

GUIDELINES ON MAINTAINING PATIENT CONFIDENTIALITY IN WARDS

Introduction

Confidentiality in the medical profession is important.

Every patient has the right to Dignity (Section 10), Freedom and security of the person (Section 12) and privacy (Section 14), as contained in the ***Bill of Rights in the South African Constitution, Act 108 of 1996***, these rights are applicable to minor patients over and above the children's rights outlined in section 28 of the bill of rights, section 13 and sections 129-133 of the ***children's Act 38 of 2005***.

When considering the legal implications of violating a person's right to dignity, freedom and security of the person and privacy, it is clear that the approach to treating patients must be done cautiously and correctly.

The moment a patient feels that their right to privacy, dignity etc. is not protected and they are not being treated with the respect they deserve, the situation can quickly escalate into a legal matter which can cause unnecessary problems for the practitioner and potentially affect his registration at the HPCSA.

In this instance we are convinced that doctors should know how to approach a patient in such a manner which would avoid situations where the patient can feel "exposed" as a result of a discussion or treatment or procedure.

Definitions

Confidentiality -	that which is intended to be kept secret; When one is entrusted with private or restricted information
Privacy –	the state of being free from public attention; A state in which one is not observed or disturbed by other people
Dignity –	The state or quality of being worthy of honour or respect
Protection –	a legal or other formal measure intended to preserve civil liberties and rights
Sufficient maturity-	mental capacity enabling one to understand and appreciate the benefits, risks, social and other implications of the treatment or information.
Minor –	any person under the age of 12 years

Challenges doctors face in trying to maintain patient confidentiality

- Doctors have to do Rounds in hospitals where there are rooms with 4-30 beds and each patient is separated from the other by just a curtain and often, not even a curtain.

- Doctors have to endeavour to treat patients like the “people” they are and not as “a case”, but in doing so, when the patient is called by their name and their treatment discussed, this can give rise to a claim of violation of their right to dignity and privacy.
- Doctors discuss patients when they see each other, which is not always in a closed room. This leads to patients listening in on private conversations and then being able to inform another patient of what have been said in their absence.
- When the multi-disciplinary team works together on a patient, the information between the parties will move to such an extent that there is bound to be information which becomes common knowledge in the ward and they are not able to dispose of the information in a correct manner.
- Doctors are bound by confidentiality regarding a patient’s information, but when approached by a person who is not direct family, but the only person directly available to obtain the relevant information and relay to the patient’s family, the doctor is in the difficult position of deciding whether to provide the information or to keep it from possibly the only person who is truly standing in a personal capacity towards the patients
- In training hospitals especially, senior practitioners are required to, as part of the training for younger medical students, explain all the relevant and necessary diagnostic procedures and/ or medical terms in such a manner which could provide some despair to a patient who feels that they are exposed and their information not kept as private as they would want
- Student discussions are also an important element of training and this can also cause disclosure of information which a patient might find unnecessarily exposing.

Guidelines on Good practice in trying to protect patient confidentiality

- Every patient who is to undergo any procedure or diagnosis-discussion must be made aware that students will be part of the discussion where not only the diagnostic procedure and treatment will be discussed, but also the medical history and the patient’s personal information were relevant to the diagnosis, treatment and referral, if necessary.
- Every patient should be informed of their rights in terms of the Constitution and also in terms of the Health Professions Act 56 of 1974.
- **Section 27A of the Health Professions Act 56 of 1974** refers to the Main responsibilities of health practitioners, where subsection (b) – (d) and (f)-(g) deals directly with treatment of patients and their right to confidentiality.
- Student practitioners must be advised on the methods in which they can endeavour to maintain patient confidentiality which includes, but is not limited to:

- Greeting a patient when starting rounds at their bed
- Informing the patient what information will be discussed and obtaining their consent to do so
- Speaking in a tone of voice which will be heard by people in the direct vicinity, but not by the rest of the patients in the room
- Making sure the curtain is drawn closed when doing rounds at a certain bed
- Instructing all members of the multi-disciplinary team to arrange for a group discussion if detailed discussions which might be lengthy and of an exposing nature to the patient, is to take place
- All group discussions preferably be done in a closed facility which allows for personal information of the patient to be discussed without any unnecessary or unwarranted disclosure of the patient's information
- Should a round include staff other than the treating practitioner, the patient must provide consent for the other members of the multi-disciplinary team (including students) to be present.
- When approaching a patient for a specific task e.g. doing wound care, the procedure must be explained to the patient and their consent obtained if a student nurse or medical student is to be present to observe as part of their training.
- Take note that there must always be a senior student/trainer/doctor present when procedures are to be done when so requested by a patient
- Patient files must preferably not be left next to a patient's bed and ideally be kept in a secure place, preferably next to or in the Nurse's station.
- A patient's file must be filled out in the nurse's station or next to the patient's bed, not anywhere else e.g. another patient's bed or the cafeteria
- When discussing a patient's HIV status, no referral under any circumstances can be made to his status, another word/code can be used to inform students who are not aware of the patient's status, that he is HIV +.
- When using a specific code or phrase to refer to a patient's HIV status, care must be taken to ensure that the meaning of such a code doesn't become common knowledge

- Should a patient have to receive the news that they are terminally ill or in the final stage of their illness, care should be taken to either do so when they are not in the presence of other patients in an open ward or, they must be taken, if at all possible, to a private room/discussion area, where the news can be presented in privacy
- Patient's families must be kept informed at all times of the patient's status and medical prognosis without disclosing information which might be, at that point in time, unnecessary and irrelevant to the patient's medical recovery and well-being. This should be done with the patient's consent and if they wish aspects of their care not to be disclosed to their families, this should be respected.
- When medical practitioners are being escorted by medical and/or nursing students and medical/anatomical/physiological terminology is used for reference to specific treatments or diagnosis, the practitioner must either explain what is said immediately, or go back after formal rounds to explain to the patient what has been discussed.
- A patient's permission must be obtained when referring him/her to another health care worker.
- When making use of computers in the ward, take the necessary steps to ensure that there is not any manner in which the information can be displayed to persons other than the those part of the multi-disciplinary team assisting with the patient's care and treatment.
- Should there be any doubt on how to manage a specific situation, contact your indemnity union or SAMA for advice.
- NEVER discuss a patient or their treatment with another practitioner in an elevator or similar environment. Their family might be standing in the elevator with you and will not be pleased when realising that they are being discussed openly without restraint or respect for their privacy.

Guidelines on good practice when dealing with minor patient's confidentiality:-

- The guidelines as discussed above should be adhered to when dealing with minor patients.
- The following should HOWEVER be taken in to account when dealing with minor patients under the age of 12 years or over the age of 12 years but without sufficient maturity:-
 - The person responsible for the child must be informed where a minor is to undergo any procedure or diagnosis-discussion that students will be part of the discussion where not only the diagnostic procedure and treatment will be

discussed, but also the medical history and the MINOR patient's personal information were relevant to the diagnosis, treatment and referral, if necessary.

- the person responsible for the child must be informed of their and / or the minor's rights in terms of the Constitution, the Health Professions Act 56 of 1974 and the children's Act 38 of 2005.
 - Where a round includes staff other than the treating practitioner, the person responsible for the child must be informed and must provide consent for the other members of the multi-disciplinary team to be present.
 - When approaching a minor for a specific task e.g. doing wound care, the procedure must be explained to both the minor (where possible) and the person responsible for the child and their consent obtained if a student nurse or medical student is to be present to observe as part of their training.
 - The person responsible for the child must be informed and permission obtained when referring the minor to another physician or speciality.

- A child over the age of 12 years or under the age of 12 years but with sufficient maturity may only be tested for HIV after giving consent and his / her HIV status may only be disclosed with the minor's consent;
- Where a child is under the age of 12 years and without sufficient maturity consent for HIV testing must be obtained from the person responsible for the child and the minor's HIV status may likewise only be disclosed with the consent of the person responsible for the child.
- Where the minor is under the age of 12 years and without sufficient maturity, pre and post HIV testing counselling must be given to the person responsible for the child and whose consent is necessary to proceed with the test;
- Where a child, who is 12 years or older, obtains condoms, contraceptives, information on contraceptive, or under goes a termination of pregnancy procedure, such information may not be divulged to anyone except with the child's consent.

Note: contraceptives other than condoms should only be given following a physical medical examination.

HPCSA Guidelines on Good Clinical Practice

Booklet 1 – General Ethical Guidelines for the Health Care Professions

The core Ethical values and standards required of health care practitioners are listed in paragraph 2.

2.3.8 Specifically deals with Confidentiality pertaining to patient information.

Importantly, paragraph 5 deals with the duties medical practitioners have towards their patients and 5.4 specifically discuss patient confidentiality.

Booklet 3 – National Patients’ Rights Charter

This Booklet provides all the relevant information on the rights every patient has in and deals specifically with every patient’s rights and also gives insight into the responsibilities every patient has when dealing with their lifestyle and medical treatment.

Booklet 6 – General ethical Guidelines for Health Researchers

Paragraph 6.4 refers to research participant confidentiality.

Booklet 14 – Guidelines on the keeping of Patient Records

Paragraph 11 deals with access to records and provides an in depth explanation on why records and information can only be disclosed in specific circumstances.