

Original Research

Evolution of Patient's Confidentiality: New Threats and Solutions

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ABSTRACT:

Following article focuses on importance of doctor- patient confidentiality, it's evolution over time and various techniques to sustain the confidentiality in dynamic evolving world. Article focuses on dilemma faced by healthcare providers (when to maintain confidentiality and when not), exceptions to it (duty to report) with references from various cases. Article also focuses on some loopholes in some geographic regions, which pose threat to confidentiality.

Keywords: Confidentiality, doctor- patient relationship, loopholes to confidentiality, Tarasoff case, threats to confidentiality, Anna's Case, emergency release of information, medical research ethics, cultural diversity and confidentiality, modern technology and confidentiality, Electronic Medical Record

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INTRODUCTION

Confidentiality is ethical and legal fabric when it comes to providing healthcare. All medical personnel are expected to respect the fiduciary relationship between the patient and the healthcare provider. Although confidentiality has always been of high significance in healthcare, with modernization, new policies and laws keep coming up to secure the confidentiality and ensure the patient's trust in healthcare provider. With modernization of information and technology and rising awareness of Human Rights, Confidentiality has gained a huge momentum. Healthcare providers as well as common people need to be educated and updated about confidentiality to ensure the quality of healthcare and lives of people.

DILEMMA OF A PHYSICIAN

Although modern Universities and Health Authorities are focusing a lot on training physicians and other medical staff about confidentiality of a patient, yet, being human, there are times when physicians face tough choice (of whether to disclose or not). A case is mentioned below to reflect the dilemmas faced by physicians and how they can overcome it.

ANNA'S CASE

It is not only the doctors who need to understand the importance of doctor-patient confidentiality; patients and their families need to understand and respect it equally. Anna's Case was published in the *Journal of Medical Economics*, 2009 which reflects the story of 15 years old testing the boundaries of doctor-patient confidentiality. According to Dr. Rifkins (2009: 22), Anna (fictional name) came to him with complaints of stomach ache and was diagnosed with pregnancy. She did not want her mother to know about the pregnancy. Dr. Rifkins (2009: 22) was in dilemma, he was not sure if it was best for Anna to keep the information to herself. Dr. Rifkins (2009: 22) managed to maintain confidentiality of Anna's pregnancy, but he was expecting that when/if Anna's mother come to know about his conduct, she will not be very happy with him. Dr. Rifkins compared Anna's situation with his own teen kids, whom he expected to seek help from him when needed, rather than doing it alone. The results came out to be something he did not expect. Anna's mother understood doctor's obligations and appreciated him for maintaining doctor patient confidentiality.

EXCEPTIONS TO DOCTOR- PATIENT CONFIDENTIALITY

According to Johnson (2002: 68), a doctor is immune to liability of confidentiality breach in emergency disclosure of information, if third party is in danger. It is mandatory for the physician to report such cases immediately. If a physician fails to take immediate action and physical injury occurs to third party, the physician will be held guilty in court. There are some exceptions where doctor- patient confidentiality is waived according to the law. Some relevant examples are mentioned below:

EMERGENCY RELEASE OF INFORMATION BY PSYCHIATRIST (TARASOFF CASE)

According to Grant (2007 :43), in order to act in best interest of patient or third party, a psychiatrist can release patient's information in an emergency crisis. Grant states Tarasoff Case where a psychiatrist failed to release a patient's information and the results were catastrophic. Patient had ideas in mind to physically harm third party which he disclosed to the psychiatrist. The psychiatrist could have released the information to act in best interest of third party, but he failed to do it and third party was physically harmed by patient.

OTHER EXCEPTIONS TO DOCTOR-PATIENT CONFIDENTIALITY

Grant (2007 :43) also states that if a medical personnel witnesses abuse or neglect of a child, elderly or disabled, he/she should immediately inform the authorities without thinking of confidentiality. Grant also depicts the significance of waiving confidentiality if there a threat to Public Health. Communicable diseases like HIV need to be handled carefully and if patient fails to disclose his/her status to sexual partners and puts community at risk, confidentiality needs to be waived off under legal liability of reporting to Public Health.

Grant (2007: 43) emphasizes that medical care can not provided without disclosure of information in "Circle of Care". "Circle of Care" includes all the medical staff in close contact with the patient to deliver him medical services e.g. physicians, nurses, pharmacists, etc. Grant states that minimal information needed should be disclosed to minimum number of people to respect the privacy of patient.

According to Mair (2008 :56), there is another exception to release of medical information i.e. litigation. When a patient sues a health care provider in court, he automatically gives consent to release his health records in court. However, the issue gets complicated when records discussed in court room are released to public, as court room discussions are open to public. In such case, patient cannot sue the physician to discuss his medical records as he himself voluntarily went to the court room.

QUEST OF CONFIDENTIALITY IN MEDICAL RESEARCH ETHICS

Although there are guidelines in most countries to regulate the Medical Research without compromising patient's confidentiality, but there is still an ambiguous zone, especially when it comes to the potential conflicts associated with investigators (physicians) receiving direct payment from private research companies for selecting patients and the running of clinical trials. Guidelines for pharmaceutical research are inadequate to promise the patient's rights to confidentiality. Conflict of interest can easily occur and the whole integrity of research can be blown away. Many factors can lead to conflict of interest e.g. financial benefits/gifts to doctors that patients are not fully aware of. (Puttagunta et al., 2002: 30)

Puttagunta et al. (2002: 30) suggests that following 4 points should be emphasized on to ensure that the patient's confidentiality is not compromised in medical research:

1. Doctor's financial interests should not be hidden from patient, doctor should declare all his interests to the participating patient to give him/her a clear idea of what he/she is walking into;
2. Guidelines set by national as well as international boards should be followed strictly to limit the autonomy of pharmaceutical industries
3. Physicians/ investigators should be educated about "Conflict of Interest".
4. Monitored and regulated profit making of physicians from clinical trials

Availability of large medical databases are a matter of concern to confidentiality of patients. Government needs to strictly limit the accessibility of this data for legitimate research only (conducted by trusted resource). Research for Public domain should be regulated differently from commercial use to medical data. (Simon et al., 2008: 1731)

COMPATIBILITY OF MODERN TECHNOLOGY AND CONFIDENTIALITY

Modern era uses EMR (Electronic Medical Record) to store, access and exchange medical information. According to Donne (2012 :32) there has always been a controversy on security systems of electronic media when it comes to confidentiality of patients. Yet, for sake of ease, the usage of EMR is quite prominent in modern era. A case is discussed below to explain the risk of using electronic media in sensitive issues.

CASE VIGNETTE

Beth has been married to mark for 5 years, she is patient of a psychiatrist who uses EMR to document all the details of his patients. Mark (Beth's husband) is very possessive about Beth and often tries to control her when it comes to communicating with other people. She secretly keeps in touch with some friends via emails and texts and hides her phone in purse to

make sure Mark does not find out. The psychiatrist has counselled Beth to think about her decision to leave Mark, which she has agreed to. In response to one of Beth's calls, the psychiatrist leaves her a text message about Women's shelter (to assist Beth with housing after separation from Mark). Mark co incidentally manages to access her cell and reads all the conversations. When Beth comes back home, she faced assault from her husband. This case is an example of unauthorized access to treatment plan due to communicating sensitive information via mobile phone.

Modern technology keeps evolving and needs to be watched carefully to address confidentiality issues. Usage of appropriate technology with adequate security systems should be approved so that no legal boundaries are crossed. (Donne, 2012 :32)

CULTURAL DIVERSITY AS HURDLE TO CONFIDENTIALITY

With Globalization happening at fast pace, developed world is seeing a surge of immigrants from East. Especially in multicultural country like Canada, cultural diversity sometimes comes as a hurdle to confidentiality. According to Arif (2005:30), people from different cultural backgrounds may have different understand of confidentiality. Eastern cultures, where families tend to know each and everything about their family members, find the concept of patient's confidentiality difficult to understand sometimes. Arif (2005: 30) states that there is a huge threat to confidentiality when relatives and friends are used as informal interpreters due to language barriers of patients. Arif (2005 :30) also states that women coming from male dominant societies are inclined to the idea that it would be "culturally insensitive" to hide information from their husbands. Such issues can only be addressed by educating people about the significance of confidentiality. Not only people from diverse backgrounds need to be educated, but also medical personnel who are responsible for providing health care, should be equipped with confidentiality and expectations regarding confidentiality by different cultures.

EVOLUTION OF CONFIDENTIALITY IN UNITED STATES OF AMERICA: THE LOOPHOLES

Confidentiality has been an integral part of medicine throughout the world. However, with evolution of policies and technology, confidentiality has loosened its grip in some regions, and in some countries it is otherwise. According to Freudenheim (1991), confidentiality has diminished in US due to greed of third parties. Freudenheim (1991) states that in most of the states, confidentiality is still of high significance and can not be compromised without consent of patient. However, there are loopholes in policies of some states e.g. California has a

"Confidentiality of medical information Act" which allows the medical information of patients to be accessible to employer, insurer or health plan to assess the responsibility to provide paid- health services. The American Medical Association implanted "the right to confidentiality" as a right of patients (approved in 1990). AMA stated that confidential medical information need not to be disclosed without the patient's consent with exception to "provided for by law" or "for securing the welfare of the individual or the public interest."

EXPERIMENTAL STUDY: ARE MODERN POLICIES GOOD ENOUGH?

Many critics argue that modern healthcare law and policies are good enough and everything is in order, as it is supposed to be. According to Russell (2003: 312), modern policies and practices are not good enough to ensure the safety of patient's information. Russel conducted an experiment in collaboration with a hospital where she needed to call other health authorities for contact details of patients (most of them had not been in hospital since 10 years, so most of their information was outdated). Russell (2003: 312) called 46 surgery centers to ask for phone and address details of patients claiming that the patient's contact details were out of date and updated details were needed to contact the patients for a review session. Out of 46, just one surgery practice asked the caller to fax the request on headed hospital notepaper. 3 surgical centers asked for contact details of hospital for call back option. Only 6 practices asked for previous address/ contact number of patients to verify, 11 asked for date of birth to verify. Out of 42, 25 surgery centers gave the patient's information without asking any questions. That is an alarming rate. Russell (2003: 312) doubts the education and practices of personnel who gave details of patients without confirming the third party. Russel urges that there should a gold standard and proper guidelines to be followed by every medical practice in order to reveal the patient's information to a third party.

CONCLUSION

Healthcare is evolving, policies are evolving, expectations of public from health care providers and policy makers are evolving as well. Confidentiality is of core importance in this whole evolution. Government should vigorously implement strict procedures to ensure that patient's confidentiality is not compromised. Good health services are only possible if patients are not afraid of breach of confidentiality. Government should strictly test the modern technologies for safety measures before implementing them. Health care professionals as well as common people need to be educated to understand and value the confidentiality.

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