

Case Reports: Publication Standards in Forensic Psychiatry

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Psychiatrists who publish case reports are required to seek informed consent from their subjects on the basis of the ethics-related obligation to maintain patient confidentiality. Academic journals have developed editorial standards to fulfill this obligation. Forensic evaluations do not create a doctor–patient relationship in the traditional sense, and information obtained through a forensic evaluation may also be found in the public domain. This public exposure is particularly likely, given the development of open access publishing standards, online journals, and increasing professional involvement in social media. This article outlines the ethics of informed consent in published case reports for general and forensic psychiatry and offers recommendations for forensic case study publishing. The authors suggest changes in the current requirements stated in *The Journal* for publication of case reports.

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Case reports have long played a role in medical education. From Freud's use of Anna O to illustrate the concepts of hysteria and transference, to modern-day blogs, physicians continue to use narratives involving patients' medical histories to educate the general public, psychiatry residents, and patients themselves about mental illness, psychiatric treatment, and social policy.

Once limited to paid subscription-only services, case reports published in the medical literature can now reach a broad audience. In 2002, the nonprofit Public Library of Science (PLOS) was created as a result of the open access movement to provide free and full-text Internet access to scientific articles across numerous specialties.¹ These publications are available to the general public and are not restricted to a health care audience.

The development of social media has also broadened the reach of published case reports. Literally thousands of physicians now have blogs and Twitter feeds. Professional organizations are turning to social media to promote conferences. The World Congress

on Social Media in Medicine sponsors an annual Medicine 2.0 conference devoted entirely to the use of social media and technology in health care and medical education. Attendees are encouraged to live-Tweet comments and questions, and the proceedings are published on an open access web site.

Medical students and residents are encouraged to reflect on their experiences in caring for patients through the use of narratives and personal memoirs, and physicians in practice may write for-profit memoirs about unusual cases or therapeutic experiences. Narrative medicine as a genre has become popular enough to spawn at least one graduate degree program.²

These changes in the use and distribution of medical case reports mean that patients face an increasing likelihood that their case histories may be read or even recognized by family, friends, and coworkers. Standards for publication and criteria for protecting patient privacy have evolved in parallel.

The American Psychiatric Association (APA) guidelines on the confidentiality of medical records addressed the use of patient case records for training purposes in 1987. Then, the guidelines required the writer to remove all identifying information or to obtain written authorization.³ Stoller⁴ similarly advocated for informed consent throughout the writing process, and encouraged sharing the draft with the patient to ensure scientific accuracy and avoid inaccurate assumptions about the patient's reactions.

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The International Committee of Medical Journal Editors (ICMJE), a consortium of 11 medical journals, published a consensus policy regarding the publication of case reports in 1995. It required that identifying information be removed unless it was necessary for scientific purposes. In that case, written informed consent was required, and the writer was encouraged to show the manuscript to the patient.⁵ The ICMJE opposed the use of altered or falsified information for disguise. They agreed that a journal's instructions for authors should include the requirement for informed consent and that the published article should document the receipt of the informed consent. The consortium was made up primarily of nonpsychiatric publications such as the *Lancet*, *British Medical Journal*, *JAMA*, and *New England Journal of Medicine*.

Psychoanalytic writers were opposed to ICMJE standards and cited differing guidelines by the various psychiatric journals. Levine and Stagno⁶ contrasted the ICMJE requirements with those of the British and American journals of psychiatry. They found that the *British Journal of Psychiatry*, for example, permitted publication without consent if confidentiality could be assured. The *American Journal of Psychiatry* allowed deidentified and disguised case reports and required informed consent only for reporting results of experimental investigations when such consent was required.

In a series of five papers, Kantrowitz¹¹ reported the results of a survey of 30 analysts who wrote case narratives about their patients in a psychoanalytic journal between 1995 and 2000, and 11 analysts who had had their case reports published, with or without their knowledge. He concluded that there was no prevailing practice of obtaining informed consent among the writers and that the patients' reactions, both positive and negative, were unrelated to consent.

In June 2011, the American Medical Association (AMA) addressed general concerns related to the use of social media in their Code of Medical Ethics, Opinion 9.124, "Professionalism in the Use of Social Media."¹² This opinion states that physicians should refrain from publishing identifiable patient information online. There was no recommendation or requirement for informed consent in disguised or redacted cases.

However, none of these policies explicitly addresses the publication of nontraditional case re-

ports, such as forensic evaluations and case reports involving the clinical care of insanity acquittees or criminal defendants. These reports bear a unique set of ethics challenges to both scientific integrity and evaluatee or patient confidentiality. As public policy is increasingly shaped by rare but high-profile criminal cases, the need for publication of forensic case reports is likely to increase, to address public safety concerns and the stigma related to psychiatric patients. The purpose of this article is to outline these concerns and make recommendations for the publication of forensic case reports.

Current Practice: Editorial Policies of High-Impact Psychiatric Journals

To determine the current practice for publishing case records, the *Journal Citations Reports* of high-impact journals were accessed for 2008 and 2011. A journal's impact factor is considered to be a proxy measurement of scientific influence within the profession and is calculated according to the average number of citations to articles published in the journal for a given year.¹³ The top 20 high-impact psychiatric journals were compared between the two years, and the journals were selected based on their presence on both lists. Continued presence on a high-impact list is representative of higher longitudinal impact over time.

Of the top 20 journals, 17 were present on both the 2008 and 2011 lists. The instructions to authors and publication policies of these journals were reviewed with regard to redaction or disguise of personal identifying information, consent policies, standards for patient review, and revocation of consent.

Level of patient disguise was given a categorical rating of one (identifying patient information redacted) or two (policy allows for composite or fictionalized patient). When they were explicitly addressed, written or verbal consent policies were rated as being either allowed or forbidden. Some journals did not explicitly address patient disguise or consent, but did document reliance on other standards or an institutional review board process. These journals were coded as not addressed (NA) with a notation of the policy or procedure that they relied on.

Table 1 presents the prevailing practices for patient disguise, informed consent, patient's review of the case report, and patient's right of revocation. All 17 journals forbid full disclosure of identifying patient information. Redaction of certain demographic

Table 1 Current Editorial Standards for Published Case Reports Adhered to by High-Impact Psychiatric Journals

Journal	Disguise Level	Written Consent	Verbal Consent	Patient Review	May Revoke Consent
<i>Archives of General Psychiatry</i>	1	+	–	+	NA
<i>American Journal of Psychiatry</i>	1	+	–	NA	NA
<i>Schizophrenia Bulletin</i>	1	+	–	NA	NA
<i>British Journal of Psychiatry</i>	1	+	–	+	–
<i>Journal of Clinical Psychiatry</i>	1*	+	–	+	NA
<i>Journal of the American Academy of Child and Adolescent Psychiatry</i>	1	+	–	NA	NA
<i>Psychological Medicine</i>	NA	NA	NA	NA	NA
<i>Journal of Psychiatric Research</i>	1	+	–	NA	NA
<i>Schizophrenia Research</i>	1	+	–	NA	NA
<i>Journal Psychiatry and Neuroscience</i>	1	+	–	NA	NA
<i>Journal Child Psychology and Psychiatry</i>	NA*	NA*	NA*	NA*	NA*
<i>Addiction</i>	NA†	+	–	NA	NA
<i>American Journal of Geriatric Psychiatry</i>	1	+	–	NA	NA
<i>World Psychiatry</i>	NA	NA	NA	NA	NA
<i>Acta Psychiatrica Scandinavica</i>	1	+	–	NA	NA
<i>Psychosomatic Medicine</i>	NA*	NA*	NA*	NA*	NA*
<i>Journal of Affective Disorders</i>	1	+	–	NA	NA
<i>J Am Acad Psychiatry Law</i>	1,2	±	±	NA	NA

1, Identifying data removed; 2, fictionalized or composite patient; NA, not addressed.

* Level of disguise not explicitly stated, but journal affirmed adherence to ICMJE criteria.

† All cited according to standards of the IRB that approved the study.

±, see text of article.

or unique case aspects was the norm, as was the written informed consent of the subject. No journal required that the patient be shown the manuscript or given the right to revoke consent to publication, although one could infer a right to revoke consent for journals that deferred to institutional review boards. No journal addressed the potential use of composite patient or fictionalized vignettes.

The Journal of the American Academy of Psychiatry and Law requires documented institutional review board (IRB) approval or exemption and a copy of the IRB letter with the manuscript. Subjects of case reports must be deidentified, but composite or fictionalized reports are allowed. The article containing the case report must state how informed consent was obtained; however, consent may be either verbal or written, and the instructions acknowledge that informed consent may not be obtainable in some circumstances. Authors are encouraged to discuss their informed consent methods or attempts with the editor when written informed consent is not obtained.¹⁴ The problems with the current approach of *The Journal* will be discussed within the recommendation section below.

Ethics in General Psychiatry and Social Media

With the growing use of social networks, blogs, and other Internet-based activity, new ethics-related

concerns have emerged regarding the physician–patient relationship, the management of the relationship, and the responsibilities of those agencies that monitor and sanction professionals. Likewise, these developments in social media and the Internet raise ethics-based concerns about publishing forensic case histories, both traditional clinical cases and those cases where the author acted as an expert, not a treating professional. In forensic work, as has been well discussed in *The Journal* over the years, the relationship of evaluator to evaluatee is not a traditional patient–doctor relationship, yet it continues to be constrained by traditional ethics principles of professionalism in medicine. Although there continues to be controversy over whether forensic practice is the practice of medicine, it is generally agreed that evaluating individuals in criminal proceedings and civil litigation does not involve the same obligations as in the traditional patient–doctor relationship.¹⁵ However, we assert that the practice of forensic psychiatry should be guided by developing concepts of professionalism in medicine, rather than by any fixed definition.¹⁶ We support the view that professionalism is more than a list of values and desired behavior; it is a process of discourse and discussion that shapes normative values. The thinking in the field of forensic psychiatry should continue to evolve, leading to con-

sensus and agreed-on standards, including rethinking standards that shape publication practices. While we plan to recommend guidelines that recognize the enormous difference between the traditional professional–patient relationship and the relationship involved in forensic practice, it may be helpful to review some of the ethics-related concerns that have emerged with the use of social media and the Internet.

The recognition of dual relationships and conflicts of interest is a phenomenon that has helped define professional expectations and norms. Ethics guidelines involving the patient–physician relationship have been standardized and uniformly incorporated into professional medical practice. Respect for patients, protecting patient confidences and privacy, providing benefits and interventions that improve the health and welfare of patients, and avoiding behaviors and activities that harm patients are all established principles that direct the relationship between professional and patient. Maintaining clear professional boundaries that place the patient’s needs above the professional’s is foundational as well. The AMA and APA, for example, have established clear rules pertaining to sexual involvement with both current and former patients.

In addition, dual relationships that cloud the boundary between patient and physician have come to be seen as ethically questionable or even downright unethical. For example, prescribing medications for neighbors and family, with some exceptions, is strongly discouraged and in some jurisdictions, sanctioned, especially when it occurs without an established physician–patient relationship. Criteria that define this relationship include practices such as examining the patient and maintaining a chart, along with other activities that distinguish between informal and formal medical practice. These are boundary-keeping practices that should strongly influence our careful departure from classic patient–physician considerations in the production of forensic case reports.

Overall, the growing consensus in professional medical ethics requires that physicians recognize that their profession is held to the highest standards of ethics, both within the profession and by society at large. This higher standard requires physicians to exercise extreme care in maintaining the boundary between professional and personal relationships. Consequently, professionalism has come to be defined as

maintaining vigilance and self-reflection on how one’s behavior may be perceived and judged within one’s professional and personal life. This higher standard of professionalism requires that physicians be careful in moving between professional and personal activities. We believe that the concepts of conflicts of interest and boundary dilemmas are important and useful considerations when discussing the scholarly activity of publication of case reports in forensic practice. They provide a high and protective standard against which divulging patient information must be held. Just as clinicians must be vigilant in considering these potential ethics-related problems with patients, those inclined to write about cases must likewise be vigilant to the balancing process intrinsic to publishing them. Those practitioners who are also involved in scholarship must be particularly sensitive to the tension between respecting an evaluatee’s privacy and honoring the simultaneous responsibilities to contribute knowledge to complex human situations in forensic practice. They must recognize that case reports not only arise in the context of professional requirements to protect patient boundaries, but also function to educate and promote quality improvement in forensic practice.

Print publication has obvious differences from social media, but ethics guidelines pertaining to the use of social networking in medical practice are evolving. Social networking is a relatively new activity that can affect the physician–patient relationship and the interface that defines the clinical relationship. As mentioned above, The AMA’s Council on Ethical and Judicial Affairs has stepped into this complex area with Opinion 9.124, Professionalism in the Use of Social Media.¹² While recognizing the right of physicians to participate in these developing activities and the potential benefits of digital tools, the AMA recognizes the impact of social media on traditional professional obligations, ethics principles, and blurred boundaries in the patient–physician relationship.

The Internet creates several specific areas of ethics-related concerns in clinical practice, and the decrease in paid-subscription journals and access to journal information by a larger public underscores the need for guidelines for forensic case publications. The possible violation of patient confidences and privacy, blurring of professional–personal boundaries, and the representation of the professional online are areas particularly ripe for ethics violations. Thus the

AMA's CEJA has alerted physicians to the reality that, although privacy settings offer some protection of patient information, once the information is on the Internet, a permanent and retrievable record has been established that can compromise patient confidentiality. Blurring boundaries between one's personal and professional Internet presence is discouraged because the patient-physician boundary can be compromised. Internet interactions can easily be misconstrued and misinterpreted, and therefore separation of personal and professional identity on the Internet is important. Maintaining professional decorum and respect for the patient and putting the patient's interests before those of the physician are even more critical on the Internet than they are in traditional face-to-face interactions. In face-to-face encounters with patients, the professional has the ability to explore and clarify misunderstandings or miscommunications with the patient. Such opportunities do not always avail themselves in the world of Internet communications, where words alone can be easily misunderstood and reacted to without discussion or clarification. This possibility then brings us to the discussion of how these emerging principles influence the publication of forensic case reports. How do these principles apply or fail to apply in the world of forensic publication?

Ethics in General and Forensic Psychiatry

We begin our ethics analysis by acknowledging that educational efforts require publication of case reports and that details matter in making forensic work meaningful. In addition, we reinforce the premise that forensic practice that leads to the publication of case studies does not begin in a traditional patient-physician relationship and thus should not be defined by the same guidelines that define publication of general psychiatry clinical case studies. Constructing the narrative of forensic case reports and testimony requires not only striving for objectivity and applying scientific knowledge, but also appreciating the evaluatee's trajectory toward the legal encounter.¹⁷ Details of the story matter and have a real effect on the medical hypothesizing and framing that forensic experts perform. The precise narrative itself brings concepts and language to light that clarify the scientific and moral relationships inherent in forensic work.

This is not to say that all details matter, and as written elsewhere, forensic professionals should

avoid gratuitous and inflammatory material that is irrelevant to the legal question.¹⁸ While detail and nuance are important in forensic writing and bolster the ethics-based claim on otherwise private information, care must be taken to exclude unnecessary, trivial, or even embarrassing information that does not further the goals of the case report.

At the same time, individuals have a right to control the elements of their stories in ways that protect their integrity, understood here as wholeness or intactness. The public forum or legal system can exact a hefty toll from its participants as it is. Moreover, individuals have a claim to greater protections when faced by institutions with greater power and real control over their lives. Although this right is almost absolute in clinical case reports, it weakens substantially in the public forum where judges and juries, disability and Workers' Compensation panels, victims, and government agencies can make legitimate and ethical claims on private information.

Those who rule or make policy based on precedent have a strong claim to otherwise private information. They must make judgments, rulings, and policies with correct, undisguised information. We assert that this claim applies to those who learn from, critique, and modify these efforts. The advancement of education, along with the development of legal and social policy, calls for an attenuation of the usual strong protections placed on clinical information and its appearance in social media.

Consequently, the rules cannot be any different for forensic case reports than for the legal cases they derive from. Otherwise, the nuances and meanings of the story are altered in ways that affect their application. Because the lessons drawn from forensic case reports apply to many similar cases, there is a utilitarian argument to be made here. The benefit of the many—the teachers and students, the future victims or defendants, the judges and attorneys—carries some weight in recommending ethics protections that are different from the standards for traditional clinical case reports.

However, we do support the use of certain protections on information in publishing forensic case reports. Authors must consider at least the basic values of the American Academy of Psychiatry and the Law (AAPL) Ethics Guidelines in publishing case reports taken from forensic material.^{17,18} The AAPL principle of respect for persons, for example, requires that even individuals who have committed heinous acts

be afforded the restraint that limits reports to relevant information drawn from the public forum. Respect for privacy and confidentiality requires that inflammatory and gratuitous information irrelevant to the purpose of the published case report be excluded. Informed consent requires that information obtained without appropriate consent be censored in any future writing, and respect for honesty and striving for objectivity require thoroughness, collateral sources, and avoidance of oversimplification or demonizing. We continue to assert that, “In the event personal values strongly inform the author’s judgment, they must be handled transparently, not hidden in the narrative” (Ref. 18, p 65).

Recommendations

For publication of case histories that emanate from treatment relationships in a correctional setting or that involve treatment of individuals in other forensic settings, the same emerging standards that apply to medical and psychiatric journals should guide *The Journal*. Seeking consent, developing strategies to protect the privacy and confidentiality of subjects, and encouraging subjects to tell their stories should guide publication. In some situations, sharing an early written version of the case report with the subject may be useful. Consent for publication would not alter current requirements for consent for treatment or evaluation, since the utility of the information, purpose of publication, and publication venue can be determined only after the information is gathered.

In forensic case studies that do not emanate from a traditional patient–physician treatment relationship, our recommendations recognize the differences between general and forensic psychiatry. We support a change in the current requirements of *The Journal* for case reports. We argue that the current requirements are unnecessarily restrictive and do not include case reports from individual practitioners who are not academically situated where access to IRB approval or exemption is easily available. While we acknowledge the concerns raised by Kapoor *et al.*,¹⁹ we do not think the current requirements for IRB exemption and deidentification of subjects apply to all case reports, and in fact, *The Journal* and its readers may be missing opportunities to learn from colleagues and subjects of case reports excluded by the current requirements.

We recommend that forensic case information that is already in the public domain not require informed consent if the information is factually consistent with information known to the author. It is not uncommon to have public cases referenced as a book-end or stylistic practice for entering into a substantive discussion of an important and relevant forensic topic. To reference the case of Andrea Yates as a method for considering child murder should not require special permission, given the high-profile and public aspect of such a case. To discuss aspects of the Jared Lee Loughner case as an entry into topics such as the insanity defense, competency restoration, and the death penalty should not require permission or IRB approval. Public domain information may include, but is not limited to, information available through testimony, reports entered into evidence, or information previously published through traditional or digital media sources.

Of course, the decision to publish and frame such public information should be guided by the same ethics that guide forensic practice and expert testimony and should be evident in the work product: the publication of the case study itself. Principles of respect and honesty, fairness, striving for objectivity, thoroughness, accuracy, and truthfulness in using collateral sources, and avoiding oversimplification and the dehumanizing of subjects are all guidelines for forensic case study publications. These principles apply when the case study draws heavily from information in the public domain as well as in the one that depends on specific consent.

Editorial standards for *The Journal* currently require documented IRB approval or exemption. The ICMJE standards adhered to by most psychiatric journals do not require an IRB decision, nor did the seminal research ethics guide, *The Belmont Report*, consider it.²⁰ Given the previously outlined differences between general and forensic case reports, *The Journal’s* requirement for IRB approval is overly stringent and should be rescinded. IRB oversight for medical research and publication serves the purpose of protecting research subjects; it was never intended for case reports derived from public information. Furthermore, the Department of Health and Human Services defines research as “a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.”²⁰ The IRBs of some academic institutions advise prospective authors that a

case report based on a single subject does not meet this definition and therefore does not require IRB review.²¹

Any movement toward requiring IRB approval for a widening category of publications is troubling and places burdens on IRB processes that are contrary to the historical purpose of IRB review. The ICMJE standards require written informed consent, particularly when crucial case material cannot be deidentified. *The Journal's* editorial standards allow for either written or verbal informed consent, but allow for publication without consent in certain circumstances.

Permission or consent should be required for the use of any information that is not in the public domain. In these situations, consent would be required from the central subject of the case study, although in rare situations, it may also be appropriate to obtain consent from individuals who are a party to the narrative. We do not recommend a broad rule of consent from third-party individuals who are mentioned in passing, are incidentally related to the case, or have a relationship that can be implied, nor from public figures involved in the judicial process and subsequent narrative. In forensic cases, inevitably, information that identifies individuals other than the central subject may be essential to the value and importance of the publication, and it supports the educational and ethics-based purposes of the published narrative. We do not support the view that authors have an obligation to protect third parties in these situations. If information about such parties is either in the public domain or revealed through the central subject's story with that person's consent, we do not believe an obligation to those identified third parties is appropriate or necessary.

In some cases, the factual circumstances of the case itself may be identifiable. The forensic author is not obligated to disguise factual circumstances that are essential to the purpose of the case report, even when those circumstances may personally identify involved individuals. *The Journal's* current policy requires the use of deidentified case material. This policy should be revised, to drop this requirement when case circumstances make the individual readily identifiable, the information is already in the public domain, and identification is at the request of the subject. On several occasions, it has been the experience of one of the authors that subjects of case reports not only provided consent, but preferred that they be identified and recognized in the narrative. These subjects

wished to provide education and considered the inclusion of their identity as validation and a form of advocacy to counter the stigmatization often experienced in the case reports flowing from forensic practice. These individuals wanted their experience to be rendered as their story.

Finally, we believe that preserving authorial discretion in defining the scope of consent is appropriate and consistent with the historical, moral, and educational values that are supported in the tradition of publishing case studies. These recommendations do not distinguish between case reports published in the print academic literature, in an online open access journal, or in social media. While it is beyond the scope of this article to present recommendations for specific case scenarios, these guidelines are based on general principles of ethics that have been adapted to common forensic practice. Doing more would undermine the lessons and educational importance of published forensic case reports.

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