

Protecting patient privacy and confidentiality in social media

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Posting pictures of patients on social media without obtaining their informed consent constitutes a breach of confidentiality. This was the consensus reached by medical, legal and bioethical experts at the 2015 Healthcare Social Media Summit held last February 21, 2015 in Cebu City.

Anchored on trust

“First and foremost, we have to remember that the patient-physician relationship is a fiduciary relationship. ‘Fiduciary’ is based on the Latin word which means confidence or trust, meaning to say that it is very important that the patient will have total trust in his attending physician, because in so doing he will be able to reveal everything about his illness,” explained Dr Melfer Montoya, chair of the Committee of Bioethics in the Cebu Institute of Medicine. “Our responsibility is never to breach that confidentiality, never to breach that trust.”

One of the basic bioethical principles is respect for the patient’s autonomy and right to self-determination. Therefore, said Montoya, it is very important that the patient’s consent be obtained before posting his photos on social media. Moreover, the consent has to be an informed one; the patient should specifically be asked if his picture can be posted on Facebook (FB) or other social networking sites. Failure to



do so leads to a breakdown in the trust vital to the physician-patient relationship.

Dr Remo-tito Aguilar, an orthopedic surgeon, social media advocate, and healthcare blogger, stressed that the fiduciary relationship is not limited to the patient and physician alone. For example, a patient undergoing surgery entrusts privacy and confidentiality to the entire operating room (OR) team. Any member of the medical team – even utility personnel who may be asked to take photos during the operation – may not share information with anyone who is not directly involved in the management of the patient without the latter’s explicit consent.

The legal perspective

The right to privacy is enshrined in the 1987 Constitution of the Republic of the Philippines. Article III, Section 3, Paragraph 1 states: “The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.”

According to Atty. Ethelbert Ouano, a law

professor at the University of San Jose – Recoletos and current legal counsel of the Lapu-Lapu City Government, there are only a few exceptions to this right to privacy. One is when a law requires reporting of certain diseases, such as HIV infection. Another is when the patient waives his right to privacy. However, emphasized Ouano, the waiver must be legally valid. During circumcision, for example, even if the child being circumcised gives permission to have his picture taken and posted on FB, he is not of legal age and therefore his waiver is not valid.

Ouano acknowledged that technology far outpaces Philippine laws. The country does not have a single overarching law similar to the Health Insurance Portability and Accountability Act (HIPAA) of the US, which provides federal protections for individually identifiable health information. Ouano noted that stringent security measures such as those required in the HIPAA may prove to be a heavy burden in the Philippines, with the additional expense ultimately being shouldered by the patients. A Patients' Bill of Rights might just end up being a patient's bill, he quipped.

Facebook, privacy and anonymity

A schedule for a surgical procedure containing the names of patients, even when shared only with the FB accounts of surgery team members, may still be considered a privacy violation.

Ouano cited a recent Supreme Court decision that addresses the expectation of privacy for photos uploaded on FB. The Supreme

Court noted that “setting a post’s or profile detail’s privacy to ‘Friends’ is no assurance that it can no longer be viewed by another user who is not Facebook friends with the source of the content.”

According to Ouano, the case is not medically related but may still provide valuable lessons to healthcare professionals. “The court said: even if you set your settings to Friends only, your friends can show it to other friends,” thus breaching patient privacy.

Moreover, even if a photo does not show the patient’s face, there are still other ways by which he or she can be identified. The meta-data embedded within images, combined with knowledge with where the poster works, can be used to trace and identify the patient, said Ouano.

The patient’s best interest

What might motivate healthcare practitioners to post images or other patient information on social media?

Some doctors might discuss a patient’s case online for learning or advice-seeking purposes. In those instances, an exception to the privacy rule might be made if details of the patient’s condition are shared in a forum accessible only by physicians and if there are no patient identifiers. Montoya cited Doximity and Sermo, both of which are social networking sites that accept only licensed doctors as members. However, she pointed out, there are no equivalent sites for physicians here in the Philippines.

While some may have good intentions,

others might simply want to show off, to tell a funny story, to rant, or to vent their frustrations. Those motivations should not supersede patient's rights; the best interests of the patient must come first.

"Remember we are dealing with a human, the human body, the human person, with dignity, and that person is entitled to respect," said Montoya.

This sentiment was echoed by Mr. Ramon Rodulfo, founder of Project Red Ribbon, an organization that helps care for HIV-infected patients. He urged doctors to carefully consider a post's possible impact on the patient's quality of life. "In the HIV community, people die," he said. "There are lots of kids who commit suicide because of cyber-bullying."

He cited the case of a doctor who took a photo with an HIV patient. The photo accidentally included the antiretroviral drugs that were on the patient's table. When the photo was uploaded on FB, people were able to identify the medication and the patient's HIV infection became well-known. This caused the patient to be bullied in school and eventually contributed to his suicide.

How to protect patients' privacy and confidentiality

Medical institutions should adopt a social


media policy, recommended the panelists, especially since these facilities can be held liable for damages caused by a breach of privacy and confidentiality.

Individuals, for their part, should go back to the principles of beneficence and nonmaleficence. Montoya suggested that, before posting on social media, doctors and other healthcare professionals should ask themselves these three questions:

1. Is this action intrinsically good?
2. What is my intention?
3. What are the possible unforeseen effects that could result from this act?

"If it is not good, then you stop it," said Montoya.

Ouano also reminded doctors to consider the implications for their own practice if they share patient information on social media. Patients could withhold important details – which might be vital for proper diagnosis and management – for fear that these would be divulged to the public by the doctor. Adjusting privacy settings is not enough.

In the end, Ouano said, "the best filter is the one between your ears." 

Additional source:

Vivares, et al. vs. St. Theresa's College, et al. Available at: <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/202666.pdf> (accessed March 12, 2015).