

Ethics in health care: confidentiality and information technologies

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Abstract

Before the advent of the new communication and information technologies (NCITs), patient care was sometimes delayed because of the lengthy time it took to transmit patient information from a doctor in one location to a colleague in another. NCITs bring many advances to medicine, including to the area of communication. With a simple click, rural doctors can access their patients' laboratory test results, transmit images immediately, and receive feedback from a number of specialists working far away in teaching hospital centres. Doctors have a general obligation to preserve patient confidentiality, which includes keeping patients' information confidential. Medical confidentiality remains a vital part of ethical professional practice and it is likely that it will remain so. However, data transfer in this age of NCITs presents new ethical challenges in maintaining patient confidentiality.

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Introduction

Telemedicine, a division of new communication and information technologies (NCITs), while still a work in progress in South Africa, offers hope for doctors working in isolated areas that they will be able to provide better services to patients in their care.¹ The general ethical principles associated with the use of NCITs remain focused on assuring that action is taken that is in the patient's best interests. For example, acting in the patient's best interests includes actively performing good deeds for patients, avoiding patient harm, as well as preserving patient quality of care in the light of what constitutes best practice. The issue of patient confidentiality is another important issue that is highlighted by the use of NCITs in clinical practice.

Doctors have a general obligation to preserve patient confidentiality, which includes keeping their patient's information confidential. With advances in NCITs, there is a concurrent onslaught of implicit and explicit threats to individual liberties.² This is because the centralisation of data is increasingly underpinned by advances in technology. For example, computer storage of identifiable patient information could result in confidential patient data falling into the hands of unscrupulous commercial industries or the mass media.³ Thus, while providing patient benefit, NCITs are also capable of causing harm. Navigating the obligation to respect patients in respect of personal information derived from care-related activities, or verbally provided

under the profession's bond of trust, as well as keeping patient information confidential, may prove to be a fragile path.

Discussion

In this article, some of the ethical guidelines involved in protecting and providing patient information will be discussed and the use of NCITs highlighted. A case scenario will be deliberated, as well as the importance of patient confidentiality in medical practice. Ethical guidelines on the transmission of confidential patient information will also be covered.

Case study

Dr JM, a clinical manager at a mental health facility, received a facsimile from a colleague requesting a copy of the file of a patient who was previously hospitalised in his institution. Following admission and subsequent treatment, the patient relocated to another district and presented at that hospital's outpatient department. The patient told the outpatient department doctor that he was previously a patient at Dr JM's hospital. Dr JM is aware that patient information is critical for patient safety, as well as for consistency of care. Without hesitation, he made a copy of the patient's file. Rather than faxing the file, he decided to use the requesting doctor's e-mail address instead, and proceeded to use the hospital's secure computer to complete the file transfer. In

the process of transmission, the doctor received a phone call that diverted his concentration. Dr JM's mind was elsewhere, and so rather than inputting the e-mail address of his colleague, he erroneously typed an e-mail address with which he was very familiar, i.e. that of the South African Vintage Sports Car Association (SAVSCA). In a matter of seconds, 2 673 avid members of the SAVSCA received this patient's confidential medical information.⁴

Dr JM made a human mistake. According to recent studies, people who think that they are very good at multitasking are mistaken. In fact, multitasking escalates the number of mistakes that people make and causes the brain to miss important clues needed to effectively reason issues through to completion.⁵ Importantly, Dr JM also breached patient confidentiality. Instead of receiving vintage sports car news, a patient's substantial personal health information was relayed to others.

Respect for patient confidentiality, as well as privacy, have long been recognised as basic tenets of medical practice.⁶ In the famous Oath credited to Hippocrates (4th century BCE), his followers swore confidentiality, "all that may come to my knowledge in the exercise of my profession, or outside of my profession, or in daily commerce with men, which ought not to be spread abroad... I will never reveal. If I keep this oath faithfully, may I enjoy my life and practice my art, respected by all men and in all times; but if I swerve from it or violate it, may the reverse be my lot".⁷

Hippocratic physicians also pledged to maintain patient privacy: "Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private".⁸ Continuing the tradition of respecting patient privacy, the 2006 revision of the World Medical Association's Declaration of Geneva contains the statement: "I will respect the secrets which are confided in me, even after the patient has died ...".⁹ If doctors do not keep patient confidences, then patients will not trust doctors with their personal information. Without personal information, a doctor cannot effectively practise the science and art of medicine.

Kantism focuses on respecting the dignity and worth of each individual person. In South Africa, legalisation fortifies ethical respect for persons viz. confidentiality and privacy, as seen in the National Health Act No 61 of 2003 that states that "all patients have a right to confidentiality".¹⁰ This is also in keeping with the right to privacy as articulated in Constitution of the Republic of South Africa.¹¹ Respecting others is often translated in medical practice to mean respecting the choices that a patient makes in respect of his or her medical treatment, encouraging patients to become the major decision-maker with regard to their care, adhering to the precepts of informed consent and

keeping information confidential. With the advent of NCITs, the focus has broadened to include respecting the confidentiality of patients' retained, transmitted and stored medical information. Such developments require doctors and healthcare institutions to implement new procedures to protect patients. Thus, a patient should be consulted about the ways in which his or her medical information is managed. This is simply a contemporary adaptation of respect for persons.

One of the most compelling reasons for the provision of patient record safeguards is the fact that medical records are not solely confined to medical or treatment notations. The information that patients relay to their doctors, as well as other members of the medical team, contains considerable information which is included in their medical records. Patients' personal medical history is recorded, as well identifiers such as demographic data, dietary preferences, their religious or belief systems, the family medical history, financial disclosures and personality traits. Because of the extremely sensitive information that is present in medical records, it is easy to accept that patients have good reasons to expect that their information is kept private and confidential.¹² Patients should be assured that when securing medical services, their information will not be compromised through needless humiliating and harmful disclosure of their private medical information.

Allowances are made in medical practice. When a patient agrees to the disclosure of confidential information viz. informed consent, and when the transfer of medical records is medically justified (such as conveying information that is relevant to a patient's continuity of care to medical colleagues), such occasions constitute exceptions to the duty of confidentiality in professional practice. However, there are other instances in which the release of medical information is justified both ethically and legally.

The Health Professions Council of South Africa's (HPCSA) *Ethical guidelines* states that a practitioner may divulge information on a patient only if this is carried out:¹³

- a. In terms of a statutory provision.
- b. On the instruction of a court.
- c. In the public interest. (Disclosure in the public interest would include, but not be limited to, situations in which the patient or other persons would be prone to harm because of the risk-related content).
- d. With the express consent of the patient.
- e. With the written consent of a parent or guardian of a minor under the age of 12 years.
- f. In the case of a deceased patient, with the written consent of the next of kin or executor of the deceased's estate".

Some patient records contain an abundant amount of intimate personal information, and most of it may be greatly detailed. Other patient records may be less revealing, only containing the minimum amount of information needed to fulfil the duty of taking inclusive notes for medical purposes. While the amount of information may differ to some degree, information of any type that relates to a patient should be regarded as confidential. It is vital to keep in mind that identifiable personal data, as well as medical information, is recorded. This information could severely harm patients in the wrong hands. Therefore, there are certain ways in which such information should be managed in the era of NCITs.

Dr JM did not intend the patient's information to be made public, and no doubt he was very upset once he realised his mistake. Even sending a message saying: "Please disregard the e-mail just sent" really would not compensate for this grave error. When a doctor has good reason to send confidential patient information via NCITs, the following steps should be followed:

- Privacy should be verified, as well as the security of the computer system intended to be used and the security of the recipient's system.
- It is necessary to ensure that any e-mail address provided is both correct and valid.
- The transaction should be followed-up with a phone call, or other form of communication, to the recipient to ensure that the requested information, files or documents were received.¹⁴

Conclusion

As we have shown, medical confidentiality remains a vital part of ethical professional practice and it is likely that it will remain so. However, data transfer in this age of NCITs presents new ethical challenges to maintaining patient

confidentiality. In as much as it is possible, doctors should strive to ensure that patients are informed and that they consent or assent to the new parameters of medical confidentiality in this era of rapid technological advances.

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