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Developing an Islamic Framework for Medical Confidentiality Practice

Sayyed Mohamed Muhsin*

Abstract: Arguably, ethical guidelines and medical laws on medical confidentiality have fallen short of extrapolating the methodology for dealing with potential ethical complexities in its practice. This drawback has made it difficult for physicians to prevent harm from occurring if it has not yet happened, remove harm if it has already taken place, or minimise harm if it is unavoidable. Therefore, this article attempts to outline certain principles in the form of a framework to govern the management of confidential information in light of Islamic legal maxims. This effort is meant to help health workers to deal with conflicting situations, with reasonable care given to those at risk, while maintaining therapeutic trust and professionalism. The notable significance of this framework is that it is structured after identifying the potential harms in the protection and disclosure of medical confidentiality in selected cases from patient's, doctor's and third party's perspectives and addressing each of them with due importance.

Keywords: *Healthcare, medical confidentiality, Islamic legal maxim, patient, harm.*

INTRODUCTION

Medical confidentiality implies that the physician acknowledges the patient’s need for privacy vis-à-vis the medical care he/she is receiving. This aspect of the doctor-patient relationship is about building trust and protecting the patient’s dignity (Siegler, 1995, p. 150). However, with time, the connotations around medical confidentiality have changed and no longer reflect the absolute secrecy that it referred to in ancient times. Codes of medical practice, such as the International Code of Medical Ethics of the World

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Medical Association (WMA), do not consider confidentiality as being compromised if disclosure of patient privacy is necessitated due to risk of injury to the patient or others likely to be affected (Williams, 2004, p. 495).

A significant factor that can impinge on medical confidentiality is disclosing patient information to individuals or groups, such as the police, social workers or companies dealing with occupational health. Likewise, healthcare professionals may meet complex circumstances whereby the divulgence of patient privacy may pose a threat to one party. In contrast, the concealment of such information may cause harm to another. For example, in several cases, health professionals encounter the problem of having to breach patient privacy of individuals affected by psychiatric diseases, contagious diseases, venereal diseases, criminal or abusive cases and genetic testing.

In light of the ambiguities regarding the potential harms in medical confidentiality practice and the lack of concrete steps in addressing them, this article aims to utilise the Islamic legal maxims for dealing with harms in the maintenance and disclosure of patient privacy. The Islamic legal maxims contain principles and precepts of Islamic law, including higher objectives of the *Sharīʿah* (*maqāṣid al-Sharīʿah*). With continuous synthesis between the text and context, Islamic legal maxims (*al-qawāʿid al-fiqhiyyah*) are operative and vital in the lives of people, as they allow for problems to be readily solved (al-Qarāfī, 1998, v. 2, p. 974). The phrase "harm must be eliminated" is one of five universal legal maxims. In the view of some scholars, it encompasses half of *the fiqh* (Islamic jurisprudence), as all legal rulings it has provided are either for beneficence or non-maleficence (al-Mardāwī, 2000, v. 8, 9. 2846). In the healthcare system, this maxim is central, as demonstrated by its congruity with the idea of Hippocrates, which is, "strive to help, but above all, do not harm". Moreover, the legal maxims on eliminating harm encompass the crux of four foundational principles in modern medical ethics: respect for autonomy, non-maleficence, beneficence, and justice.

Ethical guidelines and medical laws on medical confidentiality have fallen short of extrapolating the methodology for dealing with ethical complexities (Beauchamp and Childress, 2001, p. 304; Ferguson, 2005, p. 2). This vagueness has made it difficult for physicians to help prevent harm from occurring if it has not yet happened, remove harm if it has already taken place, or how to minimise harm if it is unavoidable. Therefore, this article attempts to outline certain principles to govern the management of confidential information. The notable significance of this framework is that it is structured after identifying the potential harms in the protection and disclosure of medical confidentiality in selected cases from patient's, doctor's and third party's perspectives and addressing each of them with due importance. Mainly, this framework is prepared in light of the Islamic legal maxims related to harm elimination. However, the researcher also utilises other maxims, which are not directly related to harm elimination but play a vital role in the more effective implementation of the framework.

Preamble of Framework

Medical confidentiality is regarded as the lifeblood in the doctor-patient relationship, which is integral for public confidence in the medical profession and inevitable for effective healthcare delivery. Various aspects are included in medical confidentiality, namely, physical, which is related to personal space; informational, which is related to personal information; decisional, which is related to choices that may have a relation with religion or culture or the like; and associational which is related to the relationships and information about family members (American Medical Association, 2018, p. 1). Medical confidentiality is not to be breached, except in specific circumstances when it is a necessity, whereby case-by-case considerations are made. Accordingly, doctors are authorised to disclose a patient’s information in the presence of sound justification.

In the *Sharīʿah*, harm elimination is incumbent upon every capable individual. Therefore, harmful infliction is prohibited irrespective of whether it is by initiation or reciprocation, deliberate

or unintentional, or moral or material. In other words, a person is obliged to stay away from all forms of harm infliction and to be dutiful towards harm elimination.

This framework is meant for all staff working in and around healthcare to ensure medical confidentiality is maintained to a professional standard. In this framework, the terms – doctor, physician, practitioner, healthcare professional, health staff and health worker – are used interchangeably for convenience and avoid repetition. However, all terms refer to employees in the healthcare sector who deal with patient privacy. Significantly, this framework is premised on practical steps distilled from applying various legal maxims vis-à-vis harm elimination to the potential scenarios of medical confidentiality practice. As a result, the steps mentioned therein strive to operate as instrumental methods to protect patients, doctors, third parties and the general public from potential harm.

At the beginning of each phase, certain maxims are given, which are entitled "governing maxims"; that means those maxims operate as bases of all steps mentioned in that phase. Additionally, some other maxims, which are entitled "additional supporting maxims to this step", are given at the beginning of some steps; that means that a particular step is based on those maxims also, along with governing maxims. Thus, this framework contains four phases and 37 steps.

Phase One: Effective Maintenance of Confidentiality (Harm Prevention Aspect)

The maxims below guide and regulate the steps, procedures and actions in the first phase of the harm elimination framework. Implementation of this phase facilitates the medical practitioners to fulfil their prima facie duty of medical confidentiality effectively and carefully. As a result, the patients, the doctors and third parties will be protected from potential harms and undesirable consequences of illegal and irresponsible breaching of medical confidentiality.

Governing Maxims[i] in Phase One:

1. "No harm shall be inflicted or reciprocated" (Mālik bin Anas, 1203 AH, v. 2, p. 745).
2. "Harm should be prevented as much as possible" (al-Zarqā, 1998, p. 587).
3. "Repelling evils is preferable over attaining benefits" (al-Suyūṭī, 1983, p. 78).

(Step 1: Proper understanding of laws and principles related to medical confidentiality)

To fulfil constructive judgment and efficient application of confidentiality ethics, doctors should have a proper understanding of the rules and principles of medical confidentiality and a clear picture of the particular context they want to apply them. Doctors have to be aware of the importance of confidentiality in the therapeutic relationship and the exceptional cases where a breach of confidentiality is allowed. Recognising confidentiality as a standard law duty, professional obligation and part of fulfilling an employment contract, doctors must acknowledge the importance of medical confidentiality. In particular, doctors should be familiar with legal mandates of the particular country and professional guidelines of the hospital they work in, along with the ins and outs of the culture of the country (GMC, 2017, P. 17). The hospital management or the primary doctor, or the treating medical team must ensure that all staff, including volunteers and students, are aware of their responsibilities regarding medical confidentiality.

Step 2: Training for efficient confidentiality practice

Additional supporting maxim to this step:"acts of those with authority over people must take into account the interests of people" (Ibn Nujaym, 1405 AH, P. 137).

At the beginning of their career and occasionally during various periods of their profession, doctors must be notified and reminded of the consequences and punishments of illegal disclosure and unapproved access to patient information, such as disciplinary action, suspension or even legal proceedings. Awareness about them

will facilitate the proper use and management of patient information. These acts reflect that the people in authority give weight to people's interests and strive to protect them. Thus, mistakes due to lack of knowledge, negligent approaches and deliberate and unintended infringements can be avoided. Notably, it will encourage practitioners to be meticulous in dealing with patient privacy and stay away from irresponsible, illegal and inappropriate disclosure of patient information and disease details.

Accurate, unambiguous, factual and consistent health records should be maintained. Otherwise, future decisions based on patient’s records could be inaccurate and harmful to the patient.

Step 3: Delicate handling with patient’s unethical activities or bad habits

During consultation and treatment, the doctor may happen to know about unethical activities, bad habits or anything that the patient loathe knowing others, such as sexual promiscuity, alcoholism, illicit drug use, smoking and so on. The doctor must put the seal of confidentiality on all information acquired by him, thus improving patient care; otherwise, this can be viewed as a betrayal of trust, mismanagement of patient information, and clinical malpractice. In addition, the doctor should try to advise the patient or refer them to relevant clinical departments that can support in eliminating bad habits and unwholesome deeds. Suppose the doctor is asked by relatives (or others) about the patient's medical information. In that case, confidentiality must be maintained unless specific situations apply, as disclosing the truth can reveal the patient's defects or other unpleasant things and create more harm to the patient and others without leaving any more significant benefit. However, if the patient is minor, the doctor should be more responsible for informing the guardian about the necessary information to ensure better care is delivered and protect him from potential or impending harm.

Step 4: Strong security for patient data

Personal details, health reports, and patient's medical records should be strictly protected from any unauthorised access and illegitimate

breaches by taking reasonable steps. Robust security for recording patient data – manual and electronic records – should be maintained to avoid the deliberate or accidental unauthorised access of third parties. Doctors should make arrangements to ensure the maximum protection of personal details and disease information. They should keep in mind that they are responsible for any harm caused to patients or others due to improper maintenance of confidential information and unlawful disclosure of patient information and disease details. At times, improper maintenance of confidential information may affect a person's life, dignity or profession. It may also pose a threat to the family of the patient, other third parties or the general public.

Step 5: Adequate facility for protecting the privacy of patient

Hospital management should arrange the rooms for consultation and treatment, maintaining the privacy nature and thwarting the chances of overhearing by people outside the room. A person next to a patient in a queue should not be allowed to enter the room during the consultation. Likewise, doctors should not discuss patient details in public spaces as a precaution from others overhearing confidential conversations. They should not discuss the disease details and patient information to anyone internal or external from the healthcare profession without a necessity, legal requirement or good purpose to do so.

Step 6: Awareness of patients about the use of their information and disease details

Additional Supporting maxim to this step:“The general principles conferring validity of contracts is the consent of both parties, and the effective terms and conditions are what they agreed” (Ibn Taymiyyah, v. 29, p. 155).

The doctor should inform the patient about how his information is being used and shared and when confidentiality can be broken. The doctor should notify the patient of the reasons and purposes for which their information will be divulged. Furthermore, the doctor should inform the patient about the available options regarding the usage of their information, explaining the implications

and consequences of maintenance and disclosure at that particular moment. Finally, the doctor should advise their patients about the circumstances in which the doctor is compelled to breach confidentiality—for example, informing the patient that their information will be divulged to other healthcare professionals to provide quality care. As a result, the doctor can assure the patient's knowledge about medical confidentiality, consent, and agreement for the doctor's valid actions related to maintaining and disclosing patient privacy and disease details.

a) As part of doing this, the doctor should distribute leaflets that explain the rights and responsibilities of the doctor and patient regarding medical confidentiality, along with information about the various ways patient information is used, managed and for what reasons.
b) If the disclosure is for a statutory requirement or court order, the doctor should inform the patient of this unless a specific situation exists. For example, the doctor is legally required to cooperate with the detection, investigation and punishment of serious crimes and take measures to prevent abuse and violence for the public good. In such circumstances, notifying the patient is against the purpose of the disclosure; thus, notification is not required.

Step 7: Disclosure is permitted only in the presence of necessity or legal requirement or valid purpose

Additional Supporting maxims to this step: “Necessities render the prohibited permissible” (Ibn Nujaym, p. 85), “hardship begets facility” (Al-Suyūṭī, p. 76), “committing that which is prohibited is not allowed except in the case of dire necessity” and “necessity never requires obligating that which is inessential or optional”:

Every citizen is afforded the right to privacy. As a result, medical confidentiality is prima facie duty, while the disclosure is to be used only as a final option in the presence of necessity. Therefore, disclosing any patient details to a third party is proscribed, other than for the scientific or professional purpose for which it is legally and

ethically permitted. In addition, the duty of confidence extends even after the death of the patient (Singapore Medical Council, p. 6).

The health professional must verify two aspects before disclosure: (1) the unavailability of effective options other than disclosure to tackle that particular situation and (2) potential harm in the particular situation cannot be avoided, or more significant benefits therein cannot be achieved without breaching confidentiality. In other words, the necessity of disclosure has to be established.

In light of the *ḥadīth*, "(Secrets) of a meeting are *amānah* (trust) except three meetings in which they talk about plans for bloodshed, illicit sexual desire, and illegal usurping of wealth" (AbūDā'ūd 1354 AH, v. 4, p. 268), the scholars explain that the disclosure of confidentiality is legalised for the prevention of serious harm and a major sin.

Step 8: Usual places where disclosure is permitted or required

Additional Supporting maxims to this step: "Legal permission invalidates liability" (*Al-Jawāz al-sharʿīyunāfī al-ḍamān*) (The Mejelle, 1967 p. 91), "need, general or specific, is treated as necessity" (Al-Suyūṭī, 88) and "necessities render the prohibited permissible" (Ibn Nujaym, p. 85).

Nearly all cases wherein the breach of confidence are justified are based on eliminating the risk of serious harm to the patient or others in one way or another. By and large, the necessity of disclosure could be proved in the light of factors below (GMC, p. 13):

a) Court order; disclosure is needed to implement justice, and non-disclosure causes harm to the practitioner and his profession.
b) Statutory or legal requirement; every citizen must adhere to the country's laws, and it is also according to public benefit. Therefore, non-disclosure of medical confidentiality in the presence of statutory or legal requirements causes harm to the citizen and his life.

c) Effective healthcare delivery; at times, disclosing medical confidentiality to other health staff or relatives becomes essential for preserving patient's health and preventing harm.
d) Elimination of patient's self-harm or harm infliction on others.
e) If it is done for any other justified purpose or public interest.

The steps mentioned in the first phase significantly improve the quality of medical confidentiality practice; thus, they are safe from the negative consequences of unauthorised access to patient data. Consequently, patients are protected from the sufferings and losses caused by disclosing their privacy. In addition, the public's confidence and trust in the medical profession are upheld.

Phase Two: Before the Disclosure (Harm Prevention Aspect)

The maxims below govern the steps, actions and procedures that should be taken or performed by doctors before the disclosure. In other words, these steps enable the practitioners to decide on maintenance and disclosure of medical confidentiality. The steps mentioned in this section ensure that the disclosure of medical confidentiality in specific situations is done without causing illegitimate harm to a patient, physician and third party and preventing maximum harms before the occurrence.

Governing Maxims in Phase Two:

1. "No harm shall be inflicted or reciprocated".
2. "Harm should be prevented as much as possible".
3. "Repelling evils is preferable over attaining benefits".

Step 9: Respect for patients' concerns and objections

Additional supporting maxims to this step: "Evolution of the *Sharīʿah* ruling (based on custom and *ijtihād*) due to changing times is not to be denied" (*LāyunkaruTaghayyur al-Aḥkām bi Taghayyur al-Azmān*) and "contentment with lesser harm does not convey contentment with greater harm" (*al-riḍā bi adnā al-ḍararynlāyakūnuriḍan bi aʿlāhumā*) (Al-Kāsānī, v. 6, p. 216).

Each clinical case and healthcare situation presents its features and ethical dilemmas. Therefore, doctors must find suitable and available options that will minimise the disclosure and befit the situation at hand. Doing so will prevent as much harm as possible and maximise the overall benefit to the patient and others. But, of course, the doctor has to take the custom into account before making a decision, and it may vary according to place or person.

A sensitive issue to one person might be an insignificant matter to another. Consequently, doctors should be aware of the variability in patient sensitivity concerning confidential information. Therefore, doctors should attempt to understand their patients' concerns, objections, and interests, which will be beneficial in evading potential consequences of inadvertent disclosures (American Medical Association, p. 1). As a healthcare professional, the onus is on the doctor to honour their patients' decisions and their interests. Thus, doctors should not take anything for granted and be mindful of the concerns of their patients. Suppose the patient gives consent for the disclosure of a matter. In that case, that is limited to that particular matter because contentment with lesser harm of disclosure does not imply the contentment with immense harm, as the above maxim expounds.

Step 10: Maximum exertion for prevention of all potential harms

Healthcare professionals must exert all possible efforts to prevent harm to patients, doctors and third parties. Suppose a healthcare professional believes that the maintenance of confidentiality poses a severe risk of harm to their patient or others. In that case, they are required to reveal the necessary information for the protection of the victim. Conversely, if the disclosure poses particular consequent harm, the healthcare professional should take preventative measures to minimise detrimental effects in unavoidable situations. Furthermore, if the disclosure results in harming a similar or greater degree, then the patient's privacy should not be divulged.

Step 11: Elimination of considerable harm

Additional supporting maxims to this step: "necessity never requires obligating that which is inessential or optional" and "committing that which is prohibited is not allowed except in the case of dire necessity".

The doctor should ascertain that the consequence of his decision averts considerable harm. In order for a consequence to be regarded as considerable harm, it must meet the following criteria (Muhsin, 2019, p. 249-250):

a) Harm is actual, or there is a strong likelihood of harm infliction.
b) Harm is critical, with its seriousness dependent on custom, effect on the public, frequency of occurrence, and property damage.
c) Harm is inflicted unlawfully as a result of infringement, arbitrariness or negligence.
d) Harm is inflicted on a valued possession owned by a legitimate owner.

The abovementioned four conditions are derived by inductive analysis of various *fiqh* books. These conditions are helpful for practitioners to determine the existing situation as well as a consequence of the decision is considerable harm or not, and consequently, he can decide how to eliminate harm if there is any. Regrettably, these conditions are not usually found in professional guidelines for practitioners, while they are vitally important.

Step 12: Safety of patient, doctor, third party and public

Additional supporting maxims to this step: "the necessity does not invalidate the rights of others" (Al-Zarqā, 602) and "removal of personal injury is not permitted at the expense of inflicting harm on others" (*Laysa li Aḥadin an yadfaʿa al-ḍararʿannafsihi bi iḍrār bi ghayrihi*) (Al-Sarakhasī, 1986, v. 14, p. 90).

The possibilities of harm infliction have to be assessed from four perspectives: (1) the patients, (2) the health professionals, (3) third parties and (4) the general public. Subsequently, doctors must

consider their safety by taking precautions against potential grievances held by patients or third parties. Of equal importance is the doctors' responsibility to ensure the safety of their patients, third parties and the general public. Doctors are also required to be aware of the consequences to the overall health and continuation of patient treatment that may arise from disclosure. Harm could be inflicted mainly through five significant ways: physical, psychological, financial, familial and issues related to dignity. Each measure should be addressed in the decision and process of harm elimination.

Table. 1

Potential victims and types of harms

Potential victim	Types of harm
1. Patient 2. Doctor 3. Third-party 4. Public	Physical Psychological Financial Familial Related to dignity

Generally, professional guidelines and ethical codes do not discuss the prevention of harm, categorising the victims and types of harm. Instead, the types of harm and potential victims of harm infliction are developed in light of Islamic jurisprudence (Muhsin, 2019, p. 149-163).

Phase Three: During the Disclosure (Harm Prevention and Elimination Aspects

Since confidentiality is a foundational tenet in medical practice and considering its near-absolute nature, disclosure can only be considered as a final resort, which is to be used only after trying other alternatives. The maxims below are used as the bases of steps, actions and procedures which should be taken when a doctor decides to disclose the medical confidentiality due to necessity or with a sound

justification. Here, the concern is that is having a sound justification or necessity does not waive the patient's right to medical confidentiality; rather doctor is granted special permission to reveal particular information of the patient to particular people for a particular time and only for the achievement of a particular purpose. The steps below ensure the protection of the patient, doctor and third party from unjustified harm, which may occur due to disclosure. This is achieved by preventing potential harm or eliminating actual harm, or effectively minimising unavoidable harm.

Governing Maxims in Phase Three:

1. “No harm shall be inflicted or reciprocated”.
2. “Harm should be prevented as much as possible”.
3. “Repelling evils is preferable over attaining benefits”.
4. “Harm must be eliminated” (Al-Suyūṭī, p. 83).
5. “Harm is not repelled by its alike” (Lajnah minFuqahā’ al-Dawlah al-Uthmāniyyah, 1303 AH, Māddah 25).
6. “Harm is not repelled with harm” (Al-Suyūṭī, p. 86).
7. “Hardship begets facility” ((Al-Suyūṭī, p. 76).
8. “Need, general or specific, is treated as necessity” (Al-Suyūṭī, p. 88).
9. “Necessities are estimated according to their quantity” (*Al-ḌarūratTuqaddar bi qadrihā*) (Al-Zarqā, p. 601).
10. “Necessity is to be assessed and treated proportionally” (Al-Suyūṭī, p. 84).
11. “Necessity does not invalidate the rights of others” (Al-Zarqā, p. 602).

Step 13: Harm elimination without causing similar or greater harm

Disclosure of confidential information should not merely be procedural work; instead, doctors have to ensure that their decisions and actions are worthwhile to the patient in removing harm – whether it is complete removal or reducing its impact. Doctors must also ensure that their decisions do not result in the removal of lesser harm

to a harm that is similar or greater in extent. They are responsible for estimating and identifying potential harm in disclosing patient information and disease details, which may affect the patient, doctor and others. However, prevention of occurrence is paramount. If this is not possible, then eliminating or reducing any occurring harm must be exercised.

Step 14: Accepted and Unexpected ways of harm elimination

Harm could be removed in four ways, and two of them are allowed, and the rest is prohibited. The details are as follows:

Table. 2

Four possible ways of harm elimination and rulings upon them

	Consequences	Ruling
Removal of Harm	Without leaving any other harm	Accepted and appreciated
	By leaving lesser harm	Accepted and appreciated
	By leaving similar harm	Not accepted and prohibited
	By leaving severe harm	Not accepted and prohibited

This is because removal of harm with harm is not considered as removal of harm, rather infliction of new harm which is impermissible.[ii]

Step 15: Removal of individually identifying information

If it is within reason to believe that anonymised data serve a legitimate interest of disclosure, then the individually identifying information should be removed (Medical and Dental Council of Nigeria, p. 53). A patient's identifiable information includes their first name, surname, date of birth, photo, audio, video, the disease suffered (in rare cases) and a particular code that is given to a citizen of a country. By removing such information, doctors are successfully anonymising the information and thus preventing the patient from being inflicted of harms of revealing his identity.

Step 16: Self-disclosure

Self-disclosure plays a vital role in the elimination of potential harm. Self-disclosure is when a patient willingly discloses their confidential information to the party at risk of harm. In order to make the procedure of disclosure less complicated, healthcare professionals should advise patients on the benefits of self-disclosure. For example, doctors should advise their patients to inform their sexual partners about a seropositive status. To encourage this, it is vital that doctors make their patients aware of the importance of disclosure to prevent more significant harm. Additionally, patients should be made aware of the consequent harm that can result from failure of disclosure and education in practical steps that can be beneficial in the prevention of harm to themselves and others. However, in this step, doctors should ascertain that the patient has informed the potential victim about their disease and health status because, at times, the patient says that he will inform, but he does not.

Step 17: Seeking patient's consent before disclosure

Additional supporting maxim to this step: "It is impermissible to dispose of another's property without authorisation" (*Lāyajūz al-Taṣarruffī Milk al-Ghayr bilāIdhn*) (Ibn al-Qayyim, 1973, v. 3, p. 376), "no weight is given to the harm if it is inflicted with contentment" (*Lāʿibrata li al-ḍararmaʿa al-riḍā*) (al-Mūṣalī, p. 1936, v. 2, p. 105) and "a person is responsible for his avowal" (*Al-Mar' mu'ākhadh bi iqrārihi*) (Ibn Ḥajar, v. 8, p. 476).

Doctors should endeavour to enlist the consent of their patients for disclosure if feasible. By having the consent of the patients, the disclosure of their information becomes legal, and the prevention of harm is achieved. However, seeking consent is not required in certain circumstances, such as: (1) for direct care, (2) if the patient lacks capacity in decision-making, (3) the doctor assumes that seeking consent may pose harm to someone, (4) the consent-seeking undermines the purpose of disclosure, (5) the consent-seeking is impossible due to antiquity, (6) it is needed for local clinical

auditing, (7) it is required by law and (8) it is for meeting public interests.[iii]

Step 18: Abiding by legal mandates, ethical codes and professional guidelines

Doctors should abide by the legal mandates, ethical codes and professional guidelines concerning maintenance and disclosure of medical confidentiality. Likewise, they have to comply with the legal procedures and formalities of the country that are required during the disclosure. There may be variability in the procedures from country to country. Suppose a doctor fails to notify or report certain matters, such as infectious disease or gunshots. In that case, it may affect their profession, on account of medical negligence and so on. So, abiding by legal mandates and ethical code is about saving doctors from the trouble of legal violation and breaches of ethical guidelines.

Step 19: Seeking legal or specialist advice

If doctors find it challenging to make a finely balanced decision, they must seek legal or specialist advice. This is so that they can stay away from all elements that may lead to improper, illegitimate and illegal disclosures. It is to prevent any unintended harm to the patient or others and protect healthcare professionals from lawsuits of malpractice and negligence. In addition, the Quranic instruction is to clear the doubts with the experts and scholars, as shown in the verses below: "If you realise this not, ask of those who possess the Message" (*Al-Anbiyā'*: 7) "ask the one who knows" (*Al-Furqān*: 59).

Step 20: Restriction of disclosure to 'strictly need to know' and 'right to know' bases

The disclosure should be confined to a strictly 'need to know' and 'right to know' bases with the following considerations:

a) Minimum necessary information should be disclosed for fulfilling the legal and valid necessity for breaching confidentiality, but without causing harm to the patient due to missing information.

b) Doctors, who are convinced of the inevitability of disclosing the patient's private data to their colleagues, must solely confine it to the direct care team and on a 'need to know' basis.
c) Only necessary people outside healthcare should be allowed to access patient details on a strict 'need to know' and 'right to know' basis. Disclosure should be confined to close, mature relatives and guardians to facilitate their care and treatment. Doctors should apply the concept of "shared confidentiality", which means restricting sensitive information to selected people if the disclosure is necessary.
d) It should be ensured that information is carefully and selectively disclosed with the right people and not with any unauthorised personnel. This is vital for preventing harm by impersonation, especially when answering enquiries by phone call or email.
e) Be considerate, sensitive and responsive in sharing patient information with those who are close to the patient. The patient's dignity and privacy should be maintained in the possible way.
f) Beyond any shadow of a doubt, sharing patient information or disease details in media and social media is prohibited.

Step 21:Various ways of disclosure and their legal rulings

Considering to whom the information is disclosed, the disclosure could be in one of eight ways which are expressed in Table 5. 3, with the rulings upon them.

Table. 3

Various ways of disclosure and their legal rulings

No	To whom is disclosed	Ruling
1	Third-party who is at risk of serious harm from patient	Obligatory and the disclosure has to be according to the legal mandates and ethical codes
2	Concerned legal authorities or related government	Obligatory and the disclosure has to be according to the legal

	agencies	mandates and ethical codes
3	Close relative/guardian of patient	Allowed if it is needed for total net benefit of patient
4	Healthcare professional who is involved in the care of patient	Obligatory and should be confined to who is necessary
5	Healthcare professional who is not involved in the care of patient	Prohibited and will be charged with illegal breach of medical confidentiality
6	Random third party	Prohibited and will be charged with illegal breach of medical confidentiality
7	Public	Prohibited and will be charged with illegal breach of medical confidentiality
8	Social media	Prohibited and will be charged with illegal breach of medical confidentiality

Step 22: Prevention of the infection from spreading to others

In the cases of infectious diseases, if the parties at risk of harm are not identifiable or are unknown, the doctor should advise the patient on how to prevent the infection from spreading to others. However, in this case of epidemic/pandemic, which requires mass surveillance and route-mapping, some significant exceptions are practised because privacy protection needs to be compromised for that of life or quality of life. However, the government should control the use of private data and prevent its abuse efficiently.

Step 23: Incompetent patient for disclosure

If the person at risk is unable or incapable of understanding the seriousness of the issue, as in a child or incompetent adult, the doctor has to notify the situation to concerned authorities or guardians for their protection. Suppose an under-aged patient refuses to inform parent or guardian about the disease. In that case, the doctor should

take a judicious balance between medical confidentiality and notification of necessary information to the relevant party. Likewise, suppose the practitioner thinks that his patient is a victim of neglect or abuse and that the patient cannot grant consent for disclosure. In that case, he should inform the statutory agency or any other relevant party who can assure the protection of the patient.

Step 24: Disclosure toparticular agencies

If the disease or the patient's diagnosis needs to be notified to particular agencies, the doctor is required to report the case. For example, in a child abuse case, child welfare centres must be informed, or in the case of a patient who is unfit for driving, transport authorities must be informed. Next, the disclosure of information has to remain confined to what is demanded or necessary. In addition, the doctor should understand the usual and frequent situations and symptoms, which are required to be disclosed according to the requirement of the particular country in which they work.

Step 25:Disclosure without the patients' consent or contrary to their interests

Additional supporting maxim: "The burden of proof is on him who alleges, and the oath is on him who denies".

If the disclosure is without the patients' consent or contrary to their interests, the disclosure should be made after the appropriate deliberation and consultation with colleagues, with the relevant evidence to present before the court if it is legally demanded.

Step 26: No compromise inthe quality of care for the patient

The primary objective of the patient is to be cured of the disease and receive treatment. Therefore, the doctor has to ensure that the disclosure and related procedures should not fall and compromise the quality of care, overall health and continuation of treatment.

Step 27: Punishment against illegal breach

Additional supporting maxims to this step: "governance should be of the public interest" (al-Suyūṭī, 121) and "it is left to the judge to

decide an appropriate discretionary punishment considering the proportionate (nature) of the offence" (AbūYūsuf, 1397, p. 180).

The illegal breach of confidentiality and unauthorised access to the patient's data could be controlled by applying the appropriate level of punishment against perpetrators. Though doctors cannot be directly involved in the implementation of law, they can play a pivotal role in its enforcement indirectly. Many forms of punishments vary according to the country and institution. Therefore, doctors must be aware of the particular forms of punishment enforceable in each context. Some forms of punishments are as follows: (1) verbal punishment by admonition and castigation, (2) custody and imprisonment, (3) lashing, (4) financial penalty, (5) termination or dismissal from the job and so on (al-Khaḍīrī, 2012, 141-171).

Step 28: Removal of unwarranted fear and prejudice

With the help of psychiatrists, health workers should help patients overcome the phase of shame and any inclinations towards not receiving treatment and counselling. Likewise, the doctors should help patients tackle family break-up and domestic tensions that ariseas consequent harm of disclosure of some diseases and their symptoms. Hence, the doctor should ease the situation with the patient's partner and other relatives who are in 'need to know' or 'right to know' list at that situation. Subsequently, the doctor should give a proper explanation to them, which will be beneficial for removing unwarranted fear and prejudice. The doctor may convince them to give maximum support to the patient by explaining the positive effectsupport can have. Arguably, because of the nature of the doctors' position and the fact that they are knowledgeable about the disease and treatment, a health worker's explanation will be crucial in preventing or eliminating domestic tensions and any fallouts in a relationship.

Step 29: Notification of patient about illegal or improper disclosure

If the doctor discloses confidential medical information illegally or improperly, whether by mistake or deliberately, a doctor should

promptly inform the patient about the breach and potential harm. In doing so, the doctor and patient will have ample time to minimise any potential harm. The doctor will also be required to help the patient by explaining the disclosed information and available methods to overcome the issue or minimise the harm.

Phase Four: Choosing Lesser Harm in Unavoidable Situation (Harm Minimisation Aspect)

The maxims below govern the steps, positions, actions and procedures which should be taken well by the practitioners when they have to choose one from two or more mutually exclusive harms.

Governing Maxims in Phase Four:

1. “The greater harm should be prevented by forbearing the lesser harm” (Ibn Nujaym, 88).
2. “The lesser harm should be preferred” (Majallah, 29).
3. “If two harms clash, the greater one should be prevented by committing the lesser one” (Wānsharīsi, 1400, p. 370).
4. “Personal injury should be tolerated to prevent general injury”.

Step 30: Disclosure as overriding public interest

Though the legal and necessary disclosure will cause the deterioration of trust in the therapeutic relationship, the public interest in medical confidentiality is outweighed by the public interest in disclosure for the safety of innocent third parties, public health and so on. In other words, harms in the breach of medical confidentiality for a valid reason are deemed lesser harm than that in the protection of patient privacy; that is the reason which permits the disclosure of patient privacy in specific situations. In many cases, the disclosure generates harm to the patient. However, this harm is tolerated when compared to the greater harm in concealing the information.

Step 31: Removal of harm related to *ḍarūriyyāt*, *ḥāajiyyāt* and *taḥsīniyyāt* categories in the *maqāṣid*

According to this maxim, harm to embellishments (*taḥsīniyyāt* category in the *maqāṣid*) is tolerated in order to prevent harm to needs (*ḥāajiyyāt*category) and to essentials (*ḍarūriyyāt*category). Similarly, harm to the *ḥāajiyyāt*is tolerated in order to prevent harm to the *ḍarūriyyāt*(al-Sawsawah, 2004, p. 26).

Step 32: Conflict of Islamic legal rules

In a situation where, legal rules related to obligatory (*wājib*), recommended (*mustaḥabb*) and permitted (*mubāḥ*) are in conflict, then in terms of commission, those related to the obligatory should be preferred to the rest, and the recommended should be preferred to the permitted. In a situation where legal rules relate to the prohibited (*ḥarām*), discouraged (*karāhat*) and permitted (*mubāḥ*) are in conflict, then in terms of omission, those related to the prohibited should be preferred to the rest and those that are discouraged should be preferred over the permitted.

Step 33: Minimisation of the psychological harm

After the disclosure, if the doctor sees fit that the patient and disclosed party should undertake counselling, then they should be referred to one in order to minimise the psychological harm faced as a result of disclosure (Baḥr, 1983, p. 35-37). In doing so, this may alleviate any immediate fears and unscientific prejudices and help all cope with the situation. Likewise, informing the patient about available treatments will also be of benefit.

(Step 34: Certain harm against doubtful harm):

Additional supporting maxim to this step: "Certainty is not overruled by doubt" (Al-Suyūṭī, 55).

When two harms are compared, give preference to the actual and specific harm over the assumed or doubtful ones (Shubayr, 2007, p. 171).

Step 35: Conflict between the achievement of benefit and warding off of harm

Additional supporting maxim to this step: “The avoidance of harm takes precedence over the attainment of benefit” (Al-Suyūṭī, p. 78).

Deciding on greater benefit and greaterharm is a challenging task in the process of harm minimisation. When mixing the benefit with the harm, three situations are expected, and the decision should be in line with the format below (Al-Sawsawah, p. 105-137);

(a) If harm is preponderant than benefit, then repelling harm is preferable to securing benefit (ʿIzz bin ʿAbd al-Salām, v. 1, p. 5, 7, 17).

(b) If benefit is greater than harm, then achievement of benefit is preferred to warding off of harm (Al-Ṭūfī, 1410 AH, v. 3, p. 214).

(c) If benefit and harm are equal, then harm elimination should be given preference (Al-Suyūṭī, 78).

Step 36: Preference in achieving/eliminating one among two or more mutually exclusive benefits/harms

In a situation where the decision on confidentiality practice involves choosing one of the mutually exclusive benefits or elimination of one of the mutually exclusive harms, the preference is set as follows:

Table. 4

Hierarchy of preference in eliminating one among two or more mutually exclusive harms

Hierarchical Order	Preference in achieving one among two or more mutually exclusive benefits	Hierarchy of preference in eliminating one among two or more mutually exclusive harms
1	Matters for the preservation of life	Matters against the preservation of life
2	Matters for the preservation of intellect	Matters against the preservation of intellect
3	Matters for the preservation of family	Matters against the preservation of family

4	Matters for the preservation of wealth	Matters against the preservation of wealth

Step 37: Compensation for personal harm occurred in eliminating public harm

Additional supporting maxim to this step: "The necessity does not invalidate the rights of others".

When harm is imposed on a private stakeholder to prevent harm to the public, it should be noted that if the harm is of a permanent nature and is not transient, it should be compensated appropriately (Al-Shāṭibī, v. 2, p. 349).

CONCLUSION

In respecting the patient's privacy and building trust within the therapeutic relationship, medical confidentiality is an inevitable principle in healthcare, widely accepted as a doctor's duty and a patient's right. However, this principle is impinged on by other similar or overriding principles, when at times, the legal disclosure of patient information is allowed or required.

After mining the principles relevant to harm elimination in light of Islamic legal maxims and relevant medical applications, a coherent, consistent, effective, authentic and operational framework to deal with the consequent harm in maintaining and disclosing patient information, is presented in this article. By conforming to the framework, doctors will arguably be able to make a sound, fairly harm-free and professional judgment inmedical confidentiality issues. In the generic guidance given in framework, prevention of harm is preferred to the elimination after occurrence and minimisation.

Haslina, various countries can benefit from this framework by applying this framework to their context and systems. Similarly, concerned authorities may use this framework to modify and improve their existing practices. This framework is significant because it is designed after exploring various potential harms from the perspectives of patient, doctor and third parties. In addition, the steps

mentioned in the framework address the potential harms in medical confidentiality practice, thus eliminating and effectively minimising the harms. This framework gives instructions in four phases which are:- 1) effective maintenance of medical confidentiality, 2) steps that need to be taken before disclosure, 3) steps that need to be taken during disclosure, and 4) steps for choosing lesser harm in unavoidable situations.

[1] In this study, "governing maxim" refers to the Islamic legal maxim that guides and influences how the idea, position and step explained below is derived, distilled and designed.

[2] *Injuria non excusat injuriam* is a Latin phrasethat means that one wrong does not justify another.

[3] Both civil and criminal courts have the authority to seek disclosure from a healthcare professional. It will either be a judge or presiding officer in court. Healthcare workers are allowed to disclose patient information upon both a statutory and court order. The healthcare professional must only disclose information that is requested. If the law permits the disclosure but does not require it, health professionals can breach this request if they are satisfied that there is a legal basis to their decision.

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