



Breaching confidentiality: medical mandatory reporting laws in Iran

Alireza Milanifar¹, Bagher Larijani^{2*}, Parvaneh Paykarzadeh³, Golanna Ashtari³, Mohammad Mehdi Akhondi⁴

¹Medical Ethics PhD Candidate, Medical Ethics and History of Medicine Research Center, Tehran University of Medical Sciences, Tehran, Iran;

²Professor, Medical Ethics and History of Medicine Research Center, Tehran University of Medical Sciences, Tehran, Iran;

³Reproductive Biotechnology Research Center, Avicenna Research Institute, ACECR, Tehran, Iran;

⁴Professor, Reproductive Biotechnology Research Center, Avicenna Research Institute, ACECR, Tehran, Iran.

Corresponding Author:

Bagher Larijani

Address: 23# 16 Azar Ave, Keshavarz Blvd, Medical Ethics and History of Medicine Research Center, Tehran University of Medical Sciences, Tehran, Iran.

Email: larijanib@tums.ac.ir

Tel: 98 21 66419661

Fax: 98 21 66419661

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Abstract

Medical ethics is a realm where four important subjects of philosophy, medicine, theology and law are covered. Physicians and philosophers cooperation in this area will have great efficiency in the respective ethical rules formation. In addition to respect the autonomy of the patient, physician's obligation is to ensure that the medical intervention has benefit for the patient and the harm is minimal. There is an obvious conflict between duty of confidentiality and duty of mandatory reporting.

Professional confidentiality is one of the basic components in building a constant physician-patient relationship which nowadays, beside the novelty, it is the subject of discussion. Legal obligation of confidentiality is not absolute. In physician-patient relationship, keeping patient's secrets and maintaining confidentiality is a legal and ethical duty, and disclosure of such secrets is mainly through specific statutes. Thus, there are a number of situations where breach of confidentiality is permitted in different legal systems. One of the situations where breaching confidentiality is permitted is the medical mandatory reporting to the relevant authority which is in accordance with many countries' legal systems. Some situations are considered in many countries legal systems' such as notification of births and deaths, infectious diseases, child abuse, sport and relevant events, medical errors, drug side effects and dangerous pregnancies.

In this paper, we will examine and discuss medical mandatory reporting and its ethical and legal aspects in the judicial and legal system of Iran and few other countries. Finally we will suggest making Medical Mandatory Reporting Law in Iran.

Keywords: *mandatory reporting, medical reporting, confidentiality, patient's rights, public interest*

Introduction

The scope of medical ethics is wide and physicians-philosophers cooperation in order to codify the ethical principles and also accompanying patients while respecting their autonomy, have plenty of benefits.

Professional confidentiality is the basis of the physician- patient relationship. Physicians' duty of confidentiality has an ethical background and that's why being loyal to it, is mentioned in the medical oath. Moreover, a physician should always attempt to improve the health level of the public. It means that treatment of a patient is not only reducing his pain and caring about his recovery but also a treatment which manifests its effects in the society.

Regarding the mutual relationship between physician-patient and physician-society, some patterns of conflicts or at least disturbance in the professional confidentiality should be considered. It is physician's legal duty through specific statutes to report private information to the relevant local authority. This is known as "medical mandatory reporting". Medical mandatory reporting is one of the most important subjects of conflict between physician's duty to confidentiality, respecting patient's confidentiality, and his duty to breach confidentiality in order to serve the patient or the public.

Method

In this paper, first we will briefly analyze medical confidentiality and breach of this principle in form of medical mandatory reporting. Then by searching through the legal contexts in the laws of Iran and some other countries some examples of the mandatory reporting, will be presented.

The phrases of "Medical Mandatory Reporting" and "Medical Confidentiality" and "Infectious diseases" both in Persian and English, have been searched alone and in combination with term "Rights" in the websites of ssrn.com, irandoc.ir, dastour.ir, ghavanin.ir, PubMed and the official websites of the World Health Organization (WHO) and the Ministry of Health and Medical Education (Iran). This study started in December 2011 and ended in December 2013.

Medical confidentiality as a principle

Confidentiality is an important principle which is not only an integral part of professional practice but also a duty recognized by the law. Patients' referral to the surgeon and sharing his secrets with physician is due to this principle. Therefore, it is essential that physicians keep patients' secrets as a trust. A physician understands patient's said and unsaid secrets during the examination so he ought to maintain confidentiality. In fact, truthfulness is the most important element in the physician-patient relationship.

In addition to his medical knowledge, a physician utilizes his or her experiments and feelings to understand and treat the patients in the moments of fear, and confusion.

In their paper, "Physician professionalism for a new century", Holsinger and Beaton argue that one reason for physicians' dissatisfaction in late 20th century is liability crisis in their profession (1). Disclosing patients' secrets leads to loss of trust toward doctors and a patient may make a complaint and take the case to the court, and consequently the physician is liable to pecuniary punishment.

Disclosure of personal health information means disclosing others' secrets in any possible way like writing, expressing or indicating them; however, they seem trifle and insignificant (2). Disclosure of patients' information should only include information which is necessary for preventing the risk of harm and it should only be shared within the healthcare team who may need such information for preventing those harms or minimizing the risk of harm and discomfort to the patient (3).

Physicians must respect the laws, however it is sometimes very difficult to keep path between the duty to maintain patient's confidentiality in the society and physician's duty to disclose information as a member of the same society.

The meaning and the basis of right, autonomy and will

The definition of "right" is that we consider rights as trumps against adequate reasons for political decisions. This means presenting rights theory as prevailing evidence against utilitarian view (4). Therefore the informed consent for treatment is patient's right but exercising such right requires patients' cooperation with physicians (5).

In many countries, applicants of some positions such as attorney, physician and registrar (registry office) should take a professional oath. Once they start their profession, they are prohibited from breaching their professional oath.

Considering that the concept of the public order is more important than the imperative and mandatory laws, since violating any obligatory law does not mean that it is opposite to the public order, the maintenance of public order is to protect the public and their interests (6). It can be said that every rule related to the public order is an obvious example of the imperative laws. Evidently, good morals are an independent factor in limiting liberty of contracts that some people believe that it is not an obvious example of the public order. Although some other people believe that good morals are an example of public order, but due to its special importance in Iranian society, the legislators have preferred to mention it separately (7).

Confidentiality of personal health information in the law

Patient's rights to privacy are recognized in the laws and regulations of the most countries. Violation of this right not only has a negative effect on physician-patient mutual trust, but also has effects on public order. Moreover, there are many differences in the various countries about breaching professional confidentiality due to the mandatory reporting.

In the legal system of Canada, physicians and the medical personnel should consider any information collected within their work as confidential. No medical information related to patients outside medical team and without their consent should be disclosed (8).

The duty of the physician and healthcare providers to maintain confidentiality is explained in the legal system of Australia. This duty has been mentioned in provisions of contracts and in tort law in Australia. In fact the legal obligation of physicians in maintaining patients' confidentiality can be found in specific statutes (9). In Germany, the German Federal Data Protection Act was passed in 1977 to protect patient's secrets, while protecting individual rights has been considered in the civil code of Germany. In German Penal Code, patient's right to confidentiality is recognized and the law imposes the duty of confidentiality not only on physicians but also on all medical staff in hospitals and public or private clinics (10).

In Anglo-Saxon law, medical confidentiality is recognized as a fundamental principle. In English Law there is no specific statute on issue of confidentiality; however the General Medical Council (GMC) provides guidelines which are taken seriously by the courts (11).

In France, to the extent that maintaining confidentiality has interest for patient, is mandatory for all physicians. In French law no one in any position or no authority can access the client's secrets from professionals which are based on mutual trust. Perhaps it seems that we consider the professional secrets only for those which are related with an illness, but French law has imposed this oath to the physicians which cannot be violated (12). According to Article 4 of the French Public Health Code, the professional secrets not only refer to the secrets which are obvious to the physician due to his profession, but also refer to all information received, heard or understood in relation to the patient. This information is protected from disclosure and the legislator has made penalty provisions on those who violate the law (12).

The French judicial procedure follows the same criteria and the duty of confidentiality is imposed on every physician as a professional duty. Additionally, this duty will continue to exist even after patient's death and personal information should not be disclosed even if it is ordered by a judge. In

France the duty of confidentiality for the physicians and similar professions, are not limited to patient's illness and it generally covers all dimensions of patient's life. Sphere of confidentiality is to an extent that even if patient's personal information has been discussed by others in the press and the public is also informed about such information, the physician is not allowed to disclose any information (12).

Iran

According to Article 648 of the Penal Code of Iran, disclosure of patients' secrets by medical team is an offence since this Article states that: "whenever physicians, surgeons, midwives, pharmacists and all other people who are recognized as confident people due to their profession and position, disclose peoples' secrets in cases when it is not authorized by law, they will be subject to pecuniary punishment or imprisonment"(13). It seems that the legislator's emphasis on the term "in cases when it is not authorized by law" refers to confidentiality which is not absolute in Iranian law. It is necessary to mention that Article 331 of the Civil Code states that "disclosure of patient's information without patient's consent may expose risk of serious harm on the patient based on causation and consequently the physician or the person who has disclosed such information are responsible".

Medical mandatory reporting: breaching confidentiality in law

Sometimes a physician is obliged to breach the duty of confidentiality due to specific statute, and it is physician's duty to balance between the duty to maintain confidentiality and duty to breach this confidentiality and report patient's medical information. Breach of confidentiality occurs whenever the risk of harm to others is evident. In fact, the difficulty in violating the medical or professional confidentiality is because it is against professional values and medical activities (14).

Medical mandatory reporting: specific statutes

The following paragraph will examine cases that are mentioned in the law and provisions in different countries, where the law obliges physicians to breach the duty of confidentiality. Besides, we will mention specific statutes of other countries and Iran:

Notification of births and deaths in Iran

In order to prevent infanticide, exchange of babies and child trafficking, every birth (even illegal birth) must be registered, therefore maintaining confidentiality about issuing the birth certificate is absurd. According to Article 19 of the "Registration of Births and Deaths" Act 1976, undoubtedly, issuing birth certificates, death certificates with cause of death, has been mandatory. Currently, according to Article 2 of "Offences, Crimes and Criminal Penalties Related to the Birth

Certificates" Act, enacted in 1991, offenders who have violated Article 19 of the "Registration of Births and Deaths" Act 1976 are obliged to perform definite legal obligations and they are sentenced to jail or pecuniary punishment (15). Therefore, law has made an exception on the duty of confidentiality for healthcare providers in Article 19 of the aforementioned Act about the necessity of issuing birth certificates and sending one copy of the certificate to the National Organization for Civil Registration. Thus physicians and midwives are exempt from criminal responsibilities resulting from disclosing patient's secrets (15). According to this, neither a physician nor a midwife who is present at the child's birth or intervenes in child's birth, can cite the Article 648 of the Islamic Penal Code and avoid reporting the birth of the child to the National Organization for Civil Registration even if one of the parents or both of them asks for maintaining confidence in this matter (13).

According to the Registration of Births and Deaths Act, Article 24, due to legal consequences related to the individuals' death reporting, one copy of the death certificate with the physician's assessment must be sent to the registrar.

In this case, in the same way as issuing the birth certificate, the doctor cannot be blamed by the legal heirs for violating the law. Thus, issuing the death certificate like issuing the birth certificate are considered as an exception among the exception categories of Article 648 of Islamic Penal Code (13).

Infectious diseases

Diseases mandatory reporting system is designed to maintain and improve individual and public health level in the society and to prevent risks that they may not be aware of.

In England, according to the Public Health (Infectious Diseases) 1988 Act, all infectious and epidemic diseases have to be reported mandatory to the relevant local authority officer (16). Also in all states, physicians have to report Acquired Immune Deficiency Syndrome (AIDS), and this is considered as a part of the personnel's duty of hospitals, clinics and blood banks (17).

In Canada, infectious diseases are reported according to the law (18). In some states of Australia such as New South Wales and Tasmania, disclosure of sexual activities of a person diagnosed with AIDS and Human Immunodeficiency Virus (HIV), is permitted in some exceptional situations (19).

Also in Sweden, the law states that the identity of a person who has been diagnosed with AIDS must be reported (20, 21).

Governmental office of public health in India has categorized diseases according to the duration of reporting to diseases which have to be reported within 72 hours after the physician's diagnosis, and also the diseases which have to be reported immediately after diagnosis. It should be said that

animal bites have to be reported within 24 hours (22).

It should be noted that due to Articles 77 and 125 of Constitutional Law of Iran, and according to the Article 9 of Civil Code, provisions of conventions which enter into an agreement between Iran and other countries are considered as law.

Undoubtedly, it can be said that the health care authority of Iran, has not achieved enough success in designing a system for the medical mandatory reporting (23).

According to the specific statutes in Iran, physicians are obliged to report the diseases listed below:

Venereal diseases

According to the Article 3 of "Control of Venereal Diseases" Act 1941, and regulations related to this Act in 1946, if a patient does not attend for medical examination during a determined period, he or she must be recalled by legal authorities to approved medical centers and once diagnosed with venereal diseases, a doctor must treat the patient (23, 24).

Communicable diseases

According to the Article 19 of "Control of Venereal Diseases and Infectious Diseases" Act 1941 and the same Act Amendment 1968, every physician has to report patients diagnosed with infectious diseases to the Ministry of Health, as soon as possible after observing an incident (24).

Pregnancy related diseases and conditions

In the US, pregnant women must inform their physicians if they have consumed alcohol or drug during the pregnancy.

Government can provide health and welfare services for pregnant women who wish to terminate their pregnancies due to living in unhealthy and unsafe environments. By doing this, healthcare providers try to keep fetus safe from contagious diseases resulted from the pregnant mother's addictions like drinking alcohol and consumption of drugs. In fact the law not only protects pregnant women but also protects her future baby's health. In other words, the law respects pregnant women's rights and of their future babies (25, 26). There is no law about this subject in Iran.

Some special diseases and clinical conditions

In the United Kingdom, certain clinical conditions are notifiable according to the law, and are included in mandatory reporting. Such conditions consist of resistance against taking drugs against some microorganisms (e.g. *Mycobacterium tuberculosis*) and side effects of few drugs (e.g. *Penicillin* and *Vancomycin*) (19). In Iran, only cancer has been considered in the law. In situations where the doctor is obligated to breach confidentiality of patients who experience faint, seizures, or loss of consciousness, the physician-patient relationship faces a challenge. Some physicians in the US do not report medical information about

patients who suffer from epilepsy (27). Additionally in the US, reporting chronic diseases, diabetes, especially in the newborn babies is necessary from 2000, since 1 baby out of 3 suffers from diabetes during his or her lifetime (28, 29). In Australia, according to Motor Vehicle Act 1959, a health professional has a duty to inform the registrar the name, address and the nature of the illness and deficiency of a person who is suffering from a physical or mental illness or has a deficiency to drive which put the public in danger (30). In Iran, physicians perform according to the "Mandatory Reporting and Registering of Cancer Diseases" Act 1984 (31).

Occupational and environmental diseases

In the US, diseases such as work-related asthma, respiratory problems, silicosis, asbestosis, working with arsenic or other toxic substances, jobs which have risk of harm to children and young people under 18 years of age, fatalities caused by occupational accidents and work-related diseases have to be reported within 30 days after being diagnosed (32).

According to the law of Germany, once a physician suspects any patient with occupational disease, he must report the incident to the insurance company or to a governmental medical institution that are responsible for protecting the public health (33). There is no law or regulation about this subject in Iran.

Domestic violence:

Finnish Child Protection Act 1983, Article 40, obliges everyone to inform the Social Welfare Office, once they notice that a child needs protection and care (34). Moreover in 1994, in the US, the Violence Against Women Act (VAWA) passed by the congress based on reporting domestic and sexual violence against women (35). In this law also physician's duty to deal with cruelty against children under the legal age and elderly people or people who are not able to protect themselves (handicapped and those who suffers from mental deficiency), was recognized. There are cases when women or girls come forward with self-reports to health providers or police (36).

In these cases, if a physician suspects any incident of violence he has a duty to report. He must report the incident to the relevant authorities regardless of whether this incident already occurred or may occur in the future. Surprisingly, in many states of the US, the physicians who report such cases according to their medical knowledge are protected from the claims against them (37, 38). It should be said that anyone's cruelty and violence towards their spouses is an unacceptable behavior from medical and legal point of view (39, 40). Article 1130, Section 4 of Iran Civil Code states that violence and misbehavior towards wives by their husbands is not prohibited, unless the violence is unbearable (41).

Child abuse

According to the definition of World Health Organization (WHO), "child maltreatment" sometimes referred to as "child abuse", including all forms of physical and emotional ill, sexual abuse, neglect and exploitation by a parent or guardian that results in actual or potential harm to child's health or dignity (42).

It is impossible to maintain professional confidentiality at the time when there is an incident of child abuse, especially when there is no safety or security for the child (43). Child abuse, especially sexual abuse is an undeniable issue which has negative effects on children's mental health (44). We should consider multiple roles for the physicians dealing with issues of child abuse and prevent such incidents to occur (45). Child abuse is a serious and common issue which has attracted the attention of the governments. It is considered in the state laws and the U.S Federal Law, Civil law of all European countries and some Asian countries (46).

Child abuse reporting laws introduced in the USA by the late 1960s with the purpose of protecting the children. This law introduced to the healthcare systems of Australia and England years later (40-46). In Canada one of the main duties of the medical team especially dentists, is mandatory reporting of child abuse. Most of physicians are well-informed about this duty and they practice accordingly (47, 48).

Despite major changes in Iran's laws related to child abuse, the child protection laws are inefficient. In Iran, according to the Article 4 of "Child Protection" Act 2002, there are some penalties for child abuse. Article 6 of the same Act refers to the duty to report child abuse (49). In spite of explicit wording of the Child Protection Act which states "child abuse is a crime and there is no need for private plaintiff to report the incident, anyone who observes the incident must report it" (49), processing time for each case, numerous case failures and lack of legal protection of anyone who reports the incident, has resulted in loss of concern among people especially among physicians in a way that they tend not to get involved in this matter and report such incidents.

Actually, physicians must report the child abuse from ethical point of view, but as no legal obligation exists to oblige a physician to report child abuse to relevant authorities and in case of providing no protection for the physicians, most physicians try to just treat these children (50).

Elder abuse and negligence

Elder abuse and negligence is another issue which physicians may notice and it occurs in form of physical, emotional, sexual, financial abuse or even by negligence.

Mandatory reporting of elder abuse is the best way of preventing and prosecuting such torments (51). For example, in the US, 33 states have

mandated reporting any incident of elder abuse (52). Dentists in Canada must report any kind of torments as soon as they observe it or at the time of medical examination. It should be noted that in the US, Canada, England and Australia, elder abuse is recognized in laws (47, 48).

In Iran, there is no law related to this matter; however, the Article 633 of Iran Penal Code has considered some penalties for neglecting elderly people (53).

Sexual abuse of patients by healthcare professionals

One of the important cases that have been protected by the law in some states of the USA is reporting patients' sexual harassment by medical staff. The cornerstone of physician-patient relationship is holiness. Whenever incidents of patient sexual abuse occur such holiness is ruined forever (54). In Iran, there is no law related to this matter for protecting patients in critical situations however, reporting, investigating and prosecuting such incidents will be done through the Islamic Penal Code.

Epilepsy

In many parts of the world, there is a specific attention to the relationship between unreasonable cases and public health in order to increase public health and it is considered as a part of physicians' main duties. One of the cases is epilepsy. For instance, people who have special disease like epilepsy or for some reasons they do not have enough competency to drive, must avoid driving. By doing this, they keep themselves and the others safe and protect the public from harm. It is necessary that physicians, report the situation to the authorities once they notice such incidents (55). In Iran, there is no law related to this matter.

Sport and relevant events

The value and the goal of medical mandatory reporting are to protect public health and their needs in daily life. Presence of physicians is necessary in sport teams in order to fulfill this goal.

In the US, reporting sport injuries to the National Association of Physicians is considered as a professional duty for the medical team and any physical and psychological athlete abuse, must be reported, effectively (56).

Boxing and Martial Arts Act 2000 of Australia, states "a medical practitioner must conduct the examination of contestants before and after events and record the results". Failure to report would be subject to maximum penalty of 5000 Australian dollars. The Medical practitioner must notify not only the contestant but also the promoter of the event and the Minister of the Declaration (57). In Iran, there is no law related to this matter.

Human trafficking

Mandatory reporting cases and their related laws are evolving day by day and most laws support physicians so that they feel they are protected from

any claims and litigations. The important point is that laws are reflection of society's needs, physician-patient relationship and social needs (56).

The difficulty of the medical profession in this issue stems from weak and inefficient laws. Human traffickers misuse such inefficiency in laws in order to continue human trafficking especially when there is no international cooperation for reporting such incidents. An efficient specific statute in reporting such incidents by physicians will decrease such incidents to occur. There is no law related to this matter in Iran.

Gunshot injuries or wounds

Countries have considered some rules about deadly serious wounds resulted from weapons (crimes). Different countries have considered different requirements for reporting about firearms (like gun...) and cold steels (like knife ...) and the wounds resulted from them.

In California, physicians and other health care providers have to report any kind of wound or injury caused by deadly weapons e.g. a gun, to the police (58).

Medical mandatory reporting laws of gunshot wounds enacted in Canada in 1995 (59). Reports of forensic personnel for people who injured by firearms or any other deadly weapon is necessary.

Physicians in all states of Australia have to report patients' wounds resulted from knife, gun or any other deadly weapon (60).

Moreover, the law obliges the hospital staff to report gunshot wounds and in the special situations, hospital staff has to allow the police to speak with the wounded patient especially when the crime is highly important (critical) to access information (17, 61). There is no law related to this matter in Iran.

High risk pregnancies

Reporting death of infants, infectious disease of the pregnant women and their addiction to drugs or alcohol are physicians' duties which have been emphasized by World Health Organization and the governments.

In the US, pregnancies of young people under the age of 18 must be reported in order to reduce birth rate and to increase facilities and health services to these people (62).

Physicians must report any cases where pregnant women diagnosed with contagious disease affecting their fetus. Any kind of dangerous behavior during pregnancy such as alcohol consumption, usage of drugs and exposure to x-rays must be reported to relevant authorities (63). There is no law related to this matter in Iran.

Medical errors

It is possible that, the physicians fault causes damage to the patients' health. In this case, responsible physician is obliged to report the incident to authorities. World Health Organization called the patient's safety as public concern in World

Alliance for Patient Safety in 2004 and called for the necessary considerations for patient safety. Some countries reported damages and death of patients due to medical errors and it was discovered that one out of ten patients suffers from complications and injuries of medical errors (64, 65)

Danish Act on patient safety passed in parliament in 2003. In early 2004, Denmark was known as the first country legislating mandatory reporting related to medical errors. Imperative law of mandatory reporting obliges hospital and medical staff to report any medical practice which is against the health to the national system of mandatory reporting (66).

In the US, 23 states passed the law for mandatory reporting of diseases and severe wounds and deaths due to such injuries in 2005 (67). Finally, in 2005, the US congress passed the law on mandatory reporting of the medical faults in order to promote patient safety and quality of life (68).

In Iran, the Iranian Legal Medicine Organization has considered the duty of mandatory reporting of death. However, from a legal viewpoint, this is not one of the responsibilities of the aforementioned organization.

Drug side effects

Adverse event (or side effect) is an undesirable experience which occurs due to medication (69). In Canada, reporting adverse drug reaction is either mandatory or voluntary for manufacturers, professionals and consumers. Trial sponsors must report any serious and unexpected adverse drug reaction (ADR) to health Canada while the drug is in clinical trial. It also applies to natural health products in clinical trials. However, professionals are encouraged to report adverse reactions to marketed products such as food, consumer products, drugs for humans, vaccines to prevent diseases in humans....., and it is voluntary to report an adverse reaction to health Canada (70).

In Iran, there is a guideline about reporting side effects of the drugs but this guideline cannot impose any obligation on physicians unless it is with patient's explicit informed consent (71).

Animal cruelty

Animal cruelty is one of those situations where physicians and dentists have legal obligation to report in some countries (72).

It should be noted that generally, animal cruelty is not done by healthy people and it is possible that a child or a young person being abused by animal abusers. Therefore, it is necessary to attract public's attention to this matter and try to provide operations and guidelines, make animal cruelty

laws and provide targeted treatment to animal abusers.

Conclusion

The important issue for physicians is that sometimes a physician is obliged to disclose patients' secrets due to necessity, and failure to do so may have risk of harm to the patient or others. This raises a conflict for the physician; "necessity" and "respect for the patient" at the same time (to treat the patient with respect and dignity and to keep patient's secrets confidential and necessity to prevent harm to patient or others).

Disclosure of personal health information, in order to help and prevent some diseases and consequently preventing harm to others, requires a comprehensive guideline which defends violation of law by physicians. World Health Organization tries to consider all human beings health. In this respect, guidelines are provided to protect the rights of those who have been affected due to consequences of such disclosure.

As we explained earlier, there are significant differences between medical mandatory reporting laws of Iran and the laws of other countries. It is necessary to carefully review current Acts and set guidelines in order to protect public order, respect human dignity and basic rights of individuals. In this regard, domestic violence, child abuse, drug side effects, human trafficking, dangerous pregnancies and other abovementioned situations are to be considered in mandatory reporting law of Iran. Undoubtedly, determining the level of importance of such incidents subject to medical mandatory reporting, providing guidelines with details about how to report are inevitable. Alternatively, specific statute for each situation needs be made by the parliament so that the law explicitly defines and imposes duties on doctors to disclose specific information. However these alternative views require separate studies.

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