

A Time to Be Silent and a Time to Speak (Ec 3:7): The Dilemma of Confidentiality and the Christian Health Care Worker

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A sweeping history of medical ethics has been preserved in the so-called "oaths" of medicine. These oaths embrace the dimensions of time (from circa 2000 B.C., Code of Hammurabi), of race (Arabic, European, and Chinese of world perspectives (Hindu, Jewish, Islamic) and of Greek influences (Hippocrates). Consistently noted are seven principles:

1) First of all, do no harm, 2) Respect for human life, 3) The alleviation of suffering, 4) The right to truth, 5) The right to informed consent, 6) The right to die with dignity and 7) Confidentiality of the physician-patient relationship. While the first six of these do not seem to conflict with Scripture, absolute confidentiality of the physician-patient relationship may present such a conflict. An analysis of this principle in light of Biblical revelation is the focus of this paper.

The principle of confidentiality is necessary to protect information essential for intimate relationships. However, carefully timed and chosen speech used to breach a confidence may protect a neighbor's life. Therefore the difficult choice of whether to remain "silent" in maintaining a confidence or to "speak" and in so doing justly decide the appropriate person, place and time of speech, demands the wisdom of Solomon. The inherent conflicts engendered by this silence versus speech dilemma are particularly germane to modern medicine of which the following cases are exemplary. During the AIDS epidemic, who has a right to know positive HIV tests without patient consent?

Recently, a physician was sued for breaching his confidential relationship with a commercial airline pilot who admitted to cocaine abuse.

If a minor seeks a Christian health worker's advice concerning access to abortion, should her parents be notified without her consent? In an era of ubiquitous computerization of medical records, can a physician maintain the secrecy of these records during a time of increasing access (third party payers, quality assurance committees, utilization review, etc.) to sensitive medical information?

The prevalent secular humanist world view answers all these questions by making individual autonomy the primary concern. This practice has led to "right to privacy" laws that demand absolute confidentiality from the professional. From a Biblical perspective, however, one can ask whether patients who reveal confidential matters to their physicians have a completely binding right to expect that such matters will not be revealed to "significant others"? Even the wording of the Hippocratic Oath -- "...if it be what should not be published abroad, I shall never divulge, holding such things to be holy secrets..." -- implies that there are some circumstances and events that of necessity should be "published abroad." Even though very few Christian health workers would challenge the general good of maintaining confidences, there do seem to be times when other responsibilities out-weigh secrecy. This is the ethical dilemma of confidentiality: both the "silence" of confidentiality and the "speech" used to protect neighbors are goods to be desired at different times and in different situations.

It should become apparent that the "oaths" of medicine are inadequate for the Christian. Even though the wisdom of these codes is a reflection of God's natural revelation (Romans 2:1-16), they must be viewed as precursors to and supplemental of God's ultimately

authoritative revelation, the Bible.

Therefore, this paper will review Biblical support for both the practice of and limitations on confidentiality. Then, we will present an approach to the Biblical limits on confidentiality when applied to the practice of medicine.

METHODS:

The authors hold that the Bible is inspired by God, and thus not subject to the limitations of human reason or verification techniques. However, in the Bible God provides the principle that matters of fact and legality, assertions that one is telling the truth must be verified by the congruent testimony of two or three witnesses (Deut. 19:15, Matt. 18:16, II Cor. 13:1, I Tim. 5:19). Jesus expanded the application of the "multiple witness" principle to include truth claims in the metaphysical realm. To support His claims that He had a unique relationship with God the Father (John 5:1-30, esp. 5:17-18), Jesus summoned multiple witnesses who agreed with His claims (John 5:31-47). John the Apostle followed Jesus' example and cited multiple witnesses to support his interpretive assertions that Jesus is the Christ who gives eternal life to those who believe in Him (I John 5:6-12). Therefore, the authors will support each of their assertions regarding confidentiality with the multiple testimony principle, citing the three-fold division of the Old Testament ratified by Jesus (Law, Prophets and Psalms, Luke 24:44) and the New Testament writings as our witnesses.

Background of Medical Confidentiality: Justification

A working definition of and justification for confidentiality are summarized in "The Limits of Confidentiality." This reference can serve as an outline on which to apply a Biblical scrutiny of confidentiality. The concept of confidentiality when applied to medicine entails four interrelated tenets:

1. Respect for individuals as capable of having secrets.

2) The ability for individuals to share secrets within a framework of intimacy of their own choosing. Thus, it is a natural extension of #1. Together they allow people to maintain identity, intimacy, privacy, family, friendship and national relationships. Obviously, once a secret is shared with another any disregard for the intimate or private nature of that information can lead to "gossip." Gossip is defined as the spreading of "intimate" facts or rumors inappropriately.

3) Thus, the person receiving a secret offers a pledge of silence. This pledge is where the boundaries surrounding secrets are drawn and this boundary is where the dilemma of silence vs. speech resides. It is actually a dual dilemma in that inappropriate speech on one hand (gossip) can irreparably damage intimacy and friendships; but on the other hand, the recipient of intimate information may feel compelled to reveal a secret if danger exists to another. This particular speech is not viewed as gossip. If one views confidentiality as absolute, one may not speak under any circumstances. If it is not, however, one may speak and breach the trust but must carefully identify the circumstances and the persons to whom to speak.

4) The final rationale relates specifically to "professional" secrecy. This secrecy is confidentiality beyond ordinary loyalty supported in numerous professional societies (medicine, law, social services, clergy). The secrecy of professions originated in the practice of medicine. It exists philosophically because of its utility to society.

This means that the codes of privacy in professions allow people to reveal intimate details to professionals with binding secrecy for the good of the greatest number of society. Since professional secrecy, per se, is not discussed in the Bible, professional conduct will be justified with the Biblical principles used for the first three concepts.

Biblical Justification for Confidences (Secrets)

God used the secret of Joseph's trials and identity to restore his brothers and reconcile their family. (Genesis 42-45) If Joseph had revealed his identity at an inopportune time, this positive result of secret keeping

may not have occurred. When Joseph did reveal his secret, he did so privately to avoid embarrassment to his family. Though Joseph had many tales he could have told, his conduct anticipates and illustrates the Mosaic injunction against "tale bearing" (slander, Lev 19:16).

The Wisdom literature highlights the importance of "secret" keeping for a trustworthy man (Prov. 11:13). Also, in the "Writings" (KETHUVIM), Esther at the behest of Mordecai keeps her Hebrew identity a secret (Es 2:20).

In the prophets, another Godly use of "secret" keeping is presented (Jeremiah 36, esp. 36:19 and 36:26). The justification for secret keeping in Jeremiah was the preservation of human life. The "secret" protected the safety of Jeremiah and Baruch and is accompanied by the divine imprimatur, i.e., "the Lord had hidden them." On numerous occasions in the New Testament, Jesus speaks to his disciples "privately" (e.g., Mark 9:28, Mark 13:3, Luke 10:23, and Matt 24:3). One particularly important "confidence" takes place in the Gospels (Matt 17:9). After Jesus' transfiguration, He warns the Apostles not to tell anyone what had occurred (Matt 17:9). The transfiguration and many of Jesus' private talks with the Apostles from this point on (vide supra) were to be kept secret until after the resurrection. Paul writes of appropriate secrets in his "weak" and "strong" passage: "Whatever you believe about these things, keep them between yourself and God" (Rom 14:22). Here it is implied that some things should be "secret" because of the potential injury to a brother.

Edifying Speech and the Negative Effects of Gossip

In the Biblical review on the importance of secret keeping, both the positive result of edifying speech and the negative effects of gossip can be seen. In the New Testament, Jesus himself says "for out of the abundance of the heart, the mouth speaks" (Matt 12:34-37). The "speech" of Jesus was always truthful (John 8:40-45), and He was subsequently described as "one who did no sin, neither was guile found in his mouth" (I Peter 1:22). Thus, Jesus completely fulfilled the standard of a "perfect" or "complete" man according to James 3:2.

Conversely, in the Wisdom Literature (Ps 55:21), David demonstrates that words from a friend can violate and in deception become "drawn swords." Proverbs 16:27-28 shows the negative power of speech to "scorch like a fire, and separate close friends." In Jeremiah 38, Jeremiah is placed in a cistern by King Zedekiah because of "gossip." Though the charge was false, Zedekiah's behavior was founded on his recognition of the inherent danger of speaking inappropriately about state affairs. The Pauline letters use these same caveats for speech in II Corinthians 12:20, Colossians 4:26 and Ephesians 4:24-29, as does the third chapter of James.

In summary, a rationale for confidentiality begins with a person's capacity to have secrets (#1), supplemented by the fact that a person chooses intimate relationships in which to share those secrets (#2). Others must guard these confidences by silence or limiting themselves to edifying speech only. Secret keeping, the use of speech for edification, and the censure of gossip are supported in the Old and New Testaments. Since these scriptural directives should be behavioral norms for the Christian health care worker, we will move on to the main point of contention which arises at issue (#3), i.e., a pledge of silence limiting speech. Attempting to demonstrate the Biblical limits on absolute confidentiality will involve the following:

- A) Old Testament: Protection of Neighbors,
- B) The Law of Love: Supported in the Gospels, Pauline letters and other Writings,
- C) Moses Maimonides: Successful integration of Biblical Law and medical practice.

Protection of Neighbors:

The authors believe that the Bible presents a deontological ethical system, not a relativistic ethical system. Thus, situations become the occasion for the application of Biblical norms. The correct interpretation of and application of Biblical norms to varied situations enables the Christian to avoid the ethical dilemmas posed by "situational" ethics. The Christian is never forced to "sin" when applying deontological Biblical

norms to difficult situations (I Cor 10:13).

Thus, when a Christian professional considers breaching confidential information, this breach does not necessarily represent indiscriminate speech or "sin." Rather, contemplation of such a breach can be motivated by the desire to avoid potential injury of a "neighbor's" health by disease or abuse.

The concept of neighbor protection is present throughout the entire Bible, but is explicitly stated in Leviticus 19:16-18. In fact, the philosophy of neighbor protection is particularly apparent in dealing with communicable diseases. Leviticus 13 can serve as a paradigm concerning limits of confidentiality, since Old Testament communicable diseases such as leprosy are analogous to modern day "plagues" such as acquired immune deficiency syndrome.

In ancient Israel patients with diseases were removed from the general community for protection of neighbors. However, before a certain diagnosis of communicable disease was made, the patient's condition was known only to the priest and possibly to family members (significant others, Lev 13:1-44). Only after a definite diagnosis of a communicable disease was pronounced were patients with these diseases removed from the general community for the protection of themselves and others (Lev 13:45-46). Even though their separation would alert others in the community that something was wrong (i.e., a breaking of strict confidentiality), the ethical framework presented in Leviticus 13 suggests that this practice of limited confidentiality was justified by the higher good of protecting a neighbor's life. This principle of protection of neighbor is also taught in the Wisdom Literature (Prov 24:11-12).

The Law of Love:

The consistency of neighbor protection-love is continued in the New Testament in the Gospels (Luke 11:27-28), Pauline letters (Rom 13:10), and other writings (II Pet 1:5-7, I John and James 2:8). Thus, the Bible seems to suspend the good of "silence" when a greater good of neighbor protection is present. The caveat, however, is that the professional must truly be guided by love and the protection of life in the

dissemination of confidential information. By doing so, the professional completely fulfills the law of love without committing sin (Gal 5:13-14).

Moses Maimonides:

Christians share a common conviction with Maimonides that the ethical assertions contained in the Law are to be obeyed while we differ on the motive power that drives our obedience (Matt 5:17-20, Rom 8:1-4, 13:8-10).

Thus, Maimonides' successful integration of medicine with an ethical system also embraced by Christians is a preliminary, analogical model of integration that can be expanded upon by the Christian health care worker.

This successful integration of Biblical Law and medical practice was achieved by Maimonides because he and the consensual opinion of Jewish Torah scholars articulated a hierarchical system of ethical and religious values contained in the Tanak (Old Testament). This system recognizes the superior obligation to save life as a precedent over other important ethical demands. In particular, Maimonides argued that: "Like all other precepts, the Sabbath is set aside where human life is in danger."

This specific dictum of Maimonides is part of a comprehensive obligation to preserve life as follows: "The duty of saving an endangered life (PIKKUAH NEFESH) suspends the operation of all the Commandments in the Torah, with the exception of three prohibitions: no man is to save his life at the price of murder, adultery, or idolatry ... from a Jewish point of view, it is sinful to observe laws which are in suspense on account of the danger to life and health."

When we apply these precepts to the issue of confidentiality, we can reach the conclusion that confidentiality is to be sedulously guarded except when human life is threatened. At that point, the commitment to confidentiality must give place to the superior ethical and medical commitment to preserve life. Moses Maimonides serves as an eminent example of one who successfully integrated Biblical law and medical practice. He thus provides the modern health care professional with a Biblically and ethically responsible

exodus from the dilemma of absolute confidentiality.

The authors would like to apply the Biblical methods reviewed to four difficult but typical cases of the 1990's. A seven point discussion will follow in an attempt to clarify the conflict between silence and speech inherent in these medical cases (Ec 3:7).

CASES

1) As a primary care physician, you've cared for a family -- husband, wife, two children ages 7 and 5 for approximately 11 years. The father of this family comes to your office very distraught. He admits to you that he is bisexual, a fact you had not known before and is extremely distressed because his illicit lover has AIDS. He is admitted to the hospital by a psychiatrist for depression. You aren't consulted but you review the chart and find that this gentleman is HIV positive and you confront him with the issue of his bisexuality and AIDS. His wife has not been told and he steadfastly refuses to tell her.

2) A 14 year-old who attends your church asks to talk to you about something important. She tells you in your office that her 16 year-old sister, the daughter of an Elder at your church, is pregnant. She tells you that she is very concerned because both her mom and dad are asking her sister to have an abortion to spare embarrassment. She tells you this and then insists that you not tell anyone because she feels she will upset her parents.

3) Mrs. S. is a 55 year-old white female with Huntington's disease. She is mildly compromised neurologically at present, but will progress to irreversible mental and motor deterioration barring divine intervention. The inheritance of this diseases is autosomal dominant. Mrs. S. has three children, ages 38, 30 and 27 and has 11 grandchildren. She is embarrassed by her neurological dysfunction and refuses to tell her children, and wants her diagnosis absolutely confidential.

4) A 32 year-old woman who has seen you for approximately one year comes to your office for treatment of injuries sustained in physical abuse by her

husband. You don't have significant concern for her life based on the degree of injury and she does not want her husband or anyone else told. She fears that if her husband discovers she told you, she may sustain further injury later.

Discussion

1) Confidentiality has a very important place in medicine and requires safeguards. The Bible precludes gossip and respects secrets. Because of this, Christian health care workers are responsible for education concerning secret safekeeping for themselves and others. They need to be current in appropriate protections for computer information. Special care should be taken in the dissemination of information to third parties. Patient permission or notification prior to any discussion of sensitive data should be procured.

2) Protection of Life: These cases are listed in order of greatest to least risk to "neighbor's" life. Our Biblical discussion suggests that the husband in case one and the family in case two be apprised of the Biblical wisdom and obligation to practice "limited" confidentiality. Since a risk to life exists (wife-AIDS, unborn child-abortion) select dissemination must occur. Case three will probably progress to a similar risk over time (in driving or workplace activities) and will eventually require the same response (i.e., notification of people endangered by her disease). Case four allows counseling time because the risk to life is not as emergent.

3) If the issue of confidentiality involves an interaction with a fellow Christian, one must follow Jesus' guidelines in Matthew 18 for determining the time for "silence" and "speech." There are two very important motivations involved in this interaction. First, in this sequence of discipline, Jesus allows for protection of information between the party, the "professional" and trusted witnesses. Secondly, the entire motivation for this practice (Matt 18:15) is protection, growth and possibly repentance-restoration of the "brother." Its use for these edifying ends can be seen in the New Testament (I Cor 5:5 and II Cor 2:5-11) and illustrates the positive result that comes from limited dissemination of seemingly confidential data. This is particularly germane for case 2.

4) The Christian health care worker does not have to offer value neutral counseling. Because of this, the typical "social contract" of absolute confidentiality in the doctor-patient relationship is not applicable. In fact, legal proceedings against physicians who have breached confidential information utilize an implied social contract ethic of absolute confidentiality in medicine. The Christian health care worker should volunteer his/her Biblical views regarding the protection of and love of neighbor prior to the verbalization of any confidential information. In fact, one can argue that Christian health care workers should publish a statement for both patients and colleagues that presents a philosophy of limited confidentiality according to Biblical revelation.

5) Since we are called on to be "salt and light," we can use John Stott's outline for appropriate times to persuasively argue the need for the above Biblical paradigms in dealing with confidentiality in the medical profession.

6) Be aware of the laws concerning confidentiality in your state. If these laws seem to conflict with scriptural revelation, remember that there may be times when the professional must obey God's law if human law is in direct contradiction. As Peter (Acts 4) and Daniel (Dan 8) learned, this may actually lead to arrest or prosecution.

7) Information given to health care workers by minors is to be handled differently by Christians because of Biblical mandates related to the authority of parents, sanctity of marriage and importance of the family. Particularly when consent laws for abortion and birth control do not require parental notification this may serve as an example of man's law being an affront to God's law. Notification of parents in the situation of abortion is clear cut because of the danger to unborn life.

Confidentiality is a relative good to be sedulously guarded by the Christian. However, it is limited whenever a confidence endangers another's life. Despite the trend in society towards autonomy and privacy as absolute goods, the Christian follows Biblical revelation as one who is in but not of the world. Therefore the Christian follows Biblical revelation that teaches only

one absolute good (God), and from whom all other relative goods (i.e., confidentiality) find their source, definition, and hierarchical arrangement. To do otherwise is to commit idolatry (I John 5:20-22).

Endnotes

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