

Confidentiality and Professional Privilege



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- **Confidentiality is essential for effective health care**
- **Basic principle of medical ethics**
- **Increased awareness in society of rights of patients**
- **No set of guidelines can be fully responsive to change**
- **Significant controversy**
- **Continual update and review of practice**
- **Increased sensitivity required in Psychiatry**
- **Cost-savings, quality assurance, advances in research and constitutional rights should not be allowed to decrease standards**

Issues influenced by Confidentiality :

- **Patient's Rights**
 - **The Right to Privacy**
- **Autonomy**
- **Therapist-Patient Relationship**

Concepts and definitions

Professional secrecy (medical secrecy)

Doctor-patient privilege (“testimonial privilege”)

Privacy

Therapeutic privilege

CONFIDENTIALITY

“We may not mind that a person knows a general fact about us, and yet feel our privacy invaded if he knows the details. -- For instance, a casual acquaintance may comfortably know that I am sick, but it would violate my privacy if he knew the nature of the illness”

[B&C 2001 pg 295]

- *the right to privacy parallels the justification of the right to give an informed consent. The principle of respect for autonomy, therefore, includes the right to decide as far as possible what will happen to one's person, one's body, to information about one's life, to one's secrets, and the like''*

[B&C 2001 pg 296]

“ It seems to me that none of us has a right over any fact to the effect that the fact shall not be known to others. You may violate a man’s right to privacy by looking at him or listening to him: there is no such thing as violating a man’s right to privacy by simply knowing something about him ”

[Judith Thomson. Rights, Restitution and Risk. Harvard Univ Press
1986 pg 128]

- The point is: the violation of the right to privacy is not in having access to the information but the act of giving it away to another party.....that will constitute a violation of the rule.....even if it is to serve a good course.

- Confidentiality is a subset of informational privacy in that it prevents redisclosure of information that was originally disclosed within a confidential relationship
- This is important in sustaining the trust in the healthcare professional/patient relationship
- Note: “*We necessarily surrender some of our privacy when we grant others access to our personal histories or bodies...* ” [B&C pg 303]
- It has only a relative status; taking into consideration health requirements.....notification e.g. TB

What information is considered to be confidential ?

Definition :

Confidentiality is information that is sensitive i.e. potentially harmful physically, psychologically, legally, or economically if disclosed to inappropriate persons

Responsibility of professional is :

To protect best interests of the patient

- within a framework of the relevant legislation**
- based on clinical and ethical considerations**

Laws, Rules and Codes

- contained in laws, rules and codes of conduct
- publicly acknowledged by professionals
- but widely ignored and violated in practice.....

“ whatsoever thing I see or hear concerning the life of man, in any attendance on the sick or even apart therefrom, which ought not to be voiced about, I will keep silent thereon.”

- Hippocratic Oath

Code of Miamonides

Declaration of Geneva

International Code of Medical Ethics

HPCSA Ethical Rule 20

Madrid Declaration

Etc.....

- **WMA's Declaration of Geneva:**

“I will respect the secrets which are confided in me, even after the patient has died”

- **WMA's International Code of Medical Ethics:**

“A doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted to him”

- **HPCSA:**

“Divulging any information regarding a patient which ought not to be divulged, except with the express consent of the patient”

LEGISLATION

National Health Act

Patient's Rights Charter

Constitution of RSA (Section 32)

Mental Health Care Act 2002

Promotion of Access to Information Act no 2 of 2000

Protection of Personal Information Act(Bill) 2005

Confidentiality : Health Act

14.(1) All information concerning a user, including information relating to his or her health status, is confidential.

(2) No person may disclose any information unless –

(a) the user consents in writing

(b) a court order or any law requires

that disclosure

(c) non-disclosure represents a serious threat

to public health

Mental Health Care Act

imposes a duty to maintain confidentiality

except if :

seriously prejudice the health of the user or other people

temporary denial of access is justified to avoid prejudice to patient or others (S13.3)

Promotion of Access to Information Act no 2 of 2000

- **release of patient records (S 11(3))**
- **signed informed consent (S 34(2) (a))**
- **appropriate counselling arrangements**

Access to Patient's Records/ Information may be requested by :

- patient for his/her own information**
- a family member/other acting on behalf of the patient**
- a body investigating allegations of inadequate Rx or abuse**
- a health professional taking over management**
- an insurance company in relation to a claim**
- for medical aid benefits**

Medical Schemes Act 131 of 1998 Regulation 15J(2)(b).

“any information pertaining to the diagnosis, treatment or health of any beneficiary of a medical scheme must be treated as confidential”

Medical Schemes Act 131 of 1998:

Regulation 15J(2)(b).

“in terms of the contract entered into pursuant to regulation 15A, but such information may not be disclosed to any other person without the express consent of the beneficiary.”

Regulation 15J(2)(c).

“a medical scheme is entitled to access any treatment record and other information pertaining to the diagnosis, treatment and health status of the beneficiary in terms of a contract.....

Refusal of Access only where :

clear and specific evidence that releasing the information might

- **“ cause serious harm to the physical or mental health or wellbeing “ and that no adequate provision has been made for “counselling or other arrangements before, during or after disclosure of the record to limit, alleviate or avoid harm” to the patient (S 38 (a))**
- **“endanger the life or physical safety” of the patient or others (S 38(a))**

Access should be refused where ;

- **record is requested for “purposes of criminal or civil proceedings” related to complaint or charge on staff**
- **unreasonable disclosure of information of a personal nature concerning a third person (relative or other including deceased person)**
 - **except with consent of person in question (before or presently)**
 - **Certain other specific circumstances (S 34)**
 - **public interest (S 37)**
 - **influence on legal proceedings to prosecution (S 39)**

Conflicts

Use of shared information

Sources of information

Inappropriate secrecy

Confusion of agency in informing

Indiscretional breeches

Clinical audit (utilisation review)

Insurers

Patient advocacy groups

Minors

Group and Family therapy

- Confidentiality challenged:
 - patient's and 3rd party's interests
 - access to information:
 - confidentiality vs best possible healthcare
 - third party payment
 - personal habits and financial statements
- Solutions:
 - Inform patients about “medical confidentiality”
 - Select information; specific/knowledge based
 - Consent
 - *“Patients should be interrogated concerning their complaint in a tone of voice which cannot be overheard”*
(Percival's Code of Medical Ethics – 1803)

EXCEPTIONS/BREACH OF CONFIDENTIALITY

1. WITH PATIENT CONSENT
2. IN EMERGENCY IN INTERESTS OF PATIENT
3. CERTIFICATION in terms of Mental Health Act or of Infectious Diseases
4. TO PROTECT THIRD PARTIES
5. IN ACCORDANCE WITH LEGISLATION
 - CHILD ABUSE
 - DANGEROUSNESS (SECTION 13 of MH Act)
 - ORDER OF THE COURT
 - PREVENTION OF DOMESTIC VIOLENCE ACT
6. WHEN MEDICAL PRACTITIONER IS DEFENDANT OR AN ACCUSED

QUESTIONS :

What information is considered confidential ?

Is confidentiality absolute (all or nothing) ?

Are there gradations/levels of confidentiality ?

What should be included in records and what should be left out ?

Who decides ?

Can the patient request ? When ?

Can all patients request ?

Should there be a dual records system ?

What form should records take ? Computerised records ?

How should information be given out ?

Who has ownership of medical records ?

Are psychiatric records different from other records ?

What of the control/ security of records ?

Are there exceptions/breeches of confidentiality ?

Questions contd.....

What should be included in records and what should be left out ?

Who decides ?

When ?

Can the patient request ?

Can all patient's request ?

Should there be dual record systems ?

Process/progress notes.

Should it be restricted to : How am I doing or ?

What do you think of me ?

Computerised Records