



Confidentiality in Healthcare

لیلا افشار

دکترای تخصصی اخلاق پزشکی

MD, PhD of Medical Ethics

عضو هیئت علمی گروه اخلاق پزشکی

'The things that most people want to know about are usually none of their business'

George B. Shaw



At a Glance

- ❖ What is confidentiality? /Why respect confidentiality?
- ❖ Is confidentiality absolute/Exceptions to confidentiality/Breeching confidentiality
- ❖ Confidentiality –Death, incapacity and minors



Confidentiality

- *Generally, if institution/person 'A' holds information about person 'B' then person 'C' cannot obtain that information in the normal course of events without the consent of person 'B'*

- *'Most people consider health information to be highly personal and, therefore, need to be confident that their privacy will be protected whenever they use a health service ... Clear and open communication between the health service provider and health consumer is integral to good privacy'*



What information is confidential?

- ❖ All identifiable patient information, whether written, computerised, visual or audio recorded or simply held in the memory of health professionals, is subject to the duty of confidentiality.

شامل: آنچه بیمار راجع به بیماری یا مطالب دیگر مربوط به آن به پزشک می گوید، آنچه پزشک با معاینه در می یابد و آنچه پزشک درمحل معاینه می بیند.



It covers:

1. Any clinical information about an individual's diagnosis or treatment.
2. A picture, photograph, video, audiotape or other images of the patient.
3. Who the patient's doctor is and what clinics patients attend and when.
4. Anything else that may be used to identify patients directly or indirectly.



When does a matter become confidential?

Broadly speaking the courts have recognised three elements to deciding whether a matter is confidential:

- ❖ The nature of the information
- ❖ Nature of the encounter
- ❖ Nature of any disclosure



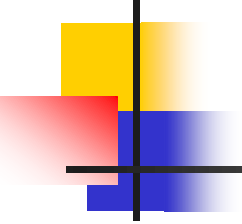
Why respect confidentiality?

- ❖ **Trust** is an important aspect between patients and healthcare professionals. Patients without fear of a breach of confidentiality should be able to communicate symptoms that often they may feel are embarrassing, stigmatising, or indeed trivial.
- ❖ Without this trusting relationship patients may not **divulge information** which may make treating them impossible.
- ❖ Patients **may not seek medical attention at all**.
- ❖ Has **important role in a professional patient relationship** establishing a sense of security, freedom of action and self respect for patients.



Why respect confidentiality?

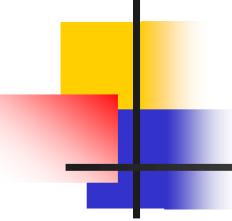
- **Ethics (Professional Code of Conduct)**
- Law
- Institutional policy



■ رازداری به عنوان یک وظیفه مقدس در سوگند نامه های پزشکی آمده است.

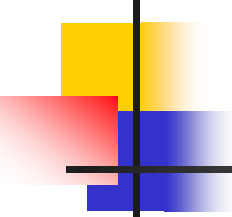
■ سوگندنامه بقراط: «آنچه که من در طی درمان یا حتی خارج از درمان راجع به زندگی فرد می بینم یا می شنوم، به هیچ وجه نباید انتشار یابد. من صحبت کردن راجع به این مسائل را برای خود ننگ می دانم»

■ سوگند نامه پزشکان ایرانی : «در معاینه و معالجه حریم عفاف را رعایت کنم و اسرار بیماران خود را، جز به ضرورت شرعی و قانونی، فاش نسازم»



■ ماده ۶۴۸ قانون مجازات اسلامی :

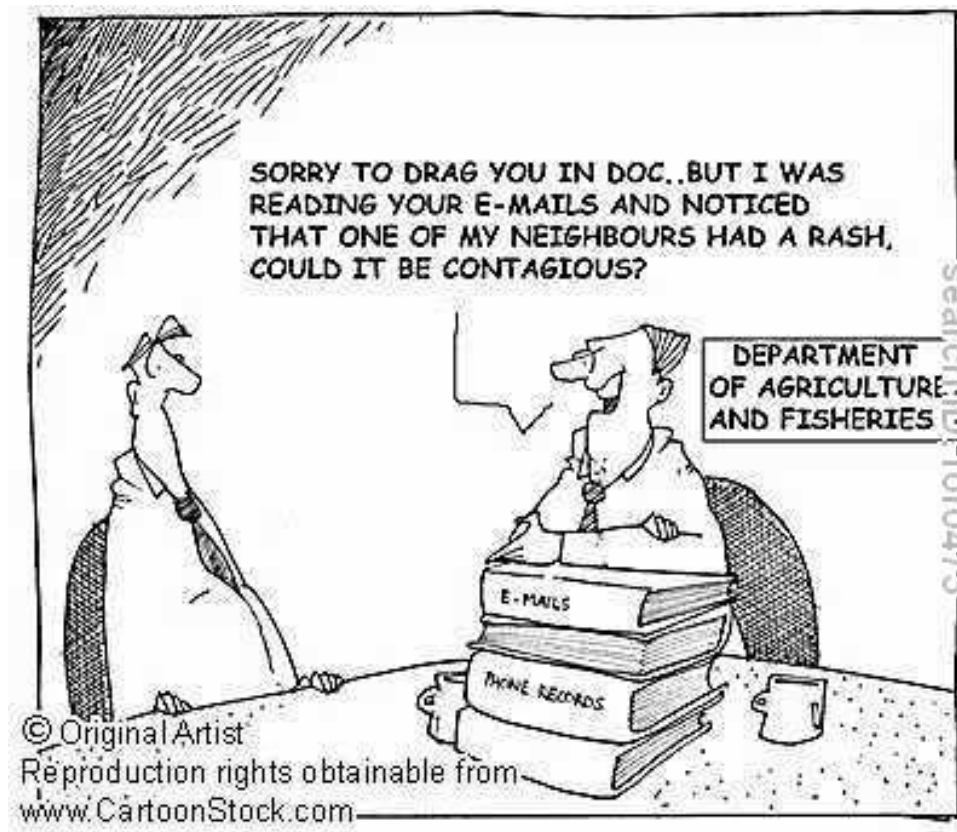
«اطباء و جراحان و ماماها و داروفروشان و کلیه کسانی که به مناسبت شغل یا حرفه خود محرم اسرار محسوب می‌شوند، هر گاه در غیر از موارد قانونی، اسرار مردم را افشا کنند به سه ماه و یک روز تا یکسال حبس و یا به یک میلیون و پانصد هزار ریال تا شش میلیون ریال جزای نقدی محکوم می‌شوند».



آیین نامه انتظامی رسیدگی به تخلفات صنفی و حرفه ای شاغلان
حرفه های پزشکی و وابسته درسازمان نظام پزشکی جمهوری
اسلامی ایران:

ماده ۴- شاغلین حرفه های پزشکی و وابسته حق افشای اسرار و نوع
بیماری بیمار، مگر به موجب قانون مصوب مجلس شورای اسلامی را
ندارند.

Is the duty of confidentiality absolute?





Is confidentiality an absolute right?

- Confidentiality is recognised as a right.
- The belief that confidentiality is not absolute is the model which the U.S. and the U.K. subscribe to.
- In France and Belgium confidentiality is considered as an absolute requirement to protect the patient's interests.



The exceptions to confidentiality

There are four circumstances where exceptions may be justified in the absence of permission from the patient:

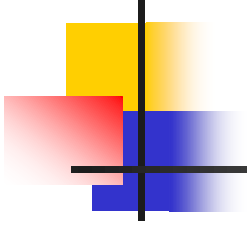
1. When **ordered by a Judge** in a Court of Law
2. When necessary **to protect the interests of the patient.**
3. When necessary **to protect the welfare of society.**
4. When necessary **to safeguard the welfare of another individual or patient.**



When necessary to safeguard the welfare of another individual or patient:

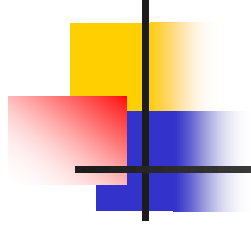
- ❖ Tarasoff Case
- ❖ HIV+

Confidentiality vs. Duty to Warn



When necessary to protect the welfare of society:

- Infectious Disease
- Gunshot wounds? who may inform the authorities
- Road Traffic Law?



When necessary to protect the interests of the patient:

- ❖ Children or adults who are subject to **abuse**
- ❖ The protection of an individual from themselves,
in cases of **suicide** could also be broadly placed
in this category; this is where the limits of this
exception become vague



When ordered by a Judge in a Court of Law:

- Discovery – must be done by court order
- Discovery is related to relevant issues involved in the court proceedings only



Breaching Confidentiality

- ❖ If the individual consents
- ❖ If required by statute
 - Infectious disease
 - Child protection
 - Eligibility to health services
- ❖ The Public Interest
 - Preventing harm to others
 - In litigation
 - Traditionally, no medical research exception has been recognised
- ❖ Is disclosure for relevant and sufficient reason and proportionate?
 - A healthcare professional MUST be able to justify any breach of confidentiality



CONFIDENTIALITY FOR THOSE WHO CANNOT CONSENT?

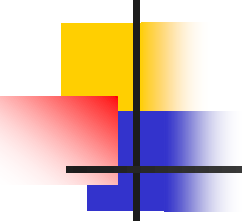


Who has a right to know your healthcare information?

- ❖ If a patient is >18 ,
- ❖ Is fully competent (or competent enough to understand medical information in order to make a decision),
- ❖ And is alive:

Only he/she and the people he/she authorise to share his/her private information with have a right to view the information.

(relatives of a competent adult do not)

- 
-
- Incapacity
 - Death
 - Minor



Incapacity

- Where an individual cannot; comprehend or retain treatment information, believe it and weigh it in the balance to arrive at a choice then they are considered unable to consent to that treatment.

- If a doctor decides to breach confidentiality on the '*best interest*' argument:
 1. first must weigh the possible harms against the benefits,
 2. second, must be prepared to justify the decision and
 3. third if unsure should consult experienced colleges.



Death

- Morally an individual's confidentiality is still considered to require respect

- Legally -confidence is prima facie a personal matter thus the legal duty ends with the death of a patient..

■ گواهی فوت یک سند عمومی است اما
جواز دفن که حاوی علت مرگ است
یک سند محرمانه تلقی می شود.



Minors

- Unwanted parental intrusion to confidentiality can result in minors losing trust in healthcare providers and move away from health care



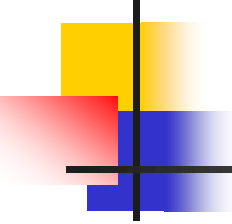
How can healthcare providers insure confidentiality is maintained?

- **Discretion in general conversations**
 - ‘New technology’: Facebook, Twitter
 - Online posting of unprofessional content
- **Examining how we talk to patients**
 - Out-side work
 - With Non-clinical personnel
- **How do we ‘carry’ data?**
 - Unsecured laptops
 - USB keys
 - Is data anonymised where possible
- **When information is shared** – every party must be aware of his/her obligation of confidentiality



Summary

- ❖ Confidentiality is **VITAL** in healthcare – But is not always an absolute right.
- ❖ There are 4 exceptions defined for confidentiality.
- ❖ A healthcare professional **MUST** be able to stand over any breach of confidentiality and it should be a last resort.
- ❖ Duties to inform authorities in certain cases (*Child abuse, elderly abuse, public interest*) – where danger exists, should only be done after careful consideration.
- ❖ All competent persons over 18 have the right to confidentiality- for all other persons healthcare providers must act in the patients best interests.



هر راز که اندر دل دانا باشد باید که نهفته تر ز عنقا باشد
«عمر خیام»

lafshar@gmail.com

leilaafshar@sbmu.ac.ir