Confidentiality – it's about trust

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Dr Yash Naidoo, Dentolegal Consultant at Dental Protection, takes us back to basics and first principles to remind readers why professional ethical rules regarding confidentiality were created in the first place, and explores some real-life scenarios in which confidentiality comes into play.

Patients must be able to trust that we will keep their information confidential. If patients have any doubt that we can keep their information secret, they may conceal certain information which they feel might embarrass them if revealed to others, alternatively, they may tell us nothing at all. The expectation of confidentiality is central to a patient's trust in not only their healthcare team, but the profession as a whole. It is no wonder, then, that the profession has taken steps to codify a set of rules and guidance dedicated to confidentiality.

LAW

Recently enacted privacy laws such as the Protection of Personal Information Act (POPIA) in South Africa have not changed the principles of confidentiality which the profession has recognised and sought to protect for a while. These laws simply codify, supplement and reinforce those principles. So, while POPIA was the buzz word a few years ago, I am quick to caution healthcare professionals not to get too distracted by the buzz and reassure them that so long as they are sticking to their ethical obligations, they probably need not be too worried by all the change. The important point is that patient information is sacrosanct in ethics and in law, and patients' confidentiality is protected by both lawmakers and the healthcare profession.

PRACTICAL CONSIDERATIONS

With countless articles, bulletins, blogs and the like regarding confidentiality (arguably including this one, but hopefully not), it is perhaps understandable that healthcare practitioners bombarded with such information may find it difficult to see the wood from the trees when faced with real-life situations in practice where confidentiality comes into play. Let us explore some examples.

It all starts in the waiting room. There may be several patients sitting quietly, staring at their mobile devices while they wait their turn. Because they are all there for the same general purpose (i.e. dental care), that does not mean that their expectation of privacy disappears and need not be protected. A receptionist or clinician can still breach a patient's privacy even in this setting – for example, by asking a patient if they are here for the large abscess drainage, in front of others. Apart from potentially embarrassing the patient, this clearly breaches their right to confidentiality and privacy. It may seem like an innocent and harmless question to a patient who is obviously there for dental treatment, but it is much more than that to the individual patient who wants their health information kept private. It need not be an abscess or something with more obvious potential to embarrass – any treatment or clinical condition ought to be kept confidential between the patient and the practice.

GREY AREAS

As clinicians (and practice staff) we are told many things by our patients. Some information is clearly confidential; the contents of a medical history for example. However, a lot of other information may not be quite so easy to categorise. Is a patient's address confidential? Should the time that a patient attends your surgery be confidential? Is it reasonable to tell a wife, who calls to ask if her husband is having treatment at your rooms that yes, he is there, or should you say that the information is confidential? The information may seem innocuous but the reasons why it is being requested may not be.

Other situations are more complicated still.

Should you give information to someone who claims to be a schoolteacher and phones up to check on the whereabouts of a pupil on a particular day? There could be concerns for that pupil's safety.

Should you give information to the police when they enquire whether a person they suspect of a crime was having treatment on a particular date at your practice or not? This may be considered to be in the public interest.

It is these types of situations in which confidentiality ought always to be a default consideration before acting. Not all situations will have clear cut answers, but when in doubt, consult the regulator's guidance booklets, a senior colleague, or ask Dental Protection for advice.

SOCIAL MEDIA

In modern times and with the rise of the social media influencer, it may seem as if patients want the opposite of privacy when it comes to their dental treatment – particularly cosmetic treatments. There are patients who ask if they can record or take photos of their clinical journey to post on a website or social media profile. This does not mean that all patients want their information or photos to be posted online.

The HPCSA clearly understands this, and has stated in their ethical guidelines on social media *(booklet 16)* that practitioners *must* obtain the written consent of the patient before publishing photographs about them in media to which the public has access, whether or not the practitioner believes that the patient can be identified by the photograph.

This again takes us back to the fundamental issue of trust. Patients need to trust that if they attend our practices, we will

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not post photos of them (whether anonymised or otherwise) without their written permission. Many patients research a clinician or practice online before visiting, and it would be useful if the photos which they come across online have captions assuring the public that the photos were taken and posted with the patient's written consent.

IT'S A ONE-WAY STREET

It is worth mentioning the following because from time to time we are asked about it. The confidentiality is the patient's, not the clinician's. When patients consult with us, it is their clinical/personal information that they disclose to us, which is deemed by the regulator and lawmakers as worthy of protection. As the professional in the relationship, we have the obligation to keep the patient's disclosures confidential – the patient has no such reciprocal obligation.

This query comes up often in the context of audio recordings of consultations. The safest attitude for a clinician to adopt is to assume that all patients are recording everything that happens during the confines of a consultation room. It is their confidential information being recorded, and it is likely that they can do with that as they please.

Which takes me to the next important point, along the lines of recording information: our clinical notes. Always remember that the information contained in the patient's records is their information and they are entitled to access that information on request. So, when making notes, it is useful to always bear in mind that the notes are not only for your records, but may someday be seen by the patient and anyone they choose to disclose it to, such as a colleague for a second opinion, a lawyer for investigating a potential claim, or a judge in court if a claim ever materialises. The importance of keeping factual, dispassionate notes which are relevant to the patient's clinical care, cannot be overemphasised.

CONCLUSION

Being a healthcare professional gives us many privileges. Perhaps the most important is the right to ask our patients questions of a confidential nature, and to expect truthful answers.

However, this privilege also imposes upon us an ethical (and legal) obligation to treat any information obtained as completely confidential.

Confidentiality is central to the relationship of trust between you and your patient. In general, it is a straightforward concept, but there are situations which may require guidance from the regulator and as always, if you are in doubt, you can always ask Dental Protection for advice.

The important thing is that the concept should always be borne in mind in practice. There are resources covering professional ethical rules regarding confidentiality, available on the Dental

Protection website here.
(https://www.dentalprotection.org/south-africa/publications-resources)

Online CPD in 6 Easy Steps

The Continuing Professional Development (CPD) section provides for twenty general questions and five ethics questions. The section provides members with a valuable source of CPD points whilst also achieving the objective of CPD, to assure continuing education. The importance of continuing professional development should not be underestimated, it is a career-long obligation for practicing professionals.