

SMA'S LETTER TO MOH ON PATIENT PRIVACY AND CONFIDENTIALITY UNDER NEHR

Ministry of Health (MOH) officials met with SMA Council Members on 18 November 2016 to discuss MOH's proposed amendments to the Private Hospitals and Medical Clinics (PHMC) Act. Subsequently, the SMA Council deliberated on the issue of patient privacy and autonomy, and sent the following letter. MOH has acknowledged the receipt of SMA's letter via email.

2 March 2017

Dr Philomena Tong
Director
Regulatory Policy and Legislation Division
MINISTRY OF HEALTH
16 College Road
College of Medicine Building
Singapore 169854



Dear Dr Tong,

FEEDBACK ON REVIEW OF PRIVATE HOSPITALS AND MEDICAL CLINICS (PHMC) ACT

1. The Singapore Medical Association (SMA) thanks the Ministry of Health for engaging SMA on the review of the PHMC Act, including meeting with the SMA Council on 18 Nov 2016.
2. We wish to highlight SMA's feedback relating to proposed changes to the Act with respect to the National Electronic Health Record (NEHR).

OPTING OUT

3. SMA notes that a patient can "opt out" of the National Electronic Health Record (NEHR). However, the MOH FAQ mentions that
"Once opted out of the NEHR, your health record would not be accessible by any authorised clinicians and healthcare professionals even though your health record in the NEHR will still be updated."
4. This means that the patient medical record remains in the NEHR but access is denied to healthcare professionals.

PRIVACY VERSUS CONFIDENTIALITY

5. The SMA feels strongly that the NEHR needs to draw the distinction between a patient's privacy and confidentiality rights and to address the two separately. The two terms "privacy" and "confidentiality" should not be used interchangeably or conflated, especially when we introduce the NEHR to all patients in Singapore, local or foreign.
6. For the avoidance of doubt, confidentiality refers to personal information divulged with healthcare providers that cannot be shared with third parties without the expressed consent of the patient. In other words, confidentiality is privileged communication between two parties as part of the patient-healthcare provider relationship and includes the obligation of the provider who have access to patient records or communication to hold that information in confidence.

7. Privacy is more fundamental than confidentiality. It is the right of the individual patient to be left alone and to make decisions about how personal information is shared. The Singapore Medical Council reiterates this point with the SMC Ethical Code and Ethical Guidelines 2016 stating:
*"You must always respect patients' right to privacy and dignity"*ⁱⁱ
8. As such, while SMA does not object to the proposed PHMC Act amendment that a clinic or hospital's participation in the NEHR is a licensing requirement, due consideration must be given to the rights and best interest of the patient.

PATIENT AUTONOMY

9. The proposed policy that the patient's records will be continually updated in the NEHR even when the patient has opted out, by assuring that doctor-access will be blocked, does NOT address the patient's rights to privacy. It only addresses the patient's confidentiality rights, and even so, in a rather blunt manner.
10. When a patient opts out of the NEHR, he should be given the choice to forbid his information from being updated in the NEHR. There will be certain negative and indeed permanent consequences of such a decision (as compared to unblocking or blocking access to this information in the NEHR), and the patient should be duly advised of these serious consequences, but he should still be given the option to make such a decision based on his rights to privacy.
11. Once his privacy rights has been addressed, the patient's confidentiality rights can be accommodated by giving the patient the option on whether his information can be accessed by healthcare providers (i.e. whether to "block" or "unblock" his records).
12. At present, we understand that once a patient gives consent to his data, all doctors with proper clearance can access the patient's records. There has already been cases reported in the press of unauthorized access of patient data by healthcare providers. Even though a doctor or healthcare professional can be punished for accessing a patient's records without valid justification, such measures are punitive and retrospective in nature, after the transgression and damage has already been done.
13. In an era of increasing patient awareness, sophistication and empowerment as well as rapid technological advancement, SMA advocates that patients be allowed to decide for themselves what information they wish to reveal to which healthcare provider and that control be imposed prospectively. In such a manner, a patient's confidentiality rights and needs can be addressed with more finesse and measured control.

CONCLUSION

14. In conclusion, while the NEHR is in-principle the right way forward, the fundamentals of privacy and confidentiality rights need to be addressed to take into account the different needs of individual patients. By addressing these issues transparently and effectively, we believe that Singapore's position as a regional medical hub will be strengthened.

Yours sincerely

Dr Wong Tien Hua
President
Singapore Medical Association

i. <https://crms.moh.gov.sg/FAQ.aspx> [Under NEHR - "Can I choose to opt out of the NEHR? What will happen if I do so?"]

ii. SMC Ethical Code 2016, C1(2)