

## Professional Confidentiality and Medical Secret. The Real Situation

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The progress of biomedical sciences and the growing number of health care specialists compel to a restructuring in the doctor-patient relationship. The undeniable advantages brought by science have raised doubts and concerns namely in the field of personal insurance and health. The classic conception of professional secrecy has been contested, towards the progressive changes suffered in society.

It is been talked today about the danger of doctors who work for insurance companies and to whom they are attached, and who may violate medical secrecy and reveal results of genetic testing analyzes (genetic predispositions), in such a way that once violated the right to confidentiality there may exist the chance of by abuse or negligence a third party accedes to this information of a strictly private competence [1]. Thus, the insurance companies may be tempted for economic reasons to take out advantage of the susceptible genes, for calculus of the respective awards or even refuse to conclude a contract [1]. The passiveness of the legal order before such phenomenon would determine the surrendering of the law before a new cult of inequality for which the invocation of secrecy to the medical confidentiality has all its legitimacy [1].

### Medical secrecy

The medical secrecy is the silence which the professional of medicine is obliged to maintain on the facts that has taken knowledge while practicing his activity, and which is not mandatory to disclose. The medical secrecy is the fact that it must not be revealed [2]. At the light of bioethics, the obligation to medical secrecy in the current days, will have distinct paradigms existing in the hypocritical period, having as assumption the idea that the medical profession by its nature will be subject to a one more strict conduct. Under the oath of Hippocrates (460 A.C), the keeping of the medical secrecy expressed in the following wordings “what I shall see or hear during the practice or outside it or in lifetime, which may not be necessary to be revealed, I shall keep it as secret”, translates a moral obligation and almost religious one of the medical behavior, not based on legal foundations or of public order. Nowadays the medical secrecy is an essential condition for the relationship between the doctor and his patient, based on moral, social and professional concern assuming a base of truth and mutual confidence. The silence demanded to the doctors has the purpose of preventing the publicity of certain facts, whose disclosure would bring damages to the moral and even economic interests of the patients. The privacy of an individual is therefore an added value which enshrines the defense of the freedoms and guarantees of the citizens and the safety of private relationships. The Universal Declaration of the Human Rights ensures even the right of each person to respect for his own private life. According to our code of ethics, the doctor must keep secret of all the facts that he has learnt about in consequence of his activity, ensuring that his collaborators or members of the health team which he integrates behave in conformity to the rules of the professional secrecy, him being responsible to clarify these members as to the confidential nature of the clinic information [2,3].

The professional secrecy will include revealed facts, directly by the person, or by someone else by their request, or by a third party with whom he has contacted during care provision or because of it. It also covers the facts the doctor has understood, resulting or not from his clinic observation or from the third party and also facts reported by other professionals, being compelled to professional secrecy regarding the same ones.

The obligation of the secrecy exist even if the practice is paid or not and it is extensible to all categories of patients, independently of the place where the doctor-patient relation occurs. The medical secrecy encompasses all that is told to the doctor, like what the doctor knows about his mister - professional secrecy, which is an intrinsic limitation of the medical activity, being the professional secrecy encompassed as to the source [2,3].

In our perspective, it should be considered the secret as the patient's sense of belonging but also as public legacy. The doctor is initially the trustee of a confidence and though the secret belongs to the patient, the duty of keeping it results as duties that are imposed as a medical doctor. The description and reservation of certain facts assimilated during the practice of the medical profession, aim therefore the protection and defense of the reputation of the people. In this behavior, there is by extension a collective interest in the inviolability of this secret.

In the medical profession it is not always easy to accept an inflexible intervention.

In the current days the doctor cannot refuse to accept that in modern and organized societies medical science may be converted into a public service with its inherent advantages and disadvantages. This is so because people's life and health are labeled as a common good.

Medicine's own evolution lead us to admit that the medical secrecy must tolerate certain limitations, as is prevailed in the spirit of almost everybody the collective interest over the private one.

The ethical principles are not always easy as to its practical implementation. There are times with situations and inaccurate limits that almost looks wrong to maintain a secret. It can be a situation with the patients with AIDS that maintains risk behavior for the spouse, who by not being aware of the situation will be prevented to protect himself/herself against the transmission of the disease.

If an infected person with HIV positive, though encouraged by the doctor decides not to warn the couple of the contagious risk and maintains unprotected sexual relations, the health professional has the right to alert him/her of the danger of the virus transmission.

In a case study, a 17 year old teenager, pregnant, and with HIV positive refused to inform her boyfriend of the risk of transmission of HIV/AIDS (Public Newspaper from 24-07-2013). We are here before an exceptional situation where the doctor can warn the boyfriend about the clinic situation of the patient, but can do it only after having told her. Under the Deontological Code of Portuguese Association, the obligation of medical secrecy does not prevent the doctor to take necessary precautions, it promotes or participates in health defense measures, indispensable to protect people's life and health that may contact the patient, namely family members and other members [2].

Exceptional situation for the doctor to keep secret in certain cases may contribute to spread the disease to third parties. Which should then be the right behavior in terms of public health and public welfare? Answering this question we can reaffirm the need for the doctor to be attentive and be capable of recognizing the different aspects of these problems in order to avoid involuntarily harming others.

Yet being life and health protection a fundamental value, the doctor should always convince his patient to modify his behavior and only then reveal its situation to the interested people, letting the patient know that he is going to do that.

In practice, this exceptional situation justifies the exclusion of the responsibility of secrecy. The way a patient gets sick cannot be revealed, unless it crashes with superior interests. It looks like there is a confrontation between the right to privacy and the right of medical secrecy. Yet the right to privacy is not an absolute right because there are limitations (art 70º, b) C.D.O.M. The profession secret is therefore restricted regarding the rights to third parties [2]. Relative Medical Secrecy. Nowadays the Medical secrecy cannot be defended in absolute terms. The absolute concept of medical secrecy, with the inviolability and sacredness nature looks like being in certain cases

in contradiction with the professional practice. This sacredness of the secret must be revised, as the secret is of natural and rational order and the confession of transcendental nature [4].

### Relation doctor-patient

What should be made to prevail is the idea that the medical secrecy should be relative being its disclosure always grounded in ethical, legal and social reasons. When it is said that a superior interest demanded the violation of a professional secret, one should carefully act in case of special situations within the medicine practice. Like that its disclosure, in justified situations, cannot constitute as an ethical or legal violation, especially when it is aimed to protect a superior opposite and more important interest. After draining all the affords to get the consent of the patient to disclose the facts about his/her health in order to protect healthcare interests of third parties, in case of expressed opposition of the patient, it is the doctor's duty to inform the patient that he will break the secret and let know the fact in the following 24 hours to the Ethical Commission of the institute where he works [4]. He may also inform of his intention to break secret to the Ethical and Deontological National Commission of Medical Association [2].

It is sealed to the doctor to disclose facts which he knows due to his profession practice, unless it is a due case, legal duty or expressed authorization of his patient. But when he decides to unclose contents of professional secrets the doctor must be provided with conditions that will justify this same decision. When there is no break in the secrecy a just cause is the interest of moral or social order that allows the non fulfilment of a rule, by considering that the presented reasons are relevant to justify such a violation.

Grounding in the existence of a state of need, being ultimately the act the occurrence of which is made legitimate a transgression [4] even if the medical secret belongs to the patient, we have to consider that this information reservation is relative, because what is being protected is not the exclusive will of a single person but the custody of the common welfare that is the interests of the public order and social stability. What is forbidden is the illegal disclosure that has as motivation bad faith, levery or unclear interests.

On the other hand it is recognized by legal duty the break of the secret by obedience to what is set in legislation and the failure to it will be constituted crime.

As to medical secrecy we can say that there are few situations pointed out in the rule, example of which is the notification of transmissible diseases [4]. Just cause and legal duty are therefore distinct issues. Legal duty is considered what is clearly expressed in law. It should not be considered a criminal offense for breaking medical secrecy if it is the patient who asks for it and if the patient is of age and capable of, or his lawful representatives in opposite situation. Yet it is recommended that this secrecy break be always prefixed by detailed information and in accessible language about the disease and about the consequences of this revelation, because such a declaration may damage the patient in his own interests.

Some authors even advise that this request made by the patient, during the time of its disclosure, be written by free manifestation and before a clarified consent [3,4]. In any case, in the certificates or reports there should always be included that the revelation of the patient's condition or of his diagnose was made on his/her request or by his/her lawful representatives.

Our Medical Ethical Code has also recently driven away from the absolute secrecy concept, which imposes it in an unconditional way and in any situation, adopting a relativistic concept of the secret confidentiality when admitting the revelation by just cause, legal duty or expressed permission by the patient [2].

The medical secrecy is therefore a social instrument for the sake of common welfare and public order. Therefore, its revelation in case of justified situations should not be set as an ethical or lawful violation, especially when it is aimed to protect a contrary superior and more important interest. Thus, whenever the doctor is in need to disclose the secret he must let know that such a revelation was requested by

the patient or his lawful representatives. And even in situations of clear commitment of interests of the patient, there should be made an advice on the possible damages or in extreme occasions he can even refuse the patient's request.

We can admit that not all the personality rights has to undergo the patrimonial rights. Strictly speaking when a property right has prevalence over a fact of a private life may be it is actually because this right would not really constitute a personality right.

The secrecy break must then be analyzed as a joint interest of all who may be involved in it, because what is behind medical secrecy is not a mere relation with the patient, but also between a medical class and even the society itself. Therefore, it is of interest of the Medical Association to regulate the medical secrecy.

Another aspect which grabs the professional secret is the patient's age, which informs us of the clinic situation. The doctor must not be dependent of any compulsory age limit. It should equally be applied to relations with minors with wisdom, that is, with ability to understand the situations with which they are confronted. This is the only way to establish a relation based in mutual confidence and consequently provide an aid that the minor asks for. For this reason, it seems like it should not be told the parents about the problems, requests and confidences of their minor children if the children request secret.

Another thing is the responsibility to persuade them on the advantages on having the parents informed about their problems, avoiding situations where we are obliged to take sides and preventing situations where the children run without a safety net that only parents can provide (or must provide).

The affirmation that the woman is legally self-employed, from the age of 16, to ask for an IVG, is correct [5,6]. The same way, this is the legal limit for the effectiveness of the consent. Yet, for other procedures, the ethical and deontological issue that the health professionals have to face lies mainly in the just balance between autonomy and secret [7].

Having in mind the ethical principles of private nature, of the empowerment of the patients, of the beneficence and of the non-evil deeds, the doctors must respect the confidentiality of the data and information about the minor's health. They should restrict themselves to the manifested will of the patients in case they are 16 or older and have wisdom ability. They must not use or spread such data or information for other purposes besides what they were featured or consented for. In case of minors who are under 16 they must inform parents, lawful representatives of the minor or legal authority on the data regarding their health condition and with this step if not taken may result on risk for his/her health [8].

In short it is necessary that the doctor has knowledge about the legal determinations that ground his behavior, in case of a probable need to break the secret. This issue distinguishes by its relative nature even when submitted to legal assessment, taken into account the peculiarities of each one. In those case, the decision to break the medical secret must be guided by reflection and prudence due to its ethical, penal and civil repercussions associated to this procedure.

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