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Mandatory Physician Reporting of Gunshot Wounds: A Chicago Perspective

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I. INTRODUCTION

Respect for patient privacy and confidentiality are affirmatively stated by every practicing physician when they take the famous Hippocratic Oath, asserting they will not spread what they see or hear during the course of treatment.[1] While the words of this oath allude to an absolute protection of patient confidentiality, in reality there are many exceptions where the law places a duty upon healthcare professionals to disclose patient information.[2] One such exception in Illinois is the Criminal Identification Act (the Act), which requires healthcare professionals to notify local law enforcement of a person requesting treatment for any injury resulting from the discharge of a firearm.[3] This law weighs the duty owed to the patient in respecting per-

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1. John C. Moskop et al., *From Hippocrates to HIPAA: Privacy and Confidentiality in Emergency Medicine—Part I: Conceptual, Moral, and Legal Foundations*, 45 ANNALS EMERGENCY MED. 53, 53 (2005) ("What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken about") (*quoting* ENCYCLOPEDIA OF BIOETHICS 2632 (Reich WT ed., 1995)).

2. *See* Malkeet Gupta, *Mandatory Reporting Laws and the Emergency Physician*, 49 ANN. EMERGENCY MED. 369, 373 (2009) (41 states and the District of Columbia have mandatory reporting laws from injuries from weapons, while nine states do not have a mandatory reporting law) .

3. 20 ILL. COMP. STAT. ANN. 2630/3.2(1) (2013) ("It is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits to notify the local law enforcement agency of that jurisdiction upon the application for treatment of a person who is not accompanied by a law enforcement officer, when it reasonably appears that the person requesting treatment has received: (1) any injury sustained from the discharge of a firearm; or (2) any injury in the commission of or as a victim of a criminal offense.").

sonal autonomy and privacy against the societal duty of public safety through mandatory police involvement, raising conflicting ethical concerns for physicians.[4] This article argues that mandatory reporting of gunshot wounds may appear beneficial in theory, but not effective when practiced in a city like Chicago where community members have widespread distrust of the police.

In Section II, this article will discuss the historical and legal basis of breaching patient confidentiality to protect the general public. Section III will explore the counter argument in favor of absolute confidentiality as a necessary procedure in order to maintain patient safety and trust. Finally, Section IV will examine these different opinions on patient confidentiality through the lens of the murder problem in Chicago and explains why the negative aspects of the law outweigh the potential benefits.

II. THE HISTORICAL AND LEGAL BASIS FOR MANDATORY REPORTING

Patient privacy and confidentiality are professional responsibilities of physicians.[5] To protect confidentiality and privacy is to respect the human dignity of a patient and recognize that patients have intrinsic moral worth.[6] Privacy is a broader concept that envelopes physical seclusion, protection of personal information, identity, and the ability to make personal choices without interference.[7] Confidentiality refers to the duty not to disclose patient information without first obtaining the patient's consent.[8] Physicians not only have an ethical professional duty to not disclose patient infor-

4. *See* A. Frampton, *Reporting of gunshot wounds by doctors in emergency departments: A duty or a right? Some legal and ethical issues surrounding breaking patient confidentiality*, 22 EMERGENCY MED. J. 84, 85 (2005); Stephen W. Hargarten & Joseph F. Weackerle, *Docs and Cops: A Collaborating or Colliding Partnership?*, 38 ANNALS EMERGENCY MED. 438, 439 (2001).

5. Moskop et al., *supra* note 1 ("Respect for patient privacy and confidentiality has been affirmed as a professional responsibility of physicians since antiquity").

6. Joel Martin Geiderman & John C. Moskop, *Privacy and Confidentiality in Emergency Medicine: Obligations and Challenges*, 24 EMERGENCY MED. CLINICS N. AM. 633, 635 (2006).

7. *Id*. at 634.

8. *Id*.

mation without proper consent, but they are also members of society, having a duty as citizens to further public safety.[9] If physicians act in a way that breaches their professional code, these actions may bring shame, guilt, and regret, even if the breach was in furtherance of their duty as citizens and wards of public health.[10] On the other hand, if a physician fails to take necessary steps to prevent foreseeable injury, he must live with the consequences both personally and in the community, potentially receiving severe criticism from the general public.[11]

A modern example of these prevailing pressures was highlighted in *Tarasoff v. Regents of the University of California*.[12] In this case, a student at the University of California, Berkeley confided in a university psychologist that he intended to kill a young woman who spurned his affections.[13] The psychologist decided to breach patient confidentiality and alert the campus police, who briefly detained the patient and then set him free.[14] Shortly thereafter, the patient stabbed the young woman to death.[15] In a landmark decision, the Supreme Court of California held that the psychologist's breach of confidentiality was warranted, and doctor-patient confidentiality is limited by the possibility of public danger.[16] Since this decision, United States courts broadened the acceptable breach of patient confidentiality to situations where there is an identifiable victim, allowing physicians to warn relevant authorities of a patient's general violent tendencies.[17]

The *Tarasoff* opinion paved the way for physician mandatory reporting

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9. Frampton, *supra* note 4.
10. Michael H. Kottow, *Medical confidentiality, an intransigent and absolute obligation*, 12 J. MED. ETHICS, 117, 118 (1986).
11. Frampton, *supra* note 4.
12. Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334 (Cal. 1976).
13. *Id*. at 339.
14. *See id*.
15. *Id*.
16. *Id.* at 347 ("[t]he protective privilege [of doctor-patient confidentiality] ends where the public peril begins").
17. Frampton, *supra* note 4, at 86.

of gunshot requirements such as Illinois' Act.[18] As of 2006, forty-one states and the District of Columbia had laws requiring physicians to report to the police any injuries sustained from the discharge of a firearm.[19] The rationale oftentimes asserted is that physicians are in the business of public safety and injury prevention, and these laws are tailored to those ends.[20] Because the patient is not accused of a crime, advocates believe that the reporting of gunshot victims will not lead to patient's refusing to seek medical care.[21] Empirical evidence supports the notion that victims of domestic violence are not deterred from seeking medical attention based on mandatory reporting laws.[22] There is no similar study conducted to determine if mandatory reporting of gunshot wounds deters patients from seeking medical attention.

The law aims to reflect an ethical consensus that society is willing to enforce through civil and criminal sanctions.[23] In this vein, laws can be seen as the common ethos of American society, making it the proper domain to resolve controversial medically ethical issues.[24] The notion that the law and broad public health concerns trumps other ethical concerns is found in modern medicine decrees such as the Code of Ethics of the American College of Emergency Physicians, which says emergency physicians shall only disclose confidential patient information with consent or when required by

18. *See* Gupta, *supra* note 2.

19. *Id*.

20. *See* Howard Ovens, *Why mandatory reporting of gunshot wounds is necessary: A response from the OMA's Executive of the Section on Emergency Medicine*, 170 CAN. MED. ASS'N J. 1256, 1257 (2004).

21. *Id*.

22. Debra Houry et al., *Mandatory Reporting Laws Do Not Deter Patients From Seeking Medical Care*, 34(3) ANNALS EMERGENCY MED. 336, 339 (1999) (In a Colorado study, 62% of respondents said that the law would make no difference in the health care seeking behavior, and 27% said the law made them more likely to seek help. *Id*. Only 12% stated that the law would make them less likely to seek care). *Id*.

23. Arthur R. Derse, *Law and Ethics in Emergency Medicine*, 17 EMERGENCY MED. CLINICS N. AM. 307, 312 (1999).

24. *Id*. at 313.

an overriding societal duty.[25] While the Hippocratic Oath may be seen as a triumphant declaration of the protection of patient confidentiality over all other considerations, the modern trend shows that this protection is not without limits.[26]

III. THE OTHER SIDE OF THE COIN: MEDICAL CONFIDENTIALITY VIEWED AS AN ABSOLUTE

Though the modern legal trend seems to support the breach of patient confidentiality in defense of public safety, many contrarians believe it to be a dangerous practice.[27] Opponents quickly point out that just because breach of patient confidentiality is required by law does not make it morally right.[28] The opposition finds mandatory reporting requirements to be directly contrary to the core values physicians practice.[29] The core values of trustworthiness, beneficence toward the patient's health needs, and respect for patient autonomy are not just values that doctors care about, but also are what the general public wants doctors to care about.[30] Patient confidentiality is both a moral desire and an interpersonal communication strategy that is foundational to the medical profession.[31] Patients seek medical attention in order to get well and must trust that their physicians intend to achieve the same goal.[32] The interactions between patients and physicians are nurturing and curative, while the interactions between police and victims are inquisi-

25. Moskop et al., *supra* note 1 ("[e]mergency physicians shall respect privacy and disclose confidential information only with consent of the patient or when required by an overriding duty such as the duty to protect others or to obey the law") (*quoting* AM. C. OF EMERGENCY PHYSICIANS, CODE OF ETHICS FOR EMERGENCY PHYSICIANS (2003)).

26. *See id*.

27. *See* Kenneth Kipnis, *A Defense of Unqualified Medical Confidentiality*, 6 AM. J. BIOETHICS 7, 16 (2006) (doctor's breaching confidentiality does not prevent public peril, but only erodes patient confidence); *see* Kottow, *supra* note 9 at 117 (the benefits of breaching confidentiality do not overcome the harms to patients).

28. Frampton, *supra* note 4.

29. Kipnis, *supra* note 27.

30. *Id*. at 11-12.

31. Kottow, *supra* note 9, at 117.

32. Merril A. Pauls & Jocelyn Downie, *Shooting ourselves in the foot: why mandatory reporting of gunshot wounds is a bad idea*, 170 CAN. MED. ASS'N J. 1255, 1256 (2004).

tive and correctional;[33] blurring these two exchanges upsets patient confidence.[34] If physicians are viewed as an extension of the police, patients may have difficulty in revealing intimate medical details such as drug use, sexual practices, and acts of violence.[35] Because of this concern, mandatory reporting laws make it less likely that vulnerable populations will seek medical help when necessary.[36]

Opponents of mandatory reporting laws argue that these provisions do not achieve their intended goal of protecting the general public health and in fact, directly harm the patient whose confidentiality was breached.[37] Little data has been presented to demonstrate that mandatory reporting laws lead to curbing criminal activity.[38] Anecdotal evidence pertaining to mandatory reporting of domestic abuse cases reveals that some women are concerned that these types of laws infringe on their personal autonomy and believe they should retain sole control over the decision to involve the police.[39] Reliable data is difficult to gather on embarrassing, criminal, or irresponsible behavior.[40] Therefore, the chilling effect of mandatory reporting cannot be accurately stated, and is likely more significant that currently understood.[41] With this in mind, preservation of confidentiality is the only way of securing public health.[42] Protecting a patient's confidentiality who seeks care with a gunshot wound makes it more likely for a patient to tell all relevant health information to his physician.[43] Thus, absolute confidentiality allows

33. Hargarten & Waeckerle, *supra* note 4.
34. *Id*.
35. Pauls & Downie, *supra* note 32, at 1255-56.
36. *See* Kipnis, *supra* note 27, at 16.
37. *See* Pauls & Downie, *supra* note 32, at 1255-56.
38. Hargarten & Waeckerle, *supra* note 4.
39. Michael A. Rodriguez et al., *Patient Attitudes About Mandatory Reporting of Domestic Violence: Implications for Health Care Professionals*, 169 W. J. MED. 337, 340 (1998).
40. *See* Kipnis, *supra* note 27, at 14.
41. *See id*.
42. Frampton, *supra* note 4.
43. Kipnis, *supra* note 27, at 15.

doctors to complete their best work, increasing public safety.[44]

Exception-less confidentiality is the only way to prevent harm to a patient who otherwise would be subject to investigation and constraints.[45] Physicians are not instrumental in deciding or carrying out preventative actions, as their duties remain in the clinical realm and not the political arena.[46] It is improper for physicians to enter the political arena by informing police of patient injuries because it is an act beyond the core values patients rely on when seeing a doctor.[47] The harm mandatory reporting laws intend to avert by involving the police without patient consent is only potential harm, while breaches of confidentiality directly and immediately harm a patient.[48]

IV. EYES TOWARD THE MURDER CAPITAL

The Act requires healthcare employees to report an injury sustained from the discharge of a firearm as soon as treatment permits.[49] The Act intends to further public safety by requiring some basic information, such as the patient's identity and nature of the injury.[50] An Illinois Appellate Court found in *People v. Hillsman* that a patient does not have a reasonable expectation of privacy in emergency rooms because police presence is an obvious consequence of the Act.[51] Consequently, any Chicago resident that receives medical treatment for a gunshot wound can reasonably expect to be paid a visit by the police while recuperating.[52]

Police visits to recovering gunshot wound victims is a regular occurrence in Chicago, as the city was deemed the murder capital of America by a

44. *See id.* at 16.
45. *See* Kottow, *supra* note 9.
46. *Id.* at 120.
47. *See id*.
48. *See id.*
49. 20 ILL. COMP. STAT. 2630/3.2(1) (2013).
50. People v. Kucharski, 806 N.E.2d 683, 688 (Ill. App. Ct. 2004).
51. People v. Hillsman, 839 N.E.2d 1116, 1125 (Ill. App. Ct. 2005).
52. *See id*.

2013 Federal Bureau of Investigations (FBI) report.[53] Murders in Chicago followed the national downward trend in the 1990s, but rates declined in Chicago at a slower rate than other major cities.[54] Of the total murders committed in 2009, roughly eighty-two percent of Chicago homicides were committed with a firearm.[55] Aggregate studies based on police studies show that rates of violent crimes are highest among disadvantaged communities that contain large concentrations of minority groups, consolidating murders to a few Chicago districts.[56] This focused police presence in specific districts led to approximately seventy-five percent of Chicago murder arrests targeting African Americans in 2009.[57]

Studies show that the murder rate in major cities dropped during the 1990s based on factors such as increases in the number of police and rising prison population, while different police strategies and gun control laws had no effect.[58] Specifically in Chicago, the lowest murder rate since the early 1960s was achieved in 2012 partially because of an increased police presence in twenty small zones deemed most dangerous, and dampened retaliatory gang shootings through comprehensive analysis of the city's gang

53. Reid Wilson, *FBI: Chicago passes New York as murder capital of U.S.*, WASHINGTON POST (Sept. 18, 2013, 9:00 AM), http://www.washingtonpost.com/blogs/govbeat/wp/2013/09/18/fbi-chicago-passes-new-york-as-murder-capital-of-u-s/ (500 murders occurred in Chicago in 2012, the highest city total in the nation).

54. *See* Erica Haft & Colin Johnson, *Background Memo on Homicide Tracking in Chicago and Cook County*, NORTHWESTERN SCHOOL OF LAW (July 2011), http://illinoismurderindictments.law.northwestern.edu/docs/Homicide-Trends-in-Chicago-and-Cook-County.pdf.

55. *Id*.

56. Robert J. Sampson et al., *Social Anatomy of Racial and Ethnic Disparities in Violence*, 95 AM. J. PUB. HEALTH 224, 224 (2006); *see* Haft & Johnson, *supra* note 54.

57. Haft & Johnson, *supra* note 54.

58. *See* Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. ECON. PERSP. 163, 163, 172-74, 176-79 (2004) (The four factors cited that explained the decline in crime were: increases in the number of police, the rising prison population, the receding crack epidemic, and the legalization of abortion. *Id.* at 176-81. Six factors that played little or no role in the crime decline were: the strong economy of the 1990s, changing demographics, better policing strategies, gun control laws, laws allowing the carrying of concealed weapons, and the increased use of capital punishment. *Id.* at 170-75).

members.[59] Community-oriented programs such as part-time jobs for the city's disadvantaged youth also saw positive results in reducing gun violence.[60] Though the murder rate dropped, police solved only thirty percent of the shooting homicides and twenty percent of the nonfatal shootings in 2012.[61] Police cite the difficulty to find witnesses willing to discuss violent events as the main reason a large majority of the city's gun-related crimes remain unsolved.[62] Witnesses fall silent even when they have information about gun-related crimes for fear of retribution from gang members.[63] For example, on April 12, 2012, seventeen year-old Robert Tate was fatally shot in the chest, but refused to cooperate with police in his dying minutes even though he knew the identity of the shooter.[64] While gang culture plays a role in witness silence, community members and experts agree there is a deep seeded mistrust of police because they have not created an atmosphere that encourages residents to come forward and cooperate with them in solving crimes.[65]

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59. Monica Davey, *Chicago Tactics Put Major Dent in Killing Trend*, NEW YORK TIMES (June 11, 2013), *available at* http://www.nytimes.com/2013/06/11/us/chicago-homicides-fall-by-34-percent-so-far-this-year.html?pagewanted=all&_r=0.

60. Stephanie Kollmann & Dominque D. Nong, *Combating Gun Violence in Illinois: Evidence-Based Solutions*, NORTHWESTERN SCHOOL OF LAW 6 (October 17, 2013), http://www.law.northwestern.edu/legalclinic/cfjc/documents/Gun%20Violence%20Memo%20-%20Final.pdf. Chicago has implemented One Summer Plus (OSP), which provides part-time jobs to youth from high-violence neighborhoods for seven weeks during the summer. *Id*. The University of Chicago Crime lab has found "convincing evidence than OSP was highly successful in reducing violence among adolescents[.]" *Id.*

61. David Schaper, *In Chicago, Violence Soars and Witnesses Go Silent*, NPR (Nov. 13, 2012, 3:32 AM), http://www.npr.org/2012/11/13/163242604/in-chicago-violence-soars-and-witnesses-go-silent.

62. *Id.*

63. Frank Main, *Police: Even while dying, teen won't talk*, CHICAGO SUN-TIMES (April 18, 2011, 6:03 PM), http://www.suntimes.com/pulitzer/4903883-582/police-even-while-dying-teen-wont-talk.html (many neighborhoods have the motto that:"[s]nitches get stitches[,]" and citizens fear retribution from community members more than police criminal investigations); Schaper, *supra* note 61.

64. Main, *supra* note 63.

65. Schaper, *supra* note 61. "It's that they don't trust police officers"—54 year-old Sherman Smith. *Id.* "Police patronize you, man. Police over here, they don't protect and serve. They patronize. . .The only thing I can really think of that would help the community really is if the police are more hands-on in serving and protection, you know what I'm saying? If they walk the streets and get to know people[.]"—21 year-old Joenathan Woods. *Id.*

Chicago's murder rate raises significant public health and safety concerns, and ideally these concerns could be alleviated by mandatory reporting requirements of gunshot wounds.[66] These ideal conditions are unattainable in the practical world and are not supported by quantitative crime reduction facts.[67] Advocates for mandatory reporting of gunshot wounds make the unsupported claim breach of patient confidentiality is justified because these laws protect general public safety.[68] They claim mandatory reporting of gunshot wounds can reduce crime by allowing police to quickly identify victims, mobilize investigation efforts, and establish a presence in endangered areas.[69]

The problem is that this hypothetical scenario is not supported by anecdotal data from community members or hard police data in Chicago.[70] Mandatory reporting of gunshot wounds may be a misguided policy that harms the community more than it helps it due to the erosion of patient confidence.[71] Police presence at emergency rooms without patient consent quickly turns a trustworthy and nurturing environment into an inquisitive and confrontational environment.[72] If gunshot victims are wary of police investigation into the events, they may think twice before seeking medical treatment.[73] If a victim refuses to seek medical attention because of police exposure, the physician's goal of patient care and the police's goal of public safety are both negatively impacted.[74] Threatened minority communities

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"The police are responsible for creating an atmosphere in a community that encourages residents to come forward and cooperate with them in solving crimes[.]"—Criminologist Art Lurigio.

66. *See* Ovens, *supra* note 20.

67. *See* Davey, *supra* note 57; Levitt, *supra* note 58, at 172; Main, *supra* note 63; Schaper, *supra* note 61.

68. *See* Ovens, *supra* note 20.

69. *See id.*

70. *See* Davey, *supra* note 57; Levitt, *supra* note 58, at 172; Main, *supra* note 63; Schaper, *supra* note 61.

71. *See* Pauls & Downie, *supra* note 32, at 1255-56.

72. *See* Hargarten & Waeckerle, *supra* note 4.

73. *See* Kipnis, *supra* note 27, at 16.

74. *See generally id.*

already have a general distrust of law enforcement due to their belief that they use abrasive tactics, and police involvement without patient consent may proliferate this feeling.[75] Law enforcement individuals may be better served by building trust organically through increased community involvement and fostering an atmosphere of cooperation.[76] Physicians breaching gunshot victims' confidentiality by giving such information to the police may also cause the general distrust of law enforcement.[77] Victims may view mandatory reporting as a partnership between police and physicians against impoverished minority communities.[78]

If distrust of physicians is harbored within a community, it may have a chilling effect on patients seeking care for other sensitive issues such as drug use, sexual diseases, or violence not involving firearms.[79] The general public health of communities may be harmed if patients do not trust physicians enough to seek care when they need it or feel they must guard private information in a doctor-patient relationship to avoid police involvement.[80] Additionally, despite mandatory reporting of gunshot wounds being law for over twenty years, gunshot related crimes are being solved at historically low rates.[81] These statistics indicate that mandatory reporting may not lead to significant amounts of arrests.[82] Legislatures and the Chicago Police Department would be well-served to look for alternative methods to increase law enforcement effectiveness.[83] Physician-patient confidentiality is imperative to patient confidence and thus the success of medical treatments.[84] In an environment like Chicago where community members distrust police

75. *See* Schaper, *supra* note 61.
76. *Id*.
77. *See* Kottow, *supra* note 9.
78. *See id*.
79. *See* Pauls & Downie, *supra* note 32.
80. *See* Frampton, *supra* note 4.
81. *See* Schaper, *supra* note 61.
82. *See id*.
83. *See* Main, *supra* note 63.
84. *See* Kottow, *supra* note 9.

and their tactics, forcing physicians to act as an extension of the police through mandatory reporting of gunshot wounds is not ethically valid.[85] Based on poor results[86] and the potentially negative community effects that breaches of confidentiality bring,[87] mandatory reporting of gunshot wounds may not be a worthwhile policy.[88]

V. CONCLUSION

Patient confidentiality and protection of public safety are both important goals that physicians value. Mandatory reporting of gunshot wounds that require physicians to breach patient confidentiality to protect the general public may be feasible in theory,[89] but when viewed in light of community dynamics in Chicago, where distrust of the police is deeply seeded in at-risk communities,[90] the law may do more harm than good.[91]

Respect for patient privacy should be paramount when dealing with gunshot wound patients.[92] The ethical concerns raised by the Act that affect the patient directly are not outweighed by the potential societal benefits.[93] Historically low gun crime solving rates show that the Act has not proven effective, and different tactics should be implemented by Chicago police.[94] The Hippocratic Oath taken by physicians should be upheld without exception when dealing with gunshot victims.

85. *See id* at 117.
86. *See* Schaper, *supra* note 61.
87. *See* Pauls & Downie, *supra* note 32, at 1255-56.
88. *See* Kipnis, *supra* note 27.
89. *See* Ovens, *supra* note 20.
90. *See* Schaper, *supra* note 61.
91. *See* Kipnis, *supra* note 27.
92. *See* Kottow, *supra* note 9.
93. *See* Kipnis, *supra* note 27.
94. *See* Shaper, *supra* note 61.