Medical Secrecy: Some Moral Aspects

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A recent survey conducted among some hundred English and Welsh physicians 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, who himself 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 medical 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 such a basic question; or perhaps resentment towards medical societies 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 IN 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 those facts are externally apparent to others; the evidence is mercifully 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 revere those who pry into our private affairs for the satisfaction of their own curiosity. Whether it be the size of his bank account or the nature of his secret sins, 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 very same sense in which material possessions belong exclusively to...
This is an exclusive right to it on the part of a particular individual, and the individual's reasonable unwillingness to share it with others, there enters 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 the interests of that individual, we pry into his secret knowledge or impart it to others or make an authorized use of it in any way to his disadvantage, we do him an injustice of the most serious kind. It is an injustice equiva lent to the taking of his property, and in this way it would be done? There are some who would not dream of doing such a thing. But what would be their motive? If they do so on the implicit understanding that their secrets are entirely safe with doctors and that their confidence as patients will in any way be used to their disadvantage, they do it under an expectation of personal injustice, a blow which 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 the ideal summum bonum of its profession, every medical professional must command the respect and esteem of the public and maintain that tradition of unquestioned trustworthiness which invites the confidence 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 to this social purpose for its effectiveness on the willingness of patients to make available their secrets to their doctors a good deal of its efficiency on the willing ness of patients to make available their secrets to their doctors a good deal of its effectiveness. The physician's duty to his patient, 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 of the medical secret, and it is implicit in the tacit understanding of the physician's relationship to the common good that every violation of the medical secret is sacred not by mere convention or arbitrary agreement among honorable men, but by virtue of the immutable law of which none less than God is the author. The medical secret is sacred not by mere convention or arbitrary agreement among honorable men, but by virtue of the immutable law of which none less than God is the author. The medical secret is sacred not by mere convention or arbitrary agreement among honorable men, but by virtue of the 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 the same reason, incidentally, doctors should avoid if possible discussing even the nonsecret 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 granted if the request could be made, then presumption of consent could be in order. Certainly, for example, no doctor would hesitate to call medical consultants into a case in which an unknown patient is unconscious and consultation advisable. And because it is only reasonable to suppose that patients are concerned for their spiritual welfare, it is also a safe presumption that they are not unwilling that the chaplain 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 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 the 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. Society 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.
too, for including within our general principle the phrase, "as long as the common good, even independently of the patient's right, requires that secrecy be observed." Translated into medical terminology, it means that disclosure of professional knowledge should be for the doctor a procedure of last resort.

But to return to cases, what circumstances could deprive the patient of his personal right to complete secrecy? The generic answer is "conflict"; more specifically, conflict either with a higher obligation on his own part or with a predominant right on the part of others. The following break-down of possibilities perhaps will serve to illustrate the type of limitation which must be put on the patient's right to complete secrecy.

a) Conflicting Obligation of the Patient

There are times when a patient's refusal to allow medical secrets to be divulged to certain others will do him more harm than good, and when insistence on secrecy may appear to conflict with more important rights and obligations of his own. It may happen, for example, that if a needy patient would only inform a wealthy relative of his need of some expensive medical treatment, death might be averted. Still the patient refuses to reveal his plight, and the doctor may wonder whether the stubborn one's own good he himself should contact the relative in question.

As long as the patient retains his right to secrecy, the doctor must respect 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 lapses. 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 so 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.

b) Conflicting Rights of the Doctor

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.

Even in the face of his obligation 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.

Such a contingency, though possible, does not seem to be a highly probable. 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 definiteness 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 point he is not obliged to go. The reasons in order are these: 1) the doctor-patient contract cannot be said to be undertaken with intent to bind even with serious harm to the physician, and hence does not certainly oblige from justice at that cost to him; 2) charity does not obligate from justice at that point he is not obliged to go. The basic reason behind this dilemma is that the common good is ultra-sensitive to the integrity of the profession. The doctor is not justified in concealng his knowledge privileged; and he should conceal, if possible, the identity of the patient. Beyond that point he is not obliged to go. 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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 immeasurably 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 other cases proposed to the English and Welsh doctors would favor the physician's maintaining secrecy in both. The most to be achieved if the doctor reports the abortionist is the possible apprehension and prosecution of one criminal, but unfortunately not the extirpation of the criminal practice. And if conviction should depend primarily on the doctor's evidence, the chances of effecting even that result are poor, since he can provide only hearsay evidence from a hostile witness. If the doctor identifies his patient in order that she be forced to testify, he is violating her right to reputation, which is still extant despite her moral guilt in procuring abortion. It seems to me that too little good and too much harm would actually result from revelation in this case, and that the doctor is still obliged to secrecy.

In the insurance case, the patient is clearly making an unjust claim under the terms of his policy. But the 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 in which he shares by virtue 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 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 had 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.' If not the same rule, then one quite similar should characterize the doctor's habitual attitude towards the medical secret.

Creditable Record . . .

Catholic hospitals and allied agencies in the United States and Canada now total 1,501 representing an increase of some 200 per cent in forty years, with a total of 214,015 beds and 29,015 bassinets.

At the present time, there are 1,141 Catholic hospitals and allied agencies in the United States with 147,577 beds and 23,318 bassinets; while Canada boasts 360 such institutions with 66,018 beds and 5,894 bassinets.

The total number of patients cared for during 1954 in U.S. hospitals is reported as 8,093,669 and an estimated number in Canadian institutions of 2,250,000. The total of 10,343,608 includes in and out patients.

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