

THE EXTEND OF CONFIDENTIALITY IN PSYCHIATRY

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Abstract: Confidentiality is instrumental to the therapeutic relationship in psychiatry and hence its ethical significance. Regardless of its clinical necessity, the maintenance of patient confidence has been the subject of much discussion in the light of necessary breaches and potential implications for the extension of the therapeutic obligations of psychiatrists beyond the individual therapeutic relationship. Indeed, as Green and Bloch have argued “confidentiality can never be absolute, and therein lies its ethical intricacy”.

The Tarasoff Case

The pivotal instance of confidentiality and the so-called ‘duty to inform’ was the so-called “Tarasoff Case”.³³³ In August 1969, Prosenjit Poddar (a Bangladeshi man) was in treatment with the psychologist Dr Lawrence Moore. Dr Moore was on staff at the University of California at Berkeley. During the course of his psychotherapy, Poddar disclosed the intent to murder a woman, Tatiana Tarasoff, on her return to the USA from Brazil in summer. Poddar and Tarasoff had kissed casually at a party and he had become obsessed with her. Being very concerned about the threat, Moore discussed the issue with two of his superiors. The decision was taken to arrange Poddar’s admission to a state psychiatric hospital for observation and Moore spoke with two campus police officers, and then wrote a letter to the Chief of Police, requesting their assistance in detaining Poddar. Tarasoff’s family was not notified of the risk posed by Poddar. Poddar was apprehended and questioned by police, and subsequently released without charge or referral to psychiatric treatment. Poddar murdered Tatiana Tarasoff on 27 October 1969. The Tarasoff family took legal action against the Regents of the University of California for their failure to warn them of the danger. The resultant verdict highlighted the obligation of a duty to inform someone of the risk posed by a patient.

Whilst the implementation of this Californian legal ruling has been variable across jurisdictions,³³⁴ the issues raised by the case have formed the basis of much ethical reasoning in this area.²⁴⁸ The issue has presented another manifestation of the “dual role dilemma”.

Other Areas of Confidentiality in Psychiatry

In the preparation of medico legal reports confidentiality is waived by the patient when they consent to the preparation of the report.^{330, 336} One of the complexities of this area is whether a report is being prepared by a treating psychiatrist, or a psychiatrist in the role of an independent expert witness. Whilst patients provide consent for the preparation of medico-legal reports to be tendered as evidence in criminal or civil proceedings, they may not be aware of the contents of the report, particularly sensitive personal information. This highlights the need for psychiatrists preparing such reports to highlight the various aspects of the process before the report is prepared.

Much information is either stored or transferred electronically, either on data-bases or by email. Given the sensitive nature of psychiatric clinical information, this highlights the need for data security in such processes.³³⁷

In the United States, and increasingly in other settings, where health insurance programs are in operation, there is a continual tension in the requirements of psychiatrists to provide information about patients in order to secure payment for treatment.³³⁸ In the Australian setting, this is particularly the case with Medicare Rebate Item number,³¹⁹ which provides for more than 50 consultations per annum for patients with specific psychiatric diagnoses (such as borderline personality disorder or eating disorders) or levels of impairment.

Confidentiality is particularly problematic in community mental health settings,^{339, 340} where the patient's privacy can be imperiled by clinicians visiting the patients in their home, or conducting assessments in public places. This might involve the patient's family members, neighbours or acquaintances being made aware of the involvement of community mental health practitioners in the patient's life.

Ethical Boundaries to confidentiality

The confidentiality requirement exist within a wider social context in which healthcare professionals' other duties may conflict with their duty of confidentiality. In particular, healthcare professionals may have ethical duties to disclose confidential information, without consent, if serious and imminent dangers are present for a third party and they judge that disclosure is likely to reduce or eliminate the danger. In assessing such risks and whether they outweigh the duty of confidentiality, both the probability of the harm and its magnitude need to be considered. Where both the probability and seriousness of harm to a third party are high, the moral duty to disclose to prevent harm is likely to override the professional duty of confidentiality.

The Ethics of Confidentiality

Professional ethics govern the communication with and engagement of carers during service delivery. The codes of ethics and guides to professional practice that relate to the notion of confidentiality are summarised as follows:

- The promise of confidentiality is a commitment that the patient's information will not be transmitted to a third party without the consumer's express permission.
- The promise of confidentiality permits voluntary suspension of privacy when a person consults a doctor or other healthcare clinician on the understanding that his or her privacy will be maintained. The promise of confidentiality allows a person to reveal information about themselves, mind and body, in order that they can be assisted.
- This promise is founded on the notion of respect for persons generally, respect for the right and capacity for self-determination, and as such is a principle that must be adhered to for its own sake. But this maintenance of privacy is also a requirement for a health system to function successfully in a community. People must be able to trust that health clinicians will keep their confidences secret so that they can effectively seek help. Hence, the goal of privacy is to optimise health outcomes for individuals in a community.
- However, confidentiality is not absolute. Although a consumer may voluntarily allow confidential information to be provided, the community, in the form of the state, may also mandate that a consumer surrender the right to confidentiality if the community or individuals within the community are understood to be endangered.
- The modern environment of healthcare provision is far more complex than the paradigm of a consultation between a single consumer and a single healthcare clinician. In this context, it may be entirely appropriate for many members of a health care team to have access to sufficient information about a consumer to facilitate that person's optimal care.
- In this context it may also be appropriate for others who are neither members of the healthcare team nor clinicians, such as family and carers, to have access to certain information about the consumer to help them make decisions in the best interests of the consumer, and indeed, themselves. In such cases it may be appropriate for the clinicians to provide family and carers with necessary information.

Confidentiality

Patients have a right to expect that information about them will be held in confidence by psychiatrists. Information about patients must be treated as confidential. There will be

circumstances when, in the best interest of the patient or the public, disclosure of confidential information without a patient's consent is considered. This includes disclosure of information to carers and families. In so doing, a psychiatrist must follow the GMC guidance Confidentiality: Protecting and Providing Information (in the ethical guidance series) and the detailed guidance in the College document Good Psychiatric Practice: Confidentiality and Information Sharing (CR133). A psychiatrist must have knowledge of and practise in accordance with the Data Protection Act, the policies and information-sharing protocols of employing and partner organisations, and seek the advice of the organisation's Caldicott Guardian as appropriate.

Good psychiatric practice in relation to confidentiality

A psychiatrist must maintain up-to-date knowledge on issues relating to 39 confidentiality and ensure that their practice is in accordance with current GMC advice.

A psychiatrist must acknowledge and consider the views of carers and 40 family members, recognising the right of the patient to confidentiality but also recognising the right of carers and family members to share and highlight their concerns:

- the psychiatrist must ensure that the patient understands the benefits (a) of sharing, and the risks of not sharing, information with their carers and family, acknowledging the important role that carers and family have in the patient's care and treatment, and of their need for information to fulfil this role
- when treating children or adults lacking capacity, particular attention (b) needs to be given to relationships with carers, parents, family members and other professionals involved. Consideration should be given to sharing information in the best interests of the patient.
- A psychiatrist must be aware when dealing with children that there may 41 be situations in which disclosure ensures that the psychiatrist is acting in the overall best interests of the child.

Conclusion

Confidentiality between healthcare professionals and their patients carries with it legal obligations of confidence as well as ethical ones. Furthermore, in well-defined circumstances there may be legal obligations imposed on psychiatrists to waive confidentiality, even where there has been a refusal of consent to disclosure.

Any consideration of whether to disclose confidential patient information to third parties should start from the position of protecting the patient's right to confidentiality.

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