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Disclosure of medical information



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By **JEAN-PAUL RUDD**

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.

Common law protection

The common law right to privacy prevents public disclosure of private facts. Invasion of privacy is a tort / delict based in common law, allowing an aggrieved party to bring a lawsuit against an individual / institution 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. The obligation of confidentiality goes beyond undertaking not to divulge confidential information; it includes a responsibility to make sure that all records containing patient information are kept securely.

Statutory and other protection

[The National Health Act of 2003](#) makes it an offence to disclose patients' information without their consent, except in certain circumstances.

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

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.

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.

See also:

- [POPIA Alert: When does public interest trump your right to privacy?](#)
- [Valid medical certificates – Clarity in the uncertainty](#)
- [What are employees’ and employers’ rights and obligations in terms of sick leave in South Africa?](#)
- [Depression: The impact that it has on an employee’s functioning](#)
- [Road Accident Fund lawyer: When do I need one?](#)

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[Jean-Paul Rudd](#)

Jean-Paul Rudd is a partner in our personal injury and insurance departments. He specialises in civil litigation with special emphasis on personal injury related matters, which includes Road Accident Fund,... [Read more about Jean-Paul Rudd](#)

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