



ADVISORY

The South African Dental Association Newsletter
Informing Oral Healthcare Professionals

Bulletin



SADA Professional Advisory Bulletin

- Ethical Bulletin - Handling Complaints – Part 2
- Disclosure of and access to dental information

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Dear SADA Member

This is the second of the four-part series that focuses on improving our member's understanding of patient complaints. SADA introduced an independent complaint resolution service in 2012 as an alternative to the HPCSA for patients wanting to complain about their dental care. Since then, the service has successfully resolved over 5 500 disputes between patients and dentists. We want to share valuable experience gained over the last 12 years with our members to help them prevent patient complaints.

CLINICAL

Ethical Bulletin – Handling Complaints – Part 2

Complaints are an unfortunate reality for anyone delivering professional services. As healthcare professionals, we have an ethical and professional duty to respond to criticism and complaints promptly and constructively (*HPCSA Booklet 1 – General Ethical Guidelines – 5.1.10 Duties to Patients*).

On the other hand, our patients have the right to complain about health care services received, to have such complaints investigated and to receive a full response (*Patients Right Charter – Booklet 3 - 2.12 Complaints about health services*).

In the previous edition, we mentioned the importance of implementing a "Practice Complaints Procedure" at the practice for patients who want to complain about their treatment or experience. Most complaints received by the Health Professional Council or SADA, could quickly have been resolved in-house through a practice complaints procedure. It is only because unhappy patients are ignored or dismissed at the practice that the decision to involve a third party is made.

Every staff member must be trained in what to do when a patient expresses dissatisfaction, which plays a vital role in reducing the likelihood of a patient becoming dissatisfied. An effective complaint procedure can prevent unnecessary third-party involvement and provide a basis for a dentist and patient to rebuild their relationship.

Principles of a Practice Complaints procedure

- It is an agreed-upon written procedure for handling complaints so that every staff member knows what to do.
- It is helpful if a named senior individual with good communication skills and experience is responsible for operating the practice's in-house complaint procedures. Patients should be advised of this person's name, job title (where applicable), and how to

contact the nominated individual. They should be assured of a friendly, approachable and prompt response.

- Every complaint must be listened to, acknowledged, and logged in a register, even if the dentist or staff member thinks the complaint has no merit. In many instances, the first time a dentist becomes aware of a complaint is when the letter from the HPCSA arrives. Often, this is because the staff should have informed the dentist of the patient's complaint as soon as it was received.
- Try to give the patient choices—would they like to meet at the practice or discuss their concerns over the telephone?
- Always keep the patient informed of what is happening. A person who feels their complaint is ignored is more likely to involve a third party like SADA or the HPCSA. Confirming each stage of the complaint procedure in writing is a good policy. If the patient involves the HPCSA or a lawyer, it is invaluable to be able to demonstrate that you did everything you could to resolve the problem at an early stage.
- Customer satisfaction has been shown to decrease in proportion to the number of times the complainant has to contact the organization (or vice versa) in order to effect resolution. Make each contact count.
- Good communicators usually make good complaint handlers. Most dental team members have no formal communication or complaint-handling training, so it is worthwhile to train them in these skills.

In the next edition, we will discuss how to respond to a patient complaint.

LEGAL

DISCLOSURE OF AND ACCESS TO DENTAL INFORMATION

Dental practitioners from time to time receive requests for patient information, records, x-rays, file notes etc. These requests are made by patients themselves, their spouses or partners, parent/s in respect of their children's records, divorced or separated parents where custody and guardianship is unclear, patients' attorneys, schemes, insurance companies etc.

Confidentiality

Information about a person's health and health care is generally considered to be highly sensitive and personal. Therefore, this type of confidential information enjoys statutory and common law protection in South Africa.

Data protection laws in healthcare

1. [Constitution](#)
2. Common law obligation of confidentiality
3. [National Health Act](#), 2003
4. Various ethical rules relevant to patient information like the HPCSA [Ethical guidelines](#) for good practice in the health care professions
5. The Promotion of Access to Information Act ([PAIA](#)) – for example, a requester might be able to request access to the HIV status of another person
6. The Protection of Personal Information Act, 2013 or [POPIA](#) which deals with data protection
7. [Rules](#) for the processing of health information or sex life

These are just some of the more important ones, various pieces of legislation implicate the right to privacy. It is important to look at all relevant laws when considering their application of them to issues. In this article, we are just going to look at two laws and how they interact. You can also read more about [information security legal requirements in different healthcare laws](#).

Constitution

The right to privacy is constitutionally entrenched in the South African Bill of Rights. Section 14 provides amongst others the right not to have the privacy of their communications infringed.

Common law protection

The common law right to privacy prevents public disclosure of private facts. Invasion of privacy is a delict based in common law, allowing an aggrieved party to bring a lawsuit against an individual or facility who unlawfully intrudes into his/her private affairs, discloses his/her private information, publicises him/her in a false light, or appropriates his/her name for personal gain.

There is also a common law duty to preserve professional confidence. This obligation is not limited to not divulging confidential information; it includes a responsibility to make sure that all records containing patient information are kept securely.

The National Health Act of 2003

The Act makes it an offence to disclose patients' information without their consent, except in certain circumstances. All information concerning a user (including information relating to his or her health status, treatment or stay in a health establishment) is **confidential** (section 14). **No person may disclose** any information unless:

- the user **consents** to that disclosure in writing;
- a **court order** or any law (like PAIA or section 15 of the NHA) requires that disclosure; **or**
- non-disclosure of the information represents a **serious threat to public health**.

A health worker may disclose for a legitimate purpose in the interests of a patient and **may disclose** such personal information to any other person, health care provider or health establishment as is necessary for any **legitimate purpose** within the **ordinary course and scope** of his or her duties where such access or disclosure is in **the interests of the user**.

A healthcare provider may access health records. A health establishment must protect health records.

Ethical Rules - HPCSA

The [Health Professions Council of South Africa](#) has also issued guidelines relating, inter alia, to the obligation to keep dental records confidential.

The Promotion of Access to Information Act 2000

This Act gives everyone the right of access to records held by public or private bodies, provided it is for legitimate reasons. This includes health records. Either the patient or someone authorised to act on the patient's behalf can request access, and the request must be responded to in 30 calendar days.

The Act says that the request should be refused if the disclosure to "the relevant person might cause serious harm to his or her physical or mental health, or well-being".

Relatives other than parents have no automatic right of access and any requests for information should only be granted with the consent of the patient. Parents and guardians of children aged under 12 can gain access to their child's medical records if they request it. An exception is if the child has had a termination of pregnancy, which should remain confidential unless the child consents to its disclosure.

Children aged 12 or over, and who have the maturity to understand the consequences of disclosure, must give their consent to the disclosure of their medical records.

The police have no special right to access clinical records. However, they can be granted access if the patient consents to the disclosure; if the information has been requested by a court order; or if – as with risks to public health – the public interest outweighs the patient's right to confidentiality.

Attorneys may also request access to a patient's dental records, in situations where they are handling a claim – again, the consent of the patient is needed before any disclosure. If the solicitor is acting on behalf of the patient, it is safe to assume that the request is being made on the instructions of the patient – although a signed consent form clarifying this is preferable.

Protection of Personal Information Act, 2013 (POPIA)

Provisions of POPIA prohibits the processing of personal information concerning a person's health. The Act further provides that it does not apply to the processing by various people or institutions. Such as:

- medical professionals, healthcare institutions or facilities or social services,
- insurance companies, medical aid scheme administrators and managed healthcare organisations,
- schools, and
- any public or private body managing the care of a child

One can process personal information concerning a person's health if you:

1. follow the conditions and rules in section 32 of POPIA;
2. keep the personal information confidential; and
3. comply with the rest of the conditions in POPIA.

You can also process a person's medical history if you do 2 and 3.

When is disclosure permitted?

Generally, disclosure of confidential clinical information to someone other than the patient will be an actionable breach of confidence. There are, however, three circumstances when clinicians can release confidential clinical information without the consent of a patient:

1. Disclosure is ordered by a court.
2. Disclosure is required by law.
3. Disclosure is in the public interest.

Court orders

Civil and criminal courts have powers to make orders requiring a doctor or holder of health records to disclose confidential information for the purposes of litigation. Usually, such orders are made following a third party having requested the information and the court having determined that there is an overriding public interest in the disclosure.

Legislation

The Road Accident Fund Act, for example, requires a victim of a motor vehicle to disclose certain medical information to the Road Accident Fund ("the Fund"), to successfully lodge a claim with the Fund. Failure to provide such information, allows the Fund to object to the validity of the claim.

A public interest in disclosure

As the duty of confidentiality is not absolute, there may be circumstances where the public interest in maintaining confidentiality is outweighed by the public interest in disclosing specific information. Such circumstances may include where disclosure is necessary to avert a real risk of a danger of death or serious harm to others or for the prevention or

detection of serious crime. Even then such disclosure is permissible only if made to someone with a proper interest in receiving the information.

After death

Confidentiality applies after a patient's death – generally, information should only be disclosed to third parties with the consent of the deceased patient's next of kin or executors. Exceptions to this rule include if information is required for an inquest.

Conclusion

Although civil actions for breach of confidence are rare, the issue can be a minefield for the unwary. Thus, those who are about to reveal confidential information should carefully consider their grounds for doing so and be clear that there is either consent, lawful authority or some public interest justification.

Yours in oral health

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17 Apr	SADA Pretoria Branch – CPD EVENING hosted by the YDC - 17 April (PTA056)
18 Apr	SADA Gauteng South CPD Evening 18 April 2024 (GS068)
25 May	SADA KwaZulu Natal – Hands on Day brought to you by Access Dental (KZN062)
10 Apr	SADA Mpumalanga Branch Skukuza Long weekend ACCOMMODATION (MP019)



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