Sawbones 176: Patient Privacy

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Clint: Sawbones is a show about medical history, and nothing the hosts say should be taken as medical advice or opinion. It's for fun. Can't you just have fun for an hour and not try to diagnose your mystery boil? We think you've earned it. Just sit back, relax, and enjoy a moment of distraction from that weird growth. You're worth it.

[theme music plays]

Tommy:
Hello, and welcome to Sawbones, a marital tour to misguided medicine. I'm your cohost, Justin McElroy.

Sydnee:
Uh, no you're not.

Tommy:
No, I'm not.

Sydnee:
[laughs] I'm definitely Sydnee McElroy but you're my dad.

Tommy:
I'm your cohost Tommy Smirl and I am just a dude.

Sydnee:
[laughs] That's right, this is a very different Sawbones this week.

Tommy:
It's a crossover.

Sydnee:
We've switched it up. Uh, we... Uh, we here at Sawbones, it—you're probably familiar, we like to talk about medical history and stupid, awful medical things that we've done throughout history, uh, because we didn't know anything and my dad, who's name by the way is Tommy Smirl, I'm introducing you.

Tommy:
Oh, thank you.

Sydnee:
[laughs] Does a podcast that does the... sort of the same thing with legal matters called Court Appointed with my uncle, Michael Meadows.

Tommy:
That's right and so we got the idea, said, "Here's a topic that kind of is part medical and part legal, why don't we do a big podcast?" And then Justin said, "Let's just swap dumb guys."

Sydnee:
[laughs]

Tommy:
"You go over with Sydnee and I'll go over with Michael and we'll do the same topic but cover it from both angles." So, you have a sister episode now.

Sydnee:
Now, it should be noted that I did not refer to them as the dumb guys. [laughs]

Tommy:
It's—it's a Twitter thing.

Sydnee:
It's a Twitter thing?

Tommy:
Yeah, they talk about the dumb guys on the shows.

Sydnee:
[laughs] No, we just... You're just not the experts. That's a lot more cumbersome. Just the not experts.

Tommy:
I clarify that by saying I'm just a dude.

Sydnee:
Uh-huh.

Tommy:
That takes me out of the equation. I'm not held responsible for anything.

Sydnee:
[laughs] So, we wanted to talk a little bit about patient privacy and, uh, HIPAA, which you hear thrown around a lot but a lot of people don't know what that stands for, what that means. And this is definitely a topic that has both medical and, of course, legal implications. Uh, myself as a physician, I have my own kind of perspective on it. And then on Court Appointed, uh, my uncle Michael is a lawyer, so he'll be taking the same topic from a legal perspective. So, let's talk about patient privacy.

Tommy:
All right, that sounds like a good idea.

Sydnee:
[laughs] Since that's our show. Uh, the idea of patient privacy is not new. It's very old. It goes back as far as... I mean, when we really think about the history of medicine, a lot of the time, especially on Sawbones, I'll start with Hippocrates, now of course we were doing weird things to people even before that, but we, kind of, think of that as the beginning of the medical profession.

Tommy:
Isn't that ironic? Hippocrates and HIPAA?

Sydnee:
That's true.

Tommy:
You'd almost think it came from that.

Sydnee:
Yeah.

Tommy:
I—I guess it didn't have anything to do with it because it's a... what do you call it? An acronym?

Sydnee:

Yeah. You know, it didn't... But they so often will choose those kinds of acronyms to, like, represent... They do that with medical studies a lot too where they try to pick something that sounds exciting or revolutionary as the acronym for the study when it's really just about, like, which cholesterol drug is better or something.

Tommy:
So, give it an exciting name and it makes it more exciting.

Sydnee:
Yeah. Because it's our... it's our nerdy stuff. So, we're trying to get people interested in it. [laughs]

Tommy:
For the commercials later when they try to get... convince you to tell your doctor that you want that.

Sydnee:
"Well, according to this very cool trial..." Uh, the... So, Hippocrates of course wrote the Hippocratic oath. And patient privacy is specifically mentioned in the Hippocratic oath. And what it states in the original version is, "And whatsoever I shall see or hear in the course of my profession as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets." So, basically, I'm not... I'm not going to tell anybody what we do. What ha—[laughs] what happens in the doctor's office, stays in the doctor's office.

Tommy:
So, they were, like, in Vegas.

Sydnee:
Exactly. It was the same idea.

Tommy:
Okay.

Sydnee:
And this was largely tied to the fact that, historically, doctors initially were very closely tied to priests. So, uh, while... by the time the Hippocratic—

Tommy:

Because they killed a lot of people? [laughs]

Sydnee:
[laughs] What? No! Wait, what do you think priests do?

Tommy:
Well, they administer last rights. [laughs]

Sydnee:
Oh. [laughs] Well, that's a fair comparison. We didn't know what we were doing. Um, no, but I... Because by the time... Now, to be fair, in Hi—in Hippocrates' time, physicians were beginning to become more regarded as, like, craftsmen, tradesmen, like, guild members, that kind of thing. They were still very closely tied to their religious roots, because for the begin... for ancient history, medical problems were largely seen as, like, punishments from the gods or if you got better, it was a divine intervention. Whatever healer coached you through that, therefore, was imbued with some sort of spiritual powers as well. So, you can see that, like, close connection. So, priests in fact were doctors for a long time.

You know, and I mean, like, if you look at, like Shamans and medical men and that kind of stuff, the two were very tied. And so I think you see that related, um, that just as a priest holds your—your, you know, secrets very sacred, you know what I mean. If you go confess to a priest, they're not going to tell anybody, the same was expected of a doctor for that reason.

Tommy:
I never thought of that, but when you think about things like Native Americans, they had their doctors were also the spiritual leaders a lot of times there. And you—you... when they run into, you know, tribes in the woods that have been back in there and people don't know much about, usually the spiritual leader's also the medicine man or whatever like that.

Sydnee:
Exactly. Exactly. And if you think about the origins of diseases being thought to be divine, you know, punishments or whatever, it makes sense. You'd want somebody who understood the body but also was in touch with the spiritual realm, um, because then curing you of disease is very much like exorcism, and so then the connection to a priest becomes very clear.

Tommy:
That kind of goes back to your detox, uh, episode, huh?

Sydnee:
Yeah, that's true. [laughs]

Tommy:
All the bad stuff coming out.

Sydnee:
Get all the bad stuff out. Uh, so, alongside this belief is the directive that we refrain from any wrongdoing. So, we're supposed to keep our—our patient's secrets sacred and secret, and not tell anybody, because that is the trust you put in your spiritual healer or your physician, whatever... you know, whatever we're at that point in history.

But at the same time, we're not supposed to hurt you. You know, that—that primum non nocerum, first do not harm, is not actually in the Hippocratic oath. It actually came along in, like, the 17th century. But it does make a point in the Hippocratic oath that we should be... we should refrain from wrongdoing, which is... I mean, the same idea.

Tommy:
That's a good idea in general. I mean, does it really have to be written in there. Try not to kill 'em? You know.

Sydnee:
I mean, Dad, I know you're new to this show, but trust me, we're done some pretty messed up stuff in history. [laughs]

Tommy:
[laughs]

Sydnee:
It— it was... it was important to remind doctor's, like, "Try not to hurt anybody."

Tommy:
I think that do no harm was a movie title too, uh, had something to do with that.

Sydnee:
It may have been. It may have been. Uh, but because we were also tasked with not hurting people, over time, physicians took this to mean that

sometimes, in order to help your patient, you had to tell their secrets. That sometimes if they, you know, couldn't take control of their own healthcare or they weren't able to do things for themselves, that you might have to divulge this information to somebody else to help them, to help them manage whatever it is, or make a decision, or keep them from doing something that you thought would harm them.

Uh, and so that—that's, like, a direct conflict. You want to keep their secrets, but at the same time, if we're not supposed to hurt them, maybe sometimes... And it's a very paternalistic attitude of medicine, sometimes for their own good, I'm going to tell somebody their secrets. Um, and that was completely left up to the doctor. So, it's your own discretion. What do you think you need to do in someone's best interest? Well, I don't know. It's up to each individual person who just happens to become a doctor.

Tommy:
And some people are better at making those decisions than others.

Sydnee:
Exactly. That's a lot of power to just put in physicians. I mean, like, I like to think that, um, I'm okay at science and I—I care about people a lot and so therefor I had a talent for medicine and I was able to get through medical school. But that doesn't necessarily make me this great person.

Tommy:
I think you're a great person.

Sydnee:
Well, thank you, Dad. I hope I'm a great person. But it does—doesn't necessarily make me one just because that's the job I chose and so—

Tommy:
Well, your mom and dad think you are.

Sydnee:
[laughs] There are a lot of wonderful doctors but the— the two, you know... the two... you can't assume one. Um, and— and also, the other exception that's in the oath is... and it's in that— that paragraph I read, if the information be what should be published abroad, and what they're talking about is if this is important information that maybe we need to share with the world so that we, you know, further our understanding of the human body, then we need to share it as well.

Tommy:
So, like, if it's a big breakthrough about something.

Sydnee:
Exactly.

Tommy:
That could save lives. You found something with someone that is a disease and you found a cure because of it, then you need to share it.

Sydnee:
Exactly. And so then at that point, you have to make the decision, "Is it something I need to do to do that with or not?" And then it's okay to do it if you decide it is. So, we see that even though this was this sacred duty, we're already kind of, like, "Well, but almost all the time."

Tommy:
[laughs]

Sydnee:
Almost. [laughs] Um, this idea that it the... kind of, this sacred duty, like, it changed throughout the middle ages when it became more of, like, a mark of decorum. A doctor would not be respected or trusted if you gossiped about your patient. You would think they were less professional.

Tommy:
Sure.

Sydnee:
So—so maintain privacy became more tied to professional behavior. And this was mentioned specifically in this treatise written by John Adern in 1370 and it was a treatise on anal fistulas. [laughs] And he says specifically, "You really shouldn't talk about your patients." And you can kind of see why. [laughs]

Tommy:
Yeah. [laughs]

Sydnee:

If you're writing a treatise on anal fistulas, that you'd be... you should be like, "And also, please don't go tell all your patient's friends about his anal fistula. Come on."

Tommy:
"Hey John, what's your paper about?" "Uh, A-holes."

Sydnee:
[laughs] Be a buddy and don't go tell everybody about the anal fistulas.

Tommy:
Why would you want to tell people about the anal fistulas? Of all the topics I've picked, I've never picked that topic.

Sydnee:
You know, uh, Dad, we did an episode on, uh, anal fistulas once. They were in... They were in fashion for a while. King Louis brought them into fashion.

Tommy:
In fashion? How can an anal fistula be in fashion?

Sydnee:
He had one and he was the king, so it became the fashion. There's no accounting for taste.

Tommy:
Oh my gosh, I mean, that's like a pierced belly button or something.

Sydnee:
I think... I think it's more uncomfortable.

Tommy:
[laughs] And not as—

Sydnee:
I— I've never had either but...

Tommy:
And not openly displayed.

Sydnee:

The first... When we see this idea being challenged from outside, because a lot of this we've talked about is, like, physicians are mandating it for themselves. Uh, we see this being challenged from the outside in the 14 ad 1500s as the great pox which was syphilis is spreading through Europe.

Uh, physicians are being compelled by local authorities to report the names of patients with syphilis to them. And this is clearly in violation of the oath and what physicians believe their job is. And this is actually taken to court repeatedly as physicians are fighting for their right to keep their patients secrets, uh, and judges are trying to force them otherwise.

And there are a lot of compelling arguments about trust. Like, and this is where we start to see that argument: if I start telling people, "Hey, my... This dude's got syphilis, nobody's going to come to me for treatment for syphilis anymore because they're going to know that I tell people. And so it's going to be bad for patients, it's bad for the public health. They need to know they can trust me or else nobody will seek medical care." And that's where you start to see that argument arise.

Um, and physicians fought really hard and they made really compelling arguments and ultimately, in every case, the judges agreed with them. Like, "Well, you're right." And—and what usually turned it is that they said, "You know, syphilis doesn't just strike... I mean, it's not, like, a class thing. Anybody can get syphilis, maybe even judges. And if a judge got syphilis, wouldn't that judge want me to keep it quiet?" And then they—

Tommy:
He said, "I would. I mean, yes, he would."

Sydnee:
[laughs] And then they ruled in their favor.

Tommy:
[laughs]

Sydnee:
Uh, they did... Uh, I would note, they did make an exception where the judges were like, "You're right, you're right. We could... We could reveal some really person secrets for some people that we like, so we won't do that, but you're going to give me a list of, like, the quote ruffians and prostitutes, right?"

Tommy:

[laughs] Just the—the ne'er-do-wells.

Sydnee:
And the doctors were usually like, "Well okay, that's fine. Yeah of course I'll do that." So...

Tommy:
[laughs] Oh man—

Sydnee:
Yeah. Obviously—

Tommy:
Is that where they got “a pox upon you”?

Sydnee:
One of. One of. That... This is in... The... Syphilis was the great pox as opposed to the small pox.

Tommy:
[laughs] Syphilis was a great pox?

Sydnee:
It was.

Tommy:
In overall poxes, that's a great pox?

Sydnee:
[laughs] I think...

Tommy:
Man.

Sydnee:
I don't know that they mean great as in, like, great job, I think they mean great as in, like, it's—like, great.

Tommy:
Yeah, you tell your friend, "Hey, I got syphilis."
"Oh, you got the great one! Man, you're lucky!"

Sydnee:
"I just got the small one."

Tommy:
"I never get the good pox. Golly."

Sydnee:
"And then Fred over there for the chicken one, that's no good."

Tommy:
"The chicken. But now he'll be liable to get shingles later in life."

Sydnee:
There you go.

Tommy:
[laughs] I wouldn't know that if they didn't have the commercial. And then you got to look at it.

Sydnee:
Um, obviously, we were far from really a great code of medical ethics at this point, since, like, it was okay to divulge, you know, the... what were considered at the time, the lower tiers of society, it was okay to divulge their medical information but not a judge. Um, at... But that starts to improve.

We see confidentiality, kind of, codify throughout writings on the 1700s in Europe as well as in the early days of the US. Um, throughout US history, you see more and more stress on patient privacy and on only disclosing a patient's information to them as opposed to family members.

Like, that's kind of... that notion in the US is really ingrained. Like, the idea that you... that, you know, Dad, you would be sick and I wouldn't tell you about it, I would only tell mom, you know, if I was just doctor and not your daughter, that would be crazy. Like, I wouldn't even think to do that. But that's... That has been, I think, unique in the US. Now, that is true in other countries as well now. But it wasn't throughout history.

Tommy:
Well now, you—you have to sign something for other people to get information.

Sydnee:
Exactly.

Tommy:
I mean, right. I mean, like, even if it's your wife or something, they'll only tell you unless you sign something saying it's okay for this person to hear this information.

Sydnee:
That's exactly right. And that can make it very tricky sometimes as a family doctor where I take care of a lot of large families and you get a lot of, like, "Hey, you saw cousin Bob the other day, how's he doing?" And I have to say, "I can't."

Tommy:
"I can't speak about it."

Sydnee:
"I can't say anything."

Tommy:
"He has the bad pox though."

Sydnee:
But you got to say in a way that… [laughs] You got to say it in a way that they'll still like you, so I'll be like, "I love cousin Bob. Anyway, how are your feet?" Like, you know… [laughs] Like, something. You know, I don't want to... But I can't talk about it.

Tommy:
Well, at least you won't have to worry about buying cousin Bob a Christmas present, don't expect him to be around then.

Sydnee:
No. [laughs] Um, this was actually... There's a... You begin to see also stress in early writings in the US on the health of women patients being kept private. Because throughout history, as you can imagine, since women were barely—barely considered their own property, uh, that their health information was certainly not considered their own property.

Tommy:

Sure.

Sydnee:
And so you would see this in cases of, like, you want to marry somebody but you want to make sure she's, like, good stock. And so you can get information from her doctor, or a husband could easily get information on his wife's health that his wife would never be given. I mean, it... the doctor would go examine the women and then go tell her husband everything about her. And she would just sit there quietly.

Tommy:
"Give me the lowdown, Doc."

Sydnee:
Exactly. I mean, and so you start to see this— this idea that, you know, it's... I know it's crazy that women are people and maybe they have rights of their own and maybe you should tell them about their health, which was—

Tommy:
Would you have a look under the hood.

Sydnee:
Yeah, that... Yeah. That kind of thing.

Tommy:
[laughs]

Sydnee:
To be fair, this could be true in the inverse in some cases for royalty. There were cases where, like, a princess would be betrothed to somebody and they would say, "Well, let's check this guy out. Is he good stock too?" So, it could go the other way.

Tommy:
Sure.

Sydnee:
Um, the exception that lingers though, at this period in history, is the terminally ill patient. And this—this argument comes into play a lot between a lot of the great, like, early US and European thinkers of the time who were saying, like, either is it okay to lie to a patient who has no hope of ever getting better? And say... Like, they say, "Promise them cure in all cases

even though they are hopeless." That is... That is written. Like, go in and say, "Yes, I'm going to make you better. In two or three months, you're going to be back on your feet again. Don't worry." And then go on the next room and tell their family, "Listen, you're going to need to get funeral preparations underway."

And that was a... that was a common idea at the time. Whereas you begin to see people in the US saying, "I don't like that." You know, "We—we should... Maybe we should start to tell people."

Tommy:
Well, you know, you— you hear the thing about people would tend to live their lives differently if they knew they were on limited time, maybe. Make more of the moments, so...

Sydnee:
Exactly.

Tommy:
You know, maybe you'd want to do that if you knew and if you keep that from them... Or the burden falls to the family then to have to pass that news to them.

Sydnee:
Right. Which is even worse. And a lot of this was, again, done with that... it wasn't malicious. It was that paternalistic idea, like, this is in your best interest. It will do you no good to know this. As your doctor, I get to make the decision what is in your best interest and I... and so this is what I'm doing.

This went so far as—as some doctors, especially there was one doctor back from the middle ages, Doctor McKenny who would say... who wrote in an essay on medical ethics that you should never become knowingly involved with any who are about to die or who are incurable. So basically just stay away from really sick people so you don't have to deal with this ethical conundrum.

Tommy:
[laughs] "Hey, don't go to room 3B."

Sydnee:

I mean, that's what really is advised to doctors, was like, "It's really difficult. You don't know if you should lie or not. Basically just don't—don't get involved."

Tommy:
Slide the tray under the door and run.

Sydnee:
[laughs] That way if he asks you any questions, you don't have to... you don't have to lie tom him. You don't have to tell the truth either. You can just don't answer.

Tommy:
"Doc, be square with me? Am I going to... Am I going to be okay?"
"Uh, I got to go. I got an appointment."

Sydnee:
"Oh, look at the time." [laughs]

Tommy:
"I got to milk the cows and slop the pigs…"

Sydnee:
"I got bills to pay." [laughs]

Tommy:
[laughs]

Sydnee:
Well, Dad, things got better. And I want to tell you about it. But first, why don't you come with me to the billing department?

Tommy:
Well, all right. Lead the way.

Sydnee:
[laughs] You've never been there before.

Tommy:
No, I've never been to the billing department.

[theme music plays]

[ad break]

Sydnee:
So, as I said, Dad, things had to get better.

Tommy:
They had to get better.

Sydnee:
We had... That's usually the turning point in this show. Something has to get better.

Tommy:
[laughs]

Sydnee:
Um, like I said, while this... while this idea persisted in the 1700s in many parts of Europe that you could lie to a patient that was terminally ill, um, for their own good, was the thought process. Uh, in the US, especially during the revolutionary period, things started to change. Um, we've talked about Benjamin Rush on this show. The father of psychiatry.

And I've—I've thrown some shade at old Ben because he did some… some pretty questionable things, Dad. Some pretty whack stuff. Um, but he did urge physicians to be honest and not lie about death. Uh, and that sometimes, you just... even though it's hard, you got to tell a patient the truth and that that might actually be in their best interest, which was a revolutionary idea.

Tommy:
So, he—he was, uh, not good in some things but, uh, in this case, he was all right, huh?

Sydnee:
Yeah. In this case, he was all right. He... I... You know, that's a... that's a whole argument. I get a... I got a lot of emails about how Benjamin Rush was a good guy. And like I... Yeah, he did some good things. He—he saw psychiatric patients as people and treated them as people which was, strangely enough, revolutionary as well. Um, but then there were some crazy treatments too. We have an episode on it you can check out.

Tommy:
I will. I'll check that one out.

Sydnee:
Uh, Thomas Percival wrote the first modern... what we consider, first modern code of medical ethics in 1803. And it was pretty widely accepted even all the way across the Atlantic here in the US. It was adopted by the early American Medical Association. Um, there were a lot of things obviously in the code of medical ethics, not just patient privacy, but that was explicitly mentioned. Um, although, in that same section where they talked about you need to keep your patients secrets private, they also said, "Also, if one of your other doctors is up to no good, don't tell anybody." Which is, you know, not true now. I'm actually explicitly tasked to tell someone if one of my other doctors is doing something wrong.

Tommy:
Yeah, it's like the code amongst cops and—and same amongst policemen, huh?

Sydnee:
Well, I don't think—

Tommy:
Don't—don't tell on each other.

Sydnee:
No, I don't think that's true now.

Tommy:
No, but it was.

Sydnee:
I think a lot of guild—

Tommy:
Serpico. You've seen Serpico, right?

Sydnee:
[laughs] I think a lot of, like, guild-type professions were probably like that. Like, we— we got each other's backs. Um, now it's—it's funny because they... I am... I am actually asked constantly when I'm evaluating my fellow

physicians and recommending them, do I know of any, like, problems with, like, addiction or substance abuse or that kind of thing or do I know of any reason that they can't do their job. Like, I have to sign paper that says, "I don't..." That they're not.

Tommy:
Wow.

Sydnee:
Yeah.

Tommy:
I—I would... you all have to report have to report on each other?

Sydnee:
Oh yeah. That's part of professionalism is that if I know somebody's not fit to do their job, I've got to go tell somebody.

Tommy:
I mean, I can understand, like, administrative staff at a hospital that may, you know, have these judgments, sort of. But I didn't know they asked doctors to report on each other like that.

Sydnee:
Absolutely. Yeah. Yeah, it's—it's considered core to our professionalism is that we wouldn't... we wouldn't let another doctor... knowingly, we wouldn't let another doctor, you know, see patients if they were unfit for some reason.

Tommy:
I guess just put yourself in the place what if it... they were treating your family member.

Sydnee:
Exactly. Exactly. So, and I mean, I feel that way about my patients. I feel that way about their patients even though I don't really know them but I do.

Tommy:
But you do.

Sydnee:

Uh, we also begin to see, at this point, courts and judges beginning to get involved, dictating the bounds of acceptable disclosures. So, instead of physicians just kind of deciding for themselves, this is in a patient's best interest so I'm going to go tell this private information, we start to see it being, like, made law. "No, this is when you get to, Doctor. You don't get to decide anymore. We're going to decide for you."

Um, and as doctors began to go to court over these issues because they are violating them. We also see less and less of them talking to patient's families instead of patients. You see it become pretty standard that, "No, no, you should just talk to the patient about things. Don't go around them."

Um, and from here, and through the declaration of Geneva, which was in 1948, we start to see a stress more on the idea that, as opposed to this kind of, um... this sacred thing, like, the privacy of a patient is something that is sacred to a physician and that it's part of their reputation, it begins... it begins to become, like, an absolute duty to the patient. That it's not just a good idea, it's not just for professionalism's sake. It's your duty to.

Tommy:
And it's the law.

Sydnee:
Exactly. And you start to see that the idea that there might be exceptions to that secrecy from an ethical standpoint begins to vanish, you know, that—that that becomes a very absolute ideal. Like, "Well no, I would always keep my patient's privacy." Um, and part of that was probably in self-defense for all the laws that were being made. Um, but that was a big shift from an ethical perspective from, "Sometimes it's in the patient's best interest and so I have to do it, it's—it's doing no harm," To, "Nope, there is no exception to that."

Tommy:
So, it's kind of like when Ross started dating a student and he thought it was just frowned upon and actually it was against the law. They had found that out the hard way.

Sydnee:
That's exactly it. Early on, telling other people a patient's private medical history was frowned upon. By now, it is definitely illegal.

Tommy:

[laughs] You have to do the air quotes when you say that. Was "frowned upon."

Sydnee:
"Frowned upon." [laughs] Um, so we see that shift from a professional issue to a patient physicians relationship issue to purely an issue of patient right. It really has nothing to do with you as the doctor, it's the patient's right to privacy. Um, so later in the 1900s, we get this need. "Okay, well then if it is now an absolute right, when is it okay to violate it? We need it very clearly spelled out. What are the times that I can break that confidentiality and go tell somebody because I'm not going to do it unless you give me a list because I don't... you know, I also don't want to get sued."

And that's where we get... That's where HIPAA comes into play. Now, HIPAA wasn't just about patient privacy.

Tommy:
No, that was just a small part of it. It was actually about the portability of—of your healthcare so that you didn't lose coverage going from one job to another.

Sydnee:
That's exactly right. And you know what's weird is, as a physician, when I... I mean, and... as I was... I have been educated on HIPAA many times. Um, so I understand that, I guess. But for me, when I say HIPAA, I'm always thinking patient privacy. And I think most people do.

Tommy:
Absolutely. That's—that's all I thought, I mean, until we were getting ready for this.

Sydnee:
Mm-hmm.

Tommy:
I have to deal with it in—in my business handling documents, confidential documents and medical records and things like that. So, we have to be HIPA compliant. And you think that's what the main thrust of the whole law was. But that was just a piece of it that didn't come in till about halfway down the actual law.

Sydnee:

Yeah, that's— that's exactly right. It's just... It's like one subsection of a section is the security provisions. Uh, where... And a lot of that was because... So, the law was—was, like... like you said, Dad, was to help make health insurance more portable for patients, that was a big part of it. Um, to, like, streamline the process, reduce waste and fraud, and—and that kind of thing. And part of that was not a mandate for but a big push for electronic health records. It was a big... a big piece of it, that that would make it more portable. Your information would become a lot more portable if it was electronic.

Tommy:
Well, and more secure too.

Sydnee:
Yes.

Tommy:
Um, if... You know, if it's done properly, it's more secure because I can remember one of the projects we had when this first came about was to go to a hospital that had files identified with social security numbers down the spine. So, of course, you didn't want social security numbers hanging out there because, you know, before that, you didn't really have identity theft.

Now, this was tied to that as well. So, we had to go through and relabel all these files for him because they were changing to a different type of identification system as opposed to your social security number.

Sydnee:
Well, and that's a good idea. I wonder if they've... See, at the VA, they always use social security numbers and I don't know if that's ever changed.

Tommy:
All their files, were they visible?

Sydnee:
Yeah. Yeah, that was... those were the patient numbers were social security numbers.

Tommy:
Wow.

Sydnee:

So, I don't know if that's still true though. I... Because I haven't worked there since I was a student. But back when I was a student, it was.

Tommy:
I would have to think that it's changed by now.

Sydnee:
I don't know. I don't know. I mean, that... Because that was why... like, HIPAA always came into play but whenever we rotated through the VA, we had, like, multiple more hours of training and reminding and taking tests and filling out more papers and, man, if you tried to walk out of that building with any kind of PHI, protect health information, they were all over you because social security numbers were all over everything.

Um, so all this push for the EHR, the electronic health record, came with a lot more privacy issues because if it's going to be on a computer, people can have access to it. Um, and so we see all these security rules laid out. Um, and since then, up to 2013, the law has been continually refined to add for, like, um, ways to, um, make the information harder... encrypt, that's the word I'm looking for, encrypt the information better in a computer so it's harder to get to.

Um, and this has come into play with, like, now we have things like the patient portal where patients can send me messages and I can send them messages back over a secure, sort of, like, email server.

Tommy:
And in some cases, uh, patients can get access to their own medical records. The hospital gives them access to it, whatever they have on file.

Sydnee:
We have that too. Yeah, through the portal, you can access your own records. We even have, like, a secret doctor texting now. It's, like, a secret text program that is pro—that is HIPAA complaint so that I can text other physicians about patient information, you know, so that we can, like—

Tommy:
It goes through an encryption process probably.

Sydnee:
Exactly. And so, like, in the hospital, we use that to communicate quickly with specialists often and—and that kind of thing.

Tommy:
Yeah, that's why you can't email documents unless it's through an encrypted protocol.

Sydnee:
Exactly. I— I have to explain that all the time if a patient emails me, I can't answer an email. I can't answer a Facebook question, I can't do this.

Tommy:
Right, yeah.

Sydnee:
Um, large breaches of HIPAA can be very expensive. So, like, if a hospital has had some sort of break in their encryption or something, and you have to assume every patient who has through their system has maybe been exposed, it could be, like, 200 bucks a patient at least to co—you know, the fine for that or to deal with that. Um, and this doesn't even include state laws which an add as much as $250,000 for a breach of HIPAA.

Tommy:
Yeah, they constantly have to tweak the law because of the technology. You have such new technology rolling out all the time in different ways. It's like when they first did this in 1996, who would have envisioned something like where I read in the paper where, uh, I think it was a nurse in a room took a picture—

Sydnee:
Yeah, I heard about that.

Tommy:
... of some guy's junk and sent it to her friends. I don't know why she wanted to. I don't know if they knew him.

Sydnee:
That's terrible. I don't know who would do that. I wouldn't even... That wouldn't even occur to me.

Tommy:
And—and, of course, in 1996, they didn't have any view of something like that taking place. And so you've got to constantly upgrade it because of the different law, I mean, the different technology and stuff.

Sydnee:
Yeah, yeah. No. If we want to take a picture of something, like a rash or something, I have to ask the patient to, like, sign all these documents and we have to be care— like, we can't just take pictures with our phone, we have to get, like, a camera. Like, it's a whole thing.

Tommy:
[laughs]

Sydnee:
Because we do that sometimes for, like... Because we... I work at a medical school. So, like, "Oh, this is... I want to keep this for students. I want to include this in a presentation." I have, like, 30 things I have to do before I can do that. I can't just take pictures.

Tommy:
You don't ever want to be the guy there that's getting examined by the doctor and the doctor comes in and— and looks and says, "Wow, I've never seen that before. Hey, hey, get those other three doctors down the hall. Have them come in. Hey, have you ever seen this before? Look at this."

Sydnee:
"Get the students, get the students."

Tommy:
"Oh, we got to take some pictures of this."

Sydnee:
Now, as I said, there are s—there are some exceptions. So, there are certain scenarios under which I can disclose your protected health information and it's okay. Other than when I ask you. Any time that I ask you and you sign a paper that says it's okay, I can. But it... These are times when I don't have to ask you.

Tommy:
So, you don't have my permission and... but you can still go ahead and tell somebody about it.

Sydnee:
Yes, so, like, for instance, if I'm going to send you to a specialist for something, I can send them your records. That's pretty obvious. I don't have to ask you, I can just send them. Um, to get paid. So, I, like, put your

diagnoses on a bill. When I bill your insurance, I have to put something on it. So, to get paid, I... you know, I disclose your information.

Tommy:
It's common sense.

Sydnee:
Um, healthcare operations. Like, we have to do, like, quality improvement programs and things or training. Those would be things that would be acceptable uses. Um, there's mandatory reporting of certain diseases. So, like, communicable diseases, I have to report to state health department, you know, to—to authorities. Um, a lot of sexually transmitted infections are reportable. So, and we have a list that is mandated.

Tommy:
The health department handles it from there.

Sydnee:
Exactly. The... And we have a mandated list that we have to report.

Tommy:
So, you don't, like, put it in Craigslist or anything.

Sydnee:
No [laughs]

Tommy:
[laughs]

Sydnee:
And actually, I say I, the— the lab usually reports this stuff. It's not me. The lab tech just reports the positive result. Um, in addition, certain things like death statistics are tracked. You know, that—that's released.

Tommy:
Well, if you're a death statistic, you're not going to probably complain about them releasing your information.

Sydnee:
Well, you might not complain but it's still private. It's now indefinite. It used to be 50 years after you pass away, your information is still protected and

then it times out. I believe with the 2013, there was, like, this omnibus regulation that was passed. At that point, it just became indefinite.

Tommy:
Wow.

Sydnee:
So, you're protected forever. You're good.

Tommy:
Okay. I'll rest more peacefully knowing that.

Sydnee:
[laughs] The—the FDA has some mandatory reporting for, like, adverse events or product failures that then would... I would have to disclose your information. Um, workplace injuries or, like, uh... um, workers' comp issues—

Tommy:
Sure.

Sydnee:
... that I have to report that sometimes. Um, audits if Medicaid or Medicare wants to come in and audit stuff, then I disclose your information to them.

Tommy:
They want to make sure they're get... that you're billing properly or something like that.

Sydnee:
Exactly. To make sure I'm not committing fraud. Um, law enforcement—

Tommy:
You wouldn't do that, I know you wouldn't.

Sydnee:
I don't. I don't do that.

Tommy:
I know.

Sydnee:

I'd get in a lot of trouble.

Tommy:
I'll vouch for... If they come in again and ask, you tell them to call me.

Sydnee:
I'll tell them to call my dad. [laughs]

Tommy:
That's right. I'll vouch for you.

Sydnee:
Um, law enforcement has very specific instances when they can. Um, although they can broadly apply that, because basically if a judge tells you you have to, you have to.

Tommy:
Yeah. I still think they need even further redefining on that though. Um, when you have prisoners that walk away from hospitals and the police department doesn't know about it.

Sydnee:
That's true. If I have a patient in the hospital who has been, like, arrested but then they have, like, a medical problem so they bring them to the hospital for care, I can't call the police officers and tell them when they're discharged.

Tommy:
And so then they just walk off.

Sydnee:
Yeah.

Tommy:
And—and there's something wrong there but, uh, I mean, we've had a couple instances around here in the hospital have said, "Look, we can't."

Sydnee:
"I can't."

Tommy:
"We'll be in violation if we report it."

Sydnee:
No, I'd have to have, like, a... I—I think I'd have to have a court order telling me to.

Tommy:
That's just whack, man.

Sydnee:
[laughs] Um, for research, we do it all the time. Although, you... Most of the time, we tell patients that they're part of research, you know. But—but we do collect data for research, for organ donation obviously. Um, for driving, if a patient is deemed unsafe to drive and I tell them not to drive and they're not going to comply, I can report them to the DMV.

Tommy:
Well, that makes good sense.

Sydnee:
Yeah. So, that we keep people who, for whatever reason, shouldn't drive on their own—

Tommy:
It's for the greater good.

Sydnee:
Exactly.

Tommy:
That's what a lot of these come down to. The greater good.

Sydnee:
Well, and we have an... We—we have an ethical obligation to public health.

Tommy:
Mm-mm.

Sydnee:
So, that makes sense. Um, sex offenders identities are routinely disclosed. Um, I report child abuse cases to CPS. Um, and in addition, since there was a case in 1976, [inaudible 00:39:20] where a patient revealed to their psychiatrist that they intended to kill somebody and then they left and killed

that person. And so if I know someone is a direct imminent threat to someone else, then I then can reveal... in fact, I have a duty to reveal that information to save that other person's life and protect that other person.

Tommy:
Good, I would hope so.

Sydnee:
Yeah. Um, and then there are, like, specialized government functions like, if you want to fly a plane or be an astronaut or be in certain parts to the military, like, I can disclose your information in order to allow or prevent you from doing so. So, those are a lot of cases.

Tommy:
Yeah.

Sydnee:
A lot of situations.

Tommy:
Tell the army about my flat feet so they can't draft me.

Sydnee:
Exactly, you're F4.

Tommy:
F4 or something like that.

Sydnee:
Is that what it is? I don't know. [laughs]

Tommy:
Yeah, I don't know.

Sydnee:
I don't know. You're unfit.

Tommy:
I—I wasn't involved any of that side of that.

Sydnee:
I inherited your flat feet so I don't have to worry either.

Tommy:
As long as you don't get my bad knees.

Sydnee:
I don't know. But anyway, I hope that was helpful.

Tommy:
It was very helpful.

Sydnee:
[laughs] Well, I think that applies to you too, Dad, with document storage and scanning this, you know—

Tommy:
Absolutely. And I... You know, I thought that the mandate for medical records came about from that same 1996 law that HIPAA comes from, but it's actually the—the mandate for it actually came from the affordable care act which didn't take effect until 2010.

Sydnee:
Exactly, exactly. Yeah.

Tommy:
So, it's two different things.

Sydnee:
A lot of us were already, kind of, there though. I mean, it makes sense. Medical records just make sense.

Tommy:
Absolutely.

Sydnee:
Yeah. They're so much easier.

Tommy:
And there's a person that sells them.

Sydnee:
[laughs]

Tommy:
I agree. They absolutely make sense.

Sydnee:
Well, as a doctor that uses them, I appreciate them.

Tommy:
But, uh... and they're—they're also coming into play not just in the medical field but in business and industry and stuff like that.

Sydnee:
Sure.

Tommy:
I mean, you have human resource departments and things like that. And there again, you have sensitive information that needs to be protected. So, it comes under the same type HIPAA requirements.

Sydnee:
Exactly. And, you know, and that's the thing I would say, at the end of the day, as a doctor, my... I consider my primary goal to keep everything you tell me and everything we discuss secret at all times. It is rare if somebodies going to, I don't want to say violate HIPAA, but disclose PHI. If—if we think one of those scenarios that I just listed really matters, um, I am going to take a long, hard look and stop and consider what do I need to disclose, is it okay, is it not something I can ask the patient first? I'd much rather get your permission than do it against your will. I mean, these are not things we take lightly. So, I—I think that should be said.

Tommy:
Would you normally have someone to confer with? Like, uh, would the hospital provide, like, a staff lawyer or a senior doctor of some type or someone that you would confer with on this.

Sydnee:
I actually have legal counsel available to me all the time at—at work if I just want to ask a question. Just, like, "Is this okay for me to—to do or not?"

Tommy:
"I feel it's my obligation to report this person to authorities, what do you think?"

Sydnee:
Yeah, then I have somebody I can talk to about it. So...

Tommy:
That's good.

Sydnee:
Because I would take that very seriously. And I think the vast majority of physicians would.

Tommy:
Yeah, I'm not a rat. I'm not a rat but—

Sydnee:
[laughs]

Tommy:
... every now and then, you—you got to.

Sydnee:
Well, thank you, Dad. This has been fun.

Tommy:
Well, thank you for having me. You know, I know that it... Justin's a regular and, you know, I don't want to mess up the good things and it—it may be that I go back to Court Appointed, they might have voted me off the island. They might want Justin back all the time. So, I might have just talked myself out of a job.

Sydnee:
No, I don't think so. I don't think so. No, this has been a lot of fun and, um, you should definitely check out Court Appointed.

Tommy:
Court Appointed, it's one iTunes or you can get it from Audioboom.

Sydnee:
There you go. And you can check it out for the legal perspective on this with, uh, my uncle Michael who is a lawyer, and Justin will be there as the... I'm not going to say the dumb guy. As the jokester. [laughs]

Tommy:
[laughs]

Sydnee:
As the goofster. Um...

Tommy:
So, I appreciate you having me and— and, uh, participating in this crossover event.

Sydnee:
No problem, Dad. Uh, you should check out maximumfun.org for a lot of other wonderful podcasts. Um, thank you to—to everybody who listens to our show. Thank you to maximum fun for hosting us. And thank you to The Taxpayers for our theme song, Medicines.

Tommy:
I am your cohost Tommy Smirl, not Justin McElroy. I had to hesitate. I didn't know who I was.

Sydnee:
Am I am Sydnee McElroy.

Tommy:
Don't drill a hole in your head.

[theme music plays]

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