



Issue description

Committee: Human Rights Council

Issue of: The question of Professional Secrecy

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Introduction:

"Should physicians, surgeons, health officers, pharmacists, midwives, and all others who through their status or profession be in possession of information confided to them reveal such secrets, they shall be punished with imprisonment of 8 days to six months and a fine of 100 to 150 francs - unless called to testify as a witness in a court of law or compelled by a court or the law to divulge the secret."¹

The extract is from the Napoleonic Criminal Code of 1810, and it can be seen that even here professional secrecy appears. Professional secrecy is the duty of a professional, which obliges the professional to maintain the information given by his or her client. The main aim of professional secrecy is to protect the private life, the 'secrets' of an individual, thus, it ensures trust between the client and the doctor or between attorney and client.

Definition of key terms:

Code of Ethics: A written set of guidelines issued by an organization to its workers and management to help them conduct their actions in accordance with its primary values and ethical standards.²

The Bar: The profession of barrister.³

The medical definition of privileged communication: 'a communication between parties to a confidential relation (as between physician and patient) such that the recipient cannot be legally compelled to disclose it as a witness'⁴

The legal definition of privileged communication: (also called confidential communication) 'a communication between parties to a confidential relation (as husband and wife, attorney and client, or doctor and patient) such that the recipient of the communication has a privilege exempting him or her from disclosing it as a witness'⁵

¹ <https://aiic.net/page/540/professional-secrecy-until-the-bitter-end>

² <http://www.businessdictionary.com/definition/code-of-ethics.html>

³ Oxford Dictionary - <https://en.oxforddictionaries.com/definition/bar>

⁴ <https://www.merriam-webster.com/medical/privileged%20communication>

⁵ <https://www.merriam-webster.com/legal/confidential%20communication>



General overview:

As it has been mentioned before, one of the key elements of given professions such as medical or legal professions is trust between the client and the attorney or between the client and the doctor, and that is what professional secrecy ensures. Since, for example, in order for a client to completely open up before a psychologist, it is essential to create an environment, where the client can be sure they can share information, which in that situation is regarded as confidential. The protection of one's confidential information is called the duty of professional secrecy, which cannot be disclosed without the consent of the patient or client. Professionals are entitled to maintain discreet silence. The information cannot be shared with other people in the same profession either; except for people working in medical professions since by discussing such a case a better service can be provided.

Although, professional secrecy is applied in many professions, such as lawyers, interpreters etc., the most conflicting features appear in medical professions. For a service to be as efficient as possible, the relationship between a doctor and a client requires confidence, honesty, trust and fidelity. It would mean the failure of trust if the service lacks these features. For instance, this means that a physician cannot reveal facts about their child to the parents if he or she is above 18. It is also true in case of married couples. Without the consent of the patient, the doctor is not allowed to discuss the illness of their patient with their husband or wife, although this can be overruled if the illness could harm the partner. As it can be seen, there are exceptions when the doctor is expected to disclose the information about his or her patient because it is for the interest of the state or community. Notifiable cases are, for example, births, stillbirths, deaths, infectious diseases, drug addictions, therapeutic abortions, an epidemic, and food poisoning. Also, if the physician receives information about a criminal act, such as assault, terrorist activity etc., he or she is obliged to inform the authorities. It is also essential to mention that in cases of negligence suits and court of law, professional secrecy is not valid. It might seem that with these completions, problems with professional secrecy do not exist, however, there are cases when these special features contradict each other, for instance, if an underage person is suffering from STD or if a doctor assumes that his or her patient has been a victim of family violence, however, he or she does not have the consent of the patient.

In the case of legal professions, it is essential that lawyers do not disclose information about their client in order to protect the relationship of professional confidentiality. If this condition is not met, it would cause the failure of trust, because the client would withhold some information from his or her lawyer. Since the lawyer would have to work with a limited amount of information, the quality of the service would deteriorate. According to CCBE (Council of Bars and Law Societies of Europe), there are, however, infringements, whose three main causes are usually the followings;

- *'either, the lawyer is outright associated with their client, whose practices and activities must be unveiled at all costs. In some countries, lawyers are considered as accomplices of their clients;*
- *either, in these times of tackling organised crime and terrorism, any opportunity to find the "guilty parties" is seized, including by infringing upon the relationship of professional confidentiality between lawyers and clients;*
- *or, and this a serious new trend, lawyers acting as legal advisors or drafting legal documents, could be called upon to report to a specific administrative or fiscal authority the behaviour of certain clients or services requested by them, on the grounds of suspicious origin of funds or "aggressive" tax planning schemes'.⁶*

⁶https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_Postion_Papers/EN_DEON_20170915_Statement-on-professional-secrecy_LPP.pdf



It is necessary to eliminate or at least minimise the number of such cases since they jeopardise professional confidentiality.

Major Parties Involved:

- *American Medical Association:* AMA was established in 1947 in order to improve the healthcare and the medical education in the United States, support scientific advancements, and launch a program for medical ethics.
- *American Bar Association:* ABA is a voluntary professional organization, whose aims are the following; ‘...improving the legal profession, eliminating bias and enhancing diversity, and advancing the rule of law throughout the United States and around the world.’⁷
- *Council of Bars and Law Societies of Europe:* CCBE was founded in 1960, and is a non-profit organization, whose aim is to represent the law societies of Europe.
- *World Medical Association:* WMA is an international organization, which works cooperatively in order to achieve ‘the highest standards of medical ethics and professional competence’⁸.

Timeline of events:

1810 – Napoleonic Criminal Code of 1810 included professional secrecy

1867 – Criminal Code of 1867 replaced the Napoleonic Criminal Code of 1810; it preserved the maintenance of attorney-client privilege and introduced fines and imprisonment if it was violated.⁹

1947 – World Medical Association was established.¹⁰

1948 – United Nations included the article 12 of the Universal Declaration, which included the patient’s rights.¹¹

1979 – United Nations International Covenant on Civil and Political Rights

The right to privacy was induced.

1981 - Council of Europe's 1981 Convention for the Protection of Individuals with Regard to the Automatic Processing of Data; it defined health data as ‘special’

1989 - Organization for Economic Cooperation and Development introduced the Guidelines for the Protection of Privacy and Transborder Flows¹²

⁷ https://qa.americanbar.org/about_the_aba.html

⁸ <https://www.wma.net/who-we-are/about-us/>

⁹ The Bar of Brussels: Professional Secrecy of Lawyers in Europe

¹⁰ <https://www.wma.net/who-we-are/about-us/>

¹¹ <https://www.who.int/genomics/public/patientrights/en/>

¹² <https://www.ncbi.nlm.nih.gov/books/NBK222816/>



Previous attempts to solve the issue:

- Organization for Economic Cooperation and Development introducing the Guidelines for the Protection of Privacy and Transborder Flows; it introduced eight principles of the security of the medical data; ‘...(1) collection limitation; (2) data quality; (3) purpose specification; (4) use limitation; (5) security safeguards; (6) openness; (7) individual participation; and (8) accountability.’⁶
- WMA Declaration of Lisbon on the Rights of the Patient contains and induces the rights of the patient, which the medical profession promotes.

Possible solutions and approaches:

During the research in this issue and preparing draft resolutions for KarMUN 2019, the delegates might consider solutions, which would:

- determine how the procedure should look like when the laws contradict each other in a medical case,
- minimize or eliminate the infringements in legal professions,
- make the regulations about professional secrecy more precise,
- strengthen the trust and the relationship of professional confidentiality between client and the professional.

Furthermore, the presidency of the Human Rights Council encourages all delegations to be as active and open as possible during the conference.

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Annex:

A table in which the views on professional secrecy of the members of the EU are collected:

<https://www.twobirds.com/en/in-focus/general-data-protection-regulation/gdpr-tracker/professional-secrecy>

Professional Regulations:

<https://www.ccbe.eu/documents/professional-regulations/>