

# Patient Confidentiality and Privacy

By SMA Ethics Committee



## Disclosing medical information to patient's employer

The Ethics Committee received a query from a member of the public on the rights of her company-appointed clinic to disclose her medical information to her employer.

The Committee highlighted that the default position is that the clinic doctor has a duty to respect and protect the patient's medical confidentiality, unless mandated by the law or because of the need to prevent third parties from likely and serious harm.

However, in some companies, the contractual terms related to employment and medical benefits for the employee include clauses where the terms of employment include a waiver by the employee of his right of medical confidentiality, authorising the doctor providing the medical care to furnish the company with the employee's personal medical information.

The relevant questions that the patient needs to ask would therefore include:

- Did she sign an employment contract that includes an authorisation of waiver of medical confidentiality rights, thereby allowing the doctor to share her personal medical information with her employer?
- If such a contractual clause exists, was it adequately disclosed or highlighted to her before signing?
- Notwithstanding the signature, is the requirement for waiver of medical confidentiality rights justifiable, e.g., by significant safety implications on the public or third parties involved in the employment?

## Camera in consultation room

The Committee received some queries from a member of the public pertaining to patient privacy and confidentiality when there is a camera in the consultation room.

The Committee highlighted that imaging, whether photography, videotaping or audiotaping are used in specific clinical encounters for the documentation of certain clinical procedures or clinical features of patients. The underlying principles include:

- Any form of photography, videotaping or audiotaping in the consultation room should only be used for clinical purposes.
- Patient should be explicitly informed regarding the presence of the recording device or cameras (unless there are good clinical reasons not to inform prior to recording, but disclosure should still be made later).
- The explicit and informed consent of the patient should be taken if recording is going to be made, unless again, there are good clinical justifications to waive consent, e.g., if informed, patient may behave unnaturally, thereby defeating the purpose of recording.
- Any such recording, whether photo, video or audio, must be treated as part of the patient's medical records and accorded the appropriate protection of medical confidentiality.

Regardless, the installation and use of cameras in the consultation room should be used very sparingly, because of patient privacy and the importance of a private and confidential environment for candid doctor-patient communication, ultimately contributing to good patient care. Exceptions should only be made when the clinical benefit of recording far outweighs these considerations. Where recordings do not have strong clinical justifications and are done primarily for non-clinical purposes, the patient must be informed. If the recording is to be used, explicit informed consent must be obtained from the patient or other third parties present.

Even so, such recordings should be strongly discouraged as they work against good clinical care and relationship. Whenever any recording is done without the patient's prior knowledge and is shared with a third party, it is a violation of patient confidentiality. However, even if the recording is not shared with any third party, it still constitutes a violation of patient privacy and patient dignity. A patient can ask the doctor for justifications (i.e., clinical justifications) if she comes to know that a recording has been done without her prior knowledge, and if they are not valid, the patient has a right to demand that the recordings be deleted/destroyed. **SMA**