Virtual Mentor
American Medical Association Journal of Ethics
April 2002, Volume 4, Number 4: 102-103.

CASE AND COMMENTARY
Overriding Patient Confidentiality
Commentary by Erica Ozanne Linden, JD, MPH

Case
Sarah Smith is a 42-year-old woman with a family history of breast cancer. Her mother died of breast cancer at age 39, her grandmother at 42, and a maternal aunt at 45. Sarah herself has a 20-year-old daughter. She is concerned about her own risk of breast cancer and visits her gynecologist, Dr. Walsh, to discuss her options. Dr. Walsh takes Sarah's family history and informs her that there is a genetic test that can be used to screen women to identify those at risk for breast cancer. Sarah's doctor explains to her that women who have mutations in the BRCA1 or BRCA2 genes have a substantially increased risk of developing breast cancer.

Sarah asks Dr. Walsh whether she should be tested for one of the mutations. Dr. Walsh educates Sarah about breast cancer genetics and thoroughly discusses with her the risks, benefits, and limitations of the genetic testing. Some of these risks include a potential negative impact on a patient's medical and life insurance, employment discrimination, and emotional and psychological distress.

As part of her counseling, Dr. Walsh thoroughly explains to Sarah that the management options for women identified as having mutations in the BRCA1 or BRCA2 genes include close monitoring, chemoprevention, or prophylactic surgery, including prophylactic mastectomy. Dr. Walsh also explains that none of the treatment options guarantees that the woman will avoid getting breast cancer, and tells Sarah that the option of a prophylactic mastectomy is highly controversial because of its drastic nature.

After lengthy consideration, Sarah decides to undergo the testing. Dr. Walsh orders the tests for BRCA1 and BRCA2 mutations and finds that Sarah has a mutation of the BRCA2 gene. Dr. Walsh then informs Sarah of the test results. Sarah tells her doctor she wants to keep her test results private, because she does not want any of her family members to know the results. She does not want them to worry or treat her differently. She says there is no reason for her life to change unless she develops cancer. She will agree to the preventive measures that Dr. Walsh advises, excluding mastectomy, but she does not want anyone to know that she "might" have cancer in the future. "Everyone *might* have cancer in the future," Sarah says.

Dr. Walsh doesn't know how to respond. Courts have split on whether to create an exception to the physician-patient privilege when revealing genetic information to a third party may help a patient's family avoid harm. In Pate v Threlkel, 661 So.2d 278 (Fla. 1995), the Florida Supreme Court held that a physician has a duty to warn a patient of the genetically inheritable nature of his or her disease, but that the duty to warn is satisfied by telling the patient.

In a similar case, Safer v Pack, 291 NJ Super. 619 (NJ Super. Ct. App. Div.), a New Jersey Superior Court reached a different decision. In Safer, the Court held that the duty to warn may *not* be satisfied by simply informing the patient and may require that "reasonable steps" be taken to assure that the information reaches the parties at risk. However, the court did not specify what those "reasonable steps" might be.

See what the AMA *Code of Medical Ethics* says about this topic in Opinion 5.05. Confidentiality. American Medical Association. *Code of Medical Ethics 1998-1999 Edition.* Chicago, IL: American Medical Association; 1998.

Questions for Discussion

1. Does Dr. Walsh have an obligation to inform Sarah's daughter of her mother's test results and explain to her that she may also have an increased risk for breast cancer?
2. Given that case law is not explicit on what physicians should do, how should Dr. Walsh proceed in this case if Sarah refuses to tell her daughter?

Erica Ozanne Linden, JD, MPH is a fellow in the AMA Ethics Standards Group.