

Legal Aspects of Patient Confidentiality

Note

Health and social care practice and knowledge are constantly changing and developing as new research and treatments, changes in procedures, drugs and equipment become available.

The authors, editor and publishers have, as far as is possible, taken care to confirm that the information complies with the latest standards of practice and legislation.

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Preface

This monograph follows the publication of a series of articles in the *British Journal of Nursing* on confidentiality. The need for a book for health professionals setting out the law and practice on confidentiality led to Quay Publications agreeing that the articles, updated and revised, could form the basis of a concise publication covering the main concerns which arise in respecting the duty of confidentiality. It is hoped that all registered health professionals (for convenience referred to here as practitioners) will find the book of value in their professional work, which involves the protection of the rights of the patient and working within the confines of the law. Trust is at the heart of the health professional/patient relationship, yet many practitioners find themselves in situations where they are torn between their duty of confidentiality to the patient and other duties. Knowledge of the law should assist them in resolving such dilemmas.



Acknowledgements

I would like to give my special thanks to Dr Yardley who read the entire typescript and made some valuable suggestions to the text, and who also recommended that the book should be marketed to other health professionals as well as nurses, since the issues considered here are important to them all. I should also record my considerable debt to Bette Griffiths in proofreading and preparing the indexes for the book and her constant encouragement and support.



CHAPTER I

The duty to respect patient confidentiality

Box 1.1 Case scenario: breach of confidentiality

Staff Nurse (S/N) Brown discovers that a recent admission on the surgical ward is a member of a famous pop band. She tells her friend, on a promise of total secrecy, that he has been admitted and will be having an operation for a hernia repair the following day. To her embarrassment and shame, the next day the papers publish the story and the disclosure is eventually traced to S/N Brown. What legal repercussions are likely and why?

The duty to respect patient confidentiality arises from a variety of sources including the duty of care to the patient, the contract of employment, professional codes of practice and Acts of Parliament.

Department of Health: Code of Practice on Confidentiality

The Department of Health published an NHS Confidentiality Code of Practice in 2003 (DH, 2003). This supersedes the earlier advice on the protection and use of patient information issued in 1996. The guidance covers the definition of confidentiality; providing a confidential service (including a confidentiality model); and using and disclosing confidential patient information. Annex A sets out the detailed requirements for providing a confidential service. Patients' health information and their interests must be protected through a number of measures, which include :

Legal aspects of patient confidentiality

1. Recognising that confidentiality is an obligation for all staff, external contractors, and volunteers
2. Recording patient information accurately and consistently
3. Keeping patient information private
4. Keeping patient information physically and electronically secure
5. Disclosing information with appropriate care

Annex B sets out a model which can be used to aid decision making in disclosure situations. There are three distinct flow charts which distinguish three sets of circumstances:

- B1, where it is proposed to disclose confidential information in order to provide healthcare
- B2, where the purpose is not healthcare but it is a medical purpose as defined in legislation
- B3, where the purpose is unrelated to healthcare or another medical purpose

Annex B states that these are important distinctions, in that the legal and ethical requirements differ in each case.

Duty of care to the patient

Implicit within the duty of care owed to the patient is the duty to recognise the right of the patient to have personal information relating to him/her kept confidential (*Furniss v. Fitchett* [1958]). In theory, therefore, the pop singer in the case scenario (see Box 1.1) could sue the employers of the nurse for their vicarious liability for the breach of confidentiality by the nurse. However, he is unlikely to do this since more publicity would be generated, when clearly he wished the admission to be kept secret. He would have to show that he suffered harm as a result of the disclosure if he were to rely upon an action for breach of the duty of care.

Often when royalty and other famous persons are admitted to hospital, their public relations officers agree with the hospital on an announcement of the admission and on the condition bulletins which are made during their stay. If, however, they wish for the admission and condition to be kept confidential, then this is their right. Had the singer been aware of the intent to publish before it actually took place, then he could have sought an injunction from the court to prevent the publication going ahead. An injunction is an order of the court prohibiting specified action taking place. Failure to comply with an injunction