UNDERSTANDING PRIVACY AND CONFIDENTIALITY IN MEDICAL PRACTICE

The preservation of privacy and confidentiality is enshrined in the doctor-patient relationship by the principle of patient autonomy. Patients have a right to authorise or decline access about matters relating to themselves. Privacy is a complex concept which does not lend itself to a simple definition. For purposes of understanding, privacy can be divided to several domains or segments in medical practice namely:

1. *Informational privacy* which is also called medical confidentiality, where information that is shared in confidence is only used for specific therapeutic purposes unless there are valid ethical and legal reasons to do otherwise.
2. *Physical privacy* which in medical practice is that the physical examination and medical procedures occur in appropriate ways and places to preserve the patient's privacy.
3. *Decisional privacy* in medical practice is where patients are given sufficient time, place and persons to consult to make their medical decisions that are free of coercion or constraints.
4. *Propriety privacy* pertaining to the right to authorise or decline use of tissues and other materials of the patient for purposes other than therapy. Explicit consent is necessary for use of images or tissue for medical research or education.

THE ETHICAL BASIS

The ethical basis of medical confidentiality is guided by the principle of patient autonomy (which also includes consent, fidelity and truth telling). Competent patients have the right to control the use of information pertaining to them (informational privacy). Patients have the right to determine the person, time and manner of disclosure of sensitive information. When healthcare professionals disclose confidential information to others without consent or knowledge or against the wishes of the patient, this is considered lack of respect or disregard of patient's autonomy. This is irrespective of whether the patient is harmed by the disclosure. This right is limited by the obligation not to harm others and the wider public health or societal interests.

The fiduciary nature of the doctor-patient relationship is based on trust and mutual respect. Confidentiality is the bedrock of trust which enables the patient to freely share his medical and personal information with his

doctor without fear of inappropriate disclosure. This free sharing of information does not only benefit the patient and the doctor in arriving at an accurate diagnosis and developing an effective management plan, but has value for public health disease management.

THE LEGAL ASPECTS

The legal basis of confidentiality lays in public interest of protecting the public and other members of society. It is in the society's interest that the public and patients have trust in the healthcare system so that they will seek treatment for illness. A trusted and effective healthcare system promotes security, social cohesion and harmony within a society which is of public interest. The management of medical epidemics of infectious diseases requires the public to share accurate and timely information about their health, contacts and travels. Unless the patient is certain that no harm will befall him, he is unlikely to divulge all that is necessary for managing the epidemic and his medical management. It is in the public's interest that persons with infectious diseases seek early treatment, so as to limit its spread. The public interest in medical confidentiality lies in the preservation of the public trust in the healthcare system and medical profession.

The law by statutes and regulations stipulates specific obligations to preserve medical confidentiality (Termination of Pregnancy Act and Infectious Diseases Act) and when confidential information is legally authorised to be released to appropriate persons (Infectious Disease Act and Enlistment Act).

UPHOLDING THE OBLIGATION OF CONFIDENTIALITY

The doctor owes an ethical and legal obligation not to disclose, without consent of his patient, information that the doctor has gained in his professional capacity. Even if the medical information is acquired through a third party, if revealing it will cause offence to the patient, the doctor has an ethical duty not to disclose as it risks damaging the trust and doctor-patient relationship. There is a general professional obligation of fidelity to patients in the therapeutic relationship.

Risks to patients associated with inappropriate release of confidential medical information includes grief and distress from the loss of privacy and gossip about one's illness, social stigmatisation, occupational discrimination and loss of housing. Minors and children may be subjected to inappropriate family disapproval and discrimination by both parents and schoolmates. Information given to family members may put the patient at risk of family violence and other forms of violence.

Medical confidentiality is critical in certain areas of medical practice. This includes sexually transmitted diseases and HIV medicine, adolescent medicine and sexuality, psychiatric conditions, alcohol and addiction medicine, cosmetic and enhancement surgery and reproductive procedures like artificial insemination by donor and vasectomy. However, one cannot always predict which information the patient would consider as critical in the preservation of confidentiality.

Ensuring security of medical information requires certain behaviour of confidentiality consciousness. This includes being aware of access by others when information is given by email, fax or phone when one cannot determine who is on the other end and who else can listen in. Case notes and computer screens must not be left open after viewing. Discussions in the corridors, lifts and canteens or other public places often lead to lapses. Written documents must carry the label of "Private and Confidential". It is good practice to hand the documents directly to the patient rather than through intermediaries wherever possible.

Special care with electronic devices

Electronic medical records are a permanent feature of today's healthcare systems. Large amounts of personal and intimate data may be accessed by a wider audience rapidly. Storage, transportation, reproduction and retrieval are possible in small portable devices. A single lapse can lead to catastrophic and damaging effects. Integrity of the holders of electronic information and security of the data are key factors in preventing breaches.

FOR THERAPEUTIC PURPOSES OR FOR THE BENEFIT OF THE PATIENT

Sharing of medical and personal information is acceptable between medical teams for the therapeutic benefits of the patient. There is implied consent by the patient's conduct, accepted practice and absence of explicit objection. All healthcare workers and institutions are under obligation to keep information about their patients confidential. Patients' concept and expectations on the nature and limits of medical confidentiality often differs from those of their clinicians. It is always best in clinical practice to seek consent and give general information on how and why medical information is shared in a referral or transfer of care, and how confidentiality is preserved. When patients discover on their own that their clinician had disclosed or allowed access, without their consent or knowledge, their trust in their clinician would be seriously damaged. This may lead to withholding information and even avoiding seeking of medical help in the future.

When patients have diminished or lacking capacity (in situations of minors or disorders of the brain or mind) to give consent, clinical judgement must be exercised to determine with whom and how much information is to be shared for the medical and social benefit of the patient. Physicians must exercise the best interest principle, taking into consideration previously expressed wishes and confer with appropriate guardians or surrogate decision-makers.

Sharing with family and caregivers

Family members, domestic caregivers and home nurses often form part of the care team, especially of the elderly, children and disabled. Information shared must always be done in the best interest of the patient. Good clinical and ethical judgement must be exercised as to how much information

PROFILE

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is to be shared to ensure effective care of the patient and effective protection and safety of the caregiver.

DISCLOSURE WITH CONSENT OF THE PATIENT

Other than for therapeutic reasons, demands for information about patients arise from many sources. These include teaching, research, medical publication, public health surveillance, clinical audit, the hospital administration, the police, insurance companies, employers, relatives and the press. Seeking explicit consent from the patients for non-therapeutic purposes is the usual default position. Balancing the benefits and risks of disclosure is a part of the process when applying the best interest principle in issues of confidentiality. Judgement must be exercised on the extent, relevance, method of the disclosure and to whom the information is disclosed.

ETHICAL AND LEGAL DISCLOSURES OF MEDICAL INFORMATION

1. With the consent of the patient.
2. For the benefit of the patient for therapeutic purposes.
3. For the protection from harm to the patients (eg, child abuse and poorly controlled epilepsy).
4. To prevent harm to others and when consent for disclosure is unreasonably withheld.
5. By statutory requirement (eg, Infectious Diseases Act).
6. In assisting the police in criminal investigations.
7. By demand of court in civil and criminal proceedings.
8. For a doctor to defend himself in disciplinary inquiries.
9. Anonymised data for legitimate audit, teaching or research.

DISCLOSURE FOR THE PREVENTION OF HARM TO OTHERS AND PUBLIC

When disclosing medical information to prevent harm or protect others and the public from harm, the doctor needs to consider the likelihood of occurrence of the harm (evidence of risk), the seriousness and the immediacy of the harm. In disclosing, there should be an identified or identifiable person(s) at risk and when the person(s) at risk of harm has no other means of finding out.

The patient must first be informed of the importance of sharing information and has unreasonably refused to consent or inform those at risk. When the patient refuses assistance to inform those at risk, the doctor should inform the patient of intention of disclosure. It is important first to discuss with the relevant authorities, including seeking legal advice before disclosure. The disclosure is made only to the relevant persons concerned. Equally important is to document clearly the intention and reasons for disclosure in the medical case notes.

CONCLUSION

The Caldicott Report[1] on patient identifiable information recommends that patient identifiable medical information is obtained fairly and efficiently, recorded accurately and reliably, used effectively and ethically, shared appropriately and lawfully and held securely and confidentially. ◆

References

1. The Caldicott Committee. Report on the review of patient-identifiable information. December 1997. Available at: http://webarchive.nationalarchives.gov.uk/20130107105354/http:/www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4068404.pdf. Accessed 22 July 2015.