

Should patients have the right to record consultations?

Bardale R

Professor and Head
Dept. of Forensic Medicine
Govt. Medical College and
Hospital, Miraj Dist. Sangli
bardaleru@yahoo.in

Since ages, trust is the fundamental basis of Doctor-patient relationship. However, in recent time the stable relationship is receiving blows. Moreover, after enactment of Consumer Protection Act the threads between the Doctor-patient relationships are breaking slowly. Now Doctors become service provider and patients become consumers. Concurrently adverse publicity in print and electronic media is adding fuel and causing uneasiness in Doctor-patient relationship. With each passing day the relationship is becoming uncomfortable and at times bitter enough to manhandle a Doctor or suing in the court of law.

Advances made in communication technology have changed the common-day situation and now every individual have cell phones or smartphone with 3G or 4 G connectivity. Technology makes it easy for individuals to have audio or video recording of anything they come in contact and such information is shared over social media. There is no surprise if the smartphones have made inroads in consultation chambers with patient recording the conversation. Some patient may ask permission to record and someone may do it covertly^{1,2}. In some countries patients are increasingly asking their Doctors to allow them to record the conversation during the consultation. About two to three months back news appeared in the Times of India that at Bangalore one female had requested her Paediatrician to allow her to record the consultation. In coming days it will be common for Doctors to receive such requests and/or demands from patients. Now the question is where we stand? What will be Doctor's concerns? What will be the possible social and legal implications?

Doctor's concern:

Certainly Doctors will have apprehension and will take back seat if some patient requests to allow recording of the consultation. Such request may impair the Doctor-patient relationship. From Doctor's point of view such request raises question over their honesty and integrity. In other way patient is not having faith on his or her Doctor. Such recording will destroy the professional autonomy and privacy³. The other concern will be related with safeguarding own

image and information contained in such recording. Now a day various types of software are available in the market. A clever piece of editing in the original recording can change the entire scenario. At times such editing may tarnish the image of a Doctor or such edited words may be used against other Doctor in law suits. Sometimes such wrong and edited information would be uploaded on You Tube or other social Medias and misquote the Doctor.

Social issues:

For a patient his or her health is paramount and in today's world everybody wants the best. In this attempt patient gathers various information from internet. Sometimes such information is helpful and at other times not relevant. With increasing awareness, more patients will demand such recording and other people in society may endorse their view. In fact the society may uphold the entire issue stating that it will bring more transparency in Doctor-patient relationship. From the limited published papers, the reason given by patient for recording is to review the consultation for their personal use or many times it will be helpful for them while having second opinion (1-3). Sometime such recordings can be used against the Doctors; may be for court procedures or to have ransom by way of blackmailing. This will have greatest implications on medical practice. Never the less such increasing demands may shift the medical practice into defensive medicine.

Legal issues:

Many possible legal issues will surface if such phones are allowed to record the consultation. Firstly can a patient use smart phone to record consultation? The answer is yes. As per Section 2 (1 ha) of the Information Technology Act 2008 "*communication device means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image*". Once a Doctor accepts a patient then Doctor-patient relationship exists and legally it becomes contract. Once contract is established, a Doctor is legally duty bound to treat the patient with

reasonable degree of knowledge, care and skill. As per Section 10 A of the Information Technology Act 2008 “*where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose*”. Therefore once contract is established, a Doctor cannot revoke the said contract stating that smart phone is being used to record the conversation while consultation. Secondly, whether such information recorded will be used against Doctors in court proceedings especially in cases with alleged medical negligence? Again the answer is yes and such recording can be considered as evidence in the court of law. Of course one has to establish authenticity of such digital material but such evidences can be permissible.

Conclusion:

The current cultural and societal norms of recording and clicking images or videos relating to their private lives and publishing on social media or internet is becoming commonplace practice. In coming days recording of consultation request will be reality rather than a perception. Even if Doctor doesn't consents for such recording what is surety that patient or his relative will not record the consultation on another devise? Most of the smartphones have record functions which can be easily activated without a Doctor or nurse's knowledge. Such covert recording is potential threat for medical profession. Every technology brings its ill effect along with its benefit. Such technological advances are blessings in disguise. The major question is how different organizations and Doctors will react to the concept of recording becoming normalised? Do recordings of the clinical consultation become part of the clinical record? And, if so, what are the ramifications of how such data could be used and accessed (2)? Is it not unethical to denying care to patients who want digital record? Whether such record keeping would be an invaluable tool in protecting against unsubstantiated complaints or legal actions? Technological advances will undoubtedly bring further changes. At present the concept of consultation recording is limited to educated people but possibility of wide range spreading of such information cannot be ignored or underestimated. Now time has come to have a meaningful deliberations and a conclusion on the entire issue so that it will benefit the patient and at the same time it will safeguard the dignity and professional autonomy of Doctors.

References:

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