



Patient confidentiality



David Corless-Smith reviews the GDC's Standard on patient confidentiality.

This article considers the principle of patient confidentiality and examines the advice provided by the General Dental Council in its new guidance; *Standards for dental professionals*. Protecting the confidentiality of patient information makes up a third of the six core principles of ethical dental practice identified by the GDC. So important does the GDC consider this issue that further guidance is offered in a separate document entitled: *Principles of patient confidentiality*.

The guidance starts with a brief statement on the duty of confidentiality owed to patients by dental professionals, namely that information about patients should be treated as confidential and used only for the purposes for which it is given. It continues to state that this is not an absolute obligation and that in exceptional circumstances; a patient's confidence may be breached without their consent.

Ever since the *Hippocratic Oath*, patient confidentiality has been accorded a special ethical status within the caring professions. However, even the *Hippocratic Oath* recognised that there may be exceptions and there may be a need to bow to other moral duties.

The GDC guidance states that a patient is entitled to expect that all members of the dental team will respect all information relating to them as confidential. There is no doubt that any dental professional would intuitively accept this proposition but it is certainly not self-sustaining. Why should a dental professional be obliged to keep secret forever any information given by a

patient? The guidance does not offer any justification for this ethical obligation other than declaring that confidentiality is central to the relationship of trust between both the dental professional and the patient.

There are a number of justifications for the ethical duty of confidence. The dental professional/patient relationship is- as explicitly recognized by the guidance – based on an expectation on the part of the patient of trust in the dental profession that he or she will act in the patient's best interests. One key aspect of this trust is that the patient can feel secure that the dental professional will treat as confidential any sensitive personal information that has been disclosed during the course of treatment. This commitment to not breach confidences can be viewed as an implicit covenant that dental professionals make to their patients to safeguard against the abuse of their relative position of power within the clinical relationship. If the patient was not able to trust the dental professional to keep confidences then he or she would be reluctant to disclose intimate information to the dental professional, which may in turn prejudice the professional's ability to provide appropriate and necessary dental care. The patient may even avoid seeking dental care altogether.

Another justification for the dental professional's duty of confidentiality is the principle of respecting the patient's dignity and choices. The right to control access to personal information to third parties (in other words the right to privacy) is an aspect of a person's right to self-

determination or autonomy. Respecting a person's privacy recognizes the intrinsic value of their life and their right to enjoy their life. In releasing confidential information to a third party without the patient's consent, the dental professional is therefore breaching the patient's trust and invading their sense of privacy and such action demands a powerful justification.

In view of the guidance's avowed aim of facilitating an understanding of the ethical principles underpinning dental practice, it is disappointing that it does not descend into an exposition of the ethical justification for the duty of confidentiality. This is more so because such an understanding is an essential tool for the dental professional to breach a patient's confidence and the consequences of not being able to justify such a decision are punitive.

The guidance recognises that there are circumstances in which releasing confidential information about a patient to a third party would be ethically justifiable. This may be done where the patient consents or where it would be either in the patient's interest or in the public interest.

If the patient consents to the release of information, they then waive the confidentiality of this information. The consenting patient must fully understand the nature of the information to be disclosed, the intended recipient and the consequences of disclosure. Further, the consent must be willingly given – in other words, the consent to disclosure of confidential information must be fully informed to be ethically valid.

The efficient provision of dental care requires that confidential information will be shared with all members of the dental team and administrative staff. The guidance states that the patient should be made aware of this sharing of information – in reality, this rarely happens. It is likely that the patient will appreciate that each of the dental professionals participating in the provision of their dental care will have access to confidential information relating to them and implicitly consents to this sharing of information but few patients would accept that non-clinical staff should be privy to such information. In view of the number of practice staff who legitimately have access to such information and the patient's lack of explicit consent to sharing

of information to this extent, dental professionals should be particularly alert to prevent accidental disclosure of confidential information. The guidance sensibly emphasizes a number of preventative measures to avoid such accidental release of confidential information.

So in what circumstances is a dental professional justified in disclosing confidential information to a third party without the patient's consent or even their knowledge? The guidance provides an enigmatic answer, namely when it is in the patient's interest or the public's interest. Two examples are given:

1. Where the patient puts their health and safety at risk
2. If the dental professional thinks that the information would prevent or detect a serious crime.

The guidance does not however offer an explanation as to the ethical justification for breaching the patient's confidence in these two scenarios. In deciding whether disclosure of confidential information to a third party without a patient's consent is ethically justifiable, the dental professional should identify the relevant ethical principles supporting and discouraging disclosure and weigh the priority of the conflicting ethical principles. The degree of balance of precedence of one of the ethical principles may preclude disclosure or make disclosure either permissible or obligatory.

The following two scenarios illustrate the decision-making process that the dental professional should adopt to achieve an ethically justifiable decision as to whether or not to breach a patient's confidence.

First scenario

A 15 year old girl attends for a dental examination with her mother and the dentist indicates that she wishes to take a number of radiographs. The girl's mother leaves the surgery so that the radiographs can be taken. The girl becomes upset and enquires as to whether it is safe to take radiographs as she is pregnant and asks the dentist not to tell her mother. The girl and her mother have been patients of the dentist for a number of years and the dentist knows both quite well and is convinced that it would be beneficial to the girl for her parents to know about the

pregnancy so that they can provide her with the necessary support. Should the dentist respect the girl's confidentiality?

The dentist clearly believes that she would be acting in her patient's best interests by informing the girl's mother that she is pregnant, as the girl's physical and emotional health could be put in jeopardy if she continues to keep the pregnancy a secret. The girl however is adamant that she does not wish her mother to know and so respecting her autonomy would demand that the dentist does not disclose the fact of the pregnancy to her mother. Which ethical principle prevails?

If a dentist were to ignore a patient's wishes and disclose intimate personal information whenever her or she believed that disclosure would be in the patient's best interests, this would betray the trust bestowed in dental professionals by their patients to maintain their confidences and patients would cease to be candid in releasing such information to the professional. This would undermine the professional/patient relationship and severely prejudice the professional's ability to provide quality dental care. The patient is entitled to confidentiality and entitled to require that it be maintained even when it is contrary to his or her interests. While the dentist may seek to persuade the patient to change her mind, she may not override the patient's prohibition on disclosure. This would amount to indefensible paternalism. Thus, in the scenario the dentist should not tell her patient's mother of her daughter's pregnancy.

Clearly there must be a more weighty justification to breach a patient's confidence. A dental professional is under an ethical duty to do no harm to others (the ethical principle of non-maleficence). If maintaining the patient's confidentiality would place the patient or others at a risk of harm, then disclosure may be ethically justified. The obligation to breach confidence would increase according to the magnitude of the harm and the probability of its occurrence. Thus a high risk of severe harm to the patient or another might justify a breach of confidence, whereas a low risk of minor harm would not. The dental professional's assessment of the balance of priority between respecting a patient's confidence and preventing harm to the patient or a third party is critical. It

will be seen that the GDC's guidance that disclosure may be justified where the patient puts their health and safety at risk is incomplete and misleading. The advice that if the dental professional thinks that the information would prevent or detect a serious crime is good as far as it goes but again, an explanation of the ethical justification for this proposition is absent.

The dental professional's duty to prevent harm to others is not limited to physical or psychological harm and would include the prevention or detection of dishonesty or fraud. However, the dental professional clearly does not have an ethical duty to inform on any patient he or she suspects of any crime. The ethical obligation of confidentiality is stringent and will be displaced only by the prevention of a significant harm to another.

Second scenario

A 35-year-old man attends a dentist for the first time and advises him that he is HIV positive. A course of treatment is provided uneventfully and at the next recall visit the patient tells the dentist that he has recommended that his wife attend the practice as a patient. The man tells the dentist that his wife is not aware of his HIV status and that the dentist must not tell her as he insists that he is practicing safe sex and that his wife is in no danger of contracting the virus. How should the dentist act in this situation?

Would the dentist be justified in disclosing to the wife her husband's positive HIV status? The dentist's first task is to persuade the husband to inform his wife of his HIV status. If the husband maintains his refusal, the dentist should assess the likelihood and severity of harm that might be caused to others. Here there is an identifiable person – the patient's wife- who is at a real and unknowing risk of suffering an incurable illness-HIV infection. In this case the dentist would be justified, although not obligated, to advise his patient's wife of her husband's HIV status so that she may decide whether to accept the risk of harming herself.

Would the GDC's guidance assist a dental professional in reaching an ethically justifiable decision in the above scenario? The answer must be no. The guidance simply exhorts dental professionals to seek

advice from an appropriate source such as their defence organization, if they are not sure. In view of the GDC's guardianship of setting and upholding ethical standards in dental practice, the conclusion must be that its guidance on patient confidentiality is sadly lacking.

Initially published in the Dentist January 2006 edition