

# Professional Confidentiality in Medicine and Dentistry

## Forensic Medicine Exam Notes

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### 1. Introduction: The Foundation of Healthcare Trust

**Professional confidentiality** → one of the **fundamental pillars** of medical and dental practice

- The therapeutic relationship is built on **trust** → patients disclose intimate and highly sensitive information with the expectation that practitioners will safeguard it
  - Confidentiality is **NOT JUST** an ethical requirement → it is a **legal AND moral obligation**
  - Essential for:
    - Ensuring **patient dignity**
    - Maintaining the **proper functioning** of the healthcare system
    - Enabling patients to seek treatment without fear
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### 2. Historical Background: Evolution of the Concept

#### Ancient Origins

- **Hippocratic Oath** (ancient Greece) → physicians pledged **NOT to divulge** information acquired during professional activity
  - Quote: "Whatsoever things I see or hear...which ought not to be blabbed abroad, I will keep silence on them, counting such things to be as religious secrets"

#### Medieval Period

- Confidentiality became a **key component of medical ethics**
- Later incorporated into **modern legal codes**

#### Italian Legal Context

- **Zanardelli Code** → introduced criminal sanctions for breaches
  - **Rocco Code** → reinforced the importance with legal penalties
  - **Modern framework** → regulated by both **criminal law AND deontological codes**
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### 3. Definition: Understanding Professional Confidentiality

**Professional confidentiality** = the **obligation of healthcare professionals NOT to disclose** information obtained by reason of or during the exercise of their profession

#### What Information is Protected?

- All data **capable of identifying the patient**
- Details about **health status**
- Information about **personal history**
- Details about **lifestyle**

#### Who Must Maintain Confidentiality?

- **Physicians AND Dentists** (primary obligation)
- **Allied health personnel**: dental assistants, dental hygienists, nursing staff
- Anyone with access to patient information through professional capacity

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### 4. Legal Framework: Article 622 of the Italian Criminal Code

#### The Core Law

**Article 622 of the Italian Criminal Code** → punishes anyone who:

- Obtained confidential information **by reason of their status, office, profession, or work**
- **Discloses it WITHOUT just cause** OR uses it for **personal gain**

#### Key Characteristics

- **Prosecutable upon complaint** by the injured party
- Protects **NOT ONLY clinical data** but ANY confidential information acquired through professional activity
- Creates **criminal liability** for unauthorized disclosure

#### Penalties

- Criminal sanctions imposed for violations
- Severity depends on damage caused and circumstances

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### 5. Civil Law and Data Protection Regulations

#### Italian Civil Code Approach

- Does NOT directly regulate professional secrecy
- BUT implicitly requires protection through **principles of fairness and good faith** (Articles 1175 and 1375) in contractual relationships

## Patient Compensation Rights

- Patient may **claim compensation** if breach of confidentiality results in harm
- Damages based on demonstrated injury

## Privacy Code (Legislative Decree 196/2003 and amendments)

**Strict obligations** regarding:

- Processing of personal data
- Processing of health data (more protected category)
- Storage and protection measures
- Data subject rights (access, correction, deletion)

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## 6. Medical and Dental Deontological Codes

### The Deontological Obligation

The **Deontological Code** firmly reiterates the **duty of confidentiality** for both physicians and dentists

### Three Core Principles

#### ① Confidentiality After Death

- **Obligation does NOT end** when patient dies
- Information remains protected → protects family privacy and deceased's dignity
- Even post-mortem records are confidential

#### ② Limited Sharing (Need-to-Know Basis)

- Information may be shared **ONLY with healthcare professionals directly involved** in patient treatment
- **ONLY when necessary** for diagnosis, treatment, or continuity of care
- Sharing without clinical necessity = breach

#### ③ Informed Consent and Transparency

- Practitioner **MUST inform patient** about how data will be used
- **Must obtain consent** when required
- Patients have right to know who accesses their information and why

### Consequences of Violations

- **Disciplinary sanctions** imposed by professional regulatory bodies
  - Can include warnings, fines, suspension, or license revocation
  - Separate from criminal penalties
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## 7. Permissive Grounds for Breaching Confidentiality (Allowed Exceptions)

There are **specific circumstances** where law **allows** disclosure without patient consent:

### ① Patient Consent

- Patient may **authorize** practitioner to share information
- Can consent to disclosure with:
  - Family members
  - Primary care physician
  - Other designated individuals
- **Consent must be informed** → patient understands what and with whom information is shared
- Consent can be **withdrawn** at any time

### ② Therapeutic Necessity

- Information may be shared **within the healthcare team** when necessary for:
  - **Diagnosis** (consulting specialists)
  - **Treatment** (coordinated care)
  - **Continuity of care** (referrals, transitions between providers)
- Limited to **only what is necessary** for clinical purposes
- Sharing beyond clinical need = breach

### ③ Protection of Third Parties

- In **exceptional circumstances**, when **non-disclosure poses serious and imminent risk** to identifiable individuals
- Example: communicable disease that threatens others
- **Balancing test** → weighing patient privacy against public safety
- Must be **genuine threat**, not speculative risk
- Disclosure should be **minimal** → only what needed to protect

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## 8. Mandatory Grounds for Breaching Confidentiality (Legally Required Exceptions)

**These situations REQUIRE disclosure by law** → no choice for practitioner

### ① Mandatory Reporting (Article 365 of Italian Criminal Code)

- Healthcare professionals **MUST report** specific offences
- Only applies to offences **prosecutable ex officio** (by state, not just complaint)
- Applies to:
  - **Child abuse** (physical, sexual, psychological, neglect)
  - **Elder abuse**
  - **Domestic violence** (certain forms)
  - Other serious crimes against persons
- Failure to report = **criminal offense** for the professional

## ② Mandatory Notification to Judicial Authorities

- **Certain serious or violent crimes** must be reported
- Examples:
  - **Murder or attempted murder**
  - **Assault causing serious injury**
  - **Sexual violence**
- Practitioner has **legal duty** to inform authorities
- Non-reporting = complicity or obstruction of justice

## ③ Public Health Notifications

- **Specific infectious diseases** must be reported to public health authorities
- Purpose → **epidemiological surveillance and disease control**
- Examples:
  - COVID-19, tuberculosis, measles
  - Sexually transmitted infections (in some jurisdictions)
- Protects **public health** and enables outbreak response
- Reports made to health department, not identified by patient name always

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## 9. Practical Case Analysis: HIV-Positive Patient

### The Scenario

- Patient with **HIV refuses to inform their partner**
- Partner is **unaware** of the patient's status
- Physician knows partner is at risk

### Legal and Ethical Conflict

- **Patient confidentiality vs. protection of third party**
- These are in **direct tension**

### The Rule

- Physician **CANNOT disclose** this information without consent
- **UNLESS** there is:
  - **Concrete AND serious risk** to the partner
  - Evidence of **imminent danger**
  - After **all efforts made** to encourage voluntary disclosure by patient

### Balancing Test

- **Protecting third parties must be balanced** with respecting patient privacy
- Simple non-compliance with safe sex practices ≠ automatic right to disclose
- **Professional judgment required** considering all circumstances

## Practical Steps for Clinician

1. Counsel patient about transmission risk
2. Strongly encourage disclosure to partner
3. Discuss safe sex practices
4. Offer assistance in disclosure process
5. Only disclose IF imminent specific threat established

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## 10. Practical Case Analysis: Minor Suspected of Abuse

### The Scenario

- **Dentist observes oral lesions** in a minor patient
- Lesions are **compatible with abuse** (fractures, contusions, bite marks)
- Patient may deny or minimize injury

### Legal Rule: Mandatory Reporting Overrides Confidentiality

- **Mandatory reporting overrides professional confidentiality**
  - Child protection takes **absolute priority**
  - Practitioner **must notify authorities** because offence is prosecutable **ex officio**

### Why This Exception Exists

- Children **cannot protect themselves**
- Early intervention can **prevent serious harm**
- Public interest in child protection is **paramount**

### Practitioner Obligations

- **Document observations carefully** with descriptions and diagrams
- **Report to child protective services** or law enforcement
- **Do NOT conduct interrogation** of child (leave to authorities)
- **Maintain records** in secure manner
- **Can be called as witness** in proceedings

### Legal Protection for Reporters

- Reporters made **in good faith** are **protected** from civil and criminal liability
- Even if suspicions later prove unfounded, good faith reporter is protected

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## 11. Practical Case Analysis: Infectious Disease in Dental Practice

### The Scenario

- Patient presents with **airborne infectious disease** (e.g., tuberculosis, COVID-19)
- Disease **not initially disclosed** by patient
- Practitioner and staff exposed to infection risk

## The Rule: Clinical Necessity Justifies Disclosure

- Practitioner **may share** this information with dental team
- **Does NOT constitute breach** of confidentiality
  - Disclosure is strictly limited to **safety and clinical necessity**

### What Information Can Be Shared?

- **Diagnosis only** (or suspected diagnosis)
- **Infection control measures needed**
- **Personal protective equipment** required
- **Exposure time** and patient contact details
- **No unnecessary details** beyond infection control

### To Whom Can Information Be Shared?

- **Dental team members** directly involved in care
- **Infection control officer**
- **Other patients** at risk (warning of exposure)
- **Health department** if required by public health law

### Purpose Limitation

- Information **CANNOT be used** for non-clinical purposes
- Cannot share with employer without consent (unless required by health authorities)
- Cannot post on social media or discuss publicly

### Documentation

- Record **reason for disclosure**
- Document **who was informed** and when
- Keep evidence of **clinical necessity**
  - Protects both practitioner and patient if questioned later

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## 12. Complex Balancing: When Duties Conflict

### The Core Tension

Healthcare professionals often face **competing duties**:

- **Duty to confidentiality** → patient autonomy and privacy
- **Duty to protect public** → prevent harm to others
- **Duty to report** → mandatory reporting obligations

### Decision-Making Framework

#### Step 1: Identify the Type of Situation

- Is this **permissive** (allowed but not required)?
- Or **mandatory** (legally required)?

#### Step 2: For Permissive Situations

- **Attempt voluntary disclosure** by patient
- **Counsel the patient** on risks
- **Consider all alternatives** before disclosure
- **Disclose minimally** → only essential information

#### Step 3: For Mandatory Situations

- **Must report** regardless of patient objection
- **Follow legal procedures** exactly
- **Document your actions** thoroughly

#### Step 4: Document Carefully

- Record your reasoning
- Note what information was disclosed and why
- Identify who received it
- Keep confidential documentation of the process

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## 13. Modern Challenges: Digital Era and Data Protection

### New Vulnerabilities

- **Electronic health records** → increased accessibility
- **Cloud storage** → data location issues
- **Email and messaging** → unencrypted communications
- **Social media** → accidental disclosure risk
- **Data breaches** → cybersecurity threats

### Enhanced Protections Required

- **Encryption** of electronic data
- **Access controls** → only authorized users
- **Audit trails** → log who accessed data
- **Secure communications** for sensitive information
- **Regular training** for all staff on data protection
- **Data minimization** → collect only what is needed

### GDPR and Equivalent Privacy Laws

- Patients have **explicit rights**:
  - **Right to access** their data
  - **Right to correction** of inaccuracies
  - **Right to deletion** (right to be forgotten)
  - **Right to restrict processing**
  - **Right to data portability**

## 14. Summary: Key Principles to Remember

### The Absolute Rules

1. **Default position:** Maintain confidentiality **always**
2. **Permissive exceptions:** Only when specific conditions met
3. **Mandatory exceptions:** Must report regardless of preference
4. **Limited disclosure:** Share only what is necessary, to only who needs to know
5. **Informed consent:** Obtain when possible and required

### Professional Responsibilities

- **Know the law** → understand Article 622 and reporting obligations
- **Know your code** → study deontological codes thoroughly
- **Document everything** → create record of confidential decisions
- **Seek guidance** → consult colleagues, ethics committees if uncertain
- **Protect data** → implement technical and physical safeguards
- **Train staff** → ensure all team members understand obligations

### For Your Exam

- **Understand the balance** between patient autonomy and public protection
- **Know exceptions by category:** permissive vs. mandatory
- **Be able to apply** principles to case scenarios
- **Understand Italian law specifics:** Article 622, Article 365, Privacy Code
- **Know deontological requirements:** what codes demand
- **Recognize ethical tensions** and how to resolve them

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## 15. Conclusions: The Cornerstone of Healthcare Ethics and Law

### Why Confidentiality Matters

**Professional confidentiality** remains a **cornerstone of medical and dental practice** because:

- **Underpins the therapeutic alliance** → patients must trust to disclose fully
- **Ensures patient dignity** → protects against embarrassment and discrimination
- **Enables public health** → people seek care without fear
- **Maintains social trust** → confidence in healthcare institutions

### The Multi-Layered Legal Framework

- Protection is **not merely ethical** but a **multifaceted legal requirement:**
  - **Criminal law** (Article 622) → criminal penalties for breaches
  - **Civil law** (fairness, good faith, compensation for harm)
  - **Data protection regulations** (privacy codes with administrative penalties)
  - **Deontological codes** (professional discipline)

## Historical Evolution

- Principle dates to **ancient Hippocratic Oath**
- Evolved through **medieval and modern periods**
- Today **integrates** ethical principles, clinical necessity, and legal mandates
- Reflects **complexity of contemporary healthcare** and data management

## The Practitioner's Challenge

Healthcare professionals must:

- **Navigate with high awareness** → understand when exceptions apply
- **Balance carefully** → respect patient autonomy vs. protect public health and third parties
- **Use judgment** → situations require careful assessment, not automatic responses
- **Stay compliant** → follow legal standards, clinical evidence, deontological codes
- **Document thoroughly** → demonstrate you acted appropriately

## The Ultimate Principle

**Safeguarding confidentiality is essential NOT ONLY** for individual patient welfare but also for **maintaining public trust in the healthcare system as a whole.**

When people trust healthcare professionals to keep secrets, they:

- Seek care earlier
- Disclose fully and honestly
- Follow medical advice more reliably
- Recover better and stay healthier

This makes confidentiality not just a rule, but the **foundation of effective healthcare.**

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**END OF STUDY NOTES**