

Professional Secrecy and Privileged Communication in Medical Practice

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“To be trusted is a greater compliment than being loved.” - (George MacDonald)

A man who is known to be good at keeping secrets is one who has greater esteem in the society. This ideal image of a noble man's relation to his society is the basic description of what a medical healthcare practitioner's association should be with each and every one of his patients.

Doctor-patient “interaction” falls under “**implied contract**” which starts when the patient agrees to receive treatment and medical practitioner agrees to provide it. The situation is governed under “**common law**”. When both parties mutually consented then both are bound for implied contractual obligations.

Medical practitioners' obligations are two, firstly to apply the skill with the competence of his own claim and to exercise reasonable carefulness towards his patient during professional work. Secondly, to maintain “professional secrecy”.

To that someone who believes medical person to be “Messiah”, the least they deserve is utmost loyalty towards their cause which also includes respecting their confidentiality concerning any detail they'd like to keep private. Islam also teaches us to be always trustworthy and not the opposite. When someone confides in you, they are handing you over a sacred object and you have promised to fulfill their covenant by not losing it.

Allah, the Most Beneficent commands; **“And fulfill (every) covenant. Verily, the covenant will be questioned about.” – Surah Al Isra' (17:34)**

So far we've solely taken an ethical approach to this discussion, but if laws concerning the profession are included as well; the term “**Professional Secrecy**” is what it ought to be called. The doctor being the '**professional**' by the book cannot unveil a client's information. (Whether it be personal or seemingly not). Any particulars about the patient should be safeguarded by the physician as a part of his humanitarian duty, even after his client has died. Not

surprisingly, every doctor is under an ethical oath to withstand this standard as well.

It states, **“What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken about.”**

– Hippocrates (460-370 B.C.)

The same is also stated in the **Declaration of Geneva 1948;**

“I shall respect the secrets confided in me, even after the patient has died.”

The **International Code of Medical Ethics** was amended in Venice in 1983, it resolved;

“A physician shall preserve absolute confidentiality on all he knows about his patient even after the patient is dead.”

The WHO also put forward certain guidelines regarding Medical Confidentiality, i.e.

- All information must be kept confidential.
- Information can only be disclosed if the patient gives explicit consent, or if the law specifically provides permission to disclose.

Similar sentiments are expressed in the “Code of Ethics” formulated by the Pakistan Medical & Dental Council (PMDC) now Pakistan Medical Commission.

It is quite significant to note here its role in the formation of our beloved homeland Pakistan. During the era of Quaid-e-Azam (RA) emaciating to just skin & bones, he had a personal Parsi physician, Dr. Patel at Bombay. In the course of medical examination, he kept Quaid's illness in absolute secrecy—he used to get Quaid's chest X-rays done personally and destroy the films. Had Lord Mount Batten come to know the probable mortality of his illness at that time – he would have delayed the process of independence and Pakistan would not have come into existence. This example left us the ideal standards of morality, with an excellent representation of the substantial

consequences that may result if a patient's particulars are left to be invaded.

Professional Secrecy also includes the assurance of the fact that the hospital shall guarantee the safe keeping of his details, & if not the doctor's insurance would have to be sacrificed, as such negligence is a direct violation of the patient's right to the maintenance of professional secrecy. Which means the client can sue the target physician or any other healthcare worker & the practitioner can even get their license to practice medicine taken away forever. Such punishments signify the vitality of this legal & ethical code, since it relieves the patient of any reluctance he might have disclosing personal details which may affect his reputation, job, personal or social life. This also helps the physician in getting a complete history from his client which eases the diagnostic pathway to administering full treatment.

In Western countries, this important principle is practiced with great concern. For instance, the US has designed a HIPAA law solely to provide privacy standards to protect the patient's medical records & other health info provided to health plans. The law carries strict penalties & a risk of devastating law suits. The scenario in Pakistan is somewhat different no necessary actions are taken to ensure the confidentiality in the first place. Doctors and paramedical staff discuss the patient's condition openly with their fellow doctors in clinics, cafeterias or elsewhere, forgetting the fact they are disclosing their patient's secret publically.

This practically highlights the amount of damage that may occur on the trust of a sick person who's had to face such violation which makes it clear that in spite of being one of the most traditional moral concepts in health care, secrecy is still one of the less respected principles. This is particularly worrying considering our times of intense exposition of privacy. Today's world of social networking has given a maximum invasive window to the world of secrets, as opposed to the key-hole apertures to information back in the days of photo albums and typewriters. Almost anyone can grab any required information, be it illegal to & more importantly transfer it to the rest of the world in the blink of an eye. Hundreds of people in each country have been violated in the same way; let it be an intentional act of criminal defamation or an accident, forever shattering their esteemed reputation in the community (in the worst case scenario) which can never be undone. Pakistan is facing the same

tragedy with no one to stop these trouble mongers misusing their social media & ruining lives every day. As much as we've emphasized on the importance of upholding professional secrecy, there are some circumstances in which disclosing that same private info is the ethically superior act and is also within the circle of law & order of the country. Such divulgence, which is specifically to the concerned authority, also makes them a confidant of the patient whose shoulders would carry the same burden of duty regarding preservation of the patient's data. This disclosure is known as "privileged communication." Such a privilege can be claimed, disclosure of professional secrets justified, only if made in good faith & with caution; and is not a product of some other incentive or isn't driven by jealousy, revenge or maliciousness, and to ensure it is least embarrassing to the patient, as in the following circumstances:

1. In The Interest of the Patient:

- Referral to health personnel who assists in the clinical management.
- Parents/guardian, when there is a,
 - Patient who refuses to carry out treatment
 - Patient who has suicidal tendencies
 - Psychopath with violent anti-social tendencies.
 - Minor.
 - Insane person

2. In The Interest of Public Welfare:

Doctors have the *qualified privilege* to notify the proper authorities in situations where the interest of the community is superior to that of an individual & the "greater good" of the society is at risk. For instance,

- a) Patients of infectious diseases like TB or typhoid are unfit to serve drinks to the public or be a hotel waiter.
- b) Hypertensive or brittle diabetes patients being in charge of a public vehicle like school buses, is highly unsafe.
- c) A pilot who is colour blind or epileptic is not fit for this job.
- d) A person suffering from a communicable disease should be prohibited from entering swimming pools or contracting a marriage until cured.
- e) Reporting of all suspected cases of child abuse (physical, sexual or emotional) & protecting

the child from further harm.

In all such state of affairs, it is a moral and legal duty of the physician to make known the confidential info to the people at threat or to the authorities that'll take necessary actions.

3. Statutory Duty of the Physician:

Doctors cannot withhold professional secrets in cases where he has a statutory duty to the public health authorities or the state. He must notify births, deaths or cases that pose a danger to the general public e.g. food poisoning from a restaurant or contamination of public drinking water. He must also notify the police cases of homicidal poisoning coming under his observation.

4. Responsibility in Criminal Matters:

If a practitioner is called to treat a patient with gunshot wounds or stab injuries, he may likely be lead to believe either his client is a victim to or responsible of a serious crime such as, murder, robbery, jail breaking etc. The doctor would be wrong in hiding such evidence and is duty bound to report it to the concerned authorities. Criminal abortions should also be documented. Suicide for us as Muslims is a religious offence, therefore a mere attempt to take one's own life shall be dealt with under section 325 PPC, according to which it is a crime & punishment is simple imprisonment for a term which may extend to 1 year, or a fine, or both.

5. In The Interest of the Patient's Family:

· The partner of a person having a fatal STD (like AIDS) should be informed.

· Responsibility to warn only the parents or guardians, if they find in their patients a tendency to any violent act e.g. suicide or homicide.

6. Courts of Law & the Parliament:

Doctors have the *absolute privilege* to communicate to courts of law and the parliament when asked to do so. Refusal to comply may amount to contempt of court. In such a situation, it is made sure only those having absolute authority to know the information get handed it over & it is safe from others.

7. Disclosure in Self Interest:

Professional secrecy only lasts when the client hasn't sued his physician.e.g. if a patient sues his surgeon for a medical mistake, the surgeon can disclose the particulars of his procedure to defend himself in a court of law.

8. Medical Teaching, Research & Audit:

A doctor can report a case without revealing the patient's identity.

9. Insurance Companies:

· The medical examination for taking out an insurance policy is a voluntary act therefore consent is implied.

· Should not give information to any Insurance Company about a patient's past medical history, if the patient has consulted him before.

10. Medical Records:

· Medical records belong to the hospital authority and not to the doctor unless in the case of private patients.

If records are called for by Court the hospital authority must submit them confidentially

· Records should not be given to lawyers without prior consultation with the legal representatives of the hospital when legal action concerning negligence of medical or nursing staff in concerned.

· Records should not be given to employers/ insurance companies without the consent of the patient or if dead/incapacitated without consent of next of kin.

Thus; nobility, honesty, kindness & commitment to their duties are the key morals that distinguish a person in a white coat from the rest of humanity. The burden lies on us to keep the sacred bond with our patients safe and polished, and be professionally alert in everything we say and do. Since trust and respect are both sides of the same coin, you can't have one without the other; safeguarding private info is a major concern that has to be looked into and paid more attention in Pakistan. Only then can we glue back the broken ties between our sick society and doctors, while simultaneously eradicating the paradigms that have lead to make our people believe that doctors are nothing more than 'butchers'. PMDC definitely needs to make more efforts for the implementation of this cause & any acts against it need to be condemned seriously.