

THE JOURNAL OF  
LAW, MEDICINE & ETHICS  
C O N T E N T S

VOLUME 38:1 • SPRING 2010

Symposium Articles

SYMPOSIUM

The Effects of  
Health Information  
Technology on the  
Physician-Patient  
Relationship

Guest Edited by  
Melissa M. Goldstein  
and Mark A.  
Rothstein

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Letter from  
the Editor

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**Introduction**

*Melissa M. Goldstein and  
Mark A. Rothstein*

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**The Hippocratic Bargain and Health  
Information Technology**

*Mark A. Rothstein*

The shift to longitudinal, comprehensive electronic health records (EHRs) means that any health care provider (e.g., dentist, pharmacist, physical therapist) or third-party user of the EHR (e.g., employer, life insurer) will be able to access much health information of questionable clinical utility and possibly of great sensitivity. Genetic test results, reproductive health, mental health, substance abuse, and domestic violence are examples of sensitive information that many patients would not want routinely available. The likely policy response is to give patients the ability to segment information in their EHRs and to sequester certain types of sensitive information, thereby limiting routine access to the totality of a patient's health record. This article explores the likely effect on the physician-patient relationship of patient-directed sequestration of sensitive health information, including the ethical and legal consequences.

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**Health IT and Solo Practice: A Love-  
Hate Relationship**

*Joseph Heyman*

A small town solo gynecologist describes the process of starting a practice based on health information technology, how catastrophic it can be to lose data, how difficult it can be to try to exchange information, and yet how rewarding it can be to accomplish a "paperless" experience.

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**The Impact of Web 2.0 on the Doctor-  
Patient Relationship**

*Bernard Lo and Lindsay Parham*

Web 2.0 innovations may enhance informed patient decision-making, but also raise ethical concerns about inaccurate or misleading information, damage to the doctor-patient relationship, privacy and confidential-

ity, and health disparities. To increase the benefits and decrease the risks of these innovations, we recommend steps to help patients assess the quality of health information on the Internet; promote constructive doctor-patient communication about new information technologies; and set standards for privacy and data security in patient-controlled health records and for point-of-service advertising.

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**Health Information Technology and  
the Idea of Informed Consent**

*Melissa M. Goldstein*

During this early stage of HIT adoption, it is critical that we engage in discussions regarding informed consent's proper role in a health care environment in which electronic information sharing holds primary importance. This article discusses current implementation of the doctrine within health information exchange networks; the relationship between informed consent and privacy; the variety of ways that the concept is referenced in discussions of information sharing; and challenges that surround incorporation of the doctrine into the evolving HIT environment. The article concludes by reviewing the purpose behind the traditional obligation to obtain informed consent and the possibility of maintaining its relevance in the new environment.

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**The Physician-Patient Relationship  
and a National Health Information  
Network**

*Leslie Pickering Francis*

The growing use of interoperable electronic health records is likely to have significant effects on the physician-patient relationship. This relationship involves two-way trust: of the physician in patients, and of the patients in their providers. Interoperable records opens up this relationship to further view, with consequences that may both enhance and undermine trust. On the one hand, physicians may learn (from additional records) that information from their patients is — or is not — to be trusted. On the other hand, patients may learn from the increased oversight made possible by electronic records that their trust in their physicians is — or is not — warranted. Release of information through new methods of surveillance may also undermine patient trust. The article concludes that because trust is fragile, attention to transparency and confidentiality in the use of interoperable electronic records is essential.

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**Health Information Exchange in  
Memphis: Impact on the Physician-Patient  
Relationship**

*Mark E. Frisse*

Health information exchanges represent one way of making medical information available to practitioners across institutional boundaries. One health information exchange in Memphis Tennessee has been operational since May of 2006 and provides information supporting care for over 1.2 million individuals. Creating such an exchange challenged traditional institutional boundaries, roles, and perceptions. Approaching these challenges required leadership, trust, sound policy, new forms of dialogue, and an incremental approach to technology. Early evidence suggests a positive impact on patient care and a change in the way providers interact with their patients and on another. Personal health records, consolidated EHR systems, and other alternative models promise to have similar impacts on the way in which providers and patients interact with one another.

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**Ethics, Information Technology, and  
Public Health: New Challenges for the  
Clinician-Patient Relationship**

*Kenneth W. Goodman*

Increasingly widespread adoption of health information technology tools in clinical care increases interest in ethical and legal issues related to the use of these tools for public health and the effects of these uses on the clinician-patient relationship. It is argued that patients, clinicians, and society have generally uncontroversial duties to support civil society's public health mission, information technology supports this mission, and the effects of automated and computerized public health surveillance are likely to have little if any effect on the clinician-patient relationship. It is also suggested, nevertheless, that electronic public health surveillance raises interesting and important ethical issues, some of which can be addressed if not resolved by empirical research, especially regarding patient preferences about secondary use of health data and their moral obligation to contribute to population-based health.

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**Dreams and Nightmares: Practical and  
Ethical Issues for Patients and Physicians  
Using Personal Health Records**

*Matthew Wynia and Kyle Dunn*

Electronic health records for patients, personal health records (PHRs), have become increasingly popular among policy makers and purchasers, but uptake among patients and physicians has been relatively slow. PHRs have varying uses that might make them more or less appealing to different stakeholders. The three core uses for PHRs — promoting communication, data use, and patient responsibility — each raises a set of potential practical and financial dilemmas. But some ethical concerns are also at play, some of which are rarely recognized as values-based barriers to the use of PHRs. Recognizing these ethical issues, and addressing them explicitly in PHR design and policy making, would help PHRs to achieve their promise.

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**Prescription Data Mining and the  
Protection of Patients' Interests**

*David Orentlicher*

Pharmaceutical companies have exploited health information technology to "mine" data from drug prescriptions and use the data to better target their sales pitches to physicians. This article considers the policy arguments and first amendment implications regarding state regulation of data mining. It concludes that the legislative provisions are desirable and should withstand constitutional challenge.

Independent Articles

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**Aligning Ethics with Medical Decision-  
Making: The Quest for Informed Patient  
Choice**

*Benjamin Moulton and Jaime S. King*

Clinical evidence suggests that many patients undergo surgery that they would decline if fully informed. Failure to communicate the relevant risks, benefits, and alternatives of a procedure violates medical ethics and wastes medical resources. Integrating shared decision-making, a method of communication between provider and patient, into medical decisions can satisfy physicians' ethical obligations and reduce unwanted procedures. This article proposes a three-step process for implementing a nationwide practice of shared decision-making: (1) create model integration programs; (2) provide legal incentives to ease the transition; and (3) incorporate shared decision-making into medical necessity determinations.

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**Television Food Marketing to Children  
Revisited: The Federal Trade Commission  
Has the Constitutional and Statutory  
Authority to Regulate**

*Jennifer L. Pomeranz*

The evidence reveals that young children are targeted by food and beverage advertisers but are unable to comprehend the commercial context and persuasive intent of marketing. Although the First Amendment protects commercial speech, it does not protect deceptive and misleading speech for profit. Marketing directed at children may fall into this category of unprotected speech. Further, children do not have the same First Amendment right to receive speech as adults. For the first time since the Federal Trade Commission's original attempt to regulate marketing to children in the 1970s (termed KidVid), the political, scientific, and legal climate coalesce to make the time well-suited to reevaluate the FTC's authority for action. This paper analyzes the constitutional authority for the FTC to regulate television food marketing directed at children as deceptive in light of the most robust public health evidence on the subject.

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**Symposium articles** are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

**Independent articles** are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

**Columns** are written or edited by leaders in their fields and appear in each issue of JLME.

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**Law, Science, and Innovation: The Embryonic Stem Cell Controversy**

A Symposium  
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John A. Robertson

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**The Management of Incidental Findings in Neuro-Imaging Research: Framework and Recommendations**

*Erica K. Rangel*

This paper addresses the question of how incidental findings (IFs) in clinical research should be managed by researchers, focusing in detail on IFs discovered in neuroimaging research. It begins by engaging the larger research ethics issue of whether researchers have any obligations of clinical care to participants, and assesses the content and merits of one particular framework for answering this question, Richardson and Belsky's ancillary care model. From here the paper develops an organizational structure for integrating the ancillary care model with existing research ethics standards, with the aim of better understanding their respective domains. It makes a distinction between incidental findings that are anticipated by informed consent documents, and those that are unanticipated, arguing that this distinction is critical for evaluating researcher obligations. Finally, it takes on the issue of incidental findings in neuroimaging research, translating the standards discussed into recommendations for both unanticipated and anticipated findings.

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**State Tort Reforms and Hospital Malpractice Costs**

*Charles R. Ellington, Martey Dodoo, Robert Phillips, Ronald Szabat, Larry Green, and Kim Bullock*

This study explored the relation between state medical liability reform measures, hospital malpractice costs, and hospital solvency. It suggests that state malpractice caps are desirable but not essential for improved hospital financial solvency or viability.

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**Physicians' "Right of Conscience" — Beyond Politics**

*Azgad Gold*

During the past few months, the discussion over the physicians' "Right of Conscience" (ROC) has been on the rise. The intervention of politics in this issue shifts the discussion to a very specific and narrow area, namely the "reproductive health laws" which bear well-known predisposing attitudes.

In this article, the physician's ROC is discussed in the context in which it naturally belongs: the Patient Physician Relationship (PPR). I suggest that the physicians' rights demand is a comprehensible, predictable, and even inevitable step as part of the "evolution" of the PPR. Thus, the most appropriate way to comprehend and tackle the demand for physicians' ROC is within the context of medical professionalism. While searching for practical solutions to the "reproductive health" problems, there is a need to recognize the ethical and practical implications of the change in the PPR and balance between patient and physician rights.

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**The 2008 Declaration of Helsinki — First among Equals in Research Ethics?**

*Annette Rid and Harald Schmidt*

The World Medical Association's (WMA) Declaration of Helsinki is one of the most important and influential international research ethics documents. Its most recent 2008 version declares unprecedented universal primacy over all existing national or international ethical, legal, or regulatory requirements. This self-proclaimed status as a set of minimal ethical standards raises important questions about the Declaration's appropriate normative status. The present paper argues that the new claim of ethical primacy is problematic and makes the Declaration unnecessarily vulnerable to criticism. Future revisions of the Declaration should therefore remove this claim and strengthen the document, first, by clarifying its normative status as a set of strong default recommendations, to be followed unless there is compelling ethical reason to do otherwise; and second, by improving the substance of the Declaration through further precision, specification, and argument.

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