

HIPAA Calling the Question:

Is the chaplain a health care professional?

Rev. Joseph J. Driscoll

President and Chief Executive Officer

Like the clashing of cymbals, Jeffrey's and Scott's raised voices startled the chaplain interns in the early morning seminar into a learning experience far more effective than reading the definitions off the pages before them. The instructor had been explaining the difference between the infamous "J" (judgment) and "P" (perception) on the Myers-Briggs Personality Preference Indicator. She used the example of how different people plan differently when going on a road trip.

Jeffrey burst out, "Oh, I love maps. I study them beforehand, trace the streets with a highlighter, measure precise markings and distances, and look for landmarks along the route. Give me a map and I am right at home!"

Scott bellowed from across the classroom, "I hate maps! I can't stand the details. I have no patience. I just get in the car and go!"

"Not in my car," retorted Jeffrey.

"I wouldn't go with you anyway," Scott volleyed back.

And we laughed as we learned different personality preferences and how they impact our individual perceptions of reality.

As I was preparing to approach the subject of the current deadline for compliance with the privacy regulations of HIPAA (Health Insurance Portability and Accountability Act), I remembered this incident from my days of supervision of chaplain interns. For some people, the voyage around the solar system of laws, rules, regulations, standards, policies, and procedures is easier to navigate than it is for others. Some people have a knack for detail and precision, thank God.

I have learned two things working with the Jefferys—the mapmakers, or in the instance the regulators—of this world.

First, the discipline of working with precision in both conceptualization and in language is of inestimable value in ordering our world (in this case our profession of health care), in seeking to insure consistency and fairness, and in protecting values that reflect the common good of us all (the present concern with privacy).

Second, and most significantly, no sooner than we write a standard, a regulation, or a policy, then someone will find an ambiguity, a situation not covered, an interpretation that differs from the assumption underlying what was written.

Such is the case with the HIPAA regulations governing "protected health information." There are varying interpretations, and the law intentionally allowed for that. As the April 14 compliance deadline drew nearer, phone calls and e-mails came into the national office from chaplains and institutional compliance officers alike. Let me share some information that has emerged from many of these conversations.

Letter from the Five Presidents

The newly formed Council on Collaboration (representatives from AAPC, ACPE, APC, NACC, and NAJC) met in

Washington, D.C., last December to explore concrete ways that we could collaborate. One suggestion was to draft a letter from the presidents of the five organizations to health care administrators to support our professional chaplains and clinical pastoral educators as their institutions were reexamining the regulations governing privacy and confidentiality.

The letter was drafted, reviewed by a compliance officer in a major health care system, circulated among the organizations several more times for editing, and then mailed out to certified members of the participating organizations with a cover letter from its representatives on the Council. The intent was to provide the chaplain or supervisor with the letter to personally bring to her or his administrator since a direct mailing would likely get lost in the daily barrage of mail. (See pages 9 and 10 in the April *Vision*.)

The primary aim of the letter was to clearly distinguish the role and function of the professional board certified chaplain on the health care team from that of the local clergyperson who comes to the institution to visit his or her congregants.

My experience during the last eight years on the faculty of the Harvard Medical School symposium, *Spirituality and Healing in Medicine*, is that those lines are often blurred by physicians and administrators alike. Two of the slides from my presentation directly address this distinction:

■ The **chaplain** is a health care professional; the **clergyperson** is a religious leader.

■ The **chaplain** tends to the spiritual needs of all the patients; the **clergyperson** tends to the religious needs of his or her congregants.

From the response of many of you, this letter was a helpful tool for advocacy. For some of you the letter raised further questions.

"Board Certified" Chaplain

The designation "board certified" originated from the Association of Profession Chaplains (the then College of Chaplains). In fact, they use "BCC" as the official the designation for the board certified chaplain. Shortly after becoming your executive director, I had several conversations with the then College of Chaplains leadership and recognized the wisdom and value of this designation since it is the language of the medical profession. Though the NACC as an organization never adopted the "BCC" designation (our governing body chose the designation "NACC Cert."), I, and others, began to use the expression "board certified" whenever we referenced the professional certified chaplain or supervisor.

A question arose as to whether or not an NACC-certified chaplain was indeed "board certified." The answer is that our authorization to certify comes from the United States Conference of Catholic Bishops/Commission on Certification and Accreditation (USCCB/CCA) whose Board of Directors approves our standards. Though at present we don't use the

designation “BCC,” in fact our chaplains and supervisors are indeed “board certified.”

“Non-certified Chaplain”

This is a difficult issue that will more than likely be brought closer to resolution by these HIPAA regulations. The expression “non-certified chaplain” seems like an oxymoron. If a chaplain is a health care professional, and health care professionals are all licensed or certified, then one cannot be a professional without license or certification.

But philosophically, I strongly dislike defining anyone by the designation “non.” We went through that with the black and white of Catholic and non-Catholic for many years. You were either with us or against us. There is no “non” in the stories of the life and ministry of Jesus. The “nons” in fact enjoyed favored status (the tax collectors, sinners, prostitutes, the woman at the well, the centurion) and were the first at the table in the coming of reign of God. So, shifting the language from identifying persons as “non-certified,” let us pose the following question: What about those chaplains who are not yet certified? I believe that is the question.

When we were in the first phases of restructuring our organization several years ago, we reviewed our mission, vision, and values. After much discussion, we identified “who we are” in our mission statement as “certified chaplains and CPE supervisors.” The question arose about the 25 to 30 percent of the membership who were not certified. The answer was that if we identify as a professional organization, certification is the hallmark of a profession. The assumption then is that those who join a professional association are either certified or in the process of moving toward certification.

A director of pastoral care called to ask whether this letter implied that chaplains who are not certified should therefore be let go from the staff. This was not the intent of the letter. Many persons providing excellent pastoral care are not certified for many understandable reasons. The “profession” has been developing over the last 50 or so years; the real maturation of the profession, I believe, will be the consensus around one universal set of standards. It seems then that there will continue to be a time of transition here—a phase of “grandparenting” those who for whatever reason were not certified, but who are nearing the end of an important ministry.

Two issues need further comment. First, the provision of spiritual care for our sick and dying will take a village, as the expression goes, and that includes professional chaplains (board certified will be the standard), pastoral care volunteers, clergy, other congregational ministries such as parish nurses, Stephen Ministry, etc.), and indeed all health care providers on the team. Spiritual care is not the exclusive domain of one group of persons.

Second, the future (and, for most organizations, the present) standard for hiring the professional chaplain is the credential of certification. The HIPAA regulations are calling the question: Is the chaplain a health care professional (and therefore has access to protected health information like other members of the team)? If you claim the profession, the question then asked is, where is your license to practice?

Minimum Amount of Information Necessary

A compliance officer for a health care facility called to ask what information should be made accessible to chaplains.

She asked for example, why would a chaplain need access to a patient’s lab report? It’s a good question.

My response was that all clinical members of the health care team have access to the full patient record, and the social worker, for example, is not restricted to certain areas that are determined not to be directly relevant to the provider’s discipline. In principle, the chaplain as a health care professional has full access just as any other member of the team.

Second, health care is holistic care. All members of the team work together to care for the person and her or his body, mind, and spirit. Chaplains are expected to have a knowledge of medicine and medical terms, and though he or she may not find it necessary to read the lab report, it is there as a part of the one record of the one person who has an illness of body, mind, and spirit.

I then raised the issue of “charting,” and asked the compliance officer whether or not the chaplain documented in the patient’s chart. To my dismay, she said, “No, she [the chaplain] keeps her own records locked in a file, but does not record them in the chart for reasons of confidentiality.” I made it quite clear that this was inappropriate. How could she read everyone else’s notes, all confidential information, and then turn around and say, “Oh no, you cannot have my confidential information”?

Clergy Access to Information

This area will continue to need further refinement in balancing the privacy rights of patients with the important and valued resource of spiritual care from the local faith communities. We all have had the experience of how much it means to a patient and family when the local pastor or church representative comes to visit.

Health care facilities have been restricting access to information in light of the HIPAA regulations for some time now. Often this has been done poorly with the sudden announcement of an exclusionary policy with little explanation, no alternative processes, and the obvious resulting backlash from the local clergy.

I invite you to go to our webpage and look at some samples of policies that have been adopted by certain health care facilities (<http://www.nacc.org/resources/hipaa.asp>). There are a variety of ways of implementing the regulations mandated by HIPAA that can safeguard and insure privacy while respecting the need for the spiritual resources that the local community can provide to those who are members of their faith communities, active or not.

A problem that needs ongoing attention is the diocese that pays the salaries (generally “stipends”) for “chaplains” who are not paid employees of the institution, but until now have had the rights and privileges of the other staff. This model has never been a very good idea. Institutions have received free care while at the same time there is little or no accountability (we are accountable to the one who pays our salary). The relationship of these persons to the institution, especially in light of the mandate of the HIPAA regulations, is one that each institution either has or will have to address.

Finally, HIPAA may turn out to be a significant turning point for the profession of chaplaincy. The regulations around privacy are calling the question: Is the chaplain the professional? And we better be prepared to answer that question with documentation. ▼