Because every encounter between a doctor and a patient has a moral dimension, competency in ethics is essential to being a good doctor.

“Everyday ethics in internal medicine resident clinic: an opportunity to teach”
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CONFIDENTIALITY/ DUTY TO REPORT/ INFORMED CONSENT- Clinicalforum4Ethics

C-3 Informed consent

The legal duty of informed consent, at a minimum, requires physician to disclose nature of the recommended treatment, its risks & benefits & likely outcome and alternative treatments, and their risks & benefits and likely outcomes. (LA law in addition requires physician to discuss risks & benefits of no treatment.) When there are no medically sound alternatives, informed consent is a matter of obtaining a patient’s consent to the recommendation.

Patients have the right to refuse medical treatment. The right to refuse extends to all medical care including non invasive diagnostics and medications. (The broad law rule “every adult of sound mind has the right to decide what is done to his body” is interpreted in medicine as right to refuse interventions not the right to demand medically inappropriate care))

The author suggests that patients have a broader right to choose among the medically appropriate (“feasible”) options. Patient's choice should be promoted because most interventions have both risks & benefits; outcomes are often uncertain. Some patients prefer more conservative therapies with better known outcomes. Others want to try riskier therapies that may lead to better outcomes. The text also advocates informed consent as a process of shared decision making. The physician’s role is to educate, correct patients’ misunderstandings, and to help patients to deliberate in addition to persuading them to accept the physician’s recommendation. The patient makes an informed choice based on this information and personal values and preferences. If the goal of medical care is to enhance patient’s well being- it may be best judged by the patient’s values and goals.

In LA a physician is not required to discuss a physician’s experience as information required to be disclosed for informed consent although it often becomes part of the informed consent process when patients ask. Nor is a physician required to discuss complimentary or alternative therapies that are not evidence based, but only medically reasonable alternatives that other physicians would recommend.

Patients must consent to/ agree with the treatment plan. Written consent is required for invasive tests and therapies. Consent must be voluntary. Physicians may/ should attempt to persuade patients to consent to recommended care. Coercion including manipulation or misrepresentation of the medical information relating to either patient’s condition or to the recommended interventions is not acceptable medical practice. It undermines the patient’s right to free choice.

Notwithstanding the right to informed consent, some patients will not want to hear the risks and benefits of the recommended treatments and alternatives. Physicians should nevertheless make every effort to provide information as required by law and document this effort. Some
patients will prefer to defer to their physician’s recommendation. Others will choose to involve their family and friends in the discussion and decision. Some patients will make decisions that contradict their best medical interests. This is the patient’s right.

Malpractice- Informed consent
Physicians may be found negligent and liable to patients for breaching the standard of medical care. Physicians have a legal duty to use the degree of skill and care of a reasonably competent practitioner in the same class acting under similar circumstances. With respect to informed consent, a patient must show that a physician failed to inform the patient of risks that should have been disclosed, that the patient would not have consented had the risk been discussed and that the risk occurred and caused harm. While LA informed consent law requires that the physician disclose risks that would influence a standard reasonable person in making a decision whether or not to consent (RS 40:1299.40)(objective standard), physicians should consider providing information that the individual patient would find pertinent to the decision (subjective standard).

Exceptions to informed consent
1-When the patient lacks capacity to make medical decisions a surrogate or substitute decision maker should be appointed to make decisions first subjectively as to follow the patient’s previously known preferences, or if unknown, to make decisions objectively in the patient’s best medical interest.
2- When a patient is suffering a life threatening emergent medical condition when delaying treatment might jeopardize health or life of the patient, state law recognizes implied consent for treatment unless it is known that the person would refuse this treatment. Example: CPR when it is known that patient has signed a DNR form. Appearance in an emergency department does not, per se, imply blanket consent for any and all care in light of patient’s known wishes to limit certain care.
3- Patients have the right to waive the right to participate in the consent process. Valid waiver includes being informed of the right to receive information and make decisions about their care
4- Physician may withhold information as ‘therapeutic privilege’ if physician believes that disclosure would result in the patient becoming so emotionally distraught as to foreclose any rational decision making- a very narrow exception and should be well documented in the patient’s record.

Lo promotes/ describes shared decision making process:
1-Encourage patient to play an active role in making decisions- elicit patient perspective & build a partnership with patient.
2-Ensure patient is informed- provide understandable information, frame issues in unbiased manner, interpret alternatives considering patient’s goals, make sure patient understands
3-Promote patient’s best interest- Help patient to deliberate, make a recommendation, try to persuade the patient and try to dissuade patient form making choice contrary to best interest.
C-5 Confidentiality

Physicians have an ethical and legal duty to keep all information generated about patient in therapeutic or about research subject in research context confidential.
Confidentiality encourages patients to seek medical care and to discuss sensitive information candidly.

_That whatever I shall see or hear that concerns the lives of my patients which is not fitting to be spoken, I will keep forever secret._  THE OATH OF HIPPOCRATES

Pre Commencement Hippocratic Oath

School of Medicine

_What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken about._

HIPPOCRATIC OATH

Original Oath 450 B.C.E.

Maintaining confidentiality of medical records is difficult because many people have access to medical records including clinicians, payers, and pharmacies. Computerized medical records increase potential access to unknown numbers of people and provide potential for serious breaches of thousands of records at one time.
Many breaches also occur thru simple indiscretions by providers authorized to view a record – such as talking about a patient in public areas or leaving a computer screen on or thru fax and email.
Sometimes patients unwittingly sign waivers to payers, employers and others not appreciating the blanket scope of dissemination that some general releases allow.

Federal HIPPA (Health Insurance Patient Portability & Accountability Act of 1996) and state laws protect confidentiality of a patient’s protected health information (PHI)
HIPAA – requires providers to obtain a patient’s consent to disclose health information with broad exceptions for treatment.  [Exceptions: HIPAA does not impede sharing of health information among treating providers, or for payment purposes and operations). HIPAA provides patients have rights to inspect and copy their medical records and to request corrections and to obtain records of disclosures of their information.  Stricter state confidentiality laws prime this federal law.

With respect to disclosing health information to relatives & friends – HIPAA adopts an opt out approach.  Patient must request that the information not be disclosed.  Best practice is stricter-Information should be kept confidential unless patient consents to sharing it with relatives and friends.  Ergo- Ask patient with whom PHI information may be shared.

Providers must be prudent relating to patients concerns about confidentiality of sensitive health information such as psychotherapy or drug rehabilitation.  When separating this information from the principle record is in the patient’s best interest and will not harm patient’s health or a third person’s interests- physician might consider keeping this information more secure. Most institutions have developed policies, regarding keeping ‘sensitive’ information in a separate medical record.
The right of confidentiality of protected health information is not absolute. Exceptions include reporting and warning statutes to protect third parties or patients from harm:

- **Examples:** Reporting to public officials: Infectious diseases, Impaired drivers, Injuries caused by weapons & crimes
- **Warning:** Partner notification, Persons at risk
- **Reporting & warning:** Violence by psychiatric patients
- **Reporting:** Child & Elder abuse*, Domestic violence

Patient should be told that reporting will occur. And, as practical, physicians should minimize any harm to the patient.

Author suggests five factors to consider to justify overriding the rule of confidentiality of patient’s information; (1) potential for harm is serious, (2) likelihood of harm is high, (3) no alternative for warning exists, (4) breaching confidentiality will prevent harm, (5) harm to patient is minimal & acceptable.

* **Duty to Report** although text provides that physicians shall report elder abuse in role as physicians LA law is broader in scope.

**LA Law LaRS 15:1501 et seq.** provides that any person not limited to health worker...having cause to believe an adult’s (individuals 60 years of age or older individuals 18-59 years of age in need of adult protection services)-physical or mental welfare has been or may be adversely affected by abuse, neglect, exploitation...shall report (to office of elderly affairs for individuals 60 years of age or older in need of adult protective services...and to DHH for individuals 18-59 years of age in need of adult protection services)... with immunity for non principals.