



Legal and ethical considerations in posting clinical images on social media

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Abstract

It is becoming increasingly common to find clinical images on social media sites like Facebook and WhatsApp. Patients in operation theatres, newborns in incubators, women in labor wards, and even cadavers in dissection halls are photographed and the images shared. Many of these images reveal identities and are posted for non-professional reasons without consent. This is illegal and unethical, and is liable for punishment and de-registration from the medical council. This article shares vignettes of breaches that have been made, and stresses on the need for medical students and doctors to be made aware of the issue and its repercussions. Sensitization should start right from the dissection hall with repeated reinforcement right through to graduation and post-graduation. All stakeholders, including medical colleges, the Medical Council of India, the Indian Medical Association, and social media sites have a role to play. This could help restore the crumbling trust in the doctor-patient relationship.

Keywords: Clinical image; Confidentiality; Ethics; Informed consent; Medical photography; Patient privacy; Social media

Introduction

Imagine this: you are an expectant mother in the busy labor ward. Through grueling and unending hours of labor pain, supported by a great team of doctors, you deliver your baby. Your joy

of motherhood knows no bounds. After a few days, you get online to announce the good news on Facebook. As you scroll through, you find a plethora of unseen posts and friend requests. In the suggested friends' list, you find your obstetrician who had been your savior

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and you send her a friend request. As you browse through her profile, you see a post in which she is tagged. It is a photograph of a young lady doctor holding a cherubic baby. You instantly recognize the lady as the intern who was there throughout your labor. The newborn she is holding has its umbilical cord still attached to the mother. As you look further, things become clearer. It's the picture of you (though your face is not visible) and your baby. In a moment your emotions change from appreciation to agony. "How dare she?" you think. "How can she post the photo of my baby without my permission?" The next day you file a complaint with the hospital you were admitted to, regarding the unlawful use of the picture of your baby, and seeking an apology.

Does this story sound familiar to you?

In today's world, smartphones have become ubiquitous and there is an onslaught of social media platforms on which many medical students and doctors are registered. Most of our patients also use these sites. Today people want to capture every beautiful moment of their life and share it on social media. They share their personal and professional lives.

Sharing of clinical images on social media is also becoming increasingly common. Most of us share these images to show our excitement at our first dissection, at assisting a surgery, or conducting a delivery. Some share it to showcase performing rare procedures. In some cases, it may be for patient education or promotional purposes. Irrespective of the reason, the fact is that almost all of us have at sometime or the other clicked a clinical image and uploaded it on social media. It is one thing to post personal images, and quite another to post clinical images.

Let us first understand what is meant by a clinical image. The operational definition of a clinical image goes much beyond merely a photograph of a patient. A clinical image may be a photo, a video, or an audio; it may be of the patient's body - such as an injury, skin lesion or body fluid - or an image of the patient's pathology or laboratory report, diagnostic image, or a prescription of medication.[1] While it can be very attractive to share and discuss an image as part of a case or a topic, it is a slippery slope unless the proper protocol is followed. There are risks like a breach of confidentiality, invalid consent procedures, the use of material outside of their intended purpose, and access to the images by unauthorized personnel.[2]

Guidelines on Clinical Photography

In the document on Professional Conduct, Etiquette and Ethics Regulations by Medical Council of India (MCI), it is stated that 'A registered medical practitioner shall not publish photographs or case reports of his / her patients without their permission, in any medical or other journal in a manner by which their identity could be made out. If the identity is not to be disclosed, the consent is not needed'.[3] While this sounds progressive, this document, amended in October 2016, deals with this issue in just one sentence, which leaves a lot of questions unanswered. It talks about posting images for research purposes; what about posting clinical images for non-research purposes? What about posting or sharing images beyond journals, on other sites like on social media? The document applies to registered medical practitioners. What about medical students who are not registered till the onset of their internship? There are no answers to these questions in the document.

The guidelines under Electronic Health

Record Standards for India, 2016, are more comprehensive. They have stipulations for capture, storage, retrieval, exchange and analytics of health records which also include clinical images. They state that the explicit consent of the patient is needed for access to confidential and sensitive information which can identify individuals.[4] In the United States, confidentiality laws with respect to clinical images are defined by the Health Insurance Portability and Accountability Act, 1996. Under this act, protection includes securing all electronic patient information including clinical images.[5]

While the guidelines in India about posting clinical images on social media are non-specific and patchy, guidelines by many foreign medical associations are detailed and comprehensive. One must always remember these two key guidance points given out by British Medical Association:[6] (a) You are still a doctor or a medical student when on social media; and (b) You have the same legal and ethical duties of patient confidentiality on social media as anywhere else.

The Australian Medical Association guidelines regarding this are most extensive. Some of its key points are: (a) Clinical images are health information and must be treated with confidentiality (b) They should only be taken with appropriate informed consent, stored securely, and only disclosed in accordance with the consent given (c) Make sure the patient understands the reasons for taking the image, how it will be used, and to whom it will be shown. Clinical images once uploaded on social media cannot be retracted completely; this should be explicitly stated in the consent form. (d) Using clinical images for any purpose other than that for which consent has been obtained, or sharing them in a non-professional context, is inappropriate. (e)

Clinical images used for teaching, training, and research should be de-identified, where possible.[1] When making a judgment about whether the patient may be identifiable, one should bear in mind that apparently insignificant features may still be capable of identifying the patient to themselves or people close to them. A patient can be identified by features beyond the face and hence it is recommended to show minimum body; simply relying on eye shadow boxes is not enough.

The guidelines given by the Medical Defence Union (MDU) to its members and subscribers is worth noting.[7] MDU is a medical indemnity company in the UK. It has rightly advised the physicians to ensure that the patients' consent is recorded in their notes. When the patient is a child, or an adult without capacity, then the permission must be obtained from someone with authority to act on their behalf.

Since images posted on social media can have a long life, as young patients become adults, one needs to seek their consent to use images taken in previous years. If we want to share or disclose an image of a patient who has since died, then we should follow their known wishes. If the patient is identifiable, one may consider obtaining further authority from their executor or family before the picture appears in the public domain.[7]

Very importantly, doctors should avoid taking pictures with their personal devices. Healthcare institutions should have dedicated Medical Illustrators or Medical Photographers and cameras for this purpose. In order to ensure that the informed consent is truly given by the free and informed will of the patient, a hospital committee should review and scrutinize it.

Lastly, one should understand that the

posting of clinical images on social media should be only for professional purposes and not for fun or publicity. Photos of medical students holding a brain or a placenta in their hands, even if anonymized, do not serve any professional purpose and, hence, must be avoided.

Social Media Policies on Clinical Images

Now, what about the policies of the social media platforms on which these clinical images are posted? Almost none of the social media platforms like Facebook, Instagram or YouTube have any specific policy regarding the posting of clinical images. The social media platform with any mention in its media policy is Twitter. Under the category of gratuitous gore, media depicting exposed internal organs and bones, burned human bodies, and dismembered or mutilated humans are included; such images may be removed by Twitter.[8]

Consequences for Healthcare Providers

When we dig deeper into this issue, we realize that most doctors and medical students are naïve when it comes to the legalities and ethics of posting clinical images on social media and do it out of sheer ignorance. We need to educate our current medical students, interns, residents, and doctors, lest they face legal consequences.

Under Information Technology Rules, 2011, sensitive personal data includes health conditions and medical records and sharing such data without consent, may be punished with imprisonment for two years, or with fine which may extend to Rs. one lakh.[9] A registered medical practitioner who is found guilty of professional misconduct, like posting clinical images without patient consent, may be removed from the medical

register and barred from practice.[3]

There are many examples where healthcare workers have been punished for not respecting patient confidentiality while posting clinical images on social media. A few years ago, an Indian surgeon had posted pictures of surgery being performed on his patient.[10] While the patient's face was not shown, the patient himself identified the case as representing him. The image and the comments on the post caused him a lot of anguish and he complained to his surgeon. The surgeon apologized and removed the image. He was lucky; if the patient had taken the legal recourse, the surgeon would have been in a soup.

There are examples from other countries which drive home the point: A nurse at a Stockholm hospital, suspended for posting pictures from surgery on social media. While the patient's face was not visible even in this case, it was considered unethical as it served no professional purpose and was in bad taste.[11] Four students from the nursing program in Kansas were expelled after posing for photos with a human placenta and one of those photos ended up on Facebook.[12] A team of five doctors in Argentina was suspended for taking a selfie in the middle of the surgery and posting it on Instagram.[13]

These cases are just the tip of the iceberg. There are others which were not publicized in the media, where doctors and nurses posted clinical images on social media that infringed on patient confidentiality and caused trouble for the people who posted the images.

Role of Stakeholders

While there is a lot that an individual medical student and a doctor can do, having an enabling milieu can produce better results. For this, the MCI and the

Indian Medical Association (IMA) need to come to the fore. The MCI should amend its guidelines on professional conduct to explicitly mention posting of clinical images on social media by doctors as well as medical students and interns. Other councils like those of the disciplines of Ayurveda, Unani, Homeopathy, Nursing, and Rehabilitation also need to pitch in. The IMA should also bring guidelines for its members akin to the guidelines issued by the British Medical Association and the Australian Medical Association. Social Media sites need to clearly mention regarding posting of clinical images in their media policies. All hospitals should have a written policy and central unit to

process clinical photographs and appropriate consents.

Conclusion

The take-home message is that clinical images should be used only for professional purposes. In the rare scenario where they are posted on social media, it should never be done without specific consent from the patient for the same. The doctor-patient relationship is based on the foundation of trust and confidentiality is central to it. It is our duty as caregivers to ensure that this foundation is not hollowed out.

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