

CONFIDENTIALITY

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Physicians (like lawyers) are required to keep information they hold about patients confidential.

This rule is a legal requirement and breach of it may give rise to liability or professional misconduct proceedings.

It is professional misconduct to breach patient confidentiality. The Regulations in Ontario define professional misconduct in part as:

“Giving information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law”.

Particular care must be taken by all doctors to guard against the inadvertent disclosure of patient confidences by speaking about them in public places. Care must also be taken about sending sensitive confidential patient information using means of telecommunications that may not be secure such as fax or email.

The duty to keep patient confidences arises from the physician/patient trust relationship also referred to as the physician’s fiduciary duty.

There are exceptions to the duty of patient confidentiality that arise from circumstances where the patient consents or where the disclosure is required by law.

Consent may be obtained in ordinary circumstances from the patient or where the patient is unable to consent, from the patient’s legal representative.

Consent may be either implied or expressed. Implied consent may occur where in ordinary circumstances any sensible person would believe that the patient consented. Where the doctor states that he will telephone a prescription to the patient’s pharmacy and the patient makes no objection, it may reasonably be implied that the patient consents to disclosure by the doctor to the pharmacist of necessary information to give the prescription.

Expressed consent occurs when the physician asks the patient whether they consent to a particular disclosure of confidential information and the patient replies in the affirmative. The discussion between doctor and patient is usually put down in writing and signed by the patient often using a consent form.

Legal requirements include provisions of provincial statutes such as the *Highway Traffic Act* requiring the reporting of those unfit to drive, child welfare legislation requiring the reporting of circumstances giving rise to a belief that child abuse has occurred and communicable disease

legislation requiring the reporting of those infected with communicable diseases. There are also federal statutes requiring, for example, the reporting of unfit commercial aviators under the *Aeronautics Act* or railway personnel under the *Railway Safety Act*.

There are also circumstances where the interests of society are deemed by law to take precedence over patient confidentiality requirements such as when a court order or search warrant requires the production by the doctor of patient information or when the doctor is actually called to testify in court.

While there are legal restrictions, it is generally understood that a physician is expected to report circumstances where he/she conscientiously forms the opinion that threats made by patient to kill or seriously harm another person have sufficient immediacy to require the reporting of those threats to the threaten person or to the police.

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