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# Ethics and HIPAA for Pharmacy Technicians

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## LEARNING OBJECTIVES

*Upon completion of this module, the subscriber will be able to:*

1. Define ethics.
2. Review case studies and evaluate the case for ethical or unethical behavior exhibited.
3. Describe specific principles of the code of ethics for pharmacy technicians and how they apply to their daily practice as a pharmacy technician.
4. State what the HIPAA Privacy Rules cover.
5. Explain the HIPAA Privacy Rules and how they apply to the daily practice of a pharmacy technician.



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# Ethics and HIPAA for Pharmacy Technicians

*“A man does what he must – in spite of personal consequences, in spite of obstacles and dangers and pressures – and that is the basis of all human morality.” Winston Churchill<sup>1</sup>*

In the following paragraphs, we will explore why each of the answers given by these business people do not help us to define ethics.

## Introduction

Ethics and HIPAA have been around for a while. The study of ethics goes back to the Greek philosophers. HIPAA has been a law since 1996. Neither topic is “new,” but they are important for pharmacy technicians to understand and apply.

First, we will look at what ethics is and is not. Second, we will review several codes of ethics for the pharmacy profession. Then we will look at seven ethics cases, some based upon true cases and some purely fiction. You will be asked to think about the situations in each case and write down what you would do.

After the seven ethics cases, we will review the Health Insurance Portability and Accountability Act and the privacy rules that were written to apply the law. We will review some actual settlements for violations of the privacy rules and then look at four HIPAA cases. Again, you will be asked to think about the situations in each case and write what you would do.

## Ethics

In his studies on business ethics, sociologist Raymond Baumhart asked business people, “What does ethics mean to you?” Their replies included the following:<sup>2</sup>

*“Ethics has to do with what my feelings tell me is right or wrong.”*

*“Ethics has to do with my religious beliefs.”*

*“Being ethical is doing what the law requires.”*

*“Ethics consists of the standards of behavior our society accepts.”*

*“I don’t know what the word means.”<sup>2</sup>*

How many of you would have answered like the last person? With which answer would you most closely identify?

*“Ethics has to do with what my feelings tell me is right or wrong”*

Many people tend to equate ethics with their feelings, but sometimes a person who follows his or her feelings may not do what is right and feelings often deviate from what is ethically correct. Consider the following scenario:

You get off work from your shift at 10:00 pm on a cold winter night and start to drive on a small, two lane back country road to the neighboring community where you live. You are driving your Smart car, a two seater that helps you save gas money, and you come upon a car stranded on the side of the road in a snow bank. Even though you are tired and want to get home, you decide to stop to see if you can help. There are three people in the stranded vehicle. One person is a good friend who saved your life when you were younger and could have drowned in a lake. The next is an elderly man and the third is his child whom you have always had a crush on and with whom you would love to have a serious relationship. They are all obviously shivering and cold and need help. But you only have one extra seat in your car and the likelihood that anyone else will come along to help is next to nil. What do you do?<sup>3</sup>

Most people have trouble giving up the driver’s seat in their car. That puts you in danger and does not “feel right.” Consider something “outside the box.” What if you give the person who saved your life your keys and tell him to take the elderly man into town and get help? Then you stay behind and help keep the person you have always had a crush on warm. This scenario can be a win-win for everyone involved. Would you have thought of giving up your keys and car?

***“Ethics has to do with my religious beliefs”***

Sometimes what “feels right” to one person is abhorrent to others. Consider the following incident which was covered by multiple media outlets.

In Oak Creek, Wisconsin on August 5, 2012, a man identified as Wade Michael Page walked into a Sikh temple at about 10:25 am and shot and killed six people.<sup>4</sup> We will never know his true motivation since the shooter killed himself at the scene. However, his beliefs must have pushed him to murder innocent, peaceful people during their worship service. A former friend described him as a loner and said he had talked about an “impending racial holy war.” The FBI was investigating possible ties to white supremacist groups and other racial motivations.<sup>4</sup> Certainly this was not ethical and most people would not think this was what their feelings would have told them was the right thing to do.

Religious beliefs often are tied to high ethical standards, but that can vary from religion to religion. A Muslim may have different religious beliefs from a Christian and each religion can provide different motivations for adhering to their own ethical standards.

A recent news story from the tribal regions of Pakistan reported that a group of Taliban Suni Muslims stopped several mini buses of people and asked for their identification cards.<sup>5</sup> The Suni Muslims then removed the Shia Muslims from the buses and shot them. The Suni Muslims believed that the Shia were infidels. Are these religious beliefs ethical?

White Christian southerners created the Ku Klux Klan who terrorized African Americans by appearing in white hooded robes and burning crosses. They also murdered people. Are these religious beliefs ethical?

***“Being ethical is doing what the law requires”***

Some say that adhering to “the law” is ethical, but some laws certainly are not ethical.

The law does not always adhere to ethical standards. The time and place affect the different laws in a nation. Most of us are familiar with the early American witchcraft trials in Salem. Those who were accused of being witches were given trials and burned at the stake. Were these laws/trials ethical?

The laws in the United States allowed slavery for much of the

early history of our nation. Were these laws ethical? South Africa’s apartheid laws are a more recent example of laws that were discriminatory. Were these laws ethical?

***“Ethics consists of the standards of behavior our society accepts”***

If ethics were adhering to “the standards of behavior our society accepts,” then to find out what is ethical, one would have to find out what society accepts.<sup>2</sup> To find out what society accepts would require doing a survey. Unfortunately, the lack of social consensus on many issues makes it impossible to equate ethics with whatever society accepts.

Ethnic genocide is an example of societies’ ethical standards gone awry. The Rwandan genocide of 1994 resulted in the mass murder of an estimated 800,000 people.<sup>6</sup> There were long standing ethnic tensions between the minority Tutsi, who had been in power for centuries and the majority Hutu. The Hutu took control of the government in the rebellion of 1959-1962. After the Hutu leader was assassinated in April of 1994, the Hutu conducted mass killings of the Tutsi including women and children. The killings were planned by government officials, but once the genocide was underway, a great many civilians participated in the murders. After this, the Tutsi went on the offensive, defeating the army and ultimately taking control of the country. Were these ethnic groups’ standards of behavior ethical?

***“I don’t know what the word means”***

Now let us look at a definition of ethics.

Merriam Webster’s online dictionary defines ethics as: (1) the discipline dealing with what is good and bad and with moral duty and obligation; (2) [a] a set of moral principles: a theory or system of moral values; [b] the principles of conduct governing an individual or group – as in professional ethics; [c] a guiding philosophy; [d] a consciousness of moral importance; (3) a set of moral issues or aspects {as rightness}.<sup>7</sup>

Our attention will be focused on (2) [b]: the principles of conduct governing an individual or group... or professional ethics. There are several codes of ethics that pertain to pharmacy technicians and pharmacists. We will look at a few of these.

## Professional Codes of Ethics

The following Code of Ethics is from the American Association of Pharmacy Technicians (AAPT).

### *American Association of Pharmacy Technicians, Inc.*

#### Code of Ethics for Pharmacy Technicians<sup>8</sup>

##### *Preamble*

Pharmacy technicians are healthcare professionals who assist pharmacists in providing the best possible care for patients. The principles of this code, which apply to pharmacy technicians working in any and all settings, are based on the application and support of the moral obligations that guide the pharmacy profession in relationships with patients, healthcare professionals and society.

##### Principles

- I. A pharmacy technician's first consideration is to ensure the health and safety of the patient, and to use knowledge and skills to the best of his/her ability in serving others.
- II. A pharmacy technician supports and promotes honesty and integrity in the profession, which includes a duty to observe the law, maintain the highest moral and ethical conduct at all times and uphold the ethical principles of the profession.
- III. A pharmacy technician assists and supports the pharmacist in the safe, efficacious and cost effective distribution of health services and healthcare resources.
- IV. A pharmacy technician respects and values the abilities of pharmacists, colleagues and other healthcare professionals.
- V. A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
- VI. A pharmacy technician respects and supports the patient's individuality, dignity and confidentiality.
- VII. A pharmacy technician respects the confidentiality of a patient's records and discloses pertinent information only with proper authorization.

- VIII. A pharmacy technician never assists in the dispensing, promoting or distribution of medications or medical devices that are not of good quality or do not meet the standards required by law.
- IX. A pharmacy technician does not engage in any activity that will discredit the profession, and will expose, without fear or favor, illegal or unethical conduct in the profession.
- X. A pharmacy technician associates with and engages in the support of organizations which promote the profession of pharmacy through the utilization and enhancement of pharmacy technicians.

Approved by the AAPT Board of Directors

January 7, 1996

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### *American Pharmacists Association*

The American Pharmacists Association has a code of ethics for pharmacists endorsed by the American Society of Health-System Pharmacists. It is similar to the code of ethics of the American Association of Pharmacy Technicians and is reprinted below.

#### Code of Ethics for Pharmacists<sup>9</sup>

##### *Preamble*

Pharmacists are health professionals who assist individuals in making the best use of medications. This Code, prepared and supported by pharmacists, is intended to state publicly the principles that form the fundamental basis of the roles and responsibilities of pharmacists. These principles, based on moral obligations and virtues, are established to guide pharmacists in relationships with patients, health professionals and society.

##### Principles

- I. **A pharmacist respects the covenantal relationship between the patient and the pharmacist.**

Considering the patient-pharmacist relationship as a covenant means that a pharmacist has moral obligations in response to the gift of trust received from society. In return for this gift, a pharmacist prom-

ises to help individuals achieve optimum benefit from their medications, to be committed to their welfare, and to maintain their trust.

**II. A pharmacist promotes the good of every patient in a caring, compassionate, and confidential manner.**

A pharmacist places concern for the well-being of the patient at the center of professional practice. In doing so, a pharmacist considers needs stated by the patient as well as those defined by health science. A pharmacist is dedicated to protecting the dignity of the patient. With a caring attitude and a compassionate spirit, a pharmacist focuses on serving the patient in a private and confidential manner.

**III. A pharmacist respects the autonomy and dignity of each patient.**

A pharmacist promotes the right of self-determination and recognizes individual self-worth by encouraging patients to participate in decisions about their health. A pharmacist communicates with patients in terms that are understandable. In all cases, a pharmacist respects the personal and cultural differences among patients.

**IV. A pharmacist acts with honesty and integrity in professional relationships.**

A pharmacist has a duty to tell the truth and to act with conviction of conscience. A pharmacist avoids discriminatory practices, behavior, or work conditions that impair professional judgment, and actions that compromise dedication to the best interests of patients.

**V. A pharmacist maintains professional competence.**

A pharmacist has a duty to maintain knowledge and abilities as new medications, devices, and technologies become available and as health information advances.

**VI. A pharmacist respects the values and abilities of colleagues and other health professionals.**

When appropriate, a pharmacist asks for the consultation of colleagues or other health professionals or refers the patient. A pharmacist acknowledg-

es that colleagues and other health professionals may differ in the beliefs and values they apply to the care of the patient.

**VII. A pharmacist serves individual, community and societal needs.**

The primary obligation of a pharmacist is to individual patients. However, the obligations of a pharmacist may at times extend beyond the individual to the community and society. In these situations, the pharmacist recognizes the responsibilities that accompany these obligations and acts accordingly.

**VIII. A pharmacist seeks justice in the distribution of health resources.**

When health resources are allocated, a pharmacist is fair and equitable, balancing the needs of the patients and society.

Copyright American Pharmacists Association.

Adopted by the membership of the American Pharmacists Association on October 27, 1994.

These codes of ethics are fairly detailed and we will look at scenarios later that will ask you to consider them and apply them to the situations.

***General Pharmaceutical Council of Great Britain***

The General Pharmaceutical Council of Great Britain is the regulator for pharmacists, pharmacy technicians, and registered pharmacy premises in England, Scotland and Wales. The General Council has a combined code of ethics for pharmacists and pharmacy technicians. The introduction to their code of ethics is very pertinent.

The General Pharmaceutical Council introduction states that the “document sets out the standards of conduct, ethics and performance that pharmacy professionals must follow. Pharmacy professionals are pharmacists and pharmacy technicians who are registered with us.”

The seven principles of the Standards of Conduct, Ethics and Performance are as follows:<sup>10</sup>

## Standards of Conduct, Ethics and Performance

As a pharmacy professional you must:

- Make patients your first concern.
- Use your professional judgment in the interests of patients and the public.
- Show respect for others.
- Encourage patients and the public to participate in decisions about their care.
- Develop your professional knowledge and competence.
- Be honest and trustworthy.
- Take responsibility for your working practices.

Copyright General Pharmaceutical Council 2012.

Note the similarities in the British version of their code of ethics and the subtle differences between the codes in the United States. Each code puts the patient first. In the United States, we must follow the law and are not required to follow a code of ethics. Although we should follow our code of ethics, it is not mandatory in the United States.

## Ethics Case Scenarios

### *Ethics Case Number One*

You are working in a community chain pharmacy with a pretty high volume. Sometimes the wait for a patient to receive their prescription after the drop off approaches an hour. As the intake technician who receives the prescription from the patient, you are supposed to verify the information on the prescription and the insurance information. The line to get to the intake window is about four people deep. A man in his forties gets to the window with a prescription for a hydrocodone containing pain reliever from an endodontist. After verifying his personal information and his insurance, he tells you that he had a root canal about two hours ago and the local anesthetic is wearing off. When you tell him that it will be about an hour wait, he looks like he could faint. What do you do when your first concern is supposed to be for the health and safety of the patient?

Should you talk to the pharmacist on duty and tell him/her about the patient's obvious pain? What if you suggest that the pharmacist give him one of the pain pills and subtract it from the remainder of the prescription? What if he takes the pain pill and waits in the store and then drives home with the remainder in an hour? Should you suggest to the pharmacist that his prescription should be moved up in the queue?

Would you have considered any or all of these options? Ethically, there may be no ONE right answer. Perhaps you should ask if he has someone who can drive him home if he takes the pill and waits. Perhaps you should see if he has someone who can come back later and pick up the prescription for him. Of course, all of these possibilities can further slow down the processes in the pharmacy but doing nothing other than smiling and saying, "The next person in line, please step to the front," is not really keeping the health and safety of the patient at the forefront.

### *Ethics Case Number Two*

A hospital has been under a lot of financial pressure. The pharmacy staff has been cut and even those who have resigned recently have not been replaced. You feel lucky to still have a job and are the current intravenous preparation technician. It is pretty stressful because they are asking everyone to do more with less staff. You are preparing a batch of cephalosporin piggyback medications from a bulk bottle and two smaller bottles. The bulk bottle contains ten grams and you are making twelve 1 gram doses in 100 milliliters of normal saline. You have reconstituted the 10 gram vial and two 1 gram vials. You get distracted because the pharmacist has come in to ask you a question. When you get back to the laminar flow hood, you see that there are three bags of normal saline face up (meaning that you have not added the medication) and nine bags that are face down, meaning that you have added the medication. However, the 10 gram vial is empty and the two vials containing 1 gram are full. Did you double up on the addition to the last bag? You do not have the time to start all over again. Also, you are afraid that if you have to waste the whole batch, you will have cost the hospital lots of money and could be fired. What do you do?

One way you could handle the situation would be to go ahead and add 1 gram to each of two of the normal saline bags and just not say anything. You could put the labels on the bags for the pharmacist to check and no one will ever know that one bag has twice the cephalosporin dose and one

bag has none. You may believe it is only a cephalosporin and a higher than ordered dose will not hurt the patient. You may believe the one that is empty will not hurt anyone either because the patient gets a dose every six hours, so the next dose will cover your mistake. You just hope that the patient who gets a double dose is the one who gets the empty dose. Does this violate any of the code of ethics for pharmacy technicians? If so, which one(s).

Another way you could handle the situation is to tell the pharmacist and ask him/her what to do. What if they tell you to just put the labels on and get on to the next preparation you have to make? Would you just do as you were told? Again, what parts of the code of ethics would be violated for both the pharmacist and the technician?

Or your pharmacist could handle the situation another way. He/she says to use the scale attached to the Total Parenteral Nutrition Compounder and weigh an empty 100ml normal saline bag. Then, weigh each of the bags that you have in your batch. When you find a bag that is the same weight as the empty one, you have located the one with no medication. Then when you find a bag that has a greater weight than the others that were prepared, you would have located the one which had the double dose. You could then segregate the double dose bag, reconstitute one more 1 gram vial of the cephalosporin and add it to a 100ml bag of normal saline with no drug in it. Of course, this will take some time and slow down your work, but all the patients would have the right dose for each dosing time. This would allow you to keep the health and safety of the patient first and also to:

... never assist in dispensing, promoting or distribution of medication or medical devices that are not of good quality or do not meet the standards required by law.<sup>8</sup>

### *Ethics Case Number Three*

You are one of two technicians that work in an independent pharmacy. The store is open Monday through Friday and half a day on Saturdays. The owner is a really good boss and he works most of the days, although he has used a relief pharmacist one day per week for the last six months on Tuesdays. The relief pharmacist is very nice and all seems to be going well since your boss is now getting a well deserved day off every week.

One day, you notice that the relief pharmacist is entering a

prescription into the computer for a “Mary Brown” and you assume that he wants to keep up his skills in using the computer, so you do not say anything.

After about three weeks, you notice that the relief pharmacist seems to be entering more prescriptions into the computer for “Mary Brown” instead of having the technicians do it. The pharmacist tells you that you are not to handle any prescriptions for “Mary Brown.” Afterwards, he fills the prescriptions instead of having you pull the medications and count them out. It seems all right since the only time he does this is when it is not that busy and it allows you to do other duties that you have such as ordering, filing hard copies of prescriptions, checking for out of date medications and helping check out customers. However, you notice when filing the hard copies that the prescriptions are always for controlled substances and they are always in the pharmacist’s handwriting indicating that the prescriptions were called in to the pharmacy. You also notice that the prices are lowered from the stickers placed on the original prescription. The pharmacist states that the prices were lowered to match a quoted price from another pharmacy that the patient had found.

The other technician works only part time and has not worked often with this relief pharmacist. You ask the other technician if they have noticed these things and they reply, “No, I have not noticed anything.” So, you decide to forget it.

The following week, you notice that the relief pharmacist goes to the cash register and rings up several prescriptions at the end of the day while you are preparing the end of the day report. You ask about this and he replies that they are medications for “Mary Brown” and that as a courtesy, the pharmacist will drop them off on the way home. The code of ethics for pharmacy technicians states:

A pharmacy technician respects and values the abilities of pharmacists, colleagues and other health-care professionals.<sup>8</sup>

You want to respect and value the abilities of the relief pharmacist, but you also are concerned that something is not right. Technically, the relief pharmacist is your supervisor when he is on duty and you feel you should not question his actions.

The code of ethics for pharmacy technicians also states:

A pharmacy technician supports and promotes honesty and integrity in the profession, which in-

cludes a duty to observe the law, maintain the highest moral and ethical conduct at all times and uphold the ethical principles of the profession.<sup>8</sup>

In addition the code states:

A pharmacy technician does not engage in any activity that will discredit the profession and will expose, without fear or favor, illegal or unethical conduct of the profession.<sup>8</sup>

What should you do?

What if you tell your boss that you have concerns about the relief pharmacist? Do you think that something illegal is going on? Are you afraid that there may be repercussions from the relief pharmacist?

You finally report to your boss that the relief pharmacist has filled multiple prescriptions for “Mary Brown” for hydrocodone. In addition, the prices were below what the store usually charges and that you have never seen the patient “Mary Brown.” Also, prescriptions for “Mary Brown” were only filled on days when the relief pharmacist was on duty.

Subsequently, the pharmacist was convicted of fraudulently obtaining a controlled substance. At trial, the technician testified that he was told by the defendant pharmacist not to handle any prescriptions for “Mary Brown,” and that he had never seen the patient at the drive up window, contrary to assertions by the defendant. Other witnesses testified that the defendant was the only pharmacist to ever fill prescriptions for “Mary Brown.” The State produced a witness named Mary Brown, who had once lived at the address on the prescriptions in question, whose middle initial and birth date matched those on the questioned prescriptions, and who testified that during the relevant time period, she was living in another state and never received prescriptions at that location where the defendant worked. She also testified that she had never given anyone permission to pick up prescriptions for her. The prescriber listed on the prescriptions testified that he did not have a patient named “Mary Brown” and that he would not have prescribed the hydrocodone products in the doses listed on the prescriptions, which were excessive, and that he never issued the prescriptions in question.

This case is based loosely on a case reported in the American Society for Pharmacy Law’s online e-news of August, 2011.<sup>11</sup> The technician reported the pharmacist and it was

discovered that the pharmacist was obtaining the controlled substances by fraud. Thus, the pharmacy technician behaved ethically in supporting honesty and exposed without fear or favor the potentially illegal conduct in the pharmacy profession.

### *Ethics Case Number Four*

You work in a large medical center where there are multiple hospitals. The hospital that you work in is a world renowned cancer center. There is a lot of research in the facility and there is a lot of standard treatment, including expensive chemotherapy agents and colony stimulating factors.

One day at lunch, you are sitting at a table with a group of six pharmacy technicians in the cafeteria. The technician sitting next to you has brought his lunch in a zippered blue nylon cooler bag. As he opens the lunch bag, you see a box of epoietin alfa injection vials in the lunch cooler bag. This seems odd, but you assume that he had been stocking the automated refrigerator cabinet at the nurse’s station just before lunch and they probably forgot to put it back when they got to the pharmacy.

The following week, you meet the same people at lunch and the person sitting next to you is different, but you notice that there is a box of epoietin alfa injection in his lunch sack. Neither one of the technicians has had any narcotics or controlled substances, just the box of injections that stimulate red blood cell production. You know that the hospital uses a lot of this drug since many patients get anemic. It seems odd that you have spotted two different technician friends with the drug in their lunch containers, but you do not want to “tattle tale” on your friends. Are you being disrespectful of your colleagues if you tell someone? Could there be anything illegal going on? Are you afraid of exposing someone who may be doing something illegal or unethical?

After a couple of days of worrying about it, you decide to go to the pharmacist supervisor and describe what you have seen. It is extremely difficult to do something like this, but as Winston Churchill said: “A man does what he must – in spite of personal consequences, in spite of obstacles and dangers and pressures – and that is the basis of all human morality.”<sup>1</sup>

An undercover investigation based on your tip uncovers a theft ring in the pharmacy where several technicians were

recruited by a former pharmacist at the hospital to steal the epoetin alfa and other expensive drugs. The pharmacist would then sell the drugs on the “gray market,” which were then sold to pharmacies on the west coast and to body builders.

All of the persons involved were arrested, tried and convicted. The pharmacist had several hundred thousand dollars in cash on hand and the total estimated loss of drugs at the facility was in the millions of dollars in value. Unfortunately for some of the technicians, their futures were destroyed. One was a pre-law student who would never be able to get into law school after this incident, much less be admitted to the bar to practice law. Another was a pre-pharmacy student who also would not be able to get into pharmacy school or ever be able to practice pharmacy. An unfortunate side effect of this theft ring was that the pharmacy department’s leader had to take responsibility for the millions of dollars in losses and was asked to resign.

This case study is also based upon a case that did actually occur.

### *Ethics Case Number Five*

A pharmacist in charge at a chain grocery store pharmacy gets a visit from the “loss prevention department” personnel who inform the pharmacist that there is a problem with loss of controlled substances in his pharmacy. They want to come back the following week after the store closes and install security cameras in the pharmacy department without telling anyone who works in the pharmacy about it. The pharmacist in charge is very upset that this may be going on in his pharmacy, and he insists that the security cameras be installed that very night.

He makes arrangements with the store director to have the loss prevention people come in at midnight and enter the pharmacy and install the security cameras.

Several days of taping go by with no one doing anything unusual on tape. Then, on a Saturday, one of the technicians comes in to visit the pharmacy with her 10 month old baby. She has recently been promoted out of the pharmacy department into the corporate offices. The pharmacist in charge had hired her after she had just graduated from high school and had helped train her as well as helped her get the corporate office job. He remembered that a pharmacist that he had worked for in high school had mentored him and he wanted to do the same for someone else.

She placed the baby on the front counter and while everyone was looking at the baby and playing with her, the technician mother was caught on tape walking around the pharmacy picking bottles of controlled substances off the shelves and dropping them into the diaper bag she had over her shoulder.

The pharmacist was devastated to learn that the young woman whom he had mentored had been stealing controlled substances from his pharmacy. When she was confronted and asked why she was doing this, she said that someone had found out she was a pharmacy technician. They had offered her \$100 to bring them a bottle of 100 lorazepam. She did it since she said she really needed the money. Then, they came back and asked for more. Then they asked for different drugs. She continued to do it and always told herself, “This will be the last time.” Was her behavior ethical? She told herself the first time that it was the right thing to do since she needed the money. What other unethical behavior did she exhibit?

Another technician who worked in the same pharmacy said, “She always had extra money. I thought that it was odd since she had a baby and that usually takes a lot of money.” However, this technician did not either put it together or was afraid of the consequences of telling the pharmacist in charge of her observations/concerns.

The technician mother was arrested and prosecuted. She lost her corporate job and her ability to work as a pharmacy technician. The pharmacist was then taken before the Board of Pharmacy for “failure to prevent theft of controlled substances” and his license was sanctioned. This case study is also based upon a case that did actually occur.

Unfortunately, in both of these last two cases, the unethical/illegal behavior of the person(s) involved had negative consequences on another person who was not involved in the unethical/illegal behavior.

### *Ethics Case Number Six*

This case is taken from the American Society for Pharmacy Law June 2012 e-news.<sup>12</sup>

The Louisiana Board of Pharmacy disciplined a pharmacist after it became aware that his pharmacy in a town of 1,500 persons had become the third largest dispenser of oxycodone in Louisiana. It was revealed that most of the prescriptions filled were for persons from Houston, Texas, some 375

miles away. The Board of Pharmacy found that the pharmacist knew or should have known these prescriptions were not for a legitimate purpose, and indefinitely suspended his license with no right of application for reinstatement for 10 years, suspended the pharmacy's permit for 5 years and ordered the pharmacist to pay a fine of \$15 per inappropriate Texas prescription (\$45,720) and the pharmacy to pay a \$35 fine per prescription (\$106,680). On appeal, the district court upheld the Board, and on further appeal, the Court of appeals agreed. [Tewelde et al. v. Louisiana Board of Pharmacy, No. 2011 CA 2244, La. App., 1st Cir., 2012 La. App. LEXIS 864, June 14, 2012]<sup>12</sup>

Did the pharmacist behave ethically in filling prescriptions for oxycodone for patients from over 375 miles away? The code of ethics for pharmacists states:

A pharmacist has a duty to tell the truth and to act with conviction of conscience. A pharmacist avoids discriminatory practices, behavior, or work conditions that impair professional judgment, and actions that compromise dedication to the best interests of patients.<sup>9</sup>

Did his actions (filling oxycodone prescriptions from Houston, Texas) compromise dedication to the best interests of patients? If you were a technician employed by this pharmacist, what would you do? If you report him, then you risk losing your job either immediately by being fired by him or later when the store is closed by the Board of Pharmacy. Do you just resign, get another job and forget about it?

As noted earlier:

A pharmacy technician supports and promotes honesty and integrity in the profession, which includes a duty to observe the law, maintain the highest moral and ethical conduct at all times and uphold the ethical principles of the profession.<sup>8</sup>

Also:

A pharmacy technician does not engage in any activity that will discredit the profession and will expose, without fear or favor, illegal or unethical conduct of the profession.<sup>8</sup>

## *Ethics Case Number Seven*

You work in an outpatient pharmacy with a pharmacist who has strong religious beliefs and moral convictions about abortion and birth control. He believes that life begins at conception. The beliefs are sincere and are based upon his religious convictions.

A young lady comes into the pharmacy and presents a prescription for birth control pills. She is unmarried and is seeking the birth control pills as a form of contraception. The pharmacist refuses to fill the prescription and gives it back to the young lady. She asks why and the pharmacist explains his beliefs and that birth control pills prevent implantation of a fertilized egg. Thus, oral contraceptives would contribute to the death of a fetus and he cannot fill the prescription because of his beliefs.

What ethical issues are presented in this scenario? Look again at the code of ethics for pharmacists. Especially:

**A pharmacist respects the covenantal relationship between the patient and the pharmacist.**

Considering the patient-pharmacist relationship as a covenant means that a pharmacist has moral obligations in response to the gift of trust received from society. In return for this gift, a pharmacist promises to help individuals achieve optimum benefit from their medications, to be committed to their welfare, and to maintain their trust.<sup>9</sup>

Also:

**A pharmacist serves individual, community and societal needs.**

The primary obligation of a pharmacist is to individual patients. However, the obligations of a pharmacist may at times extend beyond the individual to the community and society. In these situations, the pharmacist recognizes the responsibilities that accompany these obligations and acts accordingly.<sup>9</sup>

If the pharmacist refuses to fill the prescription, then the patient may become pregnant, and the pharmacist has subrogated the patient to his beliefs. The community and society certainly is divided on the "life begins at conception" issue. This is something that will continue to be debated. However, does the pharmacist have a right to be a conscientious objector? Most of society believes that a healthcare provider

has a right to NOT participate in an abortion if it violates their beliefs. What about birth control in the form of oral contraceptives? Could this situation be handled more ethically if the pharmacist referred the patient to another pharmacy or had a different pharmacist at the pharmacy fill the prescription for oral contraceptives?

This is another case that is based loosely on one that actually did occur. The pharmacist was reprimanded by the Board of Pharmacy and they placed practice conditions on his license for refusing to dispense oral contraceptives or to transfer refill information for oral contraceptives to other pharmacies at the patient's request. The pharmacist took the case to district court, where he lost and also to the Court of Appeals which affirmed the lower court's ruling that upheld the Board of Pharmacy. A brief synopsis of the case appears in the *Pharma-Law e-news* of May, 2008.<sup>13</sup> If you as a pharmacy technician have the same beliefs as the pharmacist, what do you do when you are presented with a prescription for oral contraceptives? In the United States, you must follow the law.

Health provider "refusal clauses" are also known as "conscience clauses."<sup>14</sup> Colorado, Florida, Illinois, Maine and Tennessee have broad refusal clauses that do not specifically mention pharmacists. Arizona, Arkansas, Georgia, Idaho, Mississippi and South Dakota have passed laws allowing a pharmacist to refuse to dispense emergency contraception drugs. Emergency contraception is used to prevent a pregnancy and refers to several different types of birth control pills that are used in increased doses within seventy two hours of unprotected intercourse and are not the same thing as mifepristone or RU-486 which is sometimes referred to as non-surgical abortion. California law states that the pharmacist has a duty to dispense prescriptions and can only refuse to dispense a prescription including contraceptives, when their employer approves the refusal and the woman can still access her prescription in a timely manner. New Jersey law prohibits pharmacists from refusing to fill prescriptions solely on moral, religious or ethical grounds.<sup>14</sup>

In some states, legislators are introducing bills that would explicitly grant pharmacists/pharmacies the right to refuse to dispense drugs related to contraception on moral grounds. Other states have or are introducing legislation that would require pharmacies to fill any legal prescription for birth control. You need to be aware of the status of the law in your state.

## HIPAA

Now let us review another of the two main issues for this module: HIPAA.

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996. It is officially Public Law 104-191 from the 104th Congress. This law deals with several issues, but for our purposes, we will examine the health information privacy part of the law. This is codified in the US Codes at: **45 USC § 1302d-6** "Wrongful disclosure of individually identifiable information."

**45 CFR § 160.103 Definitions: 'Health Information'**<sup>15</sup> is defined in the law as any information, whether oral or recorded in any form or medium, that (A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**45 USC § 1302d-6** describes "wrongful disclosure of individually identifiable health information."<sup>16</sup> It states that a person who knowingly and in violation of this part obtains individually identifiable health information relating to an individual; or discloses individually identifiable health information to another person, shall be punished... The penalties include: (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both; (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.

There are several situations in which protected health information may be reviewed without the consent of the patient.<sup>17</sup> These include "required disclosures" and "permitted uses and disclosures" which we will discuss later.

Many states also have passed laws that protect the privacy of an individual's health, financial, and other personal information. Some of these laws are stricter than HIPAA and the general rule is to follow the stricter law.

## California Case

The following case was settled July 5, 2011.<sup>18</sup> Employees of the University of California at Los Angeles Medical Center repeatedly and without a permissible reason examined the electronic protected health information of patients. This occurred during the period of 2005-2008.

The health center did not document the provision of privacy and security rule training for all members of its workforce from 2005-2008. In addition, the health center failed to apply appropriate sanctions and/or document sanctions on workforce members who impermissibly examined electronic protected health information and they failed to implement security measures sufficient to reduce the risks of impermissible access to electronic protected health information by unauthorized users to a reasonable and appropriate level.

In the settlement agreement, the health center agreed to pay the U.S. Department of Health and Human Services \$865,000 via electronic funds transfer to resolve the case.

The California Department of Health Services released a report concerning this case in May 2008.<sup>19</sup> The report revealed that the case involved unauthorized access to medical records of celebrities. The number of staff members who had been connected with unauthorized access to celebrity patient medical records had reached 68.<sup>19</sup> There were 53 staffers who had inappropriate access to Britney Spears' medical records and 15 who inappropriately accessed Farrah Fawcett's records over 100 times between July 2006 and May 2007. Included in this report were three physicians, three registered nurses and two outside contractors.

The health center had to pay almost a million dollars to settle the case of employees who impermissibly looked at protected health information. This law is certainly one that should keep any person who knows about the penalties from impermissibly obtaining protected health information.

## Indiana Case

Indiana is one of the State Legislatures that have also passed laws that help ensure the privacy of individual's health, financial and other personal information.

The following Indiana case was settled in July 2011.<sup>20</sup> WellPoint, Inc. agreed to pay \$100,000 to the State of Indiana to settle claims over breaches of consumer data security arising

from an unsecured web site.<sup>20</sup> The data breach occurred when over 32,000 individuals applied for insurance on line through the web site. The web site did not secure social security numbers, financial information and health information. A consumer notified WellPoint on February 22, 2010, and again on March 8, 2010, that consumers' data was potentially accessible on the web site. WellPoint fixed the security problem as soon as they were notified. The law required WellPoint to immediately notify the attorney general, but it did not do so. The attorney general's office discovered the security breach from the news reports in June of 2010, and notified WellPoint that they were in violation of the law. The State of Indiana filed suit in October 2010 and the case settled in July 2011.

## Understanding Impermissible

The word "impermissible" is important to understand with respect to HIPAA. It is defined as that which is not permissible and is better described by synonyms or words that mean something similar. Those synonyms are "banned," "barred," "forbidden," and "prohibited." The person who looks at protected health information must have a genuine need or reason to look at it. As a technician, you are permitted to look at the patient profile of a person for whom you are entering a new prescription into the computer. You are not permitted to randomly look at the patient profile of other patients unless you have a legitimate reason to do so. The legitimate reason is for you to perform the duties that are within your job as a pharmacy technician.

An example would be that, if presented with a prescription for Mr. Johnson, you can look at the profile of Mr. Johnson. You cannot, however, look at the profile of Mrs. Johnson or any of the children without a good reason. If Mr. Johnson states when he presents his prescription that his wife asked him to order a refill of her oral contraceptives, then you have a legitimate reason to look at her profile. You cannot disclose anything on her profile to him unless she has given permission for the pharmacy to do so.

## Privacy Rules of HIPAA

Laws are passed by Congress or the state legislature in which you reside. However, laws are typically very broad and often the agency that is charged with implementing the law is required to write the rules or regulations which get into the details of what the law covers. The rules for HIPAA are

codified in 42 CFR Part 160 and Part 164. A summary of the HIPAA Privacy Rule can be found at the U.S. Department of Health & Human Services (HHS) website at [www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html](http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html).

The HIPAA Privacy Rules establish a foundation of federally-protected rights which permit individuals to control certain uses and disclosures of their protected health information. It also provides individuals with the ability to access and amend this information and the right to an accounting of certain disclosures.<sup>17</sup>

A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected health information may be used or disclosed. An individual's protected health information may be used or disclosed according to what the Privacy Rule permits or requires, or if **the individual who is the subject of the information (or the individual's personal representative) authorizes it in writing.** That is why when you are asked to provide a copy of the patient's profile to a spouse or someone other than that patient, it is only allowed if the patient has signed a written authorization allowing you to do so. In other words, a spouse cannot request a copy of the other spouse's profile without giving you a signed, written authorization to do so.

There are numerous anecdotes about an attorney or spouse who requested a copy of a person's profile. Unknown to the pharmacist or pharmacy technician, they intended to use the records in a divorce proceeding against the other spouse. I was contacted by a pharmacist friend who said he had just received a "subpoena duces tecum" to produce the patient profile of a patient who used his pharmacy. He asked me if he had to obey it. After I asked a few more questions, it sounded like an attorney for the patient's spouse was trying to get the information. I went online and looked up the case pending through the courthouse records. I was able to find the attorney representing the patient in the divorce and called them and told them about this "fishing expedition" by the attorney on the other side. The patient's attorney thanked me and said that they would contact the other attorney and possibly get a protective order from the court. The patient's attorney had objected to providing the patient profile through the normal discovery process and the other attorney was trying to get around that objection. Technicians working in a community pharmacy are often the first person to interact with someone requesting a copy of the pharmacy records. The pharmacy should have written policies and procedures to follow concerning the release of records and should not leave it up to the discretion of the

person who receives the request. Also, it would be prudent to retain legal counsel if the pharmacy or the personnel are unsure of what to do when presented with a "subpoena."

Another example of needing a signed authorization is in one's legal practice. An attorney must have a legal client sign a written authorization allowing the attorney to have a copy of an evaluation by a physician or other healthcare professional that has been required by the Board of Pharmacy. As an attorney, I need that information to adequately represent them, but I cannot get it unless the healthcare provider or entity that has the records receives a written authorization signed by the individual who is the subject of that health information allowing me to get the information. I cannot just say, "Well, I am his attorney and I need that information."

### *Privacy and the "personal representative"*

Another quick issue to discuss is the "personal representative."<sup>21</sup> What if the individual cannot legally exercise their rights or is otherwise incapable of exercising their rights under the Privacy Rule? What if the individual simply chooses to designate another person to act on their behalf with respect to their rights under the Privacy Rule? A person authorized under state or other applicable law to act on behalf of the individual in making health care related decisions is the individual's "personal representative."

If the individual is an adult, the "personal representative" is a person with the **legal authority** to make healthcare decisions on behalf of the individual. That is usually accomplished by the individual signing a **power of attorney for healthcare** allowing the other person to make healthcare decisions. If the individual is a minor child, the "personal representative" is a parent, guardian, or other person with **legal authority** to make healthcare decisions on behalf of the minor child. This can get complicated in divorce situations as to who has the legal authority to make healthcare decisions. Finally, if the individual is deceased, the "personal representative" is the person with **legal authority** to act on behalf of the decedent or the estate. This usually is the "executor," or "administrator," who is court appointed. It is best to have the pharmacy use written policies and procedures when an individual requests protected healthcare information if it is not for himself. There are some exceptions to the rules, so if in doubt, it is best to get legal advice if you have any questions.

## *Rules for Disclosure*

There are only two situations that “require” disclosures. The first applies to individuals (or their personal representatives) when they request access to, or an accounting of, disclosures of their protected health information. The second applies to the U.S. Department of Health and Human Services when it is undertaking a compliance investigation or review or enforcement action.

“Permitted uses and disclosures”<sup>17</sup> allow (but do not require) a covered entity to use and disclose protected health information without an individual’s authorization. These permitted uses and disclosures include: (1) to the individual (unless required for access or accounting of disclosures); (2) for treatment, payment, and healthcare operations; (3) an opportunity to agree or object; (4) incident to an otherwise permitted use and disclosure; (5) public interest and benefit activities; and (6) limited data set for the purposes of research, public health or healthcare operations. Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

A covered entity such as a pharmacy has a duty to train its healthcare personnel on the Privacy Rules. This training also needs to be documented.

## *Reporting*

The Office for Civil Rights (OCR), which is a subdivision of the U.S. Department of Health and Human Services (HHS), has been designated as the official part of the HHS that has the responsibility for handling complaints of violations of the Privacy Rule. The OCR has ten regional offices and the complaint should be sent to the regional office for your state.<sup>22</sup>

Let us look at some cases where the HIPAA Privacy Rule plays a role.

## **HIPAA Case Scenarios**

### *HIPAA Case Number One*

A local musician who plays in a well known band frequently comes in to the local pharmacy chain store where

you work in the prescription department. He is a really distinctive looking fellow and usually some of the store clerks recognize him. At times, the clerks mention to you during break that they saw him in the store.

There are several technicians who work in the pharmacy department, so after one of your breaks, you go back into the pharmacy and mention out loud that Jimmy S, the musician, was in the front of the store today. The pharmacist says, “Really? I did not see him.” The other technician just says, “How awesome! I love his band and we went to see them last Saturday night.”

About that time, several patients appear to have prescriptions filled, so everyone gets back to work. It becomes hectic with the usual five o’clock rush and you forget about Jimmy S.

Everyone finally gets to have a dinner break and things slow down. There are no patients waiting and you have time to walk through the stock shelves and punch in your order. You notice when you go to the front counter to re-order the fast moving stock that the other technician is on the computer and the pharmacist is doing some paperwork. You happen to notice that the computer screen has Jimmy S’s profile on it.

What do you do? What HIPAA violations could be occurring? What ethical issues are there?

You do not want to cause trouble. On the other hand, you know in the pit of your stomach that the other technician has no legitimate reason to have the profile of Jimmy S on the computer screen.

You do not want to be known as a “rat,” so you approach the technician out of the hearing of the pharmacist that he should not be looking at Jimmy S’s profile. The other technician says, “I just wanted to see if he had any prescriptions with us. I didn’t mean any harm.” You say OK and get back to ordering.

About a week later, Jimmy S comes in to the store and presents a prescription to you at the pharmacy. You think, “How cool! I am waiting on him and most of my friends would be so envious to know that I had actually talked to him.” You process the prescription in the computer, pull the medications and the pharmacist finishes the prescription filling. Then the pharmacist counsels Jimmy S about the medication.

After he leaves, you say to the pharmacist loud enough for the other pharmacists and technicians to hear: “Didn’t you know that was Jimmy S, the fabulous musician?” The pharmacist replies, “No, I did not know he was a musician. I was treating him like all the other patients we get when I was counseling him.”

A couple of the other technicians pick up on the conversation and start talking about the music the band plays and when/where they will play next. After a while, things settle down and everyone gets back to work.

You notice one of the other technicians looking at Jimmy S’s profile and think, “Oh, no, here we go again.” You again do not want to be a “rat,” so you quietly say, “You should not be looking at his profile, it is a violation of the HIPAA Privacy Rule.” This technician gets insulted by your remark and says, “I am a technician here just like you are and I have just as much of a right to look at his profile as you do!”

What do you do? Does the other technician have a right to look at Jimmy S’s profile just like you did?

The pharmacist in charge overhears this interchange and says out loud to everyone: “I think we need to have refresher training on HIPAA privacy.” The pharmacist in charge sets up a mandatory meeting next week on Thursday for all the pharmacy personnel and you think, “Good. Now I won’t have to feel like I am the ‘bad guy’ who has to remind everyone about the Privacy Rules.”

On Saturday night, you attend a concert where Jimmy S’s band is playing. A friend of yours who has an internet blog comes up and you start talking. You casually mention that you have seen Jimmy S in the store where you work and the friend is impressed. After a while, the friend says, “I would pay for any ‘insider information’ you could give me about Jimmy S for my blog.”

What do you do? Remember the code of ethics for pharmacy technicians states:

A pharmacy technician respects and supports the patient’s individuality, dignity and confidentiality.<sup>8</sup>

You say, “That’s illegal! You could not make me an offer that was big enough to get me to do that.” You are floored when he offers you \$500 for some good information.

What do you do? You finally stutter, “No, thanks, I’ll see you around” and walk off.

Later in the evening during the second set, a couple of your co-worker technicians show up for the concert. You see your friend, the blogger, approach some of them and think, “Oh, no, he is at it again.” Since you have to work the opening shift at the pharmacy the next day, you leave towards the end of the second set and head home.

The next day at the pharmacy is not that busy since Sunday mornings are usually slow. As the day wears on, the pace picks up and the second technician comes in just before noon. That technician looks tired, and you say, “Did you party last night or what?” He says, “Yeah, I went to the concert last night.” You reply, “I did not see you there.” And he says, “I got there late, but it was worth it, the band was awesome.” Some customers come in and you both get busy. Sunday ends without an incident, and you are off work on Monday.

Tuesday, you work the late shift. You decide to look at the blog that your friend has before you go to work. You read that Jimmy S is having some serious health problems since he is being treated for hepatitis C. You get very upset since the prescription you entered in to the computer for him was for an anti-viral medication and you think that now you will be blamed for leaking this information.

What do you do? Do you just keep your mouth shut and hope no one else from the pharmacy sees the blog? Do you tell your boss, the pharmacist in charge? What HIPAA issues are involved in this situation?

After agonizing about it, you finally decide to call the pharmacist in charge and tell what you found on the blog. You also say, “I did not reveal this.”

Should you tell the pharmacist in charge more? If so what do you say?

The pharmacist in charge is pretty upset with this news because they know that the penalties could fall under the most severe that the law allows: (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.<sup>16</sup>

The pharmacist in charge calls the legal department for the company and explains: “We have a problem. I believe that someone in this pharmacy leaked some protected health information about a well known local musician.”

An investigation is opened and the legal department notifies Jimmy S that an employee of the pharmacy may have leaked some personal health information about him to a blogger.

You can decide the ending to this story for yourself. Several paths could be followed, but the most important issue is that EVERYONE in the pharmacy department needs to be given the refresher course on privacy and that this is documented. If the company does not have policies for disciplining an employee who violates the Privacy Rules, they should be written and discipline should be documented.

Since the penalties for violating a person’s right to privacy of their protected health information are so severe, many companies have a zero tolerance for such activity and the violator is terminated.

### *HIPAA Case Number Two*

You are a 52-year-old person who goes to your internist for a check-up. About a year ago, you had complained to the internist that you had some persistent hoarseness. You sing in the church choir and it had affected your voice. You also told the internist that you felt like you constantly needed to clear your throat. The internist examined you and said, “I believe you may have GERD (Gastroesophageal Reflux Disease). You are given some samples for a Proton Pump Inhibitor (PPI) and a prescription to fill later if you get relief from the samples. The internist also states that you need to go have the Ear Nose and Throat (ENT) doctor look at your throat.

The samples work great, so you fill the prescription and when the first bottle with a month supply runs out, you request a refill. You decide that since the medication is working, you do not want to spend the time and money to go to the ENT physician. The pharmacy faxes the request to your doctor’s office and they authorize a refill. This is repeated until a year has passed and the doctor’s office refuses the refill saying you need to come in for a check-up.

Now that you are in the doctor’s office, the internist asks how the medication is working and you reply, “Great.” Next you are asked if you went to the ENT doctor because they do not have a report in your chart. You say that you decided

not to go since you did not seem to find the time and you did not want to spend the extra money to do so. The internist becomes very stern with you and insists that you follow up with the ENT physician.

You grudgingly set up an appointment with the ENT doctor and go to see him. When you mention to the doctor that you came because your internist really got on to you about having your throat checked, the ENT physician replies: “I will tell you why your internist got upset with you. I will tell you something about his medical history because I have asked your internist for permission to do so and he has granted me that permission. Your internist has had laryngeal cancer. The only risk factor that he had was GERD. He did not smoke or have any other risk factors. That is why he gets upset with patients who do not follow up with me to have their throat checked.”

You feel pretty stupid now that you know the reason and reply, “Oh, I see, I did not realize it was that important.”

This scenario is based on an actual incident that an ENT physician has experienced more than one time. After the first patient came in complaining that their internist had been rather abrupt about getting their throat checked, he asked permission of the internist to divulge that he had laryngeal cancer, and the internist replied in writing, “You have permission to tell patients about my cancer and the GERD.” He could not have ethically revealed this without the internist’s permission and would have otherwise been in violation of the HIPAA privacy rules.

### *HIPAA Case Number Three*

This case is also based loosely upon an actual case.

A psychiatrist had seen a patient who requested that he write a letter to the local housing authority explaining that he needed to pay a reduced rent. The patient said he was purchasing some expensive supplements because they seemed to help his mental issues and did not have enough monthly income to pay the full rent. The psychiatrist had him sign an authorization allowing him to release his mental health information to the housing authority and the psychiatrist wrote the letter and sent it to the housing authority.

About a year later, the patient came back and said, I am having trouble with the housing authority, can you talk to them? The psychiatrist said, “Yes.” After the patient left, the

psychiatrist called the housing authority. The psychiatrist documented in a progress note that the patient had asked him to call the housing authority. The person he talked to asked if the supplements had been prescribed, and the psychiatrist replied truthfully, “No, the patient asked me to write a letter and he has told me that he does much better when he takes the supplements.” The psychiatrist checked his files and found that the authorization he had on file was a couple of days out of date. When he discovered this, the psychiatrist prepared a new authorization and called the patient to come in and sign the document. The patient refused to do so and reported the psychiatrist to the Board of Medical Examiners since the psychiatrist would not lie and tell the housing authority that the supplements were prescribed.

After the incident was reported, an investigator from the Board of Medical Examiners wrote a letter to the psychiatrist requesting information. The psychiatrist obtained legal representation and wrote up a synopsis of the events. Information was presented to the Board of Medical Examiners that the psychiatrist had acted in good faith on the verbal request of the patient to talk to the housing authority, but when he checked, the written authorization was out of date. The psychiatrist stated he had asked the patient to come in and sign a new authorization but the patient had refused. In addition, the patient had asked the psychiatrist to tell the housing authority that the supplements were prescribed even though they were not prescribed. Finally, the psychiatrist stated that he thought that the patient was acting in a retaliatory manner because the psychiatrist would not tell the housing authority that the supplements had been prescribed.

The investigator looked at the authorizations and the dates and documentation in the file and concluded that the psychiatrist had acted ethically and in good faith and that the Board would not proceed with any disciplinary action.

Technically, because the written authorization was out of date, the psychiatrist could have been in violation of HIPAA. The documentation that the psychiatrist had provided of the dates and details of the incident helped him to not be further subjected to disciplinary action. The facts of this case turn out well for the psychiatrist, but should teach us all a lesson: Check the written authorization dates **BEFORE** you release any information. In addition, the psychiatrist added that the lesson he learned was to **DOCUMENT** any verbal authorizations **AT THE TIME**. He had documented a verbal authorization in the progress notes when the patient requested that he contact the housing authority on his behalf.

## *HIPAA Case Number Four*

You work in a teaching hospital in a large metropolitan area.

You are a pharmacy technician who has worked there for about two years. You have been trained in pretty much every area of responsibility that the technicians have.

As of the last two weeks, you have been assigned to doing the filling of the automated dispensing cabinets on the nursing units. You currently work the day shift and upon arriving on the floor of the intensive care unit, you recognize someone in the visitor’s waiting area. It is the neighbor of your parents. You grew up going to their house for visits and lunches. Although you have not lived with your parents for the last three years, you fondly remember the neighbor and the family.

The neighbor recognizes you and calls out your name. She gives you a hug and says, “What are you doing here? You look really good.” You say, “I work in the hospital as a pharmacy technician now. What are you doing here?”

She gets a funny look on her face and tells you that her oldest daughter is in the intensive care unit. You can tell that she is upset, so you say, “I am so sorry to hear that, is there anything I can do for you?” She shakes her head, murmurs, “No,” and gets tears in her eyes. You do not know what to do, so you tell her that you need to get back to work and that you would like to buy her a cup of coffee in the cafeteria when you have your next break. You say, “I will meet you down in the cafeteria at 10:30.” She does not say that she will meet you there, but she does not decline your offer.

You go on in and re-stock the automated dispensing machine. It is driving you crazy to know that her daughter is in the unit, so you walk around and notice the bed she is in. She is obviously comatose and has tubes and IV lines so you know that her condition is serious. Then, you head to the next nursing unit you need to re-stock.

After you complete the re-stocking of the units, you go back to the main pharmacy and decide to pull up her profile on the computer. After taking a look, you see that she has a diagnosis of overdose of prescription and illegal drugs. Now, you look at your watch and see it is 10:15 am, so you close out the profile and finish your paperwork. At 10:25 am, you head to the cafeteria and get some coffee and a cinnamon roll. You wait, and several of your friends come in and sit with you to chat during their break. The neighbor does not come to the cafeteria and you are disappointed because you

would like to tell her that her daughter will make it since the doctor's notes say that her prognosis is very good.

What violations of the HIPAA Privacy Rules have occurred? Did you behave ethically?

You decide to go back up to the ICU waiting area after lunch and you see your parents' neighbor. She is sitting there with a blank look on her face, so you say, "I thought you were coming for coffee this morning in the cafeteria. I waited for you, but did not see you." She says, "Oh, I forgot you had asked. The visiting hours were 10:45 to 11:15 am and I guess I was just thinking of going in to see my daughter." You say, "How is she doing?" and she replies, "I don't know, I was so upset when I went in there and saw her that I cannot remember a thing they said." You say, "Come on, let's go down to the cafeteria and find a quiet place to talk. I have a break coming up." It is also another hour before the next visiting period.

You go down the elevator together and find a table in the corner. The neighbor tells you that she got a call this morning from the Emergency Room saying that her daughter had been found unconscious on the floor of the bathroom when the cleaning lady came into her house. She says she is worried that she has had a stroke.

You know otherwise. What do you do? What do you say?

If you tell her what you know, you will certainly be violating the HIPAA Privacy Rules again by revealing protected health information without authorization.

You finally tell her that you will be there if she needs someone to talk to and give her your cell phone number. You also say, "I know that your daughter is in good hands. The ICU staff is wonderful and I am sure that she will be all right."

You say goodbye and head back to work. When you get off, you call your mother and tell her that you saw the neighbor at the hospital today. When she asks, "What was she doing there?" – what do you say?

Should you tell your mother all about it since she cares deeply for the whole family?

What does HIPAA have to do with this anyway? It is a matter of love and respect for your neighbor. You know that your mother would want to help and would probably get in the car and go to the hospital to console her neighbor.

You tell her that she was there to see somebody and leave it at that. It makes you frustrated to have to be vague, but you know that you cannot "tell all" because that would reveal that you had violated the HIPAA Privacy Rules by looking at her records and it would be a second violation to then tell her what you found.

If you even tell your mother that the daughter is in the hospital, that is a violation of the daughter's protected health information.

The next day, you head up to the ICU, and low and behold, your mother is sitting in the waiting area with her neighbor. You breathe a deep sigh of relief because you know that your mom can "be there" for the neighbor.

You walk in and say, "Hi." When they see you, your mom tells you that the neighbor called her last night and told her that the daughter was in the ICU. She asks you, "Why didn't you tell me that she was here to see her daughter?" What do you say?

You finally explain to your mom and the neighbor that HIPAA Privacy Rules prohibit you from saying ANYTHING about hospitalized patients. In addition, you explain that the hospital has a very strict policy about it and that you could possibly lose your job. They both look at you with amazement and your mother says, "I did not know it was that serious."

If your supervisors find out about your unauthorized access of the daughter's records, you could be disciplined. Do you say anything?

### *Other HIPAA Scenarios*

I was in the hospital in June of 2012 for back surgery. The day after surgery one of the deacons of my church and a staff member who is a friend came to see me. It was a boost to me to have them visit, but was it a violation of the HIPAA Privacy Rules when the hospital told them in what room I was staying?

The U.S. Department of Health & Human Services (HHS) through the Office of Civil Rights has published some "Frequently Asked Questions" (FAQ). One of these FAQs addresses the question of, "Are hospitals able to inform the clergy about parishioners in the hospital?"<sup>23</sup>

The answer is yes. The HIPAA Privacy Rule allows this communication to occur, as long as the patient has been informed of this use and disclosure, and does not object. A hospital or other covered health care provider may maintain a directory of the following information about an individual: the individual's name; the location in the facility; health condition expressed in general terms; and religious affiliation.

The hospital may disclose the names of patients affiliated with for example, the Methodist church to a Methodist minister unless a patient has restricted such disclosure. Directory Information may be disclosed except for religious affiliation to other persons who ask for the individual patient by name.

If the patient is incapacitated or is there due to an emergency, and has not been provided an opportunity to agree or object to being included in the facility's directory, these disclosures may still occur, if such disclosure is consistent with any known prior expressed preference of the individual and the disclosure is in the best interest as determined in the professional judgment of the provider.

A very recent high dollar HIPAA case was reported in the American Association for Justice (AAJ) News Brief on September 18, 2012.<sup>24</sup> The HHS Office for Civil Rights announced that Boston based Massachusetts Eye and Ear Infirmary (MEEI) and its affiliated physician group, Massachusetts Eye and Ear Associates agreed to pay \$1.5 million to settle a HIPAA security-rule violation case. The Office for Civil Rights alleged that in 2010, the MEEI and the affiliated group "not only failed to secure data" on a laptop storing "3,621 patient records" but also "failed to comply with several other HIPAA security-rule requirements, including performing 'a thorough analysis of the risk to the confidentiality' of individually identifiable patient information." Under the resolution agreement, the organization must pay the settlement in three equal installments beginning October 15, 2012. In addition, the settlement also "requires MEEI to take corrective action to improve policies and procedures to safeguard the privacy and security of its patients' protected health information."

## Conclusion

Ethics and HIPAA are important areas that pharmacy technicians and other health professionals need to be aware of. Ethical behavior is not tied to feelings, religious

beliefs, or what society says, but remember the definition: (1) the discipline dealing with what is good and bad and with moral duty and obligation; (2) [a] a set of moral principles: a theory or system of moral values; [b] the principles of conduct governing an individual or group –as in professional ethics; [c] a guiding philosophy; [d] a consciousness of moral importance; (3) a set of moral issues or aspects {as rightness}.<sup>7</sup>

Also remember the Code of Ethics of the American Association of Pharmacy Technicians. This Code is nothing new. It was approved by the AAPT Board of Directors in 1996. Thus, standards or the principles of conduct governing pharmacy technicians have been in place for the last 16 years.

Finally, as pharmacy technicians and other professionals, we need to consider the Health Insurance Portability and Accountability Act, especially the Privacy Rules. Pharmacy technicians have access to protected health information and must only access it in the course of their duties. You also cannot divulge any information without written consent.

HIPAA Privacy Rules put into law some of the ethical principles that pharmacy technicians have in their code of ethics:

A pharmacy technician respects and supports the patient's individuality, dignity and confidentiality.<sup>8</sup>

A pharmacy technician respects the confidentiality of a patient's records and discloses pertinent information only with proper authorization.<sup>8</sup>

It is often difficult for someone to "... do what he must – in spite of personal consequences, in spite of obstacles and dangers and pressures..."<sup>1</sup> but as health care professionals, pharmacy technicians need to keep that quote in the back of their minds at all times. ■

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# SELF ASSESSMENT QUESTIONS

1. **Which of the following is NOT a definition of Ethics:**
  - A. Obeying the law; not doing anything illegal.
  - B. The principles of conduct governing an individual or group.
  - C. A set of moral issues or aspects {as rightness}.
  - D. The discipline dealing with what is good and bad and with moral duty and obligation.
  
2. **Ethics Case Number One involves a long wait at the community pharmacy with a patient in obvious pain at the drop off window. Which of the following statements from the AAPT code of ethics would NOT apply to this situation?**
  - A. A pharmacy technician's first consideration is to ensure the health and safety of the patient, and to use knowledge and skills to the best of his/her ability in serving others.
  - B. A pharmacy technician supports and promotes honesty and integrity in the profession, which includes a duty to observe the law, maintain the highest moral and ethical conduct at all times and uphold the ethical principles of the profession.
  - C. A pharmacy technician assists and supports the pharmacist in the safe, efficacious and cost effective distribution of health services and healthcare resources.
  - D. A pharmacy technician never assists in the dispensing, promoting or distribution of medications or medical devices that are not of good quality or do not meet the standards required by law.
  
3. **Ethics Case Number Two involves an error in mixing/compounding a cephalosporin. Which of the following statements from the AAPT Code of Ethics best applies to the case?**
  - A. A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
  - B. A pharmacy technician respects and supports the patient's individuality, dignity and confidentiality.
  - C. A pharmacy technician respects the confidentiality of a patient's records and discloses pertinent information only with proper authorization.
  - D. A pharmacy technician never assists in the dispensing, promoting or distribution of medications or medical devices that are not of good quality or do not meet the standards required by law.
  
4. **In Ethics Case Number Three concerning the pharmacist filling multiple hydrocodone prescriptions for "Mary Brown," which of the following statements from the AAPT Code of Ethics best describes how the technician should act?**
  - A. A pharmacy technician assists and supports the pharmacist in the safe, efficacious and cost effective distribution of health services and healthcare resources.
  - B. A pharmacy technician supports and promotes honesty and integrity in the profession, which includes a duty to observe the law, maintain the highest moral and ethical conduct at all times and uphold the ethical principles of the profession.
  - C. A pharmacy technician respects and values the abilities of pharmacists, colleagues and other healthcare professionals.
  - D. A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
  
5. **In Ethics Case Number Four which involves a cancer center, what unethical behavior was exhibited by the technicians?**
  - A. The technicians abused their break time.
  - B. The technicians did not complete their duties.
  - C. The technicians helped divert expensive medications to the "gray market."
  - D. The technicians falsified their work hours.

6. **In Ethics Case Number Five, which involves a technician taking controlled substances from a community pharmacy, what was the technician's justification for her unethical actions?**
- The technician was promoted out of the pharmacy.
  - The technician needed the money.
  - The technician wanted to introduce her baby daughter to her former co-workers.
  - The technician wanted to expose the lack of security in the pharmacy.
7. **In Ethics Case Number Six, involving a pharmacy in a town of 1500 that had become the third largest dispenser of oxycodone in the state, what statement from the AAPT Code of Ethics best applies to how the technician should behave?**
- A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
  - A pharmacy technician respects and supports the patient's individuality, dignity and confidentiality.
  - A pharmacy technician never assists in the dispensing, promoting or distribution of medications or medical devices that are not of good quality or do not meet the standards required by law.
  - A pharmacy technician does not engage in any activity that will discredit the profession, and will expose, without fear or favor, illegal or unethical conduct in the profession.
8. **In Ethics Case Number Seven, involving a prescription for oral contraceptives, the pharmacist:**
- Could exercise a "conscience clause" and refuse to fill the prescription as well as refuse to help the patient access the prescription in a timely manner if he worked in California.
  - Could not exercise a "conscience clause" and refuse to fill the prescription if he/she worked in New Jersey.
  - Could not exercise a "conscience clause" and refuse to fill the prescription if he worked in Colorado.
  - Could not exercise a "conscience clause" and refuse to fill the prescription if he worked in Tennessee.
9. **According to the Health Insurance Portability and Accountability Act (HIPAA), health information is defined as:**
- Only information about the health of a patient in a written form.
  - Information that does not relate to the mental health of a patient.
  - Information that relates only to the past physical or mental health.
  - Any information that is created or received by a health care provider... and relates to the physical or mental health or condition of an individual.
10. **The HIPAA Privacy Rules cover which of the following information?**
- An individual's protected health information.
  - A hospital's census numbers.
  - A medical clinic's charges for procedures.
  - An insurance company's negotiated rates to reimburse a provider of health care.
11. **Under HIPAA, the "wrongful disclosure of individually identifiable health information:"**
- Occurs when the information is disclosed to the U.S. Department of Health and Human Services while it is undertaking a compliance investigation without a signed consent from the individual.
  - Occurs when a person who discloses personally identifiable health information does so with intent to sell the information for personal gain.
  - Can carry a fine of more than \$50,000.00 but carries no potential imprisonment.
  - Can carry a fine of no more than \$100,000.00 if the offense is committed for malicious harm.

**12. The University of California at Los Angeles Medical Center:**

- A. Was given an award in 2011 for exemplary compliance with HIPAA.
- B. Applied appropriate sanctions and documented sanctions on workforce members who impermissibly examined electronic protected health information.
- C. Had 68 staff members connected with unauthorized access to celebrity patient records.
- D. Had to pay a minor fine of only \$10,000.00 to settle the case of employees impermissibly accessing protected health information of celebrities.

**13. The state of Indiana:**

- a. Settled a case with WellPoint, Inc. for \$100,000.00 in July 2011 for breaches of consumer data security.
- b. Does not regulate the security of consumer data consisting of social security numbers.
- c. Does not regulate the security of consumer data concerning financial information or health information.
- d. Does not require companies to notify the attorney general of security breaches.

**14. In HIPAA Case Number One involving Jimmy S, the musician, which of the following actions was NOT a violation of the HIPAA privacy rules?**

- A. The technician viewing Jimmy S's profile on the pharmacy computer while the other technician is ordering the medications.
- B. The technician pulling up the patient profile when Jimmy S presents the prescription to be filled.
- C. The technician who becomes angry and replies "I have as much right to look at Jimmy S's profile as you do."
- D. The technician divulging to the blogger that Jimmy S may have Hepatitis C.

**15. In HIPAA Case Number Two, the ENT physician:**

- A. Needed to get written permission from the internist to disclose his laryngeal cancer.
- B. Should never discuss another person's specific health information with a patient.
- C. Should always discuss another person's specific health information with a patient.

- D. Did not need to get written permission from the internist to disclose his laryngeal cancer.

**16. In HIPAA Case Number Three, the psychiatrist:**

- A. Did not need a signed authorization to write to the housing authority about the patient's supplements.
- B. Did not need a signed authorization to speak to the housing authority about the patient's supplements.
- C. Was unable to get a new signed authorization to speak to the housing authority about the patient's supplements.
- D. Did not document the patient's request in the medical record that the psychiatrist was asked to speak to the housing authority.

**17. In HIPAA Case Number Four, involving a patient in ICU, which of the following actions would NOT be a violation of the HIPAA Privacy Rules?**

- A. The technician walking through the ICU looking for the patient.
- B. The technician accessing the patient's profile on the pharmacy computer screen after returning from filling the automated dispensing machines.
- C. The technician inviting the patient's mother to the cafeteria for coffee.
- D. The technician telling the patient's mother that the patient had overdosed on drugs.

**18. In HIPAA Case Number Four, involving the patient in ICU, which of the following statements from the AAPT Code of Ethics best applies to the technician who talked to the woman in the ICU waiting area whose daughter was the patient in the ICU?**

- A. A pharmacy technician assists and supports the pharmacist in the safe, efficacious and cost effective distribution of health services and healthcare resources.
- B. A pharmacy technician respects and values the abilities of pharmacists, colleagues and other healthcare professionals.
- C. A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
- D. A pharmacy technician respects the confidentiality of a patient's records and discloses pertinent information only with proper authorization.

**19. According to the U.S. Department of Health and Human Services frequently asked questions about health information privacy:**

- A. A hospital may not inform clergy of an individual's location in the hospital if the patient objects.
- B. A hospital may not inform clergy of an individual's location if the patient is incapacitated and has not had an opportunity to agree or object to this disclosure.
- C. A person cannot be given any information about a patient if they ask about the patient by name.
- D. A person's religious affiliation cannot be included in the hospital's directory.

**20. HIPAA Privacy Rules put into law some of the ethical principles in the American Association of Pharmacy Technician's code of ethics. Which of the following statements in the code relates to the HIPAA Privacy Rules?**

- A. A pharmacy technician respects and values the abilities of pharmacists, colleagues and other healthcare professionals.
- B. A pharmacy technician respects the confidentiality of a patient's records and discloses pertinent information only with proper authorization.
- C. A pharmacy technician maintains competency in his/her practice, and continually enhances his/her professional knowledge and expertise.
- D. A pharmacy technician never assists in the dispensing, promoting or distribution of medications or medical devices that are not of good quality or do not meet the standards required by law.