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The Right to Privacy

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The right to privacy has been receiving much attention in the public press recently. The decision of the Supreme Court overturning abortion laws in Texas and Georgia, and by implication in most of the other states, by an appeal to this right, made headlines all over the country. The Court held the abortion decision to be a private decision vis-a-vis the state. The state, consequently, had no right to interfere with this decision or impose limitations on it, at least in half of the fetus, for the first six months. One may have legitimate reservations about this decision, e.g., whether an abortion decision is really a private decision, or that is allowed, whether the fetus is not a sufficiently "compelling interest" during the first six months of pregnancy to warrant a limitation of this right, but it would be a serious mistake to question the right itself. The individual does have a right to privacy, and this not only in reference to the state but also in regard to other private citizens. The state, for instance, rightly recognizes the physician's right to privacy in regard to professional communications, sometimes referred to as "privileged" communications. Whether this is apt terminology may be questioned, but the meaning is quite clear: a doctor may not be forced to testify in court regarding the contents of his professional communications with his patients.

But the concern here is not only with the right to privacy vis-a-vis the state. It is also with the patient's right to privacy in reference to his physician and other private individuals. A very pertinent statement of this right may be found in the Patient's Bill of Rights affirmed recently by the Board of Trustees of the American Hospital Association. Although most of this statement dealt with the patient's right to truth, there were at least two explicit references to his right to privacy. It will be worthwhile to quote them:

5. The patient has the right to every consideration of 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.

6. The patient has the right to expect that all communications and records pertaining to his care should be treated as confidential.

These statements are made in reference to hospital patients, but the rights mentioned must be respected in all doctor-patient relationships, whether in or out of the hospital.

That patients have a right to privacy not only in reference to the state but also in reference to other private individuals will hardly be questioned outside of a totalitarian society. Moral theologians have traditionally held that this right covered, among other things, information about one's self that is not known and that one would not want known by others. This information or knowledge belongs to the person himself and is as much his own property as the house he lives in or the car he drives. And it is just as wrong to "steal" this information as it is to steal his car. The same holds for any other kind of abuse or misuse of such knowledge by another person.

Pertinent Information

The first question that arises when one is faced with this aspect of privacy is how one knows what kind of information about himself a patient does not want others to know or wants to keep secret. Basically, this depends on his own wishes, but even without any explicit appeal to a person's wishes, one can presume that there are certain things about himself he would not want known, e.g., faults or defects that are not of a public nature. Even if one had no professional relationship with the person at all, and no knowledge of his wishes, he could presume that the person would want his right to privacy regarding this type of information respected and that it would be wrong to violate it in any way.

Presuming that one is dealing with this type of information, or anything else the patient does not want to reveal, it would be clearly wrong to attempt to extort it, i.e., obtain it against his will. Such things as eavesdropping, wiretapping, reading mail, etc., are clear violations of a person's right to privacy regarding secret information. But in a patient-doctor relationship, the patient willingly reveals...
his ailments and confides information in the doctor he might not be willing to reveal to others. He submits to this in exchange for the counsel or treatment he could not otherwise get. It is difficult to see under these circumstances why it would ever be necessary for the ordinary doctor to extort information from a patient, and to violate his privacy in this way.

The psychiatrist may often be faced with the problem of getting necessary information out of reluctant patients. Since he is dealing with information that would be recognized generally as far more intimate than the ordinary medical information required by the physician, it is understandable that the patient would be more reluctant to reveal it. Also, the psychiatrist is dealing with emotionally disturbed patients whose own emotional state may inhibit their ability to reveal themselves or deal openly with a psychiatrist. The psychiatrist has techniques, e.g., the use of tranquilizers, hypnosis, etc., to relax such patients and make them feel secure enough to reveal themselves. Some of these procedures may raise other moral problems which will also call for moral assessment, but their use can hardly be criticized as methods of extorting information from patients, or obtaining it against their will. When a patient comes to a psychiatrist, the presumption is that he wants to get well, and therefore wants to use the ordinary means to do so. So the basic presumption is in favor of his willingness to make whatever revelations are necessary to his treatment. But to guarantee against any accusation of abusing privacy, the psychiatrist should ordinarily have the express permission of the patient for such procedures. And, a certain scrupulous care about getting such permission will show a respect for the person of the patient which may be just as important as any treatment the psychiatrist is to offer.

More of a problem for the doctor, including the psychiatrist, is respect for the confidentiality of the information the patient has revealed to him. When the patient reveals himself to a doctor, he does so because this is necessary for treatment and this is his only reason for doing so. He is not putting this information at the general disposal of the doctor. And he rightly expects the doctor to respect the covenantal nature of this revelation and the limits placed on the use of the information disclosed. For a doctor to fail to respect these limits is to show disregard for the personal dignity and personal rights of his patient. These are not compromise, and should not be compromised in any way, because of his status as patient.

Professional Aspect

There is another aspect of the professional relationship that should be taken into account in discussing the obligation of confidentiality. The good of the individual patient is not the only good at stake. The good of the profession itself calls for respect for confidentiality, since it is only because of this respect that the medical profession is able to achieve for society the immense good it does.

If patients could not rely on doctors to respect their confidence, they would be very reluctant to bring their troubles to them, and it might happen that the more serious the trouble, the more reluctant they would be to disclose it. The medical profession could not function under such circumstances, or at least its functioning would be seriously impaired. So the doctor who would violate a confidence damages not only his patient, but his profession as well.

The two items taken from the statement of the Board of Trustees of the American Hospital Association spell out in some detail the demands of confidentiality. Specific attention is called to the confidentiality of case discussion, consultation, examination and treatment. What is called for here is a respect for the confidentiality of the doctor's office, the records and materials he maintains. What is called for here is a professional attitude of respect for the confidentiality of the patient and the doctor's office. The good of the profession is as important as the good of the individual patient. If the profession does not respect confidentiality, it will lose good will and loyalty. If it does respect confidentiality, it will gain good will and loyalty.

Respect Important

It would be impossible to delineate a set of rules to insure right conduct in all situations involving the obligation of confidentiality, but even if it were possible, of themselves they would offer no guarantee of such conduct. Far more important than any set of rules is an attitude of respect for the dignity of the patient as a person and a real sensitivity to his desire and
right to privacy. This is where the emphasis should be. There is no reason to believe that doctors violate any patient’s right to privacy in a deliberate or calculating way. More often these violations can be traced to a certain professionalism that concentrates on the disease and becomes completely unmindful of the person and his rights. The legitimate sensitivities of the patient are ignored because the doctor in fixating on the disease loses his awareness of the person. He treats the disease as though it were in a cadaver. There is no doubt that the doctor needs to maintain a certain psychic distance from his patients, but he cannot treat the disease as though the patient did not exist. There is a tendency also to lose one’s sensitivity to the wishes and feelings of patients that comes with familiarity with the profession. Familiarity tends to breed insensitivity. There is an occupational hazard with which many occupations have to contend. The steelworker forty stories above the ground loses his appreciation of the normal reaction of the ordinary person to height. The longer a doctor has been practicing, the farther he tends to get from the patient’s viewpoint. It is very easy for a veteran doctor to overlook a patient’s sensitivity to privacy. He has to make a conscious effort to keep in touch with the patient’s viewpoint. He can do this by putting himself in the role of the patient from time to time, and examining his own feelings in this role. More effective, however, may be a constant effort to keep in touch with each patient’s feelings.

As important as it is, the right to privacy, like many other rights, is not an absolute one. It has its limits. There are times when a doctor may reveal confidential information he has received even against the wish of his patients. To admit this is not to deny the importance of privacy in any way. It is merely to concede that it is not the only value and that other values may be just as, or even more, important. But perhaps a discussion of such cases should be prefaced by the remark that the doctor’s obligation to respect confidential information may be removed by the permission of the patient, either express or at least legitimately presumed. It will cease also if the information becomes otherwise public. But even apart from these cases there are times when a doctor’s obligation to respect a patient’s confidence will cease, namely, when some higher good is at stake. Moral theologians have traditionally spoken of four exception-making criteria regarding this obligation. In summary form, they say that a doctor is allowed to reveal confidential information when necessary to keep a patient from doing serious harm to the community, to some innocent third party, to himself or to the doctor. The presumption is that the damage would be unjust, wherever justice would be involved.

The danger of damage to the community is often exemplified by the case of a commercial airline pilot with serious cardiovascular disease. It is the doctor’s honest opinion that the man should not be flying a plane. The first obligation of the doctor is to inform the patient of the danger. It is the responsibility of the patient to do something about it, and only in the event that he refuses would the doctor be permitted to alert the company to the danger. The same would be true in the case of an overt homosexual who was planning marriage. If against the urging of the psychiatrist he refused to give up his plans, the psychiatrist would be permitted to alert the girl involved. Similarly a psychiatrist would be permitted to warn the relatives of a patient who had suicidal tendencies. And a doctor would be permitted to use whatever confidential information was necessary to defend himself against an unjust suit for malpractice.

These cases are merely illustrative, and hence in no sense exhaustive. Other exceptions will be just as legitimate. But the exception can never become the rule, or even compete with the rule on a numerical basis, which means that exceptions must remain relatively few in number. The value of privacy will be realized only if it prevails in the majority of cases. And only if it does prevail will the relationship of the doctor and the patient be humane as well as professional.

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House of Affirmation

The recently acquired House of Affirmation Residential Center in Whitinsville, Mass., focuses on the emotional and psychological well being of religious professionals within the context of their vocations and society. The House of Affirmation had its beginnings in the Consulting Center for Clergy and Religious of the Diocese of Worcester, established in 1970. Its staff includes Sister Anna Polcino, M.D., psychiatrist, Rev. Thomas A. Kane, Ph.D., psychologist, and Conrad W. Baars, M.D., psychiatrist, co-author of Loving and Curing the Neurotic. Additional information can be obtained by writing the House of Affirmation, International Therapeutic Center for Clergy and Religious, 201 Salisbury St., Worcester, Mass. 01609. Donations will be welcomed.

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