Privacy and Confidentiality

Michael S. Sinha, MD, JD, MPH
Adjunct Faculty, Northeastern University School of Law
Visiting Scholar, NUSL Center for Health Policy and Law
Research Fellow, Harvard-MIT Center for Regulatory Science
Affiliated Researcher, Program On Regulation, Therapeutics, And Law (PORTAL)
Teaching Faculty, Harvard Medical School Center for Bioethics
Lecturer, Department of Health Sciences, California State University, East Bay

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- Counts toward participation!
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  - @DrSinhaEsq
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- Student tweets will be highlighted at the beginning of each class
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**California v. Texas** is a highly important and a win for the executive branch, the Supreme Court, and health care for the benefit of all Americans.

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**Overview of the Case**

- The Supreme Court heard arguments for the Affordable Care Act (ACA).
- Texas argued that the individual insurance mandate and the Affordable Care Act as a whole are unconstitutional.
- Texas stated that the mandate, which requires all individuals to have health insurance, is a violation of the Constitution.
- The Court ruled that the mandate is constitutional, but the Affordable Care Act as a whole is not.
- The decision affects millions of Americans by impacting healthcare access and affordability.

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**Why I cared about the case**

I was particularly interested in the individual mandate and its implications for healthcare coverage and access.

I also noted the differing opinions among the justices, which added to the complexity of the case.

Finally, I was impressed by the legal arguments and the justices' reasoning in their decision.

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**Final points**

- The framework of the Affordable Care Act is complex and needs to be reviewed in light of the decision.
- The consequences of the decision for future legislation and policy are significant.
- Congress will likely need to address the gaps in healthcare coverage and access in the wake of this decision.

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**The cruise order**

The cruise order should be enforced stricter than the earlier order given the current status of the global pandemic. The court's decision found that quarantine authority is primarily exercised by the states, and the cruise order should be more strictly enforced.

**A cruise ship**

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**A cruise ship**
Nicolas Terry: What’s Wrong with Health Privacy?

• Reactions to Professor Terry’s article?
• How do you distinguish privacy, confidentiality, and privilege?
• In what ways can these concepts be confused by the general public and the media?
• Do you think current health care privacy laws are sufficient, or should more be done to protect medical information?

Health privacy as an instrument:

“To foster the best interest of the patient and to ensure a climate most favorable to complete recovery, men of medicine have urged that patients be totally frank in their discussions with their physicians. To encourage the desired candor, men of law have formulated a strong policy of confidentiality to assure patients that only they themselves may unlock the doctor’s silence in regard to these private disclosures. The result which these joint efforts of the two professions have produced . . . has been urged or forecast in una voce by commentators in the field of medical jurisprudence.” (internal citations omitted.)

Alberts v. Devine (Mass. 1985)
Federal Laws Related to the Privacy of Health Information

- Americans with Disabilities Act (ADA), as amended, 42 U.S.C. §§ 12101 et seq.
- Communications Assistance for Law Enforcement Act, Pub. L. 103–454
- Computer Matching and Privacy Protection Act, Pub. L. 100–503 (amending Privacy Act)
- Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., as amended by the Fair and Accurate Credit Transactions Act
- Family Educational Rights and Privacy Act, 20 U.S.C. §§ 1221 et seq., 1233g
- Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 701–711
- Freedom of Information Act (FOIA), 5 U.S.C. §§ 552
- Genetic Information Nondiscrimination Act (GINA), Pub. L. 110–325
- Substance Abuse Confidentiality Requirements, Public Health Service Act § 503

In the Matter of Miguel M. (N.Y. 2011)

Background and Holding

- What is Kendra’s Law?
- What is assisted outpatient treatment (AOT)?

- Review the “public health exception” in the HIPAA Privacy Rule 45 CFR § 164.512 (b)(1)(i) (Casebook page 714):
  - How do you think Dr. Barron interpreted this?
  - How do you think the hospital interpreted this?
  - How do you think Miguel M’s counsel interpreted this?
  - How might the average person interpret this?

Massachusetts general privacy statute

Right of Privacy, Remedy to Enforce.

A person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages.

- How would you interpret this language?
- How does it compare to various federal statutes, including the Privacy Act?
HIPAA

• 1996 law focused on electronic health records and privacy
• Privacy Rule promulgated by HHS in 2003
• Intervening event: September 11, 2001
• Professor Annas: “brought more proposals to authorize virtually unlimited access to medical records by national security, law enforcement, and public health agencies”
• Initial law “lacked teeth,” so civil and criminal enforcement was strengthened by HITECH Act of 2009

What is HIPAA?

• What did you think of the two articles?
• Which of these is a HIPAA violation?
  • Physician drops/loses their patient list in the lobby of the hospital
  • Physician writes about their patient’s story in a medical journal
  • Nurse shares a new diagnosis with a patient’s wife over the phone
  • You accidentally tell your cousin that your sister is pregnant
  • Medical technician talks about celebrity patient / shares photos on social media
  • Prominent politician is asked by news media if she has been vaccinated against COVID-19

What HIPAA is not...

Medical technician talks about celebrity patient / shares photos on social media

Prominent politician is asked by news media if she has been vaccinated against COVID-19

Any questions?