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Medical Data and Records – Reporting, Disclosure and Ownership

By SMA Ethics Committee

The advice in this column was extracted from replies to the specific circumstances and situations mentioned in the queries which were sent to the Ethics Committee. Different circumstances may result in different opinions. If you have any comments, please email them to news@sma.org.sg.

Reporting loss of medical data

The Committee received a query from an SMA member about the implications for the clinic licensee in the event of a loss of medical data and exposure to unauthorised parties caused by an in-house IT fault.

The Committee is of the view that as the licensee of the clinic, the doctor will have to answer to the Ministry of Health (MOH) and patients affected by the loss, by virtue of the fact that he is statutorily responsible for any system instituted within his practice for the management (storage, access and integrity) of medical data. Notwithstanding this, if the data loss is caused by violations of service standards or restrictions in the service agreements by his staff or service providers, then it is within his rights to carry out civil action against them in a court of law. For this, the doctor will need to consult his legal counsel.

The loss of medical data should be reported immediately to the person in charge of clinic licensing in MOH. If criminal intent is suspected in the act that resulted in the loss, then it should also be reported to the police. The doctor may wish to prohibit the IT personnel from accessing or copying any medical data unrelated to their jobs or assignments. The doctor is obligated, as the clinic licensee, to safeguard patients' data while storing and accessing it for patient management.

Disclosure of medical information to patient's spouse for divorce proceedings

The Committee received two enquiries from doctors whose patients requested their spouses' medical information for divorce proceedings.

The Committee advised that the duty of confidentiality does not allow a doctor to voluntarily release his patient's medical information to the patient's spouse or the spouse's lawyer. The doctor should reply that he would only do so if there is written consent from his patient. If the doctor is served with a court subpoena, he has to attend court and provide information, as the duty of confidentiality can be overridden by court order.

Ownership of medical records

The Committee received an enquiry from a commercial company, which had decided to change the medical provider running the company's clinic. The outgoing medical provider therefore started to remove medical records. As the issues of ownership of medical

records were not specifically spelt out in their contract, the company wrote to the Committee for advice.

After obtaining legal advice, the Committee formulated its stand on the matter as follows:

- According to the Private Hospitals and Medical Clinics (PHMC) Act, the licensee of the clinic (which in this case is the commercial company) is required to keep and maintain all medical records in the clinic by employing the services of a registered medical practitioner. Therefore the legal ownership of the physical records belongs to the licensee.
- The doctors employed by the medical provider have a duty of patient confidentiality. However, patient confidentiality is not breached by a change in the medical provider, and will be maintained by the new medical provider. There is therefore no justification for the outgoing provider to remove the physical records from the clinic.

Rights and responsibilities of clinic licensee with respect to clinic medical records under the PHMC Act (Cap 248) and PHMC Regulations (Cap 248, Rg 1)

The Committee received two enquiries on ownership of medical records. After careful deliberation and seeking relevant legal and regulatory advice, the Committee reaffirmed its previous position that the ownership of the medical records of a clinic, in any format, belongs to the clinic licensee. This position is premised upon the observation that the clinic licensee has an obligation to retain and maintain medical records, and to provide, as and when necessary, information to DMS on patients based on the records. Therefore, it can be inferred that the ownership of the physical medical records belongs to the clinic licensee in order for him to perform these duties.

If there is a change in service providers, the licensee has the right to bring along the medical records accumulated under the clinic license to his new venue of practice. If any patient from such a clinic wishes to transfer her care to a different clinic instead of continuing treatment at the new clinic under the same licensee, the patient may request for a medical summary or report to be furnished. As per established practice, the licensee can levy an appropriate professional fee for the preparation of each medical report. **SMA**