Confidentiality and Privacy: What is the difference?

Knapp van Bogaert D, PhD, DPhil
Steve Biko Centre for Bioethics, Faculty of Health Sciences, School of Clinical Medicine, University of the Witwatersrand, Johannesburg
Ogunbanjo GA, MBBS, FCFP(SA), MFamMed, FACRRM, FACTM, FAFP(SA)
Department of Family Medicine and PHC, Faculty of Health Sciences, University of Limpopo (Medunsa Campus), Pretoria
Correspondence to: Prof D Knapp van Bogaert, e-mail: Donna.VanBogaert@wits.ac.za, Prof GA Ogunbanjo, e-mail: gao@intekom.co.za
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Abstract

In the practice of medicine, the idea of confidentiality is articulated in almost all its oaths, guidelines and codes. Dating at least as far back to the Hippocratics, swearing that "... *What I may see or hear in the course of the treatment, or even outside of the treatment, which of no account one must spread abroad, I will keep to myself ...*" Confidentiality is not only of practical importance (who would continue to consult with a doctor who divulged personal information), but it is an ethical mandate as well. Privacy is similar in that it concerns one's person and is value-laden. The distinctions between confidentiality and privacy however are often unclear. In this article, we will articulate some of the conceptual differences, similarities and end with an example from current news which illuminates both concepts.

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Confidentiality

Confidentiality is linked to the value of trust in doctor-patient relations. In this encounter, a patient communicates to the doctor particular information which is of a personal nature. The patient expects that the doctor will, as bearer of this trust, not divulge that information to a third party without the confider's permission.[1] The manners in which information is communicated may vary. Usually it is through a verbalisation of symptoms, "the patient's complaints", that a doctor first becomes involved as the receiver of information. But verbalisation is not the only way information is gathered.

Beyond verbal transmission, information concerning a patient is also transmitted symbolically in words (e.g. name, age, differential diagnosis) on laboratory or X-ray test requests. Moreover, through bodily examination and evaluations e.g. laboratory tests, physical examinations, radiographs, etc intimate information is obtained. Maintenance of the medical precept of confidentiality does not require focus on the manner by which information is obtained, rather it is concerned with whether, to whom and how that particular information is transmitted. Choices about "my" information should not hover around problems of my personal retrieval or access. The point is that "my" information given or obtained in the confines of a doctor-patient relationship requires that a doctor respects my choice of what is done with my information. For example, if my doctor gives my personal medical information to my employer without my consent, then he has committed an "ethical breach". If s/he gives the same information to my employer with my permission, then no ethical breach has occurred.

Confidentiality then may include or imply two particular spheres: that which is *private* and that which is *public*. These spheres however are not always clear-cut and the boundaries between them not only require definition but any infringement of either needs to be known and accepted by both the doctor and patient. For example, patient X tells his doctor that he is abusing his step-daughter. In such a case, the doctor has an obligation first to negotiate the parameters of confidentiality with the aim of persuading the patient to inform authorities. If this is not successful, the doctor has no other option but to inform patient X that she is bound by law and to breach doctor-patient confidentiality.

Medicine concerns the receipt of information concerning a patient's life, body and mind. This information is largely held in the patient's private sphere, as opposed to, for example, their employment or education which is public. Generally, medical information is private and a doctor is obliged to use this information to benefit the patient, to ensure the information is used for therapeutic purposes and inasmuch as no overriding ethical or legal principle exists, to keep in confidence those things which are shared in confidence. However, the confines of patient-doctor confidentiality are not cast in stone. Doctors may directly share information concerning their patients with other doctors, nurses, and health care personnel in the context of patient benefit. As all members of the health care team are bound by confidentiality, this is in itself is not considered a breach. In this regard, place and intent of divulgence become qualifiers of the rightness or wrongness of the action.

In common hospital admission practice additional personal information is required such as one's financial situation viz hospital deposit, medical insurance, next of kin, name of current medical complaint, previous operations, telephone number of friend, and so forth. This type of information falls outside the health care professional-patient relationship. Thus, both private and strictly medical information now computerised and linked to other networks may and occasionally does become part of the public domain.[2]

Privacy

Debated from various perspectives, the concepts of privacy and the right to privacy often remain elusive. Broadly, we can say that privacy means consensus involving two things: 1) *Control over some information about us* and 2) *some control over who can experience us or observe*

us.[3] Privacy is a term first used in tort law. Debuting from Warren and Brandeis' "The Right to Privacy" (1890), interest in the nature of privacy has included a vast number of publications, particularly in law and philosophy.[4]

In South Africa, the right to privacy is a fundamental right as listed in the Constitution's Bill of Rights. The concept of privacy encompasses many perspectives. The most popular are: the right to make one's own decisions; the right to travel anonymously; the right to control the dissemination of information concerning oneself; and the right to control the dissemination of information about oneself. The right to privacy is the right of individuals, groups or institutions that have access to and information about others to ensure that it is limited in certain ways. Privacy is not in itself an intrinsic good but it is related to ethics in that it concerns (at least) the causal relationship between one's concept of 'being in control of their own lives' or their autonomy. In other words, unless a person is in the position to appreciate that they have the ability to determine their own course of action, to make their own choices, they cannot be considered as autonomous agents. When aspects of an individual's life are open to public scrutiny, then they are open to public experience and evaluation, this may imply a disvaluing of one's autonomy.[5]

Although a person's right to privacy is not considered a natural right, it always concerns relationships between agents: person A with some information X, and another person, Z. The right to privacy is only violated when Z comes to possess information X, and no relationship exists between A and Z that would justify Z's coming to know X.

Example

Concerning application of confidentiality and privacy, we turn to a recent newspaper report as an example. Ngala reports "...*laid a theft charge with the police after discovering the missing files ... got an order forcing the newspaper to return her records*".[6] The story allegedly goes that a member of a health care team stole medical records concerning the hospital stay of a well-known South African politician. The health care professional subsequently emigrated. Extradition orders are in effect for her return to South Africa. If the facts are as reported, then we can safely say that the health care professional violated the duty to keep patient information confidential. The alleged theft of medical records, if true, is a criminal act. Through allegedly selling the information to the press, the patient's right to privacy was violated. This is because no relationship existed between the newspaper and the health care professional that would justify a breach of confidentiality. On the other hand, this raises another interesting question: When a person freely chooses public office, does this choice imply that their lives, or a part of their lives become part of public domain? If so, what might be the ethical boundaries that exist in this regard? If not, why not?

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