Legal & Ethical Challenges of Confidentiality in Medical Practice

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“Wherever the art of Medicine is loved, there is also a love of Humanity.”
— Hippocrates

The first step in the evolution of ethics is a sense of solidarity with other human beings.
-- Albert Schweitzer
Regional Medical Ethical Challenges

**Table 2. Top 10 Bioethical Challenges in Muslim Countries**

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<td>The relation between law, ethics and <em>fatwa</em></td>
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Priority Setting in Islamic Bioethics: Top 10 Bioethical Challenges in Muslim Countries
Dr. Alireza Bagheri, 2015
What is Ethics?

Ethics is a system of moral principles affecting how people make decisions and lead their lives.

Ethics is concerned with what is good for individuals and society - a moral philosophy.

Medical Ethics - System of moral principles that apply values and judgments to the practice of medicine.
Ethics vs. Law

**Ethics** - social guidelines based on moral principles and values - no specific penalties for violation.

**Ethics** - awareness of what is right and wrong.

**Laws** - rules and regulations with specific penalties and consequences for violations.

**Laws** - developed and enforced by governments to provide balance in society and protect citizens.

Laws and Ethics together establish a moral boundary – ethics is a personal honor code while law is a justice-based rulebook.
Basic Principles of Medical Ethics

- Respect for patient’s autonomy
- Not inflicting harm on patients
- Positive duty to contribute to patient’s welfare
- Justice or fair treatment of patients
Why Is Ethics Important?

- Conflicts of interests in healthcare serious and complex
- Availability of new technologies create new ethical dilemmas around cure/treatment, costs and access to healthcare
- Need to integrate traditional notions of medical ethics with modern principles and values
Professional Ethics

- Standards of conduct applying to people who occupy a professional occupation or role
- Professional agrees to certain ethical obligations because public trusts them to provide goods and services that cannot be provided unless their conduct conforms to certain standards
- Professionals who fail to live up to their ethical obligations betray this trust
Medical Ethical Issues Involve:

- Informed consent
- End of life care
- Palliative care
- Allocation of clinical resources
- Access to care
- Ethics of medical research
- Doctor-patient relationship
- Patient privacy confidentiality
- Respect for persons
- Competence and integrity
Duty of Confidentiality

- Patient shares information with health care provider with an understanding that it will not be disclosed to third parties
- Identifiable patient information – written, verbal or electronic
- Patient confidentiality - builds trust, respects patient autonomy and privacy and leads to good patient outcome
Right to Privacy

- Privacy is valued in ethics and law
- Protecting privacy involves protecting patients from unwanted access or control by others
- Relates to patient’s personal autonomy and personal identity
- Privacy has to do with physical, informational, decisional, personal property and expressive privacy
Confidentiality Protected by Professional Codes & Laws

- Ancient and modern medical codes stress the duty of confidentiality as a time honored principle extending beyond death.
- Health professionals are also legally obliged to protect patient confidentiality under Qatar laws. Legal sanctions for breach of patient’s confidence.
- *Special requirements under Qatar law for the use and disclosure of certain categories of highly confidential information (e.g., HIV information, genetic testing, alcohol and drug abuse treatment, and mental health treatment.*)
Qatari Law No. 2 of 1983

**Article 20**

The doctor must always act with professionalism and integrity. He must preserve and uphold the dignity and honour of his profession, and he must not practice in any which impugns this dignity and honour. The relationship between him, his fellow doctors, and those working in allied healthcare roles must be based on mutual respect and strong cooperation. He must desist in general from anything that would degrade the dignity of his colleagues or detract from their academic and professional standing. He must not illegitimately or dishonestly seek to displace others from treating patients in order that he himself could then occupy that role. He must avoid any practice that is not in keeping with the ethics of the profession.
Article 20 Law No. 2 of 1983 Practice of the Profession of Medicine and Dental Medicine

Doctor is prohibited from:
Disclosing confidential information about a patient which he discovered on account of his profession, exempt in those cases permitted by law.

Article 23 Law No. 2 of 1983

…the standing committee for licenses …may review violations alleged or suspected to have been committed by doctors in breach of the provisions of Article 20…and may review charges against doctors suspected of violating the principles, requirements and ethics of the profession.
Sanctions for Violating Article 20

Disciplinary sanctions imposed:
- Warning
- Suspension from practicing the profession not more than 1 year
- Withdrawal of license from the doctor and the deletion of his name from the schedule of doctors
Patients who Lack Capacity to Consent

- Sensitivity of information and known wishes of patient must be taken into account.
- What “lacking capacity” means and who has legal status to make healthcare decisions for those patients must be defined by law.
- Hospitals may seek consent of ‘next of kin’, however, they may not have legal basis to make such decisions.
- Lawfulness of sharing information about a patient without capacity may depend on whether it can be shown that it is in the patient’s best interests.
Confidentiality Not Absolute

Exceptional circumstances where health professionals may ethically and legally qualify the principle of confidentiality to protect wellbeing of patient and others from harm.
Exceptional Circumstances

- Health professionals may breach patient confidentiality in order to avoid serious risk or harm (identifiable individuals and the public in general).
- Decision to disclose patient information should not be made in haste or without due care.
- Where disclosure is necessary, the minimum information necessary to avoid harm should be provided.
Duty of Confidentiality Beyond Death

Things to consider:

- Known wishes of deceased patient regarding information
- Impact of non-disclosure on the wellbeing and welfare of third parties – avoiding harm or benefit
- Impact of disclosure on reputation of deceased
- Possibility to anonymize before disclosure
- Impact that posthumous breaches of confidentiality may have on the care of current or dying patients
Family Member Disclosures

- Anxiety about misdiagnosis, negligence
- Hereditary conditions
- Contesting a patient’s will
- Must be consistent with patient’s wishes or advance best interests

Problems:
- While alive, patient did not consent to disclosure
- Whether rights of others’ wellbeing/welfare affected must be considered.

I’m afraid doctor-patient confidentiality prevents me from saying if your brother cried like a baby during his flu shot.
Disclosure Without Consent

Circumstances where a health professional may, justifiably, share confidential information without patient’s consent:

- Disclosure required by law
- Disclosure in the interest of patient or others
- Disclosure in the public interest
Obligated Under the Law

- Criminal investigations involving a suspected individual in a crime (e.g. road traffic offence, shooting offence)
- Legal actions where a health professional might be asked to testify in a court/tribunal
- Infectious diseases regulations which place obligation on health professionals to disclose information about ‘notifiable’ diseases to the public health authorities
Article 312 of Qatar Penal Code
Whoever **accidentally harms** a person due to negligence, ignorance or failure to take notice of or comply with the laws and legal notices shall be punished with imprisonment for a term not exceeding six months and a fine not exceeding one thousand Qatari Riyals (QR 1,000). The penalty shall be imprisonment for a term not exceeding one year and a fine not exceeding five thousand Qatari Riyals (QR 5,000), or one of these two penalties if the crime leads to a permanent deformity. In all cases, the offender shall be liable to a prison term not exceeding two months if the victim or the "avenger of blood heir" forgives or accepts blood money.

Article 313
The penalty stipulated in the two preceding Articles shall be doubled, depending on the circumstances, **if the crime is the result of a transgression of the offender's occupation, profession or job**, or the offender is under the influence of narcotics or alcohol, or the crime leads to the death of a person or the injury of more than three people, or the offender fails to help or seek help for the victim despite having the capability to do so.
Exceptions to Privacy & Confidentiality?

Suicide - Article (304) of Law No. (11) of 2004 (misdemeanor)
Anyone who tries to commit suicide by using, executing any actions that usually leads to death is convicted to no more than six months in prison and to a fine of no more than three thousand riyals, or to one of these two penalties.

Article (282) felony
Anyone who copulates with a female above sixteen without compulsion, duress or ruse knowing that this is prohibited is convicted to no more than fifteen years in prison. The same penalty is imposed on the female who accepts knowing that it is prohibited.

Article (285) - felony
Anyone who copulates with a male above sixteen without compulsion, duress or ruse is convicted to no more than seven years in prison. The same penalty is imposed on the male for his consent.
Disclosure Required By Law?

Notifying the Authorities of a Crime (Felony) Article (186)

A penalty of imprisonment for a period not exceeding three years and a fine not exceeding ten thousand Riyals or one of the two penalties shall apply to anyone who knows about the perpetration of a crime or the existence of a plan to perpetrate an offence in a time when he can prevent from perpetrating it and abstains without valid excuse to inform the relevant authorities. Said judgment shall not apply to the spouse of the perpetrator, his ascendants or descendants.

If a doctor learns of a crime that is to be committed he or she should report that information directly to the police. If a doctor discovers that a crime has already been committed, he/she should report it to the Ministry of Public Health, and the Ministry officials will determine if the report should be shared with the police.
Questions to Consider

- Provide the police a list of all patients that attended surgery/clinic this morning, when a prescription pad/laptop/my wallet was stolen?

- Provide a list of all diabetic patients to a company doing a survey on the quality of care they received? Would the answer be different if the survey was about another disease (e.g. HIV)?

- A father and his adult son are being matched for kidney donation when the healthcare team discovers that they are not genetically related. Who should they tell? The father? The son? His mother? What are the benefits? What are the risks? Are there other factors to consider, like the propriety of doctors holding sensitive personal information on their patients without telling them…?