

The professional secret and its importance to nurses and dentists practice

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Abstract

This article presents the definition of secrecy and professional secrecy in health area, as well as the criteria which prescribe it, indicating its importance for nurses and dentists. These definitions were based on extensive bibliographical research, including the legislation, electronic items in academic databases and printed literature. The discussion points out that confidentiality in health services regarding the information of the users is provided by law and by the advice of professional ethics. This legal and normative framework defines the professional duty of loyalty towards the user, emphasizing the importance of preserving it. The discussion also shows that secrecy can be broken with the permission of the user or in situations supported legally considered as just cause. It concludes by indicating the need to discuss the issue with health workers with the aim of instrumentalizing them to adopt an ethical and morally correct posture, being the actual text an initiative to provide such information.

Key words: Privacy. Confidentiality. Ethics.

Resumo

Segredo profissional e sua importância na prática de enfermeiros e odontólogos

Este artigo apresenta a definição de segredo e sigilo profissional em saúde, bem como os critérios que os prescrevem, indicando sua importância para enfermeiros e odontólogos. Essas definições basearam-se em extensa pesquisa bibliográfica, incluindo a legislação, artigos eletrônicos em bases acadêmicas e literatura científica impressa. A discussão aponta que o sigilo nos serviços de saúde quanto às informações dos usuários é previsto em lei e pelos conselhos de ética profissional. Este arcabouço legal e normativo define o dever de lealdade do profissional para com o usuário, enfatizando a importância de preservá-lo. A discussão também mostra que o sigilo pode ser quebrado mediante autorização do usuário ou nas situações amparadas legalmente, consideradas como justa causa. Conclui indicando a necessidade de discutir o tema com os trabalhadores de saúde, visando instrumentalizá-los a adotar postura ética e moralmente correta, sendo o próprio texto uma iniciativa no sentido de prover tal informação.

Palavras-chave: Privacidade. Comunicação sigilosa. Ética.

Resumen

El secreto profesional y su importancia en la práctica de los enfermeros y odontólogos

Este artículo presenta la definición de secreto y sigilo profesional en salud, así como los criterios que los prescriben, indicando su importancia para los enfermeros y odontólogos. Estas definiciones se basaron en una extensa investigación bibliográfica, incluyendo la legislación, artículos electrónicos en bases académicas y literatura científica. La discusión señala esa confidencialidad en los servicios de salud como la información de los usuarios es prevista por la ley y por el Consejo de Ética profesional. Este marco legal y normativo define el deber profesional de lealtad hacia el usuario, haciendo hincapié en la importancia de preservarlo. La discusión también muestra que el sigilo puede ser roto con el permiso del usuario o en situaciones apoyadas legalmente considerado como causa justa. Concluye indicando la necesidad de discutir el tema con los trabajadores de la salud, enfocando instrumentalizarlos a adoptar una postura ética y moralmente correcta, siendo el propio texto una iniciativa para proporcionar dicha información.

Palabras-clave: Privacidad. Confidencialidad. Ética.

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Human life involves interrelationship. To live in society people need each other, this characterizes the very essence of the social process. Implicit and explicit rules that organize this process define both the position of the interlocutors as to what is expected of each individual. Expected behaviors are defined between parents and children in different stages of life, subordinates and superiors in their professional relationship and expectations between rulers and ruled in the public sphere.

In healthcare, this phenomenon is manifested in a daily contact between professional and patient. Unlike what happens in other social relations, there is an outcome as an objective: the cure. This process is anchored in the exchange of information, advice and care between professionals and patients, considering the mental, physical and spiritual dimensions. With the intention that the this relationship may achieve its objective, the professional must, based on his knowledge, put himself at the disposal of the patient in order to help him discerning the way to promote, prevent or recover diseases or health disorders that bother him. This, in turn, seeks professional help to take advantage of the physician's knowledge and get personal or family comfort, as well as define effective treatment for health problems that afflict him.

For this relationship to result the expected effect, it is important that the patient open to the professional details about his life and routines in order to enable him to understand the nature and cause of the problem, and elaborate the diagnosis. In this process, revelations of facts emerge, often intimate, some of them that the confidant may not intend to reveal. It is a natural principle of trust, respect and dignity that the confidant transfers to the trusted. In most cases, these facts do not show greater social or personal relevance. However, there are those that need to be kept absolutely confidential because its disclosure could cause serious injury or material or moral damage. For these reasons, protection to individual freedom related to the inviolability of the secrets regarding the provision of health services^{1,2}.

The question of professional secrecy and confidentiality of information of the health service's users is crucial for appropriate assistance. This requires from the professionals (doctors, nurses, dentists, administrative staff, etc.) a reputable training to deal with the aspects directly related to safeguarding information and patient data. Several instruments address the issue, such as the Penal Code, the Code of Ethics of Professional Nursing, the Code of Ethics for Professional Education and the Code of Medical Eth-

ics, which include specific rules regarding the issue of professional secret, establishing rights and duties of professionals in various situations and contexts³⁻⁵.

It is of utmost importance to keep secret of client information, in appropriate situations, and to preserve his privacy, which remits to questions of ethics and morality as well as aspects related to the humanization of services. It must be considered that, when it comes to privacy, it does not matter color, sex or sexual orientation of the patient. It is an aspect that should also encompass the age dimension, extending from the newborn to the elderly⁶. In today's society, there is a very wide range of information about the individuals and institutions in order to facilitate patient care, plan resources allocation and the management of health services, among other functions. Faced with so many information obtained in many different ways, possibilities and risks of misuse and breach of privacy of individuals and even institutions are expanded.

It is significantly important to discuss these aspects directing the approaches to the area of nursing and dentistry, as these professionals, especially nurses and dentists, deal directly with these issues in most of their time. Even more considering that nurses and dentists are in constant contact with the user, being responsible for meeting most of their needs; they constitute, therefore, an essential part for a quality healthcare. Thus, this paper aims to review the literature regarding the professional secret related to these categories of health professionals.

Method

We have conducted a literature review of publications available from the major databases SciELO, Medline, Lilacs and Virtual Health Library (VHL). The search used the keywords "Professional Secret", "Professional Secrecy", "Confidentiality", "Information Privacy" and "Confidentiality of Information", extending to publications of the last 12 years (2001-2012). After searching using the keywords, the articles were identified by subject area, year, authors, and abstracts – and only then selected those that met the objective of this research.

To foster the discussion about the ethical principles governing confidentiality, it was first analyzed the Code of Ethics for Professional Nursing, then the Code of Ethics for Professional Education and the Penal Code. As a guiding reference it was used the scientific literature in the area of professional secret related to these categories of health profes-

sionals; contemporary textbooks of experts on the topic, which mostly bring examples of problems related to the maintenance of confidentiality in the professional sphere. Following the literature search, we performed the selection and reading of articles and textbooks, reflexively, trying to discuss the issues involving professional secrecy.

The inclusion criteria for selection of the publications were: articles and textbooks on the subject of professional secret related to the professional categories of nursing and dentistry, which were in Portuguese, published within the defined period, fully available to reading, in print and electronically. At the end, the universe of the study featured 17 papers.

Results and discussion

Health professionals and professional secrecy

Privacy is the set of information about a person, who may decide either to keep them under their exclusive control or to communicate them, deciding to what extent and to whom, when, where and under what conditions the other can have access to them. In turn, confidentiality relates to the guarantee (in the sense of confidence) that the information provided will not be disclosed without permission of the person who confided it. Privacy of information is a right of users of health services, while confidentiality is a must for professionals in relation to information generated and assigned in the professional-patient relationship^{7,8}.

Professional secret has acquired a more rigorous grounding when it became centralized on the need and right of citizens to privacy, turning to be understood as confidentiality. This dual nature of the concept of professional secret makes it a right and a duty, to the extent that, as a right of the patient it creates a specific obligation to health professionals⁹. Any information provided by patients at the time of their healthcare in hospitals, health centers or private offices, as well as any information regarding tests results and procedures performed for diagnostic or therapeutic purposes are their exclusive property.

But this was not always interpreted that way. There has long been a perception that such information belonged to the doctor or health institution. Hence derive the names "medical records" and "medical file", commonly used today. In fact, health workers and institutions are the only depository of this information, which reflects the need to update

the way the user information is handled. What justifies the access to information contained in medical records is a professional necessity, and anyone who makes use of the information does not have the right to use it freely, which reflects the right of access to information only that effectively contributes to patient care^{10,11}.

Nursing professionals in their daily contact with patients, families and staff, face information that they cannot reveal and other that can or even shall be revealed. But how should one know what information to disclose or not and to whom? These are questions issued especially considering that this matter concerns human, legal and ethical aspects. The secret is based on trust, confidence and justice. And when one saves or improperly reveals a secret, he respects or disrespects justice in view of the fact that the information belongs to the health service user^{6,10}. Therefore, in any health care specialty it is important to reflect on the ethical implications of the therapeutic relationship, considering whether patients are being respected in relation to the confidentiality of information obtained during the service⁵⁻⁹.

The ethical and legal duty of health professionals was originated in securing privacy and confidentiality of patient information, maintaining thereby the secrecy of the information. The professional secret in health care is evident in the Hippocratic thinking, which stated: *The things I will see or hear in the exercise of my art, or out of my duties, in trade of men, and that shall not be disclosed, I will keep silence, perceiving them as inviolable secrets*¹²⁻¹⁴.

Professional secret x professional secrecy

The dictionary definition of the terms secret and secrecy is reciprocally related, each one of these words referred to the other to define meaning. However, these terms are often used inappropriately. The word "secret" can mean simply hiding or preserving information which relates to personal intimacy and, as such, shall be maintained and preserved in an appropriate manner. The term "secrecy" has been less used and its use in different languages is related to aspects of concealment that is why it is less used in the sense of preservation of information¹⁰.

In health, the most current differentiation between professional secret and secrecy is to define *secret* as everything that cannot be revealed, while *secrecy* would be a characteristic of trust, con-

sidering that the professions of this field are essentially structured in that prerogative. Then it may be said that professional secrecy is related with health-care services performed by health professionals and professional secret with regard to those professionals from other areas working in health institutions and therefore having access to patient information – e.g. people who occupy administrative functions in health services¹⁵.

The maintenance of professional secret shall be a behavior adopted by all those involved in health practices, not being exclusive of those that perform the core activities of the area, such as dentists, nurses, doctors, psychologists, psychoanalysts, speech therapists, physiotherapists, and others. It is an ethical and legal obligation concerning all those who work in health services, extending to the technical and administrative staff, even those whose professions are not under the control of professional conduct or professional ethics councils¹³. The confidentiality of information must be observed both in oral and written communications with professionals, the press or even authorities; secrecy applies, therefore, to letters, leaks to the press, medical reports, case discussions, conferences and events displaying images, photographs, radiographs – and in medical examinations and auditing¹³.

The structure currently designed to provide health services implies the idea of completeness in multiprofessional work that aggregates professionals from different health areas. However, the multiprofessional approach should not imply that all team members should have access to all the patient information. If the exchange of information is really necessary, it should be limited to the information that each professional needs to develop his activities for the patient's benefit. Privacy and confidentiality are multiprofessional instruments and include not only nurses, doctors and dentists, but also other professions.

In a study about the work of community health agents it was demonstrated that his frequent contact with the user enables the development of strong trust relationships. Since the patient often receives the professional in his/her home, he feels comfortable to reveal aspects of his health conditions, even before reporting the same facts to the other components of the health team. This can lead to an ethical impasse for professionals, as it generates an issue that is pertinent to the positioning of the agent himself, considering that he is also a resident of the community. In this perspective, the question is: how to preserve patient information as a resident in the community and also a neighbor?^{1,15} This

controversial issue has not been fully resolved and is being debated in academic and professional media, considering the specificity of the action and the ambiguity of the role as a health agent.

What has been stated yet on this delicate issue is that “professional secret” is everything that by its nature must be kept hidden, since the maintenance of confidentiality does not cause damage to whom the secret belongs or to others. It is the function of health professionals to establish conditions so that the user can decide what information he/she wants to keep secret and what information he/she wants to communicate to the family, friends or health professionals¹¹. It is important to highlight that in certain situations, for example, information that may cause harm to others or situations of serious epidemiological studies, literature and law establish the need to break confidentiality. Such situations are described and discussed below.

Professional secret: keep or reveal?

Keeping a secret is linked both to the issue of privacy and to confidentiality. When it comes to privacy, the professional has a duty to safeguard the information that he has received and preserve the patient, which even reflects as an institutional duty. Confidentiality, on the other hand, assumes that the user shall pass information directly to the professional, which is responsible for its preservation. The word “confidentiality” is originated from the term “confidence”, which is essential for a good therapeutic relationship. The user is confident that the nurse, doctor or dentist will preserve everything he has told them, so that often, even people who are close to the patient are not aware of this information^{10,11}.

Professional secret is likely to be disclosed directly or indirectly. It is said that revelation is direct when the content and name of the person who the secret belongs are disclosure; and indirect if some indicatives are offered for the knowledge of the secret and its owner identification. Although the disclosure is directly or indirectly, the (in) justice is practiced the same way and the legal and ethical responsibilities are present in situations. There are circumstances in which the secret can be revealed and others in which the secret must be revealed only to those who have the right. The importance of this aspect lies in the fact that the professional can be sued or hurt ethics by revealing or keeping a secret¹⁶.

With regard specifically to the professional categories analyzed in this work – nurses and den-

tists –, the standardization provided in their code of ethics is explicit and leaves no room for doubt. The Code of Ethics for Professional Nursing brings in its Article 81 a statement regarding the right not to reveal confidential information they have received by virtue of their professional practice to persons or entities that are not bound by professional secrecy⁴. Concerning their responsibilities and duties, the Code, in its Article 82, determines that one should keep as a secret the confidential fact that he/she has knowledge as a result of his/her professional activity, except in cases provided by law, court order or written consent of the person concerned or his legal representative⁴. The Code has also established in its Article 83, that it is a nurse duty to guide his/her staff on professional secrecy⁴.

Also according to the Code of Ethics for Professional Nursing, these professionals are prohibited to grant access to information and documents to persons not directly linked to the provision of health-care, except in cases provided by law or by court order (Article 84), and also to promote or even make reference to cases, situations or facts so that those involved can be recognized (Article 85)⁴.

In order to ensure and promote the good reputation of the dental profession, members of the Federal Council as well as the regional councils of Dentistry developed in 1976, the first Code of Ethics in Dentistry (CED), establishing the fundamental principles that guide the conduct of the dentist in his/her profession. Recently, in 2012, the code has been updated and Chapter VI deals specifically with the professional secrecy⁵.

The Code of Dental Ethics brings in its Chapter VI, Article 14, Section I, a statement regarding that the professional has the right not to reveal, without cause, the secret fact or confidential information they have received by virtue of their professional practice to persons or entities that are not bound by professional secrecy. Concerning their responsibilities and duties, the Code, in its single paragraph, determines that one should keep as a secret the confidential fact that he/she has knowledge as a result of his/her professional activity, except in cases of compulsory notification; cases provided by law, court order; dental expertise in their exact boundaries; strict defense of legitimate interests of registered professionals; or written consent of the person concerned or his legal representative⁵.

In legal dimension, the Penal Code, in its Article 153, defines that it is a crime to disclose, without cause, the content of particular documents or confidential correspondence, that one is addressee

or holder and whose disclosure could cause harm to others. The Article 154 presumes that it is also a crime to reveal to someone, without cause, a secret that one has knowledge as a result of his/her professional activity, function, department, occupation or profession and whose disclosure could cause harm to others³. Thus, the legislation itself defines that institutions must protect documents that have records with information from their patients. Regarding the dynamics of multiprofessional services, including those professionals who do not work in productive end-areas, it shall always be established and improved norms and standards of restricted access to records and regulating the use of security passwords in computer systems. The access of third parties involved in health care, such as insurers and other service providers, should receive special attention¹⁰. When a professional secret is unduly revealed, trust is disrespected and it can cause serious harm to the good name, honor or occupation of the professional involved¹⁶.

However, the right to privacy and confidentiality of data is not considered absolute, ethically and legally. A breach of confidentiality may be due to the consent of the patient himself or his legal representative, under a legal duty or even the existence of a “just cause”¹³. Legislation provides a list of situations in which the secret shall be revealed. Among these: 1) in the case of a birth certificate, 2) to avoid a wedding, where conditions may threaten a spouse or offspring, 3) in the statement of notifiable diseases; 4) criminal fact provided by law; 5) case of abuse of minors; 6) knowledge of professional abortionists, 7) in the medical-legal expert and hospital records and books. Secret can also be revealed when the owner allows; when the good of third parties requires this; when the good of the depository so requires; or when the common good so requires.

It is clear, therefore, that the breach of confidentiality by professional may occur under the protection of the law in situations where there is just cause, such as those compatible with the gravity of the information. It is aligned to this assumption the notification to the competent authority on the existence of diseases or conditions of compulsory information, maltreatment of children or adolescents, elderly or spouse abuse and injury by firearm or other weapon when it is suspected that the injury has occurred due to a criminal act.

Legislation extends the confidentiality in cases where the professional is subpoenaed to testify in courthouse. Even in these circumstances, he must declare himself prevented from revealing

any information as he is ethically committed to his guard. However, there are situations in which a judge can take responsibility and require the disclosure of information, even if it contradicts the terms of the professional code of ethics, provided that this fact should be clearly recorded in the case file, which characterizes an exception and not a mere breach of confidentiality. This path can correspond to the legal aspects of the act of revealing information characterized as confidential, but it does not fully contemplate moral and ethical aspects^{10,17}. In situations where it occurs a breach of privacy or confidentiality it shall be clear the professional duty of loyalty to the patient, as it is extremely important that this commitment is preserved, even if the user is unconscious – or even after his death.

To hide the fact that he has knowledge of the secret, but that it should be disclosed, may also infringe the Justice and Community law. For example, when a client discloses to a health professional that he has a contagious reportable disease, such secrets shall not be kept because it endangers the health of the community. Faced with such situations, it is highlighted the importance of knowing the legal requirements in order to evaluate whether disclose or keep a secret¹³.

By examining the issue of confidentiality, it is noted the existence of legal and ethical aspects. Commonly, it is given more importance to the first – the legal infraction – leaving aside the ethical issues as they are considered minor. These findings indicate that a change of attitude is necessary, because by violating a secret, laws are disobeyed, but also violating fundamental aspects of human relationships: respect, justice, trust and confidence¹⁶.

All situations involving confidentiality must be addressed with wisdom, considering both the legal provisions and the formal and informal principles that govern relationships based on trust. It is essential to recognize the dignity of persons, regardless of age, gender or capacity, because everyone deserves to be respected and taken care, including the safeguarding of information related thereto¹⁰. Thus, patient's respect stands out in all aspects, especially

those related to the information provided and his personal data, inherent to their life history and definition as a person in society.

Final Considerations

It is clear the importance of considering the discussion on the issue of secret and professional secrecy, for the improvement of health services. It appears that there is an obligation of health care professionals and health services to adopt measures to minimize violations of ethical principles and ensure the secrecy of the information, and such obligation is invariant, i.e., it applies to both public and private services on an outpatient basis or in hospitals, through health insurance or free services. Therefore, health professionals need to always keep in mind that they only have authorization to access patient information because of their work function in clinical or administrative jobs. Even considering that maintaining confidentiality is not absolute, they need to be aware of what is legally permissible only in particular situations.

Throughout this work we sought to make clear the importance of the subject, both by academics on the training of future professionals, as with regard to the actual performance of the various professional categories in the health services. In this sense, it is essential to emphasize the need to encourage and promote discussions on this subject, either by training or employment in their own institutions so that health workers as a whole may know their rights and duties, assuming the proper position before the most diverse occasions. It is necessary to deepen their knowledge in order to instrumentalize them regarding the legal doctrine and consensual norms, in the view of adopting attitudes which are ethically correct and morally right, faced with conflict situations. This process of continuous training and formation greatly facilitate the understanding of the problems, which may often instigate the health professional to accumulate serious doubts, making their conduct improper or unsafe.

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Participação dos autores

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