

## PROFESSIONAL SECRECY AND WHAT IT IMPLIES\*

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It was Hippocrates, the father of medicine, who first penned the words: 'Whatsoever in the course of practice I see or hear (or even outside my practice in social intercourse) that ought never to be published abroad, I will not divulge, but consider such things to be holy secrets'.<sup>1</sup>

These sentiments were later modified and appeared in the famous Declaration of Geneva as follows: 'I will respect the secrets which are confided in me... I will not permit considerations of religion, nationality, race, party politics or social standing to hinder me in performing my duty to my patients'.<sup>2</sup>

Here, then, is the historical and somewhat romantic foundation upon which professional secrecy, as we know it today, has been built.

Since those ancient times, the science of medicine has expanded and developed beyond even the wildest dreams and most passionate longings of those much-revered physicians. But the art of medicine remains essentially the same today as in the days of Hippocrates, for human beings have not outgrown their need for a sympathetic ear or a tender word of comfort, and 'the milk of human kindness' is still as nourishing to those who suffer today as it was in days gone by.

The original motivation for maintaining professional secrecy was derived, no doubt, from a moral and social conscience on the part of the practitioner, and also from a deep respect for the individual lives entrusted to the physician. Today, the same motivations still exist (though, sad to say, to a much lesser degree), but in addition the motivation to secrecy has become reinforced as modern society has witnessed the world-wide clashes between doctors, patients and the legal profession. To describe these confrontations as clashes is not being untruthful, and the loathsomeness of such a situation existing in what has always been a most honourable and respected profession is now apparent to many.

One thing seems certain, however, namely that the present unfortunate situation will not only remain but will probably become aggravated as modern trends continue.

The purpose of this article is to examine the question of professional secrecy in the light of modern-day society, and thus to determine its relative value, not only to the patient, but to the doctor and to society as a whole.

### THE DOCTOR AND HIS PATIENT—A UNIQUE RELATIONSHIP

In the course of his daily duties every doctor becomes familiar with the sight of half-clad or unclad patients, and he usually thinks very little of it. To the patient, however, a routine interrogation and physical examination is often an embarrassing and humiliating experience. He or she realizes, however, that the examination is necessary, and that the doctor is the person best trained

to do it, and so the patient is prepared to suffer a moment's embarrassment so as not to hinder the physician in his task.

Furthermore, the family doctor cannot avoid becoming familiar with much information concerning his patients and their problems, and he soon realizes the need for absolute secrecy on his part. Patients, when consulting their medical advisers, do not usually ask for a promise of secrecy, because it is understood that medical practitioners are, in any case, pledged to keep secret what comes to their knowledge through the practice of their profession. Thus it can be seen that, ideally, the doctor-patient relationship is essentially one of mutual understanding and trust, as well as being an extremely intimate relationship.

Because the doctor exerts some influence or control over the lives of his patients, his responsibility is made all the greater, and his obligation to maintain professional secrecy is absolute.

### *The Statement of Rule governing Professional Secrecy*

'A doctor should not divulge verbally or in writing any information which ought not to be divulged regarding the ailments of a patient except with the express consent of the patient or, in the case of a minor, with the consent of his parent or guardian, or in the case of a deceased patient, with the consent of his next of kin or the executor of his estate.'<sup>3</sup>

### THE MEDICAL STUDENT'S FIRST ENCOUNTER WITH PROFESSIONAL SECRECY

On entering the hospital wards for the first time, the student soon discovers that his position is a difficult one, especially with regard to professional secrecy.

He is not yet qualified to assume full responsibility for ill patients, and is therefore not expected to discuss the patient's condition with him or with anxious relatives. At the same time, however, he is often in full possession of the facts concerning the patient's illness. Then, to add to the student's difficulties, patients frequently establish a close relationship with him, and are often not able to enjoy a similar relationship with busy house surgeons and registrars. It is a very natural thing, then, for a patient to inquire of a student concerning his illness and the expected prognosis. At times such as these, it is a difficult thing indeed for the student to give a satisfactory answer to the patient, for if he avoids a direct answer, the patient becomes filled with anxiety, while on the other hand an honest and direct explanation, if given by the student, could be erroneous, and in any case students are not normally permitted to discuss the patient's illness with him.

The only way out of his dilemma is to ask a house surgeon, registrar or consultant to discuss the patient's problem with him. Unfortunately, even this is seldom satisfactory in practice, for the doctors in charge are fre-

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quently too busy to spend the necessary time with the patient in conversation, and therefore are seldom sensitive to his or her individual psychological needs.

Thus it would seem that in the case of the senior medical student, the rigid application of professional secrecy may possibly be a hindrance rather than a help.

At the same time, however, most students realize, by the time they reach their final year, that prognostication over a patient's illness can be a very dangerous thing, even in the hands of those most senior in the medical profession; for this is an area of medical practice where it has been said that 'fools rush in where angels fear to tread!'

#### PROFESSIONAL SECRECY MUST BEGIN AT HOME

The vast majority of medical practitioners engage in at least the occasional discussion of various patients when at home, perhaps in the lounge or at the dinner table. Doctors' wives and children soon become accustomed to 'talking shop' at home.

However, visiting friends and relatives may well be horrified by what they hear in some doctors' homes, and this is seldom appreciated by those taking part in the discussion. In all fairness, it must be granted that a doctor occasionally needs the sympathetic ear of a wife or close friend, for his life is often a lonely one, with never a 'shoulder on which to cry'. But the terrible pitfall of divulging that which ought not to be divulged is ever before him.

Great care should also be exercised when discussing patients by name among medical colleagues, and it is always a good rule not to mention names unless the colleague concerned is to be called in for a second opinion and will therefore want to meet the patient.

The wives of doctors have been known to impart certain information to friends, which was told them in confidence by a tired and harassed husband at the end of a long day. The results have often been disastrous for both patient and doctor. Of course the damage was unintentional, but this did not in any way prevent the disaster.

A general practitioner of many years' standing remarked to me, with a somewhat wry smile, that he considered the size of any doctor's practice to be inversely proportional to the amount of gossiping and interference indulged in by his wife! But this same general practitioner went on to unfold to me what is surely a remarkable paradox, by stating that although the public expect a doctor's wife to maintain the 'golden silence' they are the first to reveal utter indignation when, in the absence of her husband, she declines to give information and medical advice over the telephone!

If a doctor's wife has also had a medical training, the situation is ideal, but this is not often the case. However, there is no reason why a non-medical wife should not quickly come to grips with the concept of professional secrecy, and make every effort to exercise discipline along these lines. The doctor, too, should take care to see that he does not discuss his patients as a routine at home, and that when a patient is discussed, he does so with discretion, omitting the names whenever possible.

If these principles are adhered to, a marriage relation-

ship can be of great benefit to a busy practitioner, for he knows that he can safely share his burdens with an understanding wife, without the risk of a breach of professional secrecy. And this is surely as it should be, for have we not all read in the pages of that great literary Gem that husband and wife are 'heirs together of the grace of life'?

#### PROFESSIONAL SECRECY AND PUBLIC CURIOSITY

There can be no doubt that the medical profession has an obligation to the general public in so far as medical progress is concerned, and should not attempt to deceive the public in any way as to what is going on behind the scenes in the medical world. Doctors must not forget that they, too, are really part of that body of people referred to as 'the general public', and as such they must co-operate with others, and not antagonize them in any way.

On the other hand, the non-medical part of the 'general public' must learn to understand and respect the concept of professional secrecy, and must realize that there are situations where a veil of secrecy is essential, and where prying eyes will not be welcomed. They should also be aware of the fact that certain decisions regarding patients may be difficult for a layman to understand, but are nevertheless based on the special knowledge and skills of the medical advisers.

#### *The Press*

The press is capable of doing more damage to more people in a very short time than almost any other known organization. Most reporters abide by high professional standards, but unfortunately a few do not. Usually the harm done is the result of an error, but sometimes it is intentional and quite malicious. For these reasons it behoves the medical man to tread very carefully when making public statements to the press. In fact a policy of silence, or near silence, is probably safest of all.

With the advent of organ transplantation this problem has become enormous. The public are hungry for news, and pressmen swarm about the hospitals like bees round a honeycomb. Much harm has already been done through the press as names and other details of organ donors and their families have been made public without the consent of the next of kin.

Sad to say, the medical profession has not been entirely innocent in this connection, for they have sometimes failed to take steps to prevent a leakage of information which could harm other persons.

It is my belief that details concerning matters such as organ transplantation should only be released by one hospital spokesman, and then only on condition that the relatives and the medical superintendent of the hospital are agreed that these details should be made public. Such agreement should always be given in writing.

#### *Employers, Relatives and Friends*

Many are the occasions when a doctor is confronted with an employer who demands information about the health of an employee. Frequently, the employer has paid the doctor's fee. Such a situation may be very delicate indeed, and the rule of professional secrecy is

especially applicable in these cases. Under no circumstances should the doctor give any information to the employer, unless he has the permission (preferably in writing) of his patient. He should rather discuss the illness with the patient, and then leave it to the patient to speak to his employer if he so desires. The patient should also be handed a medical certificate which he may then pass on to his employer if he wishes.

The story has been told of a woman who brought her maid to the doctor for a medical 'check up'. The doctor conversed afterwards with the woman and implied that the maid's illness was the result of her 'loose living'. The maid then lost her job and was thereafter completely disillusioned about her doctor.<sup>4</sup>

Another account is given of a man who consulted his doctor about a hearing defect. Many days later at a social function, a good friend of both the doctor and the patient inquired tenderly after the health of the patient, and the doctor unwittingly made casual references to the patient's hearing defect. As a result of subsequent gossip, the imminent marriage of the patient to a wealthy heiress was cancelled, and the patient commenced legal proceedings against the doctor.<sup>4</sup>

The medical superintendent of a large hospital recently related one of his experiences to me. On this occasion he was confronted in his office with an extremely irate husband who demanded to know the nature of an illness for which his wife had been treated during his absence on a business trip. The medical superintendent refused to divulge the nature of the wife's illness, whereupon her husband threatened the medical superintendent with legal proceedings and then made his stormy exit. The medical superintendent sent for the woman's hospital record, and noted that she had in fact been treated for the after-effects of a criminal abortion. Thus it became apparent that the woman had fallen pregnant as a result of her unfaithfulness to her husband. Had the medical superintendent divulged such information, this would have given rise to a situation of the utmost gravity for the patient, and possibly for the medical superintendent too, for he would certainly have been guilty of a breach of professional secrecy.

Similar stories could be told by most doctors in private practice today, and these incidents serve only to sound a loud warning to doctors concerning professional secrecy.

#### *Solicitors, Lawyers and Insurance Companies*

Most doctors are familiar with the sort of correspondence from the above-mentioned people, requesting and sometimes demanding information about certain patients. Frequently the doctor is offered a sum of money in return for certain information.

In these cases, the principles of secrecy remain the same, and the doctor has no right to give any information to a third person without the written permission of the patient. (Least of all should he do so for financial gain!)

The patient is issued with a certificate bearing the details of the medical findings, and it is then his responsibility to decide who shall see the certificate.

#### PROFESSIONAL SECRECY AND SOCIAL RESPONSIBILITY

From time to time the doctor is faced with a real problem over the question of secrecy, for although the

nature of the patient's illness may demand that the authorities or an employer be informed about the patient, the doctor realizes that such action could create an unpleasant situation for his patient. The doctor must then decide whether his social responsibility outweighs his responsibility towards his patient.

A case was reported recently in which a doctor diagnosed epilepsy in one of his patients who happened to be the driver of an express passenger train.<sup>4</sup> The doctor's attempts to persuade his patient to take a different job failed, and the engine driver decided to continue his job, despite the distinct possibility of a major catastrophe, which could mean death to hundreds of passengers on the train. The problem was set in print, and sent to 30 general practitioners, 30 consultants and 30 medical officers of health, for their opinion and probable management of the case. Of these 90 people, 84% replied, 'The authorities must be notified'; 12.5% replied, 'Secrecy should be maintained'; and 3.5% replied, 'I am uncertain'.

In fact the authorities were notified in this case, and the man lost his job. He then found himself in grave difficulty as he was not qualified to do any other sort of work. In this case I feel that the correct decision was made, for a doctor cannot turn a blind eye on a situation where hundreds of lives may be lost. He should rather weigh up his social responsibility against his responsibility to his patient, and then make a decision. Ideally, the patient should take the initiative in reporting his illness to the authorities if necessary, but if he should not do so, the social responsibility then falls onto the shoulders of the doctor.

There are many similar cases, however, where, after careful consideration, the doctor may decide to maintain secrecy concerning his patient because the social responsibility is not so great.

#### *Veneral Disease*

This is another thorny problem, especially when encountered in a married person, for the marriage partner must receive treatment too, and may not have been responsible for the infection of the patient. If secrecy is not maintained a divorce could result, while on the other hand effective treatment is impossible unless both persons are treated.

Perhaps the best way of dealing with the problem is to explain the difficulty to the patient, treat his illness, and then leave it to him to see that his marriage partner comes for treatment. The doctor must then consider the question of whether or not to inform the health authorities concerning known sexual contact(s). If the authorities are notified, this is an effective means of ensuring adequate treatment of the patient's sexual contact(s). On the other hand, however, such action on the doctor's part could result in a domestic crisis, and thus prove to be 'the spark which gave birth to a mighty conflagration'. For this reason, the patient should always be warned first of the intention to inform the health authorities.

It is therefore true to say that no 'rule of thumb' can be followed in such circumstances, but that the doctor must, in each individual case, carefully weigh up his responsibility to his patient against his social responsibility, before deciding what action to take.

It should also be borne in mind that if a doctor diagnoses venereal disease, abortion, or any condition with a social stigma attached, and this diagnosis is later shown to be doubtful, there may be serious legal repercussions. This is especially so if professional secrecy has not been strictly adhered to.

#### *Other Infectious Diseases*

If the disease is notifiable by law, it should always be reported (after explaining this to the patient) as failure to do so renders the doctor liable to prosecution.

#### *Criminal Abortion*

The question of criminal abortion frequently raises its ugly head. The doctor's first duty is to his patient, and he must not divulge what his patient has told him in confidence. The doctor is not a policeman, and it is not his duty to track down criminals. The patient should, however, be warned not to let the situation repeat itself with future pregnancies, and the dangers should be fully explained to her.

If, however, the doctor feels that human lives could be protected and sickness prevented as a result of intervention by the law, he should have no hesitation in requesting that the police intervene. The patients must never be made to feel that they can no longer trust their doctor with details of the abortion, for such details are often very helpful in the treatment of the patient who becomes critically ill.

#### *Criminal Conduct*

Criminal conduct on the part of the patient may be suspected. If the doctor is mistaken, and reports the patient to the police, legal action will almost certainly be taken against the doctor. For this reason, it is extremely dangerous to act on the assumption that the patient has been guilty of criminal conduct.

It follows from this that the only instance in which a doctor is advised to inform the police is when he is sure that by doing so he can prevent a crime occurring. Even in this situation, however, the patient should always be warned by the doctor before any action is taken.

#### PROFESSIONAL SECRECY AND THE LAW

##### *The Police*

When questioned by the police about a patient, the doctor should take great care not to divulge information which, in his opinion, 'ought not to be divulged'. It may, however, be to the patient's advantage for the doctor to give information to the police. For instance, a patient may have been falsely accused of committing a crime on a particular occasion, despite the patient's pleading that his illness had confined him to bed during the time of the alleged crime. His doctor should then be willing to give evidence in court to the effect that the patient was indeed confined to bed at the time and could not therefore have been involved in the alleged offence.

The police, too, are expected to exercise courtesy, and to acknowledge the doctor's right to maintain secrecy concerning details of his patients' illnesses. It is also therefore generally understood that patients who are undergoing treatment will not normally be interrogated by the police unless the doctor gives his consent.

Great care is needed when a doctor gives evidence concerning his patients, as in the case of alleged drunken driving. If the doctor makes a statement to the police to the effect that his patient was indeed in a drunken state, and later this cannot be proved, the doctor may be sued for defamation of character. When in doubt about any particular case, the doctor is strongly advised to consult one of the defence societies.

Generally speaking, the relationship between the police and medical practitioners has remained a very happy one, and every effort should be made by doctors to preserve this.

##### *In the Witness Box*

In a court of law the doctor is not privileged to maintain secrecy, although such privilege is granted to lawyers. If ordered to do so by a judge, he has no alternative but to make known the details of his patient's illness to the court. He may protest if he wishes, or ask for a special hearing 'in camera', but this will not necessarily be granted to him.

Such a situation is distasteful, to say the least, and may have life-long repercussions upon those persons involved, in terms of broken relationships and social disgrace. Needless to say, there are many doctors who are pressing for a reform of this ruling, but at present doctors do not have the privilege of maintaining secrecy in court.

#### PROFESSIONAL SECRECY AND THE DYING PATIENT

Sir William Jenner once laid down the provision that it might often be proper for the doctor to communicate that of which he is certain, but seldom or never that of which he is uncertain.<sup>5</sup> The doctor should always remember that a grave prognosis may prove incorrect and is always distressing to both the patient and his relatives.

If a diagnosis is proved beyond doubt, and the prognosis known with certainty, then a frank discussion with some patients may be helpful. In all cases, the doctor should make a rule of discussing his findings with the nearest responsible relative, so that the patient's affairs can be set in order. If the doctor fails to do this, he may then be accused of deceitful dealings with those responsible for the affairs of the patient.

An ill-timed or inaccurate statement issued by the doctor concerning his patient may result in much social embarrassment, and even perhaps in financial loss for the patient. Such loss, in the hands of shrewd lawyers, could be used as a lever against the doctor in the law courts.

#### SUMMARY AND CONCLUSION

The concept of professional secrecy has been traced from the time of Hippocrates to the modern days of human organ transplantation, and the important applications of professional secrecy have been outlined.

Our modern society is thirsty for medical knowledge, but unfortunately has lost much of its respect for professional secrecy and also for the sanctity of human life and relationships, and, because of this, may at times be quite ruthless in seeking information about patients for the gratification of vulgar curiosity.

Doctors, too, have clearly demonstrated that they need to be more disciplined about professional secrecy, for it

seems probable that most doctors, when off their guard, talk too freely to all and sundry about their patients. The safeguard of habitual reticence on the part of the doctor is to be recommended. 'There is a time to keep silence, and a time to speak', said the Preacher; and there is no calling in which a prompt recognition of both these times is more important than it may often be in medicine.

#### *Is Professional Secrecy Outmoded Today?*

The whole art and science of medicine is based on mutual trust and an intimate personal relationship between patient and doctor. This will always be the case, no matter how scientific and technical medicine becomes. This is the reason why we should examine with profound scepticism any special pleading that professional secrecy is becoming outmoded.

#### *The Medical Defence Organizations*

These organizations have made a special study of the problems confronting doctors over the question of professional secrecy. Their claim is (and correctly so) that professional secrecy is necessary for the protection of both the doctor and his patient. In our modern society

every doctor is advised to be affiliated to such an organization, for he can never tell when his career may be threatened, perhaps as a result of a situation beyond his personal control. It is precisely in situations like these that the medical defence bodies are able to offer professional advice and invaluable assistance to the doctor.

Finally, whenever a doctor is in doubt as to the ethical management of a particular case, he is well advised to seek the advice of his medical defence organization, for the obvious reason that prevention is always better than cure.

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