both patient and society;
2) The obligation as derived from natural law is not entirely absolute, but admits of some exceptions in accordance with the rights of both patient and society;
3) These exceptions are relatively rare, and usually at least the common good will require that a doctor maintain silence with regard to secret knowledge acquired of his patients in the course of professional practice.


NATURE OF SECRECY N GENERAL

Apart from all technicalities, it is clear that much of what we know -- especially knowledge of our own deficiencies in the physical or moral order -- is of a highly personal and private nature and not the sort of information which we would care to share with others. Fortunately not all of these facts are externally apparent to others; the evidence is carefully concealed to everyone but ourselves. For if others were to discover our secret, it could cause us notable displeasure, discomfort, embarrassment, or perhaps even misfortune of a more calamitous nature. Hence we take pains to conceal from others information which we consider to be no one's business but our own, and we resent those who pry into our private affairs. Even the action of our own curiosity. Whether it be the size of his bank account or the nature of his secrets, the contents of his diary or his medical case history, the ordinary individual is extremely jealous of his monopoly on certain knowledge which he regards as being exclusively his. In other words, one's right to his own secrets is universally recognized and defended as part of our natural heritage.

It is that commonly accepted concept which the theologians attempt to delineate even more precisely when they define secrets in general as any hidden knowledge, pertaining to a person by strict right, which others may not lawfully seek to possess, use, or dispose of (i.e., reveal) contrary to the reasonable will of the owner. They, too, consider a secret to be the property of its owner in the same very sense in which material possessions belong exclusively to this or that individual. Consequently the owner of a secret has the right to possess, to use, or to share it with whom he may. For others to usurp that exclusive right is a form of injustice equivalent to theft, the seriousness of which must be estimated in proportion to the harm which is foreseen as consequent upon that injustice.

Granted therefore the occult nature of certain information, an exclusive title to it on the part of a particular individual, and the individual's reasonable unwillingness to share it with others, there arises from natural law an obligation on the part of all others to respect that right just as conscientiously as they should respect the right of private property. If, contrary to another's reasonable will, we pry into his secret knowledge or impart it to others or make unauthorized use of it in any way to his disadvantage, we do him an injustice just as surely as though we had appropriated his material possessions.

PROFESSIONAL SECRECY

The professional secret is all this and considerably more, entailing as it does additional obligations even more serious than those already predicated of secrets in general. Respect for the 'simple' secret (the term is used in contradistinction to the more complex professional secret) is required primarily by commutative justice, i.e., by the rights of the individual whose exclusive possession the information is and to whose personal detriment violation of that right would tend. Professional secrecy is demanded also by legal justice, i.e., by the common good which is at very least endangered, if not actually damaged, by every violation of professional trust. It is that inextricable relationship to the common good of society which marks the essential feature of the professional secret and reveals its essentially sacred character.

This relationship arises from the fact that certain professions, altogether indispensable to society, are of their very nature fiduciary, i.e., they necessarily deal with the secrets of clients. The medical profession, for example, which is unquestionably essential to the good health of any community, depends to a large extent for its effectiveness on the willingness of patients to make available to their doctors a good deal of information of a secret nature. Because of the necessity of procuring proper medical care, patients have no choice but to entrust their physicians with knowledge about themselves which otherwise they would not dream of divulging. They do so on the implicit understanding that their secrets are entirely safe with doctors and that their confidence as patients will in no way be used to their disadvantage. They do not relinquish their right to secrecy, but perforce allow the doctor to share in the possession of knowledge over which they alone retain the right of any further disclosure.
Now let us suppose an outright breach of medical secrecy on the part of a physician. What harm would thereby be done? There would be, of course, a personal injustice to the individual patient, as would be true in any violation of secrecy. But over and above this personal injustice, a blow would also be struck against the integrity of the profession as a whole and consequently against its future effectiveness for the common good. To function at its maximum efficiency, the medical profession simply must command the respect and esteem of the public and maintain that tradition of unquestioned trustworthiness which invites the confidences of individual patients. Conduct which belies that reputation cannot fail to have deleterious effects on the profession's potential worth as a service to humanity. It is for this social purpose that medical codes of ethics are primarily devised. Their principal aim is to protect the integrity of the profession as such, that the public good may be adequately served. Professional misconduct, therefore, becomes reprehensible not only as an offense against the individual patient but also as a form of perfidy against both the profession and the community.

Such are the several implications intended by theologians when they describe medical secrecy as a special obligation, binding doctors in both commutative and legal justice, of maintaining a discreet silence with reference to the confidential communications made to them in the course of their practice. The basic obligation of the medical secret differs in no way from the obligation of secrecy in general, and forbids the physician to use or to reveal his patients' secrets contrary to their reasonable wishes. The source of the obligation, however, is twofold: commutative justice which determines the doctor's duty to his individual patients; and legal justice, which fixes his responsibility to the medical profession and to the public at large.

No member of the medical profession, when he functions as such, can possibly escape his responsibility to the individual and to the common good. It is simply inseparable from his office as physician, and made so by natural law. It is implicit in the contract upon which he enters with his patient when he undertakes to act in the latter's behalf, and would be so even independently of any humanly contrived code of ethics. While it is true that every medical code from the time of Hippocrates has recognized and sanctioned his rule of professional secrecy, the fundamental obligation in no way depends upon human legislation. We do well to reaffirm and specify it by positive precept, just as the Church has often declared other duties of natural law. But in the last analysis, we must face the fact that the medical secret is sacred not by mere convention or arbitrary agreement among honorable men, but by virtue of that universal and immutable law of which none less than God is the author.

A LIMITED OBLIGATION

On the basis of this concept of medical secrecy, the obligation it entails is to some extent limited and not absolute, and may be expressed in such terms as these: the physician is obliged to protect his patient's secret as long as the patient retains the right to secrecy and remains reasonably unwilling that its content be divulged, or as long as the common good, even independently of the patient's right, requires that secrecy be observed.

This principle affirms the right of both patient and society to require secrecy of doctors. And, with the consistency of logic itself, it also implies that if neither the patient's right nor the common good should demand secrecy in a given instance, the obligation in that particular case is simply nonexistent. Perhaps the easiest way to explain the exceptions implicit in the general rule would be to consider some of the situations in which revelation of a medical secret could be regarded as compatible with both the patient's rights and the good of society.

1) Consent of the Patient

a) Explicit Consent

To begin with the most obvious, it is clear that the patient himself, as proprietor of his own secret, may authorize its disclosure to whomever he pleases. Though still in possession of his right to secrecy, he may simply prefer not to exercise it absolutely but to admit certain others to a share in his knowledge. In the event of explicit authorization of this sort, it is hardly necessary to state that no injustice to the patient is done by revealing the information in question, provided that only as much is divulged as has been authorized and only to the parties designated. The patient's request, for example, that the doctor release to an insurance company whatever part of his medical record be necessary for adjustment of claims, limits both the, recipient of the information and the amount to be divulged.

Does the common good make any demands of the doctor in cases of this kind? It does, at least to the extent of requiring caution lest a wrong impression be given when divulging information even with the consent of the patient. Especially when dealing with laymen, a doctor would be wise to let the fact of authorization be known to those to whom he must disclose his patient's secrets. Otherwise there can be danger of creating suspicion that medical confidences are being violated, even when actually they are not, with resultant discredit to the individual doctor and to the profession itself.

(For much the same reason, incidentally, doctors should avoid if possible discussing even the non-secret affairs of their patients, i.e., facts about them which may be common knowledge, but which a physician might also know in a professional capacity. Everyone in the neighborhood may know, for instance, about the birth of an illegitimate child. But to have that knowledge confirmed by the attending obstetrician would not be the sort of conduct which does credit to the medical profession.)
b) Presumed Consent

It cannot be denied that circumstances can arise in which the patient's willingness to admit certain others to his secrets may be legitimately presumed. If for any reason it is impossible to contact the patient in circumstances which seem to demand some disclosure of professional knowledge, and if it can be prudently judged that authorization would be readily answered with prudent assurance in the affirmative, presumption of validity of such a presumption should be restricted to medical consultants in the patient's business and should be restricted to medical consultants in the patient's business and should be restricted to medical consultants in the patient's business and should be restricted to medical consultants in the patient's business.

Certainly, for example, no doctor would hesitate to call medical consultants into a case in which an unknown patient is unconscious and consulted elsewhere, the doctor would be supplied with whatever information may be necessary to his proper function in their regard.

Perhaps a practical test for the validity of such a presumption would be some such question as this: is disclosure of this information so obviously to the patient's benefit that he would readily authorize it if he were able? But unless that question can be answered with prudent assurance in the affirmative, presumption of consent in this matter can be risky business and should be restricted to that absolute minimum which only real necessity requires.

2) Cessation of the Patient's Right

When we speak in terms of the right to complete secrecy, we imply that one is justified in excluding all others from any share in the knowledge he claims as a secret. Now it can happen that others besides the patient can acquire legitimate title to the knowledge which comprises the medical secret, and can justly demand that they be allowed their rightful share in that knowledge. Or it can happen that some higher moral duty of the patient towards himself may require at least partial revelation of his secret. If either possibility should eventuate (and how it might eventuate will be illustrated shortly), it is clear that no injustice is done the patient if a secret, which in conscience he should share with others, is actually communicated to those legitimate claimants. That is why the doctor's obligation was conditioned previously with the proviso, "as long as patient retains his right to secrecy."

However, even though there may be others to whom a medical secret should be divulged, it does not immediately follow that the physician should be the one to make the disclosure. Safety and his profession also have further claims on his silence. For unless we restrict to the barest possible minimum even those disclosures which do no violence to the rights of individual patients, inevitably there will result a damaging loss of public confidence in and respect for the essential inviolability of professional trust. Primarily for that reason, the common good will usually require that the doctor maintain secrecy even after the patient's strict right may have lapsed. And that is the reason.

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too, for including within our general principle the phrase, "as long as patient retains his right to secrecy, the patient must exercise that right." And from the sole fact that his secret will do him more physical harm than good, it does not necessarily follow that the right of secrecy lapsed. Only if the harm which would result is one which he is obliged to avert even at some sacrifice of secrecy, will his right to that degree of privacy be nullified.

What appears to be, according to human standards, "the sensible thing to do" is not always of obligation.

But take for example the fallen-away Catholic who is in serious danger of death from some ailment not apparent to the professional eye and who has falsified his religion upon admission to the hospital. He forbids the doctor to inform the Catholic chaplain either of his physical condition or of his religious status. Clearly this insistence on the right to secrecy is unfounded, since it is in direct conflict with the patient's higher right and obligation to save his soul. Actually he does not possess the right to that degree of secrecy, if the revelation of those two facts represents his only practical chance for salvation. Certainly in this extreme case no right of the patient is violated if this professional knowledge is made available to the chaplain; and, if it is not likely that the latter will acquire the information elsewhere, the doctor would be justified in supplying it.

Perhaps the example is strained as to appear worthless. The choice was deliberate because of a personal conviction that in a conflict of this kind it is seldom easy to decide with certainty that the right to secrecy must yield.
Even more seldom would it be the prerogative of the doctor to solve such doubts contrary to the patient’s own decision. The case cited above is, I think, clearly one on which right to secrecy must yield; but it is one of comparatively few.

b) Conflicting Rights of the Doctor

Even in the face of his obligation to respect the medical secret as being the property of another, the physician himself possesses certain inviolable rights to reputation and to the pursuit of his material and spiritual welfare. To what extent must he sacrifice any of these rights in order to protect a medical secret? Or is he justified in protecting his own legitimate interests even at the cost, if necessary, of revealing certain professional knowledge?

In at least one such contingency, it is clear that it is the patient’s right which yields and the doctor’s which prevails. The case is one in which the medical secret is abused by being deliberately employed as a weapon of unjust aggression against the doctor himself. Instead of employing his doctor’s silence as a means of protecting his own legitimate interests (the only purpose for which the right to secrecy is granted him), the patient now threatens to make use of that silence in an unjust invasion of the physician’s rights.

Suppose, for example, that a patient were maliciously to bring an unwarranted suit for malpractice against an innocent physician. The latter’s only defense, we can further suppose, against financial loss and defamation of character is the testimony of his medical records of the case. According to the principle of legitimate self-defense against unjust aggression, the plaintiff has sacrificed his right to secrecy by making it an instrument of injustice, and the doctor may, in proportion to the gravity of the danger which threatens him, make whatever use of professional knowledge may be truly necessary to defend himself.

Legally the case is not simply solved. Unless I am mistaken, no plaintiff would be allowed to institute such a suit unless he waived the right to secrecy in which constitutes pertinent evidence. Thus the solution is again based on consent of the patient. But the moral justification of such a legal thing can be found in this principle of the right to defend oneself against unjust attack.

Theoretically it may also happen that through no fault of the patient the medical secret becomes a serious threat to the doctor. The classic example is that of a doctor who is himself accused of a crime which from professional knowledge he knows was committed by his patient. The latter, according to the further supposition, is in no way responsible for suspicion having fallen on the innocent doctor, and hence cannot be classified as an unjust aggressor in his regard.

Such a contingency, though possible, does not seem to be a highly practical probability. Perhaps, however, a case in point is created by the failure of our common law to recognize in court the privileged nature of the medical secret. Suppose, for example, that a civil court should subpoena a physician to testify from his records against a criminal abortionist. Say what we may about the defectiveness of a civil law which creates such dilemmas, the fact remains that, justly or unjustly, the doctor could be prosecuted in many of our states and severely penalized for refusal so to testify. Must he in conscience submit to such a penalty rather than reveal professional knowledge?

On condition that the danger threatening him can be appraised as truly serious, and that the doctor can avoid it in no other practical way, his testimony from the medical record would be morally permissible. He should have the court record show that he considers his knowledge privileged; and he should conceal, if possible, the identity of the patient. Beyond that such a suit unless he waived the right to secrecy in which constitutes pertinent evidence. Thus the solution is again based on consent of the patient. But the moral justification of such a legal thing can be found in this principle of the right to defend oneself against unjust attack.

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d) Conflict between Rights of Society and Victims of Medical Practice

What can be said about the conflicting rights of other individuals? One possible conflict is that of the patient's right to information about their own medical condition. This conflict is well-illustrated by the case of a patient who, despite having been informed of the risk of contagion, refused to be quarantined. In such cases, the doctor's right to protect the public health may conflict with the patient's right to information.

The common good demands protection against unjust aggression. If the doctor reports the abortion to the authorities, it is justified by the doctor's considered opinion. The doctor's obligation as it affects disclosures is even more certain than the doctor's duty to confidentiality. The doctor is justified in insisting that the patient is using their medical secret unjustly as a weapon against the public at large.

The basic reason behind this caution is again the fact that the common good is ultra-sensitive to any revelation of professional secrets. Even legitimate disclosures have to be regretted to some extent, because together with the good which they accomplish there is always the danger that the integrity of the profession will suffer in public estimation. Unless the good to be achieved is proportionate to concomitant harmful effects and unless no other practical means is available to attain that necessary good, secrecy should be maintained. As difficult as it is to cite practical cases in which a doctor would be permitted to reveal a medical secret, it is immensely more difficult to prove instances in which he is certainly obliged to make such a revelation.

THE SURVEY CASES

On the basis of all that has preceded, my own opinion on the two cases proposed to the English and Welsh doctors would favor the physician's maintaining secrecy. The doctor has the right to be permitted to disclose the abortion if the patient is clearly making an unjust claim. In the insurance case, the patient's clear intent is the possible apprehension and prosecution of one criminal, which is frequently possible in practice to exclude all legitimate doubt. Therefore, in what is meant to be a predominantly practical discussion, I prefer to transmit the questions of obligation as it affects disclosures. If doctors ever encounter a case in which they feel conscience-bound and yet reluctant to reveal a medical secret, they would do well to propose their problem to a competent theologian and be guided by his considered opinion. The patient is clearly making an unjust claim under the terms of his policy. B tube company has or had at its disposal, and apparently failed to use, a very ordinary and acceptable means of protecting itself against such an eventuality, viz., medical examination by its own physician prior to issuing the policy. The patient's personal physician has no obligation to the insurance company in these circumstances. If by his silence an injustice is made possible, it is one which, as far as the doctor is concerned, he permits because of a higher necessity and does not directly intend. And that injustice which is allowed does not seem comparable in significance to the harm which would be inflicted on the whole profession and on the common good if this type of revelation were generally permitted.

SUMMARY AND CONCLUSION

Natural law obliges the doctor to silence with regard to the secrets of his professional calling. This grave obligation derives from both commutative justice (which determines the rights of individual patients) and from legal justice (which specifies the right which society exercises over the silence of doctors). Because the rights of patients in this regard are not unlimited, and because the common good can at times be adequately served only by some disclosure of the medical secret, the natural law obligation of medical secrecy is not

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absolute and does admit of legitimate exception. By the very nature of things, these exceptions should in the practical order be most rare, and require most careful consideration in each individual case.

It was in reference to an even more sacred secrecy (one which admits of no conceivable exception) that St. Augustine said this to say: "I know less about the things which I hear in confession than I know of those things about which I know nothing." I not the same rule, then one quite similar should characterize the doctor's habitual attitude towards a medical secret.

CAPACITY FOR CONCERN*

FRED M. TAYLOR, M.D.
HOUSTON, TEXAS

Your Excellencies, Archbishop Vehr and Bishop Maloney; Right Reverend Monsignor McGowan; Reverend Fathers: Drs. Murphy and Holoubek; Mr. Chairman; ladies and gentlemen:

On behalf of the National Federation of Catholic Physicians' Guilds, as Chairman of the Award Committee and on the occasion also as a junior pediatrician, I am privileged to honor as Catholic Physician-of-the-Year, 1961, an elder physician and a senior pediatrician, Dr. Norman M. MacNeill of Philadelphia.

Before I make the award I should like, first, to say that Dr. MacNeill was nominated by the St. Rene Goupil and St. Francis of Assisi Guilds of Philadelphia, and second, to relate to you something about this physician gentleman. He is a native of one of Canada's Maritime Provinces, Nova Scotia, a part of the continent noted for an unusually high ratio of advanced educational facilities to population and for an especially valuable export: brain-power. Dr. MacNeill was born in Antigonish, which on the province is eastward and north of the land of the Acadians of Longfellow's famous poem, Evangeline.

* Address honoring the Catholic Physician of the Year, December 1, 1961; Annual Winter Meeting, National Federation of Catholic Physicians' Guilds. The Brown Palace Hotel, Denver, Colorado.

As a pediatrician, his professional responsibility has been the care...