**Patient Privacy In Dental office**

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***Abstract***

*Patient confidentiality and protection of privacy is the foundation of the doctor-patient relationship. The dentist has a duty to respect the patient's rights to self-determination and confidentiality. Physicians are obliged to protect the confidentiality of the patient including the personal and domestic lives according to medical council of India’s code of ethics. It bounds only to physician not to person who process Data. Among dentist its guideline is put forth by Indian Dentist Act. Contrary to the trend in UK and US, the Indian judiciary has carved out the right to privacy as an exception to the rule that permits interference by public authorities in an individual’s private life. IT Act which was introduced in 2005 has some ways to protect it. The Supreme Court has on several occasions emphasized that the right to privacy is not an absolute right. There is need to develop more robust legal frame work for protecting the patient privacy in India.*

**INTRODUCTION**

Confidentiality and privacy are essential to all trusting relationships, such as that between patients and doctors. Moreover, in a healthcare context, patient confidentiality and the protection of privacy is the foundation of the doctor-patient relationship. The dentist has a duty to respect the patient's rights to self-determination and confidentiality. 1

Medical confidentiality promotes the individual's medical autonomy, by sheltering those seeking morally controversial medical care from outside criticism and interference with decisions.Medical privacy involves informational privacy (e.g, confidentiality, anonymity, secrecy and data security); physical privacy (e.g., modesty and bodily integrity); associational privacy (e.g. intimate sharing of death, illness and recovery); Proprietary privacy (e.g., self-ownership and control over personal identifiers, genetic data, and body tissues); and decisional privacy (e.g., autonomy and choice in medical decision-making)2.

According to principle of autonomy the dentist's primary obligations include involving in their treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.

Privacy violations in the healthcare sector include: disclosure of personal health information to third parties without consent, inadequate notification to a patient of a data breach, unlimited or unnecessary collection of personal health data, collection of personal health data that is not accurate or relevant, refusal to provide medical records upon request by client.

Data to public health, research, and commercial uses without de-identification of data and improper security standards, storage and disposal.4

Dr Richard Speers is one of the founding members of the International Dental Ethics and Law Society (IDEALS). He dedicated a great deal of his time to personal data protection. He had served as a  member, and later chair, of CDA’s ethics committee and represented the Association on the Canadian Standards Association’s (CSA) privacy standards implementation committee  Which in turn help to bring dentistry under Bill C-6: Personal Information Protection and Electronic Documents Act.4

Hippocrates wrote the first code of regulations for medical profession, protecting patient rights & upholding of professional conduct.

“**All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal**.”( 5th Century BC)

Evolved over time to 19th century where equality was stressed. In 20th century- moral beliefs, individual values were given more importance.

Hence in this review we will discuss the professional need of about the patient privacy in medical field in general and dentistry in particular.

**Principles of Ethics in Dentistry**

They are :- a)Autonomy (self governance)

b)Beneficence (To do good)

c)Non maleficence ( to do no harm)

d)Justice Veracity or truthfulness

Autonomy:- This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of accepted treatment, and to protect the patient's confidentiality.

Under this principle, the dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.5

**Confidentiality**

It is the central trust between doctor & patient without assurance about the confidentiality patient may be reluctant to seek medical attention or to give doctors the information they need in order to provide good care.

**Health & Privacy In U.S**

**The HIPAA Privacy Rule** (Health Insurance Portability and Accountability Act).6

The Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”), is a set of national standards for the protection of certain health information Developed in U.S. under U.S. Department of Health and Human Services (“HHS”). Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individual’s health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing.

(“HHS”) issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).Public Law 104-191, was enacted on August 21, 1996. Secretary of HHS publicize standards under section 260-269.

This applies to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the “covered entities”).

**Health Plans.** Individual and group plans that provide or pay the cost of medical care are covered entities. Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations (“HMOs”).

**Health Care Providers.** Health care providers include all “providers of services” (e.g., institutional providers such as hospitals) and “providers of medical or health services” (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

**Health Care Clearinghouses.** Health care clearinghouses are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.

**Business Associate Defined.** In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.

**Protected Health Information (PHI)6**

The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. It include the individual’s past, present or future physical or mental health or condition. The provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual.

**General Principle for Uses and Disclosures of Patient Information**

It is broadly divided into three

**Basic principle:** - Individual who is subject of investigation authorize in writing, covered entities.

**Required disclosure**:-individual itself, law enforcement/investigation.

**Permitted disclosure**:- Individual itself, treatment provider especially requiring payment by third party like insurance company, in case of public interest.

**Privacy Protection In Australia7**

Dentists and their staff have ethical and legal obligations to protect the personal and sensitive information of patients, including privacy and confidentiality obligations. Dentists are required to comply with relevant privacy laws which apply to them. Dentists practising are to comply with: (a) the Privacy Act 1988 (Cth) (Privacy Act) including the Australian Privacy Principles (APPs); (b) the My Health Records Act 2012 (Cth); (c) the Healthcare Identifiers Act 2010 (Cth); (d) in relation to practice in the Australian Capital Territory, the Health Records (Privacy and Access) Act 1997 (ACT) (private and public sector); (e) in relation to practice in New South Wales, the Health Records and Information Privacy Act 2002 (NSW) (private and public sector); and (f) in relation to practice in Victoria, the Health Records Act 2001 (Vic) (private and public sector).

**Health and Privacy in India**

Medical confidentiality promotes the individual's medical autonomy; Patients must feel comfortable sharing private information about their bodily functions, physical and sexual activities, and medical history. It involves informational privacy (e.g., confidentiality, anonymity, secrecy and data security); physical privacy (e.g., modesty and bodily integrity); associational privacy (e.g. intimate sharing of death, illness and recovery); proprietary privacy (e.g., self-ownership and control over personal identifiers, genetic data, and body tissues); and decisional privacy .(e.g., autonomy and choice in medical decision-making)

**Disclosure Of Personal Health Information Are Allowed In Following Conditions**

There are certain situations where disclosure of personal health information is permitted ,they are 1) during referrals to another practicener,2) When asked by court or the police on a written requisition, 3)when demanded by insurance companies 4)For workmen's compensation cases, consumer protection cases, or for income tax authorities,85) For disease registration 6)For communicable disease investigations, 7) For studies on vaccination and 8) For reporting drug adverse event .19

**Medical Council of India's Code of Ethics Regulations, 200210**

**Patient Confidentiality**

Physicians are obliged to protect the confidentiality of patients including their personal and domestic lives9 unless the law requires their revelation, or if there is a serious and identified risk to a specific person and / or community; and notifiable diseases. The contradicting clause Physician to ensure that the patient, his relatives or his responsible friends are aware of the patient’s prognosis while serving the best interests of the patient and the family.

**Data Access and Retention**

Physicians must maintain the medical records of their patients for a period of three years.Patients, authorized attendants or legal authorities can request for medical records, which have to be issued within 72 hours.

**Research11**

In 2006, Indian Council of Medical Research (ICMR) published the Ethical Guidelines for Biomedical Research on Human Subjects. Informed consent from patient should be taken.12

Publication of photographs or case studies without consent by patients is prohibited. If the identity of the patient cannot be discerned then consent is not needed. (Part III, Section 4, Chapter 7, Section 17) However, the method of consent, whether verbal or written, is not stated in this.

According to the guide lines of ICMR it advice principle of informed Consent for all research purpose. Records of the Institutional Ethics Committee (IEC) has to be maintained for a period of 3yrs after research.

**Right to Information Act, 2005**13

Entitles citizens to request and access information that is publicly available and related to public interest. The confidentiality standards involved in maintaining medical records of a patient, including a convict, by the Medical Council of India cannot override the provisions of the Right to Information Act.

**IT Act 2000**

Act notified in 2000 (IT Act) provides legal recognition for e-commerce and sanctions for computer misuse. The IT Act is a generic legislation, which articulates on range of themes, like public key infrastructure, e-governance, cyber contraventions, cyber offences and confidentiality and privacy.There will be Penalization for breach of confidentiality and privacy, (The Information Technology Act (2000). 14

**Health Insurance Records**

The Insurance Regulatory and Development Authority (IDRA)– has issued a number of guidelines.14

**Personal Data protection Bill** (2006)

It reflected the much-needed mandate for providing protection of personal data and information, collected by organizations. Government rejected this bill . 15

**Ethical Rules for Dentist16**

The standard of professional conduct and Etiquette or Code of Ethics for Dentist was laid by Dental Council of India in Section 17A Dentist Act 1948 . (Ministry of health Notified on 2nd August 1976 )

It deals with Regulation, towards,-patient, fellow Dentist, public. According to Regulation 4 : Dentist should keep all the information of personal nature which he comes to know of patient, directly or indirectly ,in course of professional practice in utmost confidence and also auxillary staff employed by him also observe this rule. Dentist is not bound to disclose the professional secrets, except with the consent of patient or being ordered to do so by court of law. Rules are similar to ADA but mainly dealt with dentist relationship to patient. Dentist code of ethics was revised and published in 2014.16

Rules according to ethics of dental council are very **vague** compared to that of medical council of India. Provide oral health care without discrimation, to increase public awareness, to upload this law & professional competence. Recently there is an increase in public awareness regarding oral health care among patients.

**INDIAN POSITION: EVOLVING STANDARDS**

No specific legislation regarding the disclosure of medical re­cords exists in India. Under the Indian Medical Council Regulations, however, every medical professional is obligated to maintain physician-patient confiden­tiality.17 While a physician disclosing personal information about his or her pa­tients could be held guilty of professional misconduct, this obligation does not extend to other persons responsible for processing patient data,17 either under the mandate of a state body or a corporate body. Physicians are only allowed to disclose patient information to public health authorities in limited circum­stances, such as in case of a ‘serious and identified risk to a specific person and/ or community’.18

**Consent:** Consent is a form of agreement. To do any procedure lawfully it requires patient consent.

**Implied Consent**: When patient walks into clinic/hospital for treatment it itself will be considered as consent.

**Verbal Consent:** Patients is informed of verbally of treatment procedures. This is required for examination or to do treatment.

**Written Consent:** Patient is informed verbally in language he understands and has to sign in written agreement about procedure and complication which can occur during it. This is most valid form of consent in court of law.

**Right to privacy in india**

Contrary to the trend in the UK and US, the Indian judiciary has carved out the right to privacy as an exception to the rule that permits interference by public authorities in an individual’s private life. The Supreme Court has on several occasions emphasized that the right to privacy is not an absolute right .The rule of confidentiality is subject to the exception when the circumstances demand the disclosure of patient’s health in public interest, particularly to save others from immediate and future health risk.

**CONCLUSION**

In India the patient privacy doesn’t have a legal mapping similar to that of the US and UK. Doctors are bound by Code of Ethics but it won’t extend to persons who process the data. We need to develop frame work similar to HIPPA, by either the legislature or by the legal bodies. The concept of ‘sensitive personal data’ to the IT Rules in India is yet to be determined. It is likely that the enforcement of these new standards will be determined in line with the ‘right to privacy’ jurisprudence developed by the courts in India. Thus more Confidentiality laws are necessary for enforcement of patient privacy.

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