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**CONFIDENTIALITY AS A STANDARD OF CARE**- Simran Arora <sup>1</sup>**ABSTRACT**

The article talks about the vitality of confidentiality to be kept as a standard of care in the medical practice by the medical practitioners in order to safeguard the trust of the patients and help them with diagnosis and the cure. It falls under their duty to take requisite steps with reasonable care along with maintaining the doctor patient relationship and personal medical information confidential as per the preference of the respective person. It discusses the basic standard of care that must be exercised to protect the Confidential Information from any loss or unauthorized disclosure therefore maintaining the confidence of the patient in the medical practitioners.

**WHAT IS CONFIDENTIALITY?**

When a patient discloses the information to the doctor, the doctor pledges not to disclose that information to the third party and keeps it confidential that is safe with the entrusted person (the doctor). It is the cornerstone between the patient and doctor which ensures trust between the doctor and the patient, hence permitting the doctors to perform clinical examinations.

Confidentiality in the medical aspect describes it as to “the principle of keeping secure and secret from other non-relatives, information given by or about a person in the course of a professional relationship and it is the right of every patient, even after death.”

It is an obligation for the doctors to not disclose the relative information to anyone except for exceptional circumstances. It increases patients' trust which enables the patient to disclose further relative facts without hesitation or having the fear of getting judged. It will also enable the patient to disclose further issues without being hesitant. The fiduciary relationship of the doctor and the patient must be open in order for the doctor to provide his/her medical aid to the patient with the help of complete knowledge of the facts and with the help of the proper

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diagnosis.

Confidentiality itself is very important in the medical profession. There are four pillars of importance.

1. AUTONOMY- in this aspect, the patient gets to decide the accessibility by certain people of their personal information. Autonomy literally means self-rule, referring to the capacity to live according to one's own reasons and motives. So here, the patient gets the sole authority to decide for himself/ herself the bearer/s of their personal information, therefore protecting their privacy because the patient's rights are also covered by basic human rights to which every person in the world is entitled to. The Medical Research Council (MRC) talks on confidentiality with a clear expression - *Keeping control over facts about oneself can have an important role in a person's sense of security, freedom of action, and self-respect.*<sup>2</sup>

As a right it forms one of the governing principles in the relationship between doctors and patients.

2. IMPLIED PROMISE- this is where the patients assume that the information entrusted to the doctors by the patients will respect the confidentiality and the privacy involved in the certain concept of the same. The Hippocratic oath states the essence of the fiduciary relationship between the doctor and the patient.
3. VIRTUE ETHICS- patient assumes virtuous doctors would not breach confidentiality.
4. CONSEQUENTIALIST- breaching confidentiality would result in loss of patient trust.<sup>3</sup>

### **HIPAA-Health Insurance Portability and Accountability Act** (*HIPAA—Health Information Privacy*)

<sup>4</sup>HIPAA applies to Almost all medical professionals and its regulation, known as the **Privacy Rule**, drafts detailed rules regarding privacy, access and disclosure of personally identifiable health information in terms of an individual, referred to as protected health information. For example, HIPAA specifies the following:

- People should be able to view and obtain copies of their medical records and request changes in the matter if they find any error in the same.

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<sup>2</sup> Medical Research Council. Personal information in medical research. London: Medical Research Council, 2000.

<sup>3</sup> Author- jhp medical uk

<sup>4</sup> msdmanuals.com

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- Any person legally allowed to make healthcare decisions for a person who is not in the capacity has the same right of access to the person's personal medical record.
- Medical professionals should on a regular basis disclose their practices regarding privacy of one's personal medical information.
- Medical professionals may share the person's medical information, but only among themselves as is necessary to provide medical care/aid or for the payment of treatment after the diagnosis.
- Personal medical information must not be unfolded for marketing purposes.
- Health care practitioners should take reasonable standards of care to make sure that their communications with the specific related person are confidential and private.
- People may file complaints about privacy issues of the related medical practitioners (directly to the health care practitioner, the privacy compliance officer designated by the institution in compliance with HIPAA, or the Office for Civil Rights in the United States Department of Health and Human Services).

The HIPAA Privacy Rule should not be acknowledged to create certain obstacles to usual general conversations with other medical professionals providing aid to a patient, or a patient's family or friends. The regulations allow the doctors or other health care practitioners to share information that is explicitly relatable to the involvement of a spouse, family members, friends, or other people recognized by a patient. If the patient is in the capacity of making health care decisions, the doctor should use and direct this relative piece of information with the family or others present if the patient agrees or, when given the chance, does not show reluctance to the same. Even when the patient is not present or it is not practically possible to ask the patient's permission in view of the fact of emergency or incapacity, a doctor may share this piece of information with immediate family or close ones, in exercising professional diagnosis, the doctor acknowledges that doing so would be tactical for the patient.

Medical practitioners are at times officially demanded by the law to unfold certain pieces of information, generally because the respective condition may be a cause of danger to others hence called contagious in terms of nature.

For example, certain infectious diseases, as of now, such as COVID-19, human immunodeficiency virus (HIV) infection, syphilis, and tuberculosis, must be brought into the notice of the state or local public health agencies. Health care practitioners who acknowledge

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the medical signs of a child, an adult, or an elder mistreatment, abuse, or neglect normally must bring such information in the notice of the protective specialized services.

Conditions that might genuinely damage a person's physical capacity to drive, such as dementia or recent seizures, must be brought to the notice of the Department of Motor Vehicles in some states.

Health care practitioners are also allowed to unfold the piece of information to health information exchanges and public health agencies for public health's interest purposes during events such as the COVID-19 pandemic.

### **BREACH OF CONFIDENTIALITY**

Breaches of confidentiality are common, although generally by accident. Around one third of the calls received by the Medical Protection Society from medical practitioners are related to confidentiality, particularly in general practice. It is the most common reason for the professionals, at any step of their training, to ask for the expertise from their guaranteed unions. Confidentiality lies at the heart and soul of the relationship between doctor and patient, and in order to contribute to its validity, a survey suggests that the public views any breach of this kind as the paramount reason for striking doctors off the medical register.

The solution for the confidentiality breach could be as follows:

1. It becomes the duty of the candour to inform the patient if such breach of confidentiality has taken place.
2. Senior staff must be informed, and requisite statements must be made.
3. Medical defence unions must be informed in terms of taking requisite legal action to provide legal assistance.<sup>5</sup>

Maintaining confidentiality is part of the "good faith" that exists between doctor and patient as a fiduciary relationship. Ignoring patients' rights to confidentiality would lose their trust in the professionals and might prevent people from seeking the expertise and aid when needed. Confidentiality protects individual dignity, prevents information misuse, and protects autonomous decision making by the patient.

### **CONCLUSION**

Confidentiality is an important aspect that has to be taken care of at all terms in order to make

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the patient feel safe about disclosing the information for the required purpose. It is a fiduciary relationship between the medical practitioners and their patients which therefore should be protected in terms of the sanctity of their relationship which is totally based on trust.

The patient looks for the basic standard of care to be provided to him. A high value is given to the individuals in the society to be a part of the process, their involvement in the way of disclosing the specific piece of information to the medical practitioner is an important element of the autonomy and helps them to engage actively in the same, therefore confidentiality as a standard of care must of the utmost priority for the betterment of the society as a whole.



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