Medical and Therapeutic Confidentiality:
Underlying Moral Justifications and Problems

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A nice thing about teaching/talking about specific moral issues like confidentiality: people don’t tend to dismiss them by claiming morality all somehow just a matter of opinion, not objective, etc. So we can (sort of) ignore...

• subjectivism ("x is right" = "I approve of x")
• and emotivism, a more technical version of subjectivism (saying X is right is "expressing" an attitude or feeling)
• moral relativism ("right" just depends on each culture’s moral standards)
• skepticism (there just isn’t such thing as morality)
Why think that a general policy of keeping patients’/clients’ information confidential is important at all?

a. The consequences or effects of an overall policy of confidentiality
b. The right to privacy
c. Developing trust
Consequences or effects of actions or policies do matter, of course, though they may not be the only thing that matters.

What consequences matter, about confidentiality?

First look at...
The good effects of having a general policy that health professionals should maintain confidentiality.

- Patients will give more information to doctors, therapists, counselors
- Including potentially embarrassing, stigmatizing, or damaging information
- This allows better treatment of individual patients
- And allows better statistical (anonymized) information about overall trends
There also are bad effects of a strict policy of confidentiality. Mainly, a completely strict requirement of confidentiality would require health professionals to sometimes allow serious, foreseeable harms, such as...

- Physical harm that is threatened against a specific individual
- Ongoing physical or sexual abuse (of family members or others)
- Infection with communicable diseases
- Specifically, transmission of HIV or other STDs
If we’re concerned with consequences why not think that the perfect solution is to accept a general policy of confidentiality, but to decide on a case by case basis whether to allow exceptions?

- Because the more exceptions that are allowed, the more that the advantages of the general policy are lost.
- That is, if patients think that health professionals may share their information, they will tend not to provide such information.
Besides lessening the advantages of the known, established policy of confidentiality, there could be harms to individual patients or clients in many specific cases of failing to keep their information confidential. Such as...

- Problems with health insurance
- Discrimination in hiring by potential employers
- Ridicule or stigmatization
- Personal relationships being damaged
So, if the consequences or effects of varying degrees of confidentiality requirement are all that matter to us, then there is a case to be made for strict confidentiality, but also for allowing many exceptions, and for policies in between.
The Right to Privacy

• This is thought of as a separate justification of confidentiality requirements (apart from consequences)
• Usually thought to rely on the influential bioethics principle of “respect for autonomy”
• But the connection is unclear
Consequences and Morals

• There is a widespread view that consequences or effects are not all that matter morally.
• Even if you could make people happier or more prosperous overall by unjustly harming individuals or violating their rights, it would not be morally justified.
• For example, imagine the “transplant” or “inhospitable hospital” case.
The right to privacy, as a moral right, is often thought to depend on a more basic principle of “autonomy” or letting people control their own lives.
Autonomy

Origin of “autonomy”

auto + nomos

• But can’t someone control her life even if we then reveal information about her?

• It’s really thought to include controlling her own information, and making her own decisions about what to reveal
Trust

• Trust is important for its consequences (mostly good, some possibly bad) but may also be important independently, as an ideal.
• Good consequences: more communication, devotion to public institutions, stability of society, positive feelings
• Bad consequences: room for abuse by those who are trusted, lack of questioning policies
• But maybe trust also is valuable in itself, like autonomy
If there’s a basic policy of confidentiality already established, then there are additional reasons to think health professionals ought to maintain confidentiality

• implicit or explicit promise by health care providers
• to obey the law
Promise to maintain confidentiality

It’s generally thought that people ought to keep their promises. Many providers of medical care have promised in a professional oath to maintain confidentiality (for example, the Hippocratic oath given at many medical schools). Even if they haven’t, if patients know there’s a general practice of maintaining confidentiality, there’s a sort of implicit promise to stick with professional standards.
If laws are established that health care providers must maintain confidentiality, then of course this provides another reason for them to do so. But notice...

- This is not the deep justification of a policy of confidentiality, but just a reason to obey a policy if it’s legally established
- Legality is not the same as morality – there may be moral reasons to question a law. Usually, it’s thought that moral considerations are one kind of reason to establish laws.
- Although it also is in health care providers’ self-interest to obey the law, self-interest also is not the same as morality
Exceptions to confidentiality requirements

How exactly to balance the reasons for maintaining strict confidentiality with reasons for making exceptions has led to a variety of particular laws and policies (which vary from place to place).
Exceptions

Talking about “exceptions” is really ambiguous. It can mean an absolute policy with exceptions being made, or a more complex policy that specifies different actions in different situations (as an analogy, think of someone who has a strict policy “I will never drink alcohol” but then drinks on holidays, vs. someone whose policy is “I’ll only drink alcohol on holidays”)
Exceptions

In general the reasons for violating confidentiality are some kind of threat of harm

• To specific individuals
• To public health in general
Exceptions - individual

Exceptions to confidentiality that have been made because of threats to specific individuals

- A direct threat to an individual (e.g. “I’m going to kill him the next time I see him”), as in Tarasoff case
- Physical or sexual abuse of children, elderly, or spouses
- Possible infection with communicable disease (including STDs)
Exceptions - public

Exceptions to confidentiality that have been made because of general threats to public health

- Communicable diseases
- Including STDs, HIV
Exceptions - criminal

A different kind of exception to confidentiality requirements: reporting potential criminal behavior

- Gunshot wounds
- Formerly (in some places), attempted abortions, when they were illegal
Failure to Maintain Confidentiality

Besides legal requirements, some other causes of failure to maintain confidentiality:

• Managed care, health insurance cause so many people to have access to medical records that it is hard to maintain true confidentiality

• Carelessness of health care providers (talking in elevator, sharing interesting stories, etc.)

• Self-interest (revealing celebrity medical information for money, etc.)
Proponents of various degrees of health care confidentiality can find plausible reasons for their positions, ranging from truly absolute confidentiality to allowing many exceptions.
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Introduction
I received my BA from the University of Oregon, and an MA and PhD from the University of North Carolina at Chapel Hill. I taught at Rutgers University for three years and at The American University of Beirut for seven years, before joining the philosophy department at CSULA in fall 2009.

Research Interests
I am interested in both the history of moral philosophy and contemporary ethical theory. I also have worked on issues in applied ethics, and I'm intrigued by recent empirical approaches to moral philosophy.