

Confidentiality and Disclosure during the COVID-19 pandemic

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INTRODUCTION

We are in the throes of a global pandemic which the world has not experienced since the Spanish influenza outbreak of 1918. COVID-19 is a public health crisis, and as such, nations have a basic duty to protect their citizens from the consequences of the disease. Under normal circumstances there is much we can do at an individual level to protect ourselves but once the virus poses a threat to others then governments must intervene to protect the community at large.

The individualistic doctor-patient relationship is now superseded by the more communitarian relationship between the individual and the state. It is under these circumstances that individual rights may be threatened by government action. While the temptation may certainly be to suspend individual rights carte blanche in order to gain control over the spread of the virus, it is our responsibility as medical professionals to ensure that (i) reasonable justifications exist for suspending individual liberties and (ii) these justifications are backed by both ethical and legal force.

DISCUSSION

One of these individual liberties is that of confidentiality. Patient confidentiality has been protected as far back as the Hippocratic Oath. *“And whatsoever I shall see or hear in the course of my profession, as well as outside of my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.”*⁴ The main issue here is trust. If patients feel that their personal information is divulged without their consent, they may withhold symptoms or avoid seeking medical help

altogether. In the context of a global pandemic neither is desirable.

A common law duty of confidentiality is reinforced by an individual's basic human rights. The Constitution of Trinidad and Tobago provides for an individual's right to privacy stating *'..the right of the individual to respect for his private and family life.'*² These rights are mirrored in the Caribbean islands of Jamaica and Barbados.^{3,4}

However, confidentiality is not an absolute right as there are certain conditions under which disclosure is permissible. Two of those conditions are relevant to the current global situation. Firstly, disclosure is required by law and secondly, disclosure is permitted in the public interest.⁵ The latter is a fairly broad category that also encompasses protecting society from serious crime⁶ (including domestic violence and terrorism) or serious communicable disease. The American Medical Association also recommends that confidential information should not be disclosed without the consent of the patient, subject to certain conditions that which are ethically justified because of overriding considerations.⁷

Before proceeding with revealing confidential information, the physician must be satisfied that the benefits to society of the disclosure outweighs any benefits of maintaining patient confidentiality. Under the current conditions, it should be clear that it is in the public's interest to know which patient is infected with COVID-19 in order for isolation/quarantine and proper contact tracing to be instituted.

Attempts should be made to gain patients' consent for disclosure but disclosure should not be delayed if patients refuse. Additionally, patients should be informed that their confidential information is going to be disclosed and the purpose for this. This may help to appease patient concerns and restore any loss of trust in the

medical profession that may ensue as a result of the disclosure.

Ethical guidance from both the General Medical Council and the American Medical Association has been established. However, there is also strong legal guidance at a local level that supports disclosure by both physicians as well as members of the public. Despite its age, the Public Health Ordinance No. 15 of 1915 (Trinidad and Tobago) provides unambiguous guidance on how to deal with disclosure and notification of an infectious disease. Section 104 of the Ordinance states that *"Where an inmate of any premises used for human habitation is suffering from any infectious disease, or any disease the symptoms of which may raise a suspicion that it may be an infectious disease, then.....the following provisions shall have effect....."*

The head of the family to which such inmate (patient) belongs, and in his default the nearest relative of the patient present in the premises or being in attendance on the patient, and in default of such relative every person in charge of or in attendance, and in default of any such person the occupier of the premises shall, as soon as he is aware that the person is suffering from any infectious disease or a disease suspected to be infectious, send notice thereof to the Medical Officer of Health of the District where such patient resides....."

Every Medical Practitioner attending on or called in to visit the patient shall forthwith on becoming aware that the patient is suffering from an infectious disease or a disease suspected to be infectious send to the Medical Officer of Health of the District where such patient resides, a certificate stating the name of the patient, the

situation of the premises and the disease from which, in the opinion of such Medical Practitioner, such patient is suffering.....”⁸

Despite its age, the Ordinance grants considerable powers to both members of the public as well as medical practitioners with respect to notification of infectious diseases and sharing of confidential information. The public is therefore mandated by law to inform physicians if they believe that members of their household have an infectious disease. Physicians are also mandated to provide their superiors with the patient’s name and the diagnosis. In the present day, this would translate into notifying our respective County Medical Officers of Health. So, in this case disclosure is also permitted as it is required under the law.

However, it should be noted that there are some significant considerations to be taken into account when disclosure of confidential information is being debated. One of these is data collection. COVID-19 is a new pathogen and as such equally novel ways of designing and implementing new data collections are a top priority. However, this data becomes susceptible to *mission creep* where initial data usage is socially positive, but then later becomes vulnerable to inappropriate usage, including access to the data by persons/groups other than for whom it was originally intended.

The increasing use of new technologies, for example, contact tracing applications on patients’ cell phones, accentuates this vulnerability.^{9,10} Factors such as stigmatization and discrimination have important implications for the physical and mental health of infected patients.¹¹ This is especially true in the case of vulnerable populations such as migrants, where xenophobia and violence are real threats.¹²

Individual rights should not be suspended without careful considerations of the risks of endangering public safety and health. Where confidentiality is concerned there is sufficient ethical and legal guidance available to warrant the disclosure of the COVID-19 health status of individual patients. Even so, prior to disclosure it is good practice to engage with the patient and inform them how their information will be disclosed and for what purpose. It is also good practice to ensure that disclosure remains at an absolute minimum information. This is especially true where data collection and usage is concerned. This will help to maintain a level of trust in the doctor-patient relationship that is vital to good medical practice.

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REFERENCES

1. <https://hslmcmaster.libguides.com/c.php?g=306726&p=2044095>. McMaster University Health Sciences Library. Last accessed November 9th 2020.
2. The Constitution of the Republic of Trinidad and Tobago. August 1st 1976. Chapter 1 Part 1 Section 4
3. [https://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%20202011.pdf](https://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%20202011.pdf) Jamaica Houses of Parliament. Last accessed November 9th 2020.
4. www.oas.org/dil/the_constitution_of_barbados.pdf Organization of American States. Last accessed November 9th 2020.
5. <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality> General Medical Council Ethical Guidance for Doctors. Last accessed October 5th 2020.
6. Tarasoff vs Regents of the University of California. 17 Cal, 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976)
7. www.journalofethics.ama-assn.org/article/ama-code-

medical-ethics-opinions-confidentiality-patient-information/2012-09 American Medical Association Code of Ethics Overview. Last accessed October 5th 2020

8. Public Health Ordinance No. 15. 25th June 1915. Section 104
9. Dwork et al. On Privacy in the Age of COVID-19. *Journal of Privacy and Confidentiality* 2020; Vol 10 (2)
10. Ienca, M Vayena, E. On the responsible use of digital data to tackle the COVID-19 pandemic. *Nature Medicine* 2020; 26:463-464
11. Baldassare et al. Stigma and Discrimination (SAD) at the time of the SARS-CoV-2 Pandemic. *International Journal of Environmental Research and Public Health* 2020; 17(17) : 6341
12. Ethics Amidst COVID-19: A Brief Ethics Handbook for Caribbean Policymakers and Leaders. E-book available at www.uwi.edu/covid19/resources/resources-policymakers#top