VIEWPOINT

Robert Klitzman, MD
Columbia University,
New York, New York.

Presidents' Health and Medical Confidentiality

With the recent election of Joe Biden Jr., who is currently 78 years old and will be the oldest person inaugurated as US President, potential issues related to presidential health may emerge along with dilemmas concerning the privacy and confidentiality of the president's medical information. Questions arise about what information the public has a right to know about a president's health and who should decide and how. These issues require attention and informed public and professional discussion.

Similar issues have surfaced in the past, but are increasingly important, given rising social media and political polarization, shifts in relevant laws and norms, more individuals working into their 70s and 80s, and specifics of a particular situation. Over the past century, several presidents have had significant disease, many details of which were hidden from the public, including the extent of Woodrow Wilson's stroke and cognitive compromise, Franklin D. Roosevelt's paralysis, Dwight Eisenhower's stroke with transient motor aphasia, and John F. Kennedy's use of corticosteroids, narcotic analgesics, and amphetamines for Addison disease, back pain, and fatigue.¹ Observers have suggested that Ronald Reagan, diagnosed with Alzheimer dementia after his presidency, was developing cognitive deficits while in office. In October 2020, Donald Trump's hospitalization for coronavirus disease 2019 (COVID-19) raised many critical issues regarding the privacy and confidentiality of his medical information. He and his physician were criticized for withholding key information, including when the president first tested positive for the virus (whether it was before the first presidential debate) and whether he developed pneumonia.

Yet ethical tensions emerge. For centuries, patients have had certain rights to privacy and confidentiality, enabling them to trust physicians with sensitive information. However, in a democracy, governmental transparency is crucial—as embodied, for instance, in the Freedom of Information Act—to ensure and maintain public trust. Democratic governments serve at the behest of the people, who must therefore be aware of relevant information concerning elected officials, in part to hold them accountable.

Bioethics, too, emphasizes principles of not only rights to privacy, but also beneficence, nonmaleficence, and justice. Physicians thus need to minimize risks and promote individual and social well-being and social justice. Limits exist on patient confidentiality when serious risks may ensue to others. For example, when patients have sexually transmitted infections, public health departments engage in contact tracing. Also, in the Tarasoff decision, based on a 1969 case, the Supreme Court of California ruled that a psychotherapist may need to break patients' confidentiality if the patient expresses an intention or plan to harm others.

Many individuals in the US support the release of relevant medical information about presidents and presi-

dential candidates. In 2016, in a survey of 1033 people, 51% of respondents, including 66% of Republicans and 47% of Democrats, said presidents should release all medical information.²

Accordingly, disclosure of critical information about a president's COVID-19 infection would be consistent with this expectation and could potentially prevent national concerns that a president's health and fitness could impede his or her abilities to discharge the duties and powers of the office. COVID-19 causes considerable neurological, cognitive, and psychiatric problems. In a study of 509 hospitalized patients, 82% developed neurological symptoms.³ In another study of 292 patients with COVID-19, 47% of the 89 patients who were older than age 50 years reported not returning to their prior state of health at 2 to 3 weeks after acquiring the infection, and 20%, regardless of age, still reported confusion at 2 to 3 weeks.⁴

Thus, disclosure of critical health information is important, but must be balanced against a patient's right to privacy and the benefits of disclosure. President Trump's physician insisted that the Health Insurance Portability and Accountability Act (HIPAA) prevented the release of additional details about the president's medical condition. Yet HIPAA does not apply if patients decide to disclose their information to others, and the president could thus potentially release more of his health information without HIPAA being a barrier.

The 25th Amendment, ratified in 1967, following President Kennedy's assassination, stipulates that if the vice president and the majority of "either the principal officers of the executive departments or of such other body as Congress may by law provide" declares that "the president is unable to discharge the powers and duties of his office," the vice president shall assume these duties.⁵ Reasons to replace the president if he or she is unable to fulfill presidential powers and duties may include death, resignation, removal, or incapacitation due to serious physical or mental illness.

In 1994, former President Jimmy Carter and others raised concerns about the 25th Amendment, including that it focused solely on medical information from the president's personal physician, who might, however, have a conflict of interest (COI) at least in part related to loyalty to the president. Hence, Carter proposed creation of a nonpartisan group of medical experts.⁶ The Carter Center and Bowman Gray School of Medicine established a Working Group on Presidential Disability, which provided recommendations to President Bill Clinton in 1996.⁷ This working group concluded that the 25th Amendment did not require revision, but that "guidelines are needed to ensure its effective implementation," and that while "determination of presidential impairment is a medical judgement...determination of presidential inability is a political judgement."⁷ The group also concluded that while the president's physician is the

Corresponding Author: Robert Klitzman, MD, Columbia University, 1051 Riverside Dr, No. 15, New York, NY 10032 (rlk2@cumc.columbia.edu).

"best source of information" about the president's health, the president or designees have the responsibility "to make accurate disclosures to the public."⁷

Over the past quarter-century since this report, however, political and legal landscapes have changed. In the past, for instance, a norm existed by which candidates voluntarily submitted their private tax returns and their medical information, but this norm of openness has now eroded.

The group also dismissed as "unwarranted" potential criticism that the vice president and cabinet might be "unlikely to seek to remove the president...when they clearly should."⁷ Yet, especially given current political polarization, these officials would have significant COIs in removing their party's elected president and might not do so. Arguably, situations could arise in which the president's physician should, in the name of national security, override the president's decision to keep certain medical information confidential. Yet the likelihood of such a physician doing so, given the inherent COIs, is very low.

The group considered, but most of its members disagreed with, a proposal to establish a separate committee of physicians, nominated by the Institute of Medicine, to objectively assess the medical fitness for office of presidents, vice presidents, and candidates.⁷

On October 9, 2020, House Speaker Nancy Pelosi proposed legislation that would build on the 25th Amendment by establishing a standing bipartisan commission that would require presidents undergo physical examinations yearly, on the basis of which the commission would objectively judge the president's fitness for office.⁸ Pelosi's bill to create such a commission, though opposed by President Trump's supporters, reflects Carter's proposal and the previous deliberations of the working group. Congress at present is not expected to enact Speaker Pelosi's bill, yet she has said, "This is not about President Trump...but he shows the need for us to create a process for future Presidents."⁸ She may, therefore, propose the bill again in next year's Congress, and these issues will surely continue to arise over time.

Yet assessing presidents' fitness for office poses challenges. Evaluation of certain risks, especially those involving psychiatric diagnoses or cognitive dysfunction, can be difficult. Transparency is key, and withholding essential information appears unwarranted. Yet, before a commission should start assessing presidents' fitness, careful consideration is crucial regarding whether such objective criteria could even be established, and if so, what those criteria might be. Clearer

guidelines are needed regarding how to address the complexities and nuances of where to draw the line. Reputable professional organizations, such as the National Academy of Medicine, the American Medical Association, and the American Psychiatric Association, with input from relevant medical experts, should consider developing and articulating standards, clarifying many of these issues.

Such guidelines should differentiate among various types of medical information. Determinations need to be made regarding whether particular types of information are indeed relevant to abilities to perform the duties of the office. Diagnoses of cancer, for instance, which several presidential candidates (eg, Bob Dole) have reported, may require periodic hospitalization and even may be fatal, shortening presidents' terms, but might not necessarily hamper their cognitive capabilities to perform their duties. Psychiatric symptoms, however, could potentially interfere with presidents' judgment. Yet, a history of psychiatric treatment does not impair presidents' abilities. Still, assessments of the potential effects of current psychiatric symptoms on these abilities can be difficult. Established guidelines for determining patients' capacities, such as for making a particular decision regarding their medical care, do not readily apply to presidents, who make countless decisions daily.

Careful consideration of whether such guidelines are possible, and if so, how, is clearly worth pursuing, along with education of policymakers, the public, and others regarding the complexities involved. Such guidelines would pose problems if they dissuaded presidents from seeking necessary medical treatment. But such physical examinations and release of relevant information, if required, could become expected norms, along with other requirements of the office. Individuals who do not wish to follow these could choose not to seek the position. These needs for transparency could potentially extend to other government officials, but presumably would be important only if these individuals pose significant potential harms to the safety and security of significant numbers of people.

As life expectancy increases and as many presidents and some presidential candidates enter the eighth or ninth decade of their lives, these challenges will be increasingly important. Careful discussion of issues related to presidential health and confidentiality of the president's health information, as well as careful assessment of the complexities involved by appropriate professional organizations, is crucial and timely.

ARTICLE INFORMATION

Published Online: November 30, 2020.
doi:10.1001/jama.2020.23476

Conflict of Interest Disclosures: None reported.

Additional Contributions: I thank Paul S. Appelbaum, MD, for his comments and Lundy Davis, MS, Jiseop Kim, MS, and especially Patricia Contino, MFA, at Columbia University for their assistance in the preparation of this manuscript. They did not receive compensation.

REFERENCES

- Markel H, Stern AM. Presidential health and the public's need to know. *JAMA*. 2008;299(21):2558-2560. doi:10.1001/jama.299.21.2558
- Swift A. More Americans say presidents should release medical info. Gallup. Published September 22, 2016. Accessed October 29, 2020. <https://news.gallup.com/poll/195719/americans-say-presidents-release-medical-info.aspx>
- Liotta EM, Batra A, Clark JR, et al. Frequent neurologic manifestations and encephalopathy-associated morbidity in COVID-19 patients. *Ann Clin Transl Neurol*. 2020;7(11):2221-2230. doi:10.1002/acn3.51210
- Tenforde MW, Kim SS, Lindsell CJ, et al; IVY Network Investigators; CDC COVID-19 Response Team; IVY Network Investigators. Symptom duration and risk factors for delayed return to usual health among outpatients with COVID-19 in a multistate health care systems network: United States, March–June 2020. *MMWR Morb Mortal Wkly Rep*. 2020;69(30):993-998. doi:10.15585/mmwr.mm6930e1
- US Constitution. Presidential vacancy, disability, and inability: twenty-fifth amendment. Accessed November 23, 2020. <https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-26.pdf>
- Carter J. Presidential disability and the twenty-fifth amendment: a president's perspective. *JAMA*. 1994;272(21):1698. doi:10.1001/jama.1994.03520210082037
- Gilbert RE. Presidential studies: the contemporary presidency: the twenty-fifth amendment: recommendations and deliberations of the Working Group on Presidential Disability. *Presidential Studies Quarterly*. 2003;33(4):877-888. doi:10.1046/j.0360-4918.2003.00088.x
- Gersen JS. We may need the twenty-fifth amendment if Trump loses. *The New Yorker*. Published October 26, 2020. Accessed November 9, 2020. <https://www.newyorker.com/news/columnists/trump-biden-election-twenty-fifth-amendment-mental-fitness>