



Chapter IX

Privacy

Learning Objectives

- Integrate the various arguments about privacy into a theme of power
- Indicate the relationship of notices of privacy practices seen in everyday experience to the requirements of the Privacy Rule
- Distinguish situations in which an entity must give the patient an opportunity to object to the use of information from those situations in which the patient gets no such opportunity
- Apply the patient rights of access to develop scenarios in which a patient exercises such rights
- Breakdown the implementation requirements of the Privacy Rule, particularly as regards having a privacy officer, training staff, and documenting policies

Hippocrates was an ancient Greek physician whose writings not only had a great impact on the content of Greek medical thought but also on the privacy of patient information. He said (Staden, 1996):

About whatever I may see or hear in treatment, or even without treatment, in the life of human beings—things that should not ever be blurted outside—I will remain silent, holding such things to be sacred, and not to be divulged

Physicians take a variant of this oath to this day.

Political Struggle

Warren and Brandeis (1890) said:

In very early times, the law gave a remedy only for physical interference with life and property, for trespasses vi et armis. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. ...Gradually the scope of these legal rights broadened; and now the right to life has come to mean...the right to be let alone... and the term "property" has grown to comprise every form of possession—intangible, as well as tangible. ...Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right "to be let alone." Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the house-tops."

The contemporary concerns for *privacy* are not that an official will physically enter and search someone's house or that the newspaper will take photographs of private events. Rather the concern is for the use of records, particularly in computers.

Power

In the mid-19th century, three quarters of the adult population worked for themselves on farms or in small towns. Attendance at the village schoolhouse was not compulsory. Record keeping about individuals was limited and local in nature. Few individuals had insurance of any kind. A patient's medical record typically existed only in the doctor's memory. Now, by contrast, fewer than 10% of people are self-employed, and their employers often keep extensive records on them. Insurance is common, and medical care is institutionalized. Acquiring insurance or medical care requires the individual to divulge information, and usually leads to some evaluation of him based on information about him that some other *record keeper* has compiled.

What two people divulge about themselves when they meet for the first time depends on how much personal revelation they believe the situation warrants and how much confidence each has that the other will not misinterpret or misuse what is said. If they meet again, and particularly if they develop a relationship, their self-revelation may expand both in scope and detail. Throughout this process, each person may:

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