Integrity in Practice

Series Five: Mishandling of Proprietary Information

There is a strong tradition in the medical profession to respect confidentiality. Keeping medical information confidential helps to generate the trust of patients in medical practitioners. People are encouraged to confide to doctors sensitive issues relating to their illness for medical care.

Case Study 1: Disclosing medical information of celebrities

Dr J, an obstetrician of a renowned private hospital, is in charge of the fertility centre there. Clientele includes wives of tycoons and famous actresses. One day, Dr J received a telephone call from her best friend Amy who was a columnist for a tabloid. She told Dr P that she was writing a feature article on infertility and wanted to know the success rate of her clinic. She even made enquiries about a few celebrities rumoured to be infertile and their prognosis. She assured Dr J that she would not disclose the source of information. With the help of Dr J, Amy completed the feature article which eventually aroused much public interest. As a token of thanks, she treated Dr J to a lavish meal in a famous restaurant.

Analysis

- Although Dr J would not violate Section 9 of the PBO as entertainment is not defined an advantage under the law, she had ruined the doctor-patient relationship by disclosing her patients' confidential information to outsiders.

- Dr J should be aware of the provisions of the Personal Data (Privacy) Ordinance which do not allow data users to use the personal data in contravention of the purpose of collection without the consent of data subjects.

- Dr J might breach Section 1.4.1 of the Professional Code that requires a doctor to obtain the patient's consent before disclosing medical information to a third party.

Case Study 2: Lax security in maintaining medical records
Dr K is a partner of a large medical centre. Computerised medical records are maintained to enhance efficiency in the storage and retrieval of patients' information. Every employee has access to the records as there is no password installed in the computer system.

Robert, a private detective, was entrusted by Mrs CHAN to keep surveillance on her husband who was suspected to have an affair with a woman. Discovering that Mr CHAN's mistress paid frequent visits to Dr K recently, Robert tried to approach the clinic assistant Eva to seek assistance in accessing the relevant medical records. Robert agreed to offer Eva $2,000 as a reward. Subsequently, Eva passed to Robert a copy of the medical record of Mr CHAN's mistress who had been confirmed pregnant.

Eva accepted the money from Robert in return.

**Analysis**

- Eva would breach Section 9 of the PBO. It is unlikely that her employer would permit her to accept an advantage i.e. $2,000 for disclosing patients' information to a third party. In addition, she might commit an offence of accessing the computer with criminal or dishonest intent, contrary to Section 161 of the Crimes Ordinance.

- Since Dr K and his partners failed to adopt security measures to protect patients' information, they might have liabilities under the Personal Data (Privacy) Ordinance which requires that appropriate security measures have to be applied to personal data.

- Section 1.1.3 of the Professional Code also requires doctors to take every step to strengthen the control system to protect patients' information from misuse.

**How to draw the line in maintaining confidentiality?**

Doctors may face a dilemma that they have a fiduciary duty to preserve patients' confidentiality but, at the same time, are obliged to expose information that would endanger public health. If we are in doubt of whether we should disclose our patients' information to a third party, we may ask ourselves the following questions to structure our decision making process:

(a) Is the potential harm to other parties serious e.g. contracting infectious diseases by our patient?
(b) Will the breach of confidentiality prevent harm to other people?
(c) Will the disclosure minimize the harm to the patient?
(d) Is there any alternative for warning or protecting those at risk?

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