Imagine a typical pharmacy where the pharmacist is in the back, on the phone talking to the doctor's office. The technician is typing information about a new patient who has come into the pharmacy. The patient is waiting at the drop off as per the technician's request in case there is a problem. There is also a long line of patients coming in to fill prescriptions. While this is going on, the technician who is filling the prescription suddenly has a question and directs the question to the pharmacist standing on the other side of the pharmacy regarding the patient's medication and whether we have in stock or not. Without hesitation, the technician yells out to the pharmacist and asks about the medication. The pharmacist, who is on hold with the doctor's office yells back and answers the question.

This seems to be very typical in any pharmacy. Whether it is a new patient or an existing patient. Lot of personal and confidential information is shared with the pharmacy and it's team members by patients regarding their medications, insurance, driver's license numbers, social security numbers, and other private information which normal is not for public use. Although most of the time this information is not abused, it is still a gray area for patients as far as feeling secure is concerned, because there is a lot of exchange of information going on within the pharmacy.

Confidentiality is one of the core tenets of medical practice. Yet daily pharmacies face challenges to this long-standing obligation to keep all information between the pharmacy and patient private. Because the pharmacy is a public place and easily accessible, it is much more important to keep patient information as confidential as possible, even if it means not having another patient be aware of a patient's telephone number. With keeping patient information private and confidential, it is indirectly allowing the patient to build trust for the pharmacy and pharmacist. A pharmacist is obliged, just like any other health care provider, to keep a patient's profile managed in order to protect the rights of the patient. Even though pharmacists do not take the oath which doctors takes, called the “Hippocratic Oath,” it is understood that pharmacist follow the same ideals stated under the other. According to “The Oath of Hippocrates: ‘...Whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret. While I continue to keep this Oath unviolated, may it be granted to me to enjoy life and the practice of the art, respected by all men, in all times. But should I trespass and violate this Oath, may the reverse be my lot.’”(8) It is obviously assumed that when a patient talks to the pharmacist, he or she feels that that information will remain with the pharmacist only.

Unfortunately, with the more complicated and easily accessible nature of the health care system, there are many gray areas as far as governing the privacy acts are
concerned. In the past, when care was in some ways less complicated, a health care professional would not have thought of sharing information about a patient or their care, except perhaps with other professionals directly involved in the care of the patient, without first discussing it with the patient. This was possible, because access to patient information was limited to writing and actually talking to the health care provider. With the increased use of Internet and computer based sharing of profiles and patient charts, it is much easier to leak information to those who do not need to know the information. It is not surprising to know that most patients are astonished to learn how many people in a health care setting have legitimate access to what they would consider confidential information. Siegler, in the New England Journal of Medicine, presents a case in his article of a patient who was concerned about the number of people who seemed to have access to his medical records while he was hospitalized. The patient was so concerned that he threatened to withdraw from treatment. Upon inquiry, the writer found that many more people than even he would have thought indeed had legitimate needs and responsibilities that required them to examine the patient's chart. In fact, the hospital personnel with legitimate needs to view the patient's medical records numbered 75. This allows patient information to be traveled to many people and indirectly permits breaking the confidentiality protection rights of patients. (1) Actually, many patients are normally unaware as to who has authorization to view confidential patient information. Those 75 members of the hospital health care team may have some authorization, direct or indirect, to view the patient profile, which may be situational, but this is not necessarily made clear to the patient. For example, situationally necessary authorization may be given to a physical therapist, if the patient requires it, but this may not be one of the people who the patient might feel would have all their information. Thus, situationally necessary authorization, though not expressed or acknowledged, may not be in line with the patient's understanding of common practice.

This may be the case in a hospital where it might be justified that patient information is shared with multiple personnel and accessed easily under the supervision of other health care team members, but within the community, the breach of confidentiality may be intentionally or unintentionally broken. Threats to confidentiality exist throughout the health care industry, especially since it has come to depend on the ability to store and disseminate information electronically, and it has become extremely difficult to limit access on a need-to-know basis. Within a pharmacy, it is very easy to access a medication profile by any person without being a pharmacy team member or not. There is no security as far as the computer system is concerned, and the lack of codes and passwords allows just about anyone to open a file and know personal and confidential information about anyone who has been to that pharmacy. Most patients are unaware of exactly what kind of information is shared and accessed at a pharmacy. Though not being a health care team member directly, a technician, and other employees also have access to patient information while entering medication orders, logging pick-up medications, ringing up cash registers, and actually filling drugs for patients. I did a little survey with many patients (about 100 patients) that visited a pharmacy within a week. It was a questionnaire to know how comfortable the patients felt about sharing and feeling secure about the pharmacy having their personal and confidential information. The results were mainly surprising to know that most people
felt very safe and did trust the pharmacy. Though this was the opinion of most people, there was also an aspect of misguidance. While taking the survey, I actually asked the patients whether they were aware of what kind of information the pharmacy did have and what they can have access too. Not to my surprise, most patients had to first of all take a step back and think about the question. Most people had actually not even thought about this concept before. Patients, in general, thought of confidential and private information as something related to a clinic or hospital with a doctor. In fact, about 80% of the patients did not know what information the pharmacy did have and what kind of access the pharmacist or any member of the pharmacy team can obtain about them. Keeping that in mind, they did not feel as safe, though they had faith in the particular pharmacy they attended. This somewhat proves that there is a lack in the legal system as it is not clear and the written laws are not black and white for both health care members and patients to follow and understand. It is difficult to abide by rules that not everyone is aware of and do not follow as a standard across the board.

It is understood in all ethical discussions that confidentiality is important and that the right to confidentiality must be protected. Since trust is an important requirement of civilized behavior, if confidentiality were not so viewed it would be difficult for any society to function well. This can only be acted upon if laws, rules and regulations were precise and have a detailed description, which permits all members participating in the act of keeping confidentiality and privacy, to have a standard to follow. According to Hall, in his article “Health care Laws and Ethics,” “When an ethical obligation, individual or collective, is truly important, its expression is often seen in laws. Though specific laws in respect to confidentiality in the physician-patient relationship are lacking, the inviolable nature of the trust finds legal expression in at least two forms: (1) State evidence codes contain a testimonial privilege for confidential patient communication, and (2) outside the courtroom, tort law protects patient confidentiality by allowing litigation for harm caused by the unauthorized release of patient communication.”(2) It is necessary for professionals to understand and routinely consider whether the acquired information they have, whether from the patients themselves, doctors, or other members should be disseminated or kept protected. Many times, pharmacists try to share information in an attempt to give that extra edge of giving proper patient care, but fail to realize that this may be a breach to either the patient’s privacy or confidentiality. Cacciatore gives a very good example in his article in “Tomorrow’s Pharmacist,” that “in pharmacy, for instance, there is a great deal of discussion on how and with whom patient information can be shared. If certain information is shared and this results in real or perceived harm to patients, it will be resolved in tort law. Say, for example, that a pharmacist provides information to a manufacturer concerning patients taking a particular drug. The manufacturer, in turn, provides educational information to the patient about the common usage of the drug. A patient, however, understands that he is taking the drug for reasons other than those stated in the educational material and subsequently refuses to continue the medication. If any harm comes to the patient, it is possible to claim the harm was initiated by a breach of confidentiality on the part of the pharmacist. A common sense approach to avoiding this problem might have been, for instance, to mail a postcard to each patient telling them about the availability of the educational material and inviting them to request it if interested (by return mail or via a
toll-free phone number). The desire for the information would, in this case, have been that of the patient. For pharmacists in all areas of practice, being informed of a patient's diagnosis allows them to provide only that information relevant to the patient's care.” (3)

Another example, which happens often in the pharmacy, is when there is open communication within the members in the pharmacy or with pharmacists, technicians, or interns calling patients and speaking to the voicemail, answering machine, or another person other than the patients themselves. Despite the laws, it is still unclear as to how much information should be shared and what can be talked about and what cannot be told to other people. A type scenario occurs when a technician is talking to the patient at the counter and mentions the prescription medication name while having other patients in line. This is technically breaking the HIPPA laws and should be allowed. While leaving messages on the answering machine, often times the staff person who is calling may leave the patient's name and say that a prescription is ready. Though not directly stating the name of the medication, by stating that the pharmacy is calling regarding a prescription is an indirect way of not protecting the privacy of patients. This occurs on a daily basis but more so because the current laws are not either nor well understood or not followed in a more stricter manner.

There is a need to make standardized laws for protecting rights of patient information as the evolving nature of the pharmacy is starting to require more personal knowledge from patients about themselves and their drug regimens. More rules and regulations are needed for maintaining confidentiality for the entire staff and new boundaries and implementation of changes in the system can help protect confidential material safely and with more security. Due to the lack of completeness in the laws sand more training; there is call for editing the laws from what is stated currently. More training and emphasis needs to be placed on how to successfully maintain confidentiality. Cacciatore states that, “Assuming that care would be enhanced with shared information, one proposal is that privacy and security assurances also have common standards. In other words, all users of the information (recipients) should be required to honor the same privacy and security assurances expected of the initiator of the information. A state agency, for instance, may have an elaborate electronic system to protect and store patient-sensitive information but willingly share this information with other agencies in order to provide better care for patients. An agency receiving the information from the initiator should then have a legal obligation to protect and store the data in a manner equal to or exceeding that of the sender.”(3) This policy, if it becomes public policy, is important to pharmacy. In practical terms it implies that the pharmacist should take care to ensure that entities with whom patient-sensitive information is shared provide the same level of protection the pharmacy provides.

The patient being unaware is the first flaw in the system. As my survey many other studies have shown, patients are clearly unaware of what kind of information is shared and what goes where. The first act would be to make the patients understand of the team approach in patient management. There are several things that can be done to ensure that the patient does not feel threatened by the team approach. The first is patient education, which helps the patient understand and accept the value of the team
approach. Acceptance will make it easier for the patient to allow broader access by
team members to what the patient considers confidential information. Second, many
team members will already have a professional obligation to confidentiality but others
may not. A fundamental exercise is to ensure that all team members, in fact, all
personnel in contact with the patient, understand the importance of patient
confidentiality, what it entails, and their obligation to protect it in respect to individual
patients.

The health care system is evolving and there is a serious need for changes that
need to be implemented in order to have all health care professionals understand the
same rules and laws. There is a need for more training and clear statements and
restrictions need to be made on how to carry out laws concerning patient privacy and
confidentiality. Revolutions in our health care delivery system mean that patients need
to place their trust in entire networks of insurers and health care professionals - both
public and private. The computer and telecommunications revolutions mean that
information no longer exists in one place - it can travel in real time to many hospitals,
physicians, insurers, and across state lines. According to Dr. Hamburg’s Testimonial to
the US Department of Health Services, “Health care privacy can be safeguarded. It
must be done with national legislation, national education, and an on-going national
conversation.” (4) This is very true because in the current system, there seems to be a
lot of gray area and manipulations and leeway for misinterpreting and changing the
privacy rules. There are apparently no federal standards set currently for protection of
privacy for patients. As the health care team becomes more global, there is information
shared not only within health care provides in the state but also in different states. When
a patient shares information with his or her clinician or pharmacy, they are unaware that
it is not just that clinician getting the information but it can be disseminated to multiple
people. Dr. Hamburg states, “…when we give a physician or health insurance company
precious health information, the level of protection will vary widely from state to state.
We have no comprehensive federal health information privacy standards. Because the
practice of health care is increasingly becoming interstate through mergers, complex
contractual relationships and enhanced telecommunications, we need strong federal
standards. Establishing a baseline that provides uniformity will help reassure the public
that they can trust their providers and insurers to keep their health information secure.”
(4) When there is standard rule, it can be easily implemented and followed without
having disputes. With forming a baseline for all health care members, it will make it
much easier for everyone to know how to secure information correctly with keeping the
patient well informed as well. A balanced framework for legislation that can protect the
privacy of medical records, guarantee consumers the right to inspect their records, and
punish unauthorized disclosures of personal health data by hospitals, insurers, health
plans, drug companies or others will insure all professionals to abide under the same
federal laws and rules.

There is a lot of concern regarding the sense of feeling “secure.” In today’s
society, it is not uncommon to see that patients are able to trust the pharmacies they go
to but if asked, they don’t feel fully secured. There is a difference between trust and
secure. While talking to patients at my pharmacy, I was able to learn that most patients
are very comfortable with the information that we have at our pharmacy about them. Little to their knowledge though, they do not know just how easy it is to look up information and how it may be misused by just about anyone having access to the pharmacy and it’s records. If this concept were clearer, many patients would think differently about the security of sharing and giving out personal and confidential information in the pharmacy. Lot of times, patients are not even aware that their prescriptions are read by multiple people, many of them not even being pharmacists, and talked about amongst the technicians. Despite the lack of actual drug or disease state knowledge by technical personnel, it is still easy to access that information online or reading package inserts. It is necessary to teach all technical staff that any information relating to any individual other than himself or herself is considered private and should not be discussed even within the people working in the pharmacy unless needed. This includes sharing drug regimens with others and saying drug names while others are around with patients’ names. It is also necessary to keep privacy intact while contacting patients on the phone and leaving messages on answering machines that are shared by multiple people in the household. It is very curial to make a standardized rule about what exactly can be said on the phone and how to address an issue or concern if the patients themselves are not available. “Americans need to feel secure that when they give out personal health care information, they are leaving it in good hands. Information should not be used or given out unless either the patient authorizes it or there is a clear legal basis for doing so. There are many different ways that private information like your blood tests could become public. People who are allowed to see it - such as lab technicians - can misuse it either carelessly or intentionally. And people who should not be seeing it - such as marketers - can find a way to access it, either because the organization holding the information doesn't have proper safeguards or the marketers can find an easy way around the safeguards. To give Americans the security they expect and deserve, Congress should develop legislation that requires those who legally receive health information to take reasonable steps to safeguard it and face consequences for failure to do so,” says Dr. Hamburg. (4)

In 1996, Congress enacted the Health Insurance Portability and Accountability Act, or H.I.P.A.A. The primary purpose was continuity of health insurance coverage if you change jobs, but it also provided for standards for health information transactions and confidentiality and security of patient data. This confidentiality portion will most affect the day-to-day workflow among all members within the health care team. The Privacy Rule was published in April 2001 and has been enforced since April 2003 by the Office of Civil Rights. There are civil penalties of $100/violation up to $25,000/year. Criminal penalties are also possible including $50,000 and/or 1 year in prison for wrongful disclosure or $250,000 and/or 10 years in prison for the intent to sell information. (5) These rules are very generalized and the laws are not well defined. For example, it does not address how specific information should be addressed to relatives of patients, what information can be shared with other people than the patients and so on. At the pharmacy normally, the technician asks if there are any questions for the pharmacists, as the law requires it. Many times, the people picking up are not the patient themselves. In this case, it is important to consider that information about the drug or its regimen may be an act of breaking the law without intention. Thus, it is
crucial to make some changes to laws to address such situations when protecting the privacy and confidentiality is in the hands of the pharmacy and not the patient. Currently, consumers do not know that asking such a question is a law, which may not be addressed in the HIPPA policy. They may not know that information has a potential to be shared and private and confidential data about patient’s health status or drugs may be discussed without the patient having any knowledge of it. Dr. Hamburg suggest that “…our recommendations set forth a set of practices and procedures that would require that insurers and health care providers provide consumers with a written explanation detailing who has access to their information and how that information will be used, how they can restrict or limit access to it, and what their rights are if their information is disclosed improperly. We also recommend procedures for patients to inspect and copy their information, and set out the very limited circumstances under which patient inspection should be properly denied. Finally, we recommend a process for patients to seek corrections or amendments to their health information to resolve situations in which innocent coding errors cause patients to be charged for procedures they never received, or to be on record as having conditions or medical histories that are inaccurate.”(4)

“Ethics and laws regarding confidentiality evolved long before the information highway was envisioned. The old laws and ethical precepts do not always fit neatly with today's computerized systems. Given the difficulties with compliance, some physicians and networks have only paid lip service to protecting patient confidentiality. This approach is short-sighted and unwise. The law will gradually catch up with the new system and seek to protect confidential patient information.” (6) While this is still in progress, it is necessary to urgently make standardized rules for all members of the pharmacy to follow. This means being very safe while passing or exchanging information with members in with the pharmacy team members. There are very minor mistakes happening within the pharmacy and these issues need to be addressed in order to keep patient’s confidentiality in mind. For example, sharing of prescription information and questions about it should only be directed to the pharmacist. While leaving voicemails, the fact that a prescription is ready should not be said in order to avoid others in the household to know about the fact that a patient is having prescriptions filled at a particular pharmacy. While talking to patients, it should be absolutely done inside a private room in order to have no one but the pharmacist and the patient hear about medications, patient’s private concerns or questions.

Health care members should inform patients of the limits of confidentiality protections and allow the patients to decide whether treatment outweighs the risk of the disclosure of sensitive information. A patient expects to have his or her privacy respected by the health care member and should not be disappointed. This can be done by having the patient aware of all exchange of information that takes place in a pharmacy. With patients being aware of how prescriptions processing goes on, they can feel much more comfortable in sharing and feeling safe. Patients should also be aware that multiple people work on their orders and all people involved abide by the same laws of protecting privacy rights. In general, patients should also know that other entities are also receiving their information, such as insurance companies and be aware
of exactly what information is passed on. There should not be questions asked about the prescriptions or other problems to other people than the patients themselves. Answers about a particular patient should not be answered either on the phone or in the pharmacy without the patient being aware of the fact that this is happening. Health care members should become familiar with laws involving the duty to maintain confidentiality. Any breach in confidentiality, even one that seems minor, can result in mistrust and, possibly, a lawsuit and/or disciplinary action.

The principles or rules of liberty, privacy, and confidentiality are derived from the principle of respect for autonomy. The health care society should make these principles as the significant basis for practicing in order to avoid problems concerning sharing information. Everything in today’s world is so easily accessed. Anyone can get any information about anyone. It is very important that the health care laws be more elaborative and precise in order to protect both the health care team members and patients. Care must be taken to continue to respect the principle of the right to autonomy. Professionals should try to consider situations as best they can so that decisions will be in line with the wishes of the individual if competent. For example, one would not discuss confidential health information with others unless they filled the advocate role of making subsequent health decisions on behalf of the patient. As members of the society who serve patients, it is our role to make the right decision based on the situation. Due to the extra amount of information we as pharmacist are provided along with what we can have access too, it is very important to base decisions on each patient individually. For example, in a situation where the patient is very well competent, no information, whether directly or indirectly, should be shared with anyone unless the patient has shown willingness to do so in writing. This can allow lawsuit issues and trust can be maintained. In the case that a patient is incompetent or unable to speak about their personal information, questions, or concerns, it is still necessary to assess that situation with legal authorities as to who would have right to know information and who should be contacted.

With the emerging technology advances in the pharmacy and global Internet connections, all information has a potential to be leaked. This means stronger and better laws are needed for all individuals to follow in order to protect patient confidentiality. Currently patients are not well informed of information being passed on and shared among health care members, especially those working in the community setting. In this case a much more precise explanation of laws is needed for all pharmacies. This standardization of laws can help become the pharmacy a much-secured entity and set an example for other professionals to do the same.

There are many justifications for the need to have stricter rules and regulations for pharmacies to maintain confidentiality. There are many ethical issues concerning the matter of maintaining confidentiality and implementing HIPPA rules in the pharmacy, which are not even black and white yet. The rules don’t seem to be clear and more defined and strict rules are necessary, especially in this emerging society. Most pharmacies do not practice the rules as they should due to lack of completeness in the
laws and not enough training for the entire staff allows breaches of confidentiality and privacy of patients.

Dr. Hamburg concludes her testimony in the same regard. “The principles represent a practical, comprehensive and balanced strategy to protect health care information that is collected, shared, and used in an increasingly complex world. In addition to creating new federal standards, we must ensure that every single person who comes in contact with health care information understands why it is important to keep the information safe, how it can be kept safe, and what will be the consequences for failing to keep it safe. Most of all, we must help consumers understand not just their privacy rights, but also their responsibilities to ask questions and demand answers - to become active participants in their health care. We cannot expect to solve these problems all at once. With changes in medical practices and technology occurring every day, we need to be flexible, to change course if our strategy isn't working and meet new challenges as they arise. (4)

“The ideals presented so far are expressed in most professional codes of ethics. A good example is the Code of Ethics for Pharmacists adopted by ASCP (1992). In part, the pharmacist is asked to (1) respect the covenantal relationship between the patient and pharmacist, (2) promote the good of every patient in a caring, compassionate, confidential manner, and (3) respect the autonomy and dignity of each patient.” (7)

References:


