

ISSUES IN MEDICAL LAW AND ETHICS

Edited by
Puteri Nemie Jahn Kassim
Abu Haniffa Mohamed Abdullah

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Medical Law and Ethics Unit
Law Centre
Ahmad Ibrahim Kulliyah of Laws



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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Editorial Committee

Editors : *Dr Puteri Nemie bt. Jahn Kassim*
Mr Abu Haniffa Mohamed Abdullah

Technical Editing : *Dr Naemah Amin*
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PATIENTS INFORMATION: CONFIDENTIALITY AND IMPLICATIONS FROM LEGAL PERSPECTIVE

Juriah Abdul Jalil

Introduction

The relationship established between a doctor and his patient is founded on the principle of trust. Patients normally trust their doctors to keep their personal health information private and secure for various reasons. Based on this doctors have a professional, legal and moral obligation to keep the information secure and not to disclose or divulge a patient's information without his authorisation. If a doctor fails to observe this obligation, his patient may commence an action against him in a court of law on the ground of breach of trust or breach of confidence. The focus of this paper is to investigate the law of confidence and to examine how far doctors and health care personnel are bound by their obligation of confidence.

What is the law of confidence?

In general the law of confidence protects secrets, which are commercial, personal, artistic or literary or administrative in nature. It operates on the equitable principle that he who receives information in confidence should not take advantage of the information or use it as a springboard to make profit, to the detriment of the person who communicates the information.¹ In other words, the law of confidence imposes a duty on the confidEE or recipient of the confidential information not to disclose or divulge or make use of the information without the permission of the confider.

This duty or obligation to keep the information secret may arise from implied or express contract, equity and trust. Any breach of this duty will entitle the confider or owner of the information to take legal action on the ground of breach of confidence. He may seek legal redress in the form of injunctive relief, damages, delivery up and destruction, and account of profit. Nevertheless, to succeed in the action the plaintiff must satisfy three conditions namely:

- (a) the information that had been disclosed was truly confidential;
- (b) the information was imparted in circumstances importing an obligation of confidence on the part of the confidEE or recipient and;
- (c) there has been an unauthorised use of the information that has caused detriment to the plaintiff.²