Symposium Articles

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Introduction
Melissa M. Goldstein and Mark A. Rothstein

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The Hippocratic Bargain and Health Information Technology
Mark A. Rothstein
The shift to longitudinal, comprehensive electronic health records (EHRs) means that any health care provider (e.g., dentist, pharmacist, physical therapist) or third-party user of the EHR (e.g., employer, life insurer) will be able to access much health information of questionable clinical utility and possibly of great sensitivity. Genetic test results, reproductive health, mental health, substance abuse, and domestic violence are examples of sensitive information that many patients would not want routinely available. The likely policy response is to give patients the ability to segment information in their EHRs and to sequester certain types of sensitive information, thereby limiting routine access to the totality of a patient’s health record. This article explores the likely effect on the physician-patient relationship of patient-directed sequestration of sensitive health information, including the ethical and legal consequences.

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Health Information Technology and the Idea of Informed Consent
Melissa M. Goldstein
During this early stage of HIT adoption, it is critical that we engage in discussions regarding informed consent’s proper role in a health care environment in which electronic information sharing holds primary importance. This article discusses current implementation of the doctrine within health information exchange networks; the relationship between informed consent and privacy; the variety of ways that the concept is referenced in discussions of information sharing; and challenges that surround incorporation of the doctrine into the evolving HIT environment. The article concludes by reviewing the purpose behind the traditional obligation to obtain informed consent and the possibility of maintaining its relevance in the new environment.

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Health IT and Solo Practice: A Love-Hate Relationship
Joseph Heyman
A small town solo gynecologist describes the process of starting a practice based on health information technology, how catastrophic it can be to lose data, how difficult it can be to try to exchange information, and yet how rewarding it can be to accomplish a “paperless” experience.

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The Impact of Web 2.0 on the Doctor-Patient Relationship
Bernard Lo and Lindsay Parham
Web 2.0 innovations may enhance informed patient decision-making, but also raise ethical concerns about inaccurate or misleading information, damage to the doctor-patient relationship, privacy and confidentiality, and health disparities. To increase the benefits and decrease the risks of these innovations, we recommend steps to help patients assess the quality of health information on the Internet; promote constructive doctor-patient communication about new information technologies; and set standards for privacy and data security in patient-controlled health records and for point-of-service advertising.
Health Information Exchange in Memphis: Impact on the Physician-Patient Relationship

Mark E. Frisse

Health information exchanges represent one way of making medical information available to practitioners across institutional boundaries. One health information exchange in Memphis, Tennessee, has been operational since May of 2006 and provides information supporting care for over 1.2 million individuals. Creating such an exchange challenged traditional institutional boundaries, rules, and perceptions. Approaching these challenges required leadership, trust, sound policy, new forms of dialogue, and an incremental approach to technology. Early evidence suggests a positive impact on patient care and a change in the way providers interact with their patients and on another. Personal health records, consolidated EHR systems, and other alternative models promise to have similar impacts on the way in which providers and patients interact with one another.

Ethical Issues for Patients and Physicians

Matthew Wynia and Kyle Dunn

The three core uses for PHRs — promoting communication, data use, and patient responsibility — each raise a set of ethical issues, and addressing them explicitly in PHR design and policy making, would help PHRs to achieve their promise.

Electronic health records for patients, personal health records (PHRs), have become increasingly popular among policy makers and purchasers, but uptake among patients and physicians has been relatively slow. PHRs have varying uses that might make them more or less appealing to different stakeholders. The three core uses for PHRs — promoting communication, data use, and patient responsibility — each raise a set of potential practical and financial dilemmas. But some ethical concerns are also at play, some of which are rarely recognized as values-based barriers to the use of PHRs. Recognizing these ethical issues, and addressing them explicitly in PHR design and policy making, would help PHRs to achieve their promise.

Prescription Data Mining and the Protection of Patients’ Interests

David Orentlicher

Pharmaceutical companies have exploited health information technology to “mine” data from drug prescriptions and use the data to better target their sales pitches to physicians. This article considers the policy arguments and first amendment implications regarding state regulation of data mining. It concludes that the legislative provisions are desirable and should withstand constitutional challenge.

Aligning Ethics with Medical Decision-Making: The Quest for Informed Patient Choice

Benjamin Moulton and Jaime S. King

Clinical evidence suggests that many patients undergo surgery that they would decline if fully informed. Failure to communicate the relevant risks, benefits, and alternatives of a procedure violates medical ethics and wastes medical resources. Integrating shared decision-making, a method of communication between provider and patient, into medical decisions can satisfy physicians’ ethical obligations and reduce unwanted procedures. This article proposes a three-step process for implementing a nationwide practice of shared decision-making: (1) create model integration programs; (2) provide legal incentives to ease the transition; and (3) incorporate shared decision-making into medical necessity determinations.

Television Food Marketing to Children Revisited: The Federal Trade Commission Has the Constitutional and Statutory Authority to Regulate

Jennifer L. Pomeranz

The evidence reveals that young children are targeted by food and beverage advertisers but are unable to comprehend the commercial context and persuasive intent of marketing. Although the First Amendment protects commercial speech, it does not protect deceptive and misleading speech for profit. Marketing directed at children may fall into this category of unprotected speech. Further, children do not have the same First Amendment right to receive speech as adults. For the first time since the Federal Trade Commission’s original attempt to regulate marketing to children in the 1970s (termed KidVid), the political, scientific, and legal climate coalesce to make the time well-suited to reevaluate the FTC’s authority for action. This paper analyzes the constitutional authority for the FTC to regulate television food marketing directed at children as deceptive in light of the most robust public health evidence on the subject.
**117 The Management of Incidental Findings in Neuro-Imaging Research: Framework and Recommendations**

_Erica K. Rangel_

This paper addresses the question of how incidental findings (IFs) in clinical research should be managed by researchers, focusing in detail on IFs discovered in neuroimaging research. It begins by engaging the larger research ethics issue of whether researchers have any obligations of clinical care to participants, and assesses the content and merits of one particular framework for answering this question, Richardson and Belsky’s ancillary care model. From here the paper develops an organizational structure for integrating the ancillary care model with existing research ethics standards, with the aim of better understanding their respective domains. It makes a distinction between incidental findings that are anticipated by informed consent documents, and those that are unanticipated, arguing that this distinction is critical for evaluating researcher obligations. Finally, it takes on the issue of incidental findings in neuroimaging research, translating the standards discussed into recommendations for both unanticipated and anticipated findings.

**127 State Tort Reforms and Hospital Malpractice Costs**

_Charles R. Ellington, Martey Dodoo, Robert Phillips, Ronald Szabat, Larry Green, and Kim Bullock_

This study explored the relation between state medical liability reform measures, hospital malpractice costs, and hospital solvency. It suggests that state malpractice caps are desirable but not essential for improved hospital financial solvency or viability.

**134 Physicians’ “Right of Conscience” — Beyond Politics**

_Azgad Gold_

During the past few months, the discussion over the physicians’ “Right of Conscience” (ROC) has been on the rise. The intervention of politics in this issue shifts the discussion to a very specific and narrow area, namely the “reproductive health laws” which bear well-known predisposing attitudes. In this article, the physician’s ROC is discussed in the context in which it naturally belongs: the Patient Physician Relationship (PPR). I suggest that the physicians’ rights demand is a comprehensible, predictable, and even inevitable step as part of the “evolution” of the PPR. Thus, the most appropriate way to comprehend and tackle the demand for physicians’ ROC is within the context of medical professionalism. While searching for practical solutions to the “reproductive health” problems, there is a need to recognize the ethical and practical implications of the change in the PPR and balance between patient and physician rights.

**143 The 2008 Declaration of Helsinki — First among Equals in Research Ethics?**

_Anette Rid and Harald Schmidt_

The World Medical Association’s (WMA) Declaration of Helsinki is one of the most important and influential international research ethics documents. Its most recent 2008 version declares unprecedented universal primacy over all existing national or international ethical, legal, or regulatory requirements. This self-proclaimed status as a set of minimal ethical standards raises important questions about the Declaration’s appropriate normative status. The present paper argues that the new claim of ethical primacy is problematic and makes the Declaration unnecessarily vulnerable to criticism. Future revisions of the Declaration should therefore remove this claim and strengthen the document, first, by clarifying its normative status as a set of strong default recommendations, to be followed unless there is compelling ethical reason to do otherwise; and second, by improving the substance of the Declaration through further precision, specification, and argument.

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