

Virtual corridor consultations

Seeking informal peer advice online

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This series highlights common medicolegal issues in general practice. Written by a team from medical defence organisation Avant, the series is based on actual situations, with details changed for privacy and some issues summarised for the sake of discussion. This scenario explores the medicolegal issues that arise when doctors request or provide informal opinions in online discussion groups.

Private online discussion groups have become a space for doctors to share information and network with colleagues. Since 2020, with the rapid rise of telehealth and the sharing of information about the pandemic as it emerged, these platforms have increased in importance. Doctors' legal and professional obligations apply equally online, and technology can add a layer of complexity. Understanding how to comply with your professional obligations in an online environment will allow you to continue to use the opportunities that technology provides to engage, educate and inform.

Case scenario

Dr Alex has never seen a presentation like this before. In a telephone consultation, his patient Emma says she has been feeling a bit feverish and exhausted but had a negative result from the COVID-19 test she underwent yesterday. She says the joints in



her hands and feet are swollen and painful and she has a rash on her hands. The symptoms developed very quickly. Emma has just turned 38 years old but says her hands 'look like an old woman'. Dr Alex is concerned she may have a rare but serious condition and asks her to send him a photo of her hands so he can check the rash. Meanwhile, he writes a prescription and says he will arrange a specialist referral and send it to her.

Dr Alex's practice is providing mainly telehealth consultations, and most of his colleagues are constantly on phone calls. As he is worried Emma's condition may be serious and wants to obtain advice quickly, he posts the photos of her hands to a closed doctors' social media group. He does not mention her name but gives some basic demographic information. Almost immediately he gets several responses with helpful suggestions. A doctor in the UK says the case seems remarkably similar to a patient of his who turned out to have a rare adult-onset genetic disorder. He posts a link to a journal article on the appropriate blood tests to diagnose this condition and treatment options. Armed with this information, Dr Alex is able to organise appropriate referrals.

Meanwhile, someone else in the social media group comments on the large, distinctive bracelet just visible in Emma's photos, saying it looks exactly like one her neighbour always wears. This prompts a discussion in the group about whether members need specific patient consent to post any images.

Medicolegal issues

Privacy and confidentiality

Any time that information about a patient is shared, doctors need to consider the duties of privacy and confidentiality they owe to the patient. These are important and overlapping duties. Technically, confidentiality refers to the professional duty a doctor owes to a patient to keep information about the patient confidential. The Medical Board's Code of Conduct stresses doctors' obligations to hold information about patients in confidence unless that information is required by law to be released.¹ The Code of Conduct specifically requires doctors to ensure their use of digital

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communications and social media is consistent with ethical and legal obligations to protect patient confidentiality.

Doctors also have a legal obligation to protect patient privacy. Australian privacy legislation specifies how personal health information may be collected and managed and in what circumstances it may be used and disclosed.

Information can be shared with patient consent. Privacy legislation also permits disclosure for the primary purpose for which the information was collected.²⁻⁵ In practical terms, this means that when a patient has consented to health information being collected for the purpose of their medical treatment, this information may also be shared with colleagues to enable them also to provide treatment.

Providing an informal online opinion

The legal position is still emerging regarding doctors' obligations when providing an informal online opinion. Would a doctor have any liability for the advice or information they provided to a colleague in an online forum? Is it foreseeable that advice could cause damage, loss or injury to the patient?

In a 2016 case, the NSW Civil and Administrative Tribunal considered that it was reasonable and expected for practitioners to make contact with colleagues to seek advice through social media platforms and apps.⁶ However, in that case the Tribunal did not need to consider the further question of whether the practitioner giving advice had any obligation to the patient.⁶

Arguably, the appropriate analogy is that of an informal 'corridor' or 'kerbside' consultation. The cases that have considered this issue in the USA have categorised these types of consultations with colleagues along a spectrum, from a completely informal request for a colleague's views or a question during a lecture, to a consultation with an on-call specialist or supervisor.⁷⁻⁹

A true corridor consultation generally falls at the most informal end of this

spectrum. There is no existing or potential doctor-patient relationship with the doctor providing the informal opinion, and the advice is being sought outside any formal supervision or consulting relationship between the doctors. This has not been considered in any detail by Australian courts. However, US courts have stressed that doctors are expected to act with due care and skill in accordance with their professional responsibilities in such situations, but have found that the colleague being consulted would not be separately liable to the patient.^{7,8} In these cases, courts have concluded there was no doctor-patient relationship created with the doctor providing advice, and that their opinions were addressed directly to the treating doctor as a colleague and were not 'a prescribed course of treatment, but were recommendations to be accepted or rejected by [the treating doctor] as [they] saw fit'.⁹ The treating doctor is responsible for using their own clinical judgement and acumen to assess the advice or information posted and apply it to the patient's clinical scenario.

Discussion

A breach of privacy

In this case, as Dr Alex did not have Emma's consent to share her information online and the information is able to be identified, he has breached her privacy. This may be something he should raise with Emma and should even consider whether he needs to report it under the notifiable data breach scheme.¹⁰

Doctors also need to ensure they are aware of any practice or hospital policies that cover their use of social media and responsibilities for patient images.¹¹ In this case, Dr Alex may also find he has breached the practice's policies and may need to address this with his practice.

What if the information is de-identified?

In theory, information that is sufficiently de-identified so that there is no reasonable likelihood of re-identification could be

shared without consent. If it no longer identifies an individual, the privacy legislation would not apply.¹² However, there have been public instances illustrating how easy it can be to re-identify an individual from health information, particularly where multiple data points are available.¹³⁻¹⁵

Guidance on social media from the Australian Health Practitioner Regulation Agency (Ahpra) explicitly warns doctors to be aware of the risk of inadvertently breaching patient confidentiality, and that 'although individual pieces of information may not breach confidentiality, the sum of published information online could be enough to identify a patient or someone close to them'.¹⁶ The Australian Medical Association's Guide to Social Media and Medical Professionalism and the Australian College of Rural and Remote Medicine's Guidelines for Use of Social Media in Rural and Remote Practice make similar points.^{17,18}

In this case, it is possible that Emma could be re-identified and therefore this would be a breach of privacy. The safer course is always to consult with the patient and obtain their consent to share their de-identified information with colleagues, including online, to assist with their diagnosis and treatment. Having specific consent for this purpose also means doctors can disclose additional history or demographic information, which may help colleagues provide more meaningful responses.

Maintaining the clinical record

Dr Alex should have explained to Emma how he wanted to use her images and then documented her consent to sharing her health information in the clinical record. It is not necessary to mention in the post that you have the patient's consent. In fact, many closed groups require anyone posting patient information to have obtained consent in their standard guidelines for the group. The photos themselves should also be included in the clinical record.

There is no strict requirement as to

1. PRACTICE POINTS ON OBTAINING PEER ADVICE ONLINE

- Online discussion groups can be an important source of knowledge and collegiate support for doctors when used appropriately.
- Patient information should be shared only with the patient's consent, which should be documented.
- Your professional obligations and duty to act with reasonable care and skill should be kept in mind when posting or responding online.

how much detail should be included in the notes; however, it is helpful to document the details you have. This might include, for example, which platforms will be used to post the information and a screenshot or copy of the post itself. Doctors could also include the guidelines or other resources used in ongoing treatment of the patient, or a reference to them.

Offering an advice or opinion

Medical records often include comments that indicate a discussion has taken place with a colleague. As commented in a case review of an informal communication, 'All of us have had the experience of subsequently finding our "off-the-record" observations quoted as statements of fact in patients' charts or on rounds'.⁸ In Emma's case, the doctor who responded to Dr Alex's post referred him to relevant resources to help him make an appropriate referral. This is a good way for the responding doctor to assist while ensuring the informal nature of the advice is clear.

It should be borne in mind that in an online discussion, the doctors may be unknown to each other and potentially anonymous. There may be less context with which to assess the reliability of advice provided, or to gauge the skill and expertise of the doctor seeking the opinion and how they will apply the advice.

Keeping it professional online

Whenever you post or comment online, it is safest to assume that your comments

2. RESOURCES ON USE OF SOCIAL MEDIA FOR MEDICAL PRACTITIONERS

- **Ahpra.** Social media: how to meet your obligations under the National Law (www.ahpra.gov.au/Publications/Social-media-guidance.aspx)
- **Medical Board of Australia.** Good medical practice: a code of conduct for doctors in Australia (www.medicalboard.gov.au/codes-guidelines-policies/code-of-conduct.aspx)
- **Avant Mutual.** Social media for doctors keeping it professional (www.avant.org.au/Resources/Public/20170831-keeping-it-professional-social-media-for-doctors/)
- **Avant Mutual.** Clinical photography - a snapshot of the issues (www.avant.org.au/Resources/Public/Clinical-photography-a-snapshot-of-the-issues/)
- **Australian Medical Association.** A guide to social media and medical professionalism (<https://ama.com.au/article/social-media-and-medical-profession>)

will become public. This does not suggest any lack of integrity in the group members or moderators but simply reflects the reality of online environments. Security can be breached, and content can be copied, printed, reposted or shared in another forum. This can happen without any ill will, sometimes even inadvertently as platforms update their settings. Content shared online has been used as evidence in professional conduct matters or subpoenaed in other litigation.^{6,19}

It should always be assumed that at some stage a patient or colleague might see what you have posted. You should ensure that you are comfortable with both the tone and content of any comments. This applies whether you are posting in your professional persona in a peer group or in a personal capacity. It is safest to assume that your social media profiles could be linked, and any comments you make in a private capacity could be seen as a reflection of your professionalism.¹

Conclusion

There are good reasons to make use of the increasing opportunities that technology provides to consult with colleagues and share advice and insights. Even before the disruption of 2020, many doctors found that communicating with colleagues online offered a wealth of expertise and generous collegial support.²⁰⁻²² This might be particularly important for doctors in the early years of practice when they are likely to have many questions and seek

peers to learn from, but continues throughout one's career, especially as the breadth of knowledge expected of doctors is vast and evolving. As online communication became the norm in 2020, and doctors were faced with the emerging medical threat of COVID-19, it became even more important to be able to share advice and information and seek support and opinions.

There are strong public policy reasons to encourage doctors to confer with colleagues.⁷ The Medical Board Code of Conduct states that good medical practice includes consulting colleagues and using resources effectively and responsibly.¹ The Code specifically anticipates that doctors will use digital communications and social media and requires them to do so consistent with their obligations of confidentiality and privacy.¹ Some practice points on obtaining peer advice online are shown in Box 1, and resources for doctors on use of social media in Box 2.

In short, used safely and responsibly, digital platforms and online professional forums can form an important element of a doctor's professional and personal support network. The key is always to keep it professional. MT

References

A list of references is included in the online version of this article (www.medicinetoday.com.au).

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