



Medical Council of New Zealand

Confidentiality and public safety

Confidentiality in the doctor-patient relationship is a fundamental principle in medical practice. It is vital to maintain levels of trust that allow intimate and personal information to be divulged with confidence. However, when harm to a patient or another individual could be prevented by breaking that confidence and disclosing information, a doctor can legally disclose patient information. This disclosure must be limited to relevant details of the patient's information that would prevent harm and must be made to a person who is in a position to act in the interests of the patient or public safety.

Background

Health information is defined in the Health Information Privacy Code 1994 as “information about the health of that individual, including that individual's medical history”. It includes information about disabilities and services that are being provided. It may refer to information gained outside the clinical context, as indicated by a reference to “information about that individual which is collected prior to or in the course of, and incidental to, the provision of any health services or disability services to that individual”.

Confidentiality is crucial to medical practice. The patient's reliance on the confidential nature of his or her disclosures has always been necessary to engender trust between patient and doctor.

Disclosure of health information

In New Zealand the Health Information Privacy Code 1994 refers to the conditions under which disclosure that has not been authorised by the patient, is permissible. Rule 11(2)(d) allows unauthorised disclosure when the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:

- (i) public health or public safety; or
- (ii) the life or health of the individual concerned or another individual;

Disclosures under subrule 2 are only permitted to the extent necessary for the particular purpose to prevent the serious or imminent threat. No health information shall be disclosed that does not contribute to the prevention of this type of threat.

Sections 22C,D,F, G & H of the Health Act 1956 lists a number of situations in which health information should, or may be disclosed. The legislation should be referred to for the specific details of who and when information can be disclosed. Please note that these sections *permit* disclosure. Ethical considerations may make it undesirable or improper for that disclosure take place.

Discussion

Where possible, any intended disclosure should be discussed with the patient. This is especially important where the patient has a responsibility to make disclosure to an authority. It is then wise to give the patient the option of making the disclosure on his or her own account. Careful judgement is required when deciding whether to gain consent or inform the patient of the intended disclosure.

What constitutes a serious and *imminent* threat will often require a judgement call. Neither term is defined under the Privacy Act or the Code but case findings would indicate that to address an imminent threat, the recipient of the health information would have to have the power to act urgently to achieve a tangible result in the particular situation. It may be prudent to obtain legal advice if there is any doubt whether disclosure should be made.

It is not essential that a doctor confer with a colleague before deciding that disclosure in the public interest is appropriate but it may be wise. Any disclosure is a matter of medical judgement. However discussion with colleagues or a supervisor is a sensible way of demonstrating that the matter has been given full thought. Time may not always allow this because the threat must be 'imminent' for legally permitted disclosure.

The decision not to disclose can be as open to criticism as a decision to disclose.

Summary

The circumstances under which disclosure may be made, without the necessity of informing the patient, arise in law where the doctor believes, and can justify the belief, that -

- there is a serious and imminent threat to public safety; or,
- there is a serious and imminent threat to the safety of an individual, including the doctor or the patient;
- disclosure will prevent or lessen the risk;
- the patient must be identified to achieve this; and,
- the recipient of the information is in a position to act in the interests of public safety.

Sections 22C,D,F, G & H of the Health Act 1956 provides for circumstances in which health information should, or may be disclosed. The legislation should be referred to for the specific details of who and when information can be disclosed.

In any case where information is released it *must* only be the minimum of information to secure the desired result. If the above criteria are met, doctors would be likely to have satisfied compliance with the Privacy Act.

As medicine is fraught with uncertainty, there are many situations where doctors have to make difficult decisions and sometimes the decisions have to be taken quickly. Decisions to disclose patient's health information should be made thoughtfully, and after consultation with peers or a lawyer where possible. In all cases a clear record of the doctor's reasons should be made.

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Case studies

The following case studies are examples where the Health Information Privacy Code 1994 has been applied in cases involving health practitioners.

Office of the Privacy Commissioner Case note 2049(1996)

A nurse disclosed health information about a patient released into the community under the mental health legislation, in a letter sent to an opposition MP.

The patient was a high risk and needed intensive and long-term therapy and care specifically directed at the condition he suffered from. While accepting that the nurse had reasonable grounds to believe that the patient posed a serious and imminent threat to public safety, she did not have reasonable grounds to believe that it was necessary to disclose this information to the opposition MP to lessen or prevent this threat. The MP was not the appropriate recipient of the information because there is little reason to believe the MP would have the power to alter the patient's position in the community. To address an imminent threat the recipient of a disclosure would need the power to act urgently, to achieve a tangible result in a particular case. The MP was so removed from the decision-making processes in respect of individual patients in the mental health system as to be powerless. The Commissioner said that there are people with special functions to receive and act on such disclosures who have the expertise and power to act effectively to lessen the risk.

Dr D v Medical Disciplinary Committee [1986] 1NZLR513

Dr D was a registered medical practitioner in a small rural community. Mr H, one of his patients, was a bus driver by occupation and had operated a passenger service business for 30 years. In 1982 Mr H suffered two heart attacks and was attended by Dr D as his GP. Mr H underwent a triple coronary artery bypass operation. After the successful operation, Mr H obtained a medical certificate from the surgeon that enabled him to obtain a licence to drive passenger service vehicles.

Dr D disclosed to prospective passengers on Mr H's bus that Mr H was not fit to drive and could have a heart attack at any time. Dr D also sought assistance from the local Police constable to have Mr H's licence revoked. The Disciplinary Committee found Dr D guilty of professional misconduct for breach of professional confidence and censured him. Dr D did not appeal the decision but made statements to the national news media about Mr H's heart condition and fitness to drive. A further complaint was made to the Medical Council who found him guilty of professional misconduct by disclosing confidential information to the national news media in breach of professional responsibilities and his name was removed from the medical register.

This case focuses on the purpose of a particular disclosure and the need to disclose to an appropriate authority. The disclosure to the Police was not the subject of the complaint nor was it criticised by the Medical Council or the Courts. It was disclosure to other people that was criticised. The emphasis on disclosing to a "responsible authority" recognises that professional confidence should only be breached in the most exceptional circumstances and then only if the public interest is paramount.

Medical Practitioners Disciplinary Committee decision dated 16 August 1996

Dr A was a registered medical practitioner who had a doctor-patient relationship with an individual who had an established history of aggressive and abusive behaviour. The patient had directed this behaviour to a wide range of people including Dr A's receptionist. Dr A had counselled the patient and encouraged the patient to attend an anger management course.

Dr A received a routine request from the Police inquiring whether, in the doctor's opinion, the patient was a suitable person to possess or be in control of a firearm. With the above history Dr A was in no doubt that the patient was not fit to do so and within 30 minutes of receiving the letter replied in writing, conveying the opinion that the patient was unfit to possess or be in control of a firearm. This response was discussed at a later time with the doctor's colleague who concurred with Dr A's actions.

The Medical Practitioners Disciplinary Committee noted that under the Health Information Privacy Code 1994 there must be a sincere belief of imminent and serious danger to an individual or public safety before it is acceptable for a doctor to breach patient confidentiality. Dr A was contacted in a routine Police inquiry with no sense of imminent threat to an individual or the community. The MPDC found that without this 'imminent threat' the doctor's foremost duty was to the patient and the disclosure should have been discussed with the patient before it was made to the Police, or at the minimum, the patient should have been advised. The MPDC made no orders as to penalty in regards to this case but directed a notice be published in the New Zealand Medical Journal.