CPD article

Disclosing information **WITHOUT CONSENT**

The Protection of Personal Information Act (POPIA) is aligned with existing legislation restricting the circumstances under which private patient information can be shared, but imposes additional duties in handling that information.

The recent passing of POPIA into law has highlighted issues relating to the confidentiality of clinical information held by medical practitioners, the circumstances under which the information can be disclosed and to whom.

A question that often arises, is the extent to which medical practitioners can share patient information with medical schemes without the patient's consent.

Access to clinical information

The healthcare sector handles some of the most private and sensitive information about the physical and mental health of patients. Medical practitioners have a legal, professional and, in most instances, a contractual duty to maintain the confidentiality of patient health information and not to disclose it, except in limited circumstances.

As a general principle, patient information must not be given to others unless the patient has consented to the disclosure and the healthcare practitioner can justify the disclosure.

Medical schemes are, in terms of the contracts entered into with (1) main members of a scheme; and (2) with participating healthcare providers or managed healthcare organisations, contractually authorised to access clinical information about a scheme beneficiary. The consent is usually given at contract-entering stage and is not required every time that a beneficiary receives healthcare services.

Additionally, the regulations to the Medical Scheme Act, 1998 entitle medical schemes to access any treatment records held by participating healthcare providers or managed healthcare organisations and other information relevant to the diagnosis, treatment and health status of a beneficiary, to enable payment for the medical services provided.

Medical practitioners and their staff, such as case managers and practice or hospital billing staff, do not require the patient's consent to collect and process health information, either during case management or when submitting billing to the medical scheme.

Disclosure under limited circumstances

In terms of the National Health Act, 2003, and the Health Professions Act, 1974 (and the Guidelines for Good Practice issued under that Act) there are limited circumstances under which patient information can be disclosed without a patient's consent. This is generally where the disclosure is required by law, for example, for discovery purposes in pending litigation, or in terms of the Promotion of Access to Information Act, or where non-disclosure would pose a serious threat to public health.

POPIA continues this requirement but also allows the clinical information to be disclosed to third parties, such as medical schemes, without the patient's consent, or to anyone within the practice or institution's administration, if the disclosure is necessary to perform a contract to which the patient is a party or for practice administration purposes. Healthcare providers are therefore authorised, in terms of the patient-doctor contract or hospital admission contract and in terms of the law, to access, examine and disclose a patient's personal information. Not only is this a fulfilment of the contract to which the patient is generally a party, but it also furthers the legitimate interests of both the patient and the medical health providers.

Necessary security safeguards

The entitlement of healthcare providers to disclose patient health information to others, including medical schemes, is subject to the prescribed requirements for the disclosure of confidential information. Healthcare practitioners will need to be mindful with whom they share the information provided in the healthcare context and ensure that any third party with whom patient information is shared, including medical schemes, has the necessary security safeguards to protect and prevent loss or damage to or unauthorised access to the patient's health information.

For this reason, clinician documents and hospital admission forms must be carefully worded to delineate the various users of information and obtain written consent from their patients to disclose the information. The safest practice, however, is to ensure that the information is only shared with people who need to know.

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