Australians allow certain confidentiality breaches

The Australian Medical Association is changing its code of ethics from Feb 1 to allow members to divulge personal information about their patients "where the health of others is at risk" or where members "are required by orders of the court to breach patient confidentiality". The new code is the result of a long review of the previous code of ethics, established in 1992, which said that doctors should "in general, keep in confidence information divulged from a patient . . . except when a court demands".

Although the code of ethics gives no details, various situations are discussed. In one, a doctor knows a truckdriver has blackouts but continues to drive. In another, an HIV-positive man has not told his wife of his condition yet continues to have unprotected sex. In a third, a mentally ill woman threatens to kill her child. The AMA says that, in these situations, the doctor's responsibility to others outweighs his or her responsibility to the patient.

The new ethical code has engendered much debate in the popular media, particularly because January is such a slow time for news. Generally, editorials and articles have supported the concept, and there has been little outright opposition. Traditional political opponents of the AMA have complained that there was no public consultation, but over the past year there has been considerable debate within the AMA, of which any keen observer would have been aware.

The interesting question will be to see which way the medical boards, which are responsible for enforcing proper professional practice, jump. The AMA says that it has not consulted the state-based medical boards, and hopes that the boards will accept the new ethical code as standard and acceptable conduct, in which case there could be no disciplinary measures for breaching confidentiality "where the health of others is at risk".

The boards are likely to accept the new ethical code for two main reasons. One is that the boards tend to enforce the commonly accepted standard of practice, rather than set its own standards. The second is that all the medical boards have strong representation from senior AMA officials, particularly those with an interest in standards of professional conduct. It would be hard to believe individual medical board members were either unaware of or disapproved strongly of the proposed changes.

Mark Ragg

US doctors fight gag clauses in contracts

Managed-care contracts that bar physicians from discussing plan policies with patients have come under intense scrutiny in the USA. New Jersey's Board of Medical Examiners—bowing to physician and consumer concerns—this month will hold hearings on "gag" clauses and other contractual arrangements to decide the extent to which they affect quality. The New York-based League of Physicians and Surgeons is awaiting judgment on a lawsuit contesting confidentiality clauses, claiming they "trespass upon the physician's right to inform patients about coverage terms" or any problem the provider has with a plan.

Health-maintenance organisation (HMO) officials say concern is overblown but they admit these events are emblematic of a growing strain between doctors and managed care. Some HMOs, including US Healthcare (the largest HMO in New Jersey), bar participating doctors from demeaning a plan in front of patients. Harvard's Dr David Himmelstein, an outspoken backer of government-run health care, claims he was dropped from the for-profit HMO after disparaging it in public. US Healthcare says the charge is baseless.

Perhaps more troubling is that many plans frown on doctors pushing treatments the HMO will not approve. Some plans also bar discussion of the effects of reimbursement or incentive plans on participating physicians' practice styles.

Carol O'Brien, an American Medical Association attorney, says that doctors tell her that, even if there is no specific clause, "there is an understood policy not to tell patients about treatments or procedures not covered". AMA is "actively opposing" use of gag clauses and says physicians should inform patients of all relevant financial inducements. The New Jersey Medical Society is attempting to follow suit. The state is now drafting new HMO regulations, which the Society says do not go far enough. The Society wants to preclude HMOs from using gag-rule clauses; wants plans to allow physicians to complain about an HMO and inform patients about all care options without fear of retaliation; and wants plans to tell consumers that its payment policies may sway physicians to limit the volume or level of health care. HMOs say that they do not have a problem with patients knowing that doctors have to meet certain standards or get paid via capitation but in a competitive environment there are things that should remain within the purview of each plan.

Jane Firshein

Surrogacy not illegal in Israel

Surrogate motherhood is de facto legal in Israel with no legislation governing the arrangements. The existing health regulations barring surrogacy expired at the end of 1995 and the bill that would regulate the procedure is stuck in parliamentary committee because of opposition raised by religious groups arguing for full (neither gamete from a would-be parent) surrogacy only, and that only unmarried surrogates of the same religion but neither relatives nor friends of the couple will be permitted, consistent with Halachic law .

The contractual arrangements , already approved, include:

- **a formal agreement to be signed between the contracting parents and the surrogate that must be approved by special committee appointed by the health minister**
- **the surrogate mother has full custody of the newborn even if the gametes come from the social parents, but is contractually obliged to hand over the baby; if she refuses the courts will decide**
- **payment will be limited to expenses incurred including loss of time, suffering, and temporary loss of income.**

Rachelle HB Fishman