



Confidentiality — A Legitimate Patient Expectation?

By Shona Anne Thomas

“Whatsoever things I see or hear concerning the life of men, in my attendance on the sick or even apart therefrom, which ought not to be noise abroad, I will keep silence thereon, counting such things to be sacred secrets”.¹



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Duty of confidentiality

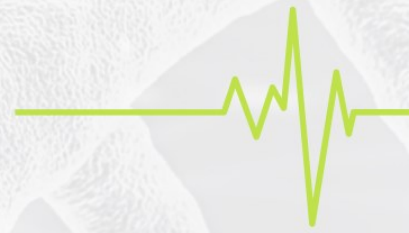
Since the days of Hippocrates himself, observance of confidentiality has been a requirement in the service of care and medicine. This is because “trust” is paramount in any patient-doctor relationship. Otherwise, if patients did not believe that doctors would keep their secrets, then they would not divulge embarrassing but potential medically important information, thus, reducing the chances in getting the best medical care.² To quote the English House of Lords:

“And it is well settled that there is an abiding obligation of confidentiality as between doctor and patient, and in my view when a patient enters the hospital for treatment whether he be a model citizen or murderer, he is entitled to be confident that details about his condition and treatment remain between himself and those who treat him.”³

Further, the Malaysian Medical Council (MMC) is abundantly clear on this issue as its Code of Professional Conduct 2019 states that “a registered medical practitioner is responsible for the confidential information obtained from patient. The practitioner must ensure that the information is effectively protected against improper disclosure when it is transmitted, received, stored, or disposed of”.⁴ Any action by a doctor which breaches confidentiality and his patient’s trust may raise the question of serious misconduct.⁵

Based on the above, the concept of patient confidentiality may seem rather straightforward but the duty of confidentiality is by no means an absolute concept.

¹ The Hippocratic Oath as stated in Jonathan Herring’s *Medical Law and Ethics* (Oxford University Press, 7th Ed) p 229
² Raanan Gillon, *Philosophical Medical Ethics* (Chichester: John Wiley, 1996) at p 108
³ Lord Phillips MR in *Ashworth Security Hospital v MGN Ltd* [2000] 1 WLR 515, p 527
⁴ MMC Code of Professional Conduct 2019, section 1.5
⁵ MMC Code of Professional Conduct 2019, section 2.2.1



Disclosure of confidential information

In certain instances, modern healthcare systems would be unworkable if a doctor were to never pass on medical information about patients to other medical professionals.⁶ For example, where a patient is undergoing facial reconstructive surgery due to malignant tumour (cancer), patient information may need to be shared between the maxillofacial surgeon, the oncologist and their respective teams in order to plan and execute the procedure. In most cases, this would not amount to a breach of confidentiality as:

- (a) The doctor would have informed the patient during early consultation of the need to collaborate with other specialists for the purposes of diagnosis and treatment.
- (b) The patient would have provided written consent by signing the consent form. The MMC provides that confidential information can be released and shared by a doctor in strict accordance with the patient's consent, or the consent of the person properly authorised to act on the patient's behalf. However, even with permission being granted, good medical practice dictates that doctors should only disclose such relevant confidential information for a specific purpose.⁷

Other circumstances in which the law allows for disclosure of confidential information (among others) are when such disclosure is: at the request of the patient himself; permitted or required by statutes⁸ (e.g. the Prevention and Control of Infectious Diseases Act 1988); in the patient's interest; in the public interest; and for medical teaching, research and clinical audit (only anonymised or coded information).

All said, the reality of medical practice is that doctors may find themselves trapped between conflicting duties and obligations. Such was the case in *Lee Ewe Poh*,⁹ where a doctor was sued by the patient for taking photographs of the patient's private parts during surgical procedure. Although it was acceptable medical practice for photographs to be taken in the course of surgical procedure, the court made a distinction in this case and held:

⁶ *Medical Law and Ethics*, supra n 1 at p 229
⁷ MMC Code of Professional Conduct 2019, section 1.5
⁸ *Ibid*
⁹ *Lee Ewe Poh v Dr Lim Teik Man & Anor* [2011] 1 MLJ 835



“... I find no doubt that in order for the surgeon to take photographs of a female patient's intimate parts of her anatomy as in this case, the proper procedure to adopt is to obtain her prior consent whether it is written or oral... Defence has contended that no consent is required for photo images to be taken during the procedure as it is the accepted practice. I am, however, of the view that a distinction must be drawn when taking photographs of the parts of the female's body which may expose her modesty and dignity as compared to photographs merely showing her hands or feet which if exposed would not cast any repercussion on her morality, decency, modesty, respect or others and might not have caused such degradation. Such accepted practice, if it is bad, ought to be changed to reflect the sensitivity of the female patients and to avert the vulnerability of misuse of such images showing the inner parts of a female's anatomy.”

Author's comments

In addition to the above, it can be observed that in recent years there has been a blurring of the lines between one's personal and professional life with the popularity of social media. Platforms such as Snapchat, Instagram and Facebook are being used by some doctors (and nurses) to share photos of and information on their patients. Regardless of the intention behind such actions, such postings (without the patient's knowledge and consent) are a clear violation of duties that could result in a disciplinary hearing for professional misconduct or a lawsuit for breach of confidentiality or violation of privacy.

To avoid pitfalls in practice, doctors are advised to familiarise themselves with the MMC's revised guidelines on confidentiality (which can be found [here](#)) as prevention, after all, is better than cure.

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