



“Legal and Ethical Aspects on the Confidentiality of Workers Medical Information”

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Employee Medical Information

- Confidentiality
- Security
- Need to Know



Privacy of Personal Information

- individual right
- right to be left alone



Confidentiality of Employee Medical Information

- Shared medical information by the employee to the medical practitioner shall be:
- held **in strict and full confidence**, and
- will not be unnecessarily shared with other parties.
- fiduciary relationship between the Patient (worker) and the Medical Practitioner.

“All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal.”

... Hippocrates

Confidentiality vs Privacy:

Confidentiality- privacy of information and its protection against unauthorized disclosure.

Privacy - The state of being free from intrusion or disturbance in one's private life or affairs
- right to be left alone.

Source: U.S. National Library of Medicine

Confidentiality

- information about the employees health must remain private and can be shared ONLY with other members of the employee's Health Care/Occupational Health team.

Refrain from immoral, unethical, and illegal practices.

Legal and Ethical Responsibilities

It is our responsibility to understand the legal and ethical implications concerning the keeping of medical records.

Ethical responsibilities are based not on law, but rather, on what is morally right or wrong.

Occupational Health Practitioners must respect the employee's rights.

R.A. 110581

Title: An Act Strengthening Compliance With Occupational Safety and Health Standards and Providing Penalties For Violations Thereof.

Approved, August 17, 2018.



OSHS Rule 1050:

Notification and Keeping of Records of Accidents and/Or Occupational Illnesses

Rule 1053.1 (1) **All** work accidents or **occupational illnesses** in places of employment, resulting in disabling condition or dangerous occurrences as defined in 1053.2 **shall be reported** by the employer to the Regional Labor Office or duly authorized representative using for DOLE/BWC/HSD-IP-6.xxxx

OSHS Rule 1050:

Notification and Keeping of Records of Accidents and/Or Occupational Illnesses

Rule 1052.01:

Reports made by the employer shall be **exclusively** for the information of the Regional Labor Office or duly authorized representative in securing data to be used in connection with the performance of its accident and illness prevention duties and activities and as a requirement distinct from that of the Employer's Compensation Commission or any other law. The reports shall not be admissible as evidence in any action or judicial proceedings in respect to such injury, illness or death on account of which report is made and shall not be made public or subject to public inspection except for prosecution for violation under the Rule.

Rule 1960: Occupational Health Services

- Occupational Health Services
- Duties of Employers:

1965.01 (4) Maintain a health record of his programs and activities and **submit an annual medical record, xxx to the Regional Labor Office xxx**

Rule 1960: Occupational Health Services

- **Occupational Health Services**

- **Duties of the Occupational Health Physician:**

1965.02 (6) Maintain and analyze records of all medical cases and to prepare and submit to the employer an annual medical reports, xxx

Rule 1960: Occupational Health Services

- **Occupational Health Services**

- **Duties of the Occupational Health Nurse:**

1965.04 (5) Maintain a reporting and records system, and if a physician is not available, prepare and **submit an annual medical reports, xxx**

Rule 1960: Occupational Health Services

- Occupational Health Services

- Duties of the Occupational Health Practitioner:

1965.06 (4) Maintain a reporting and records system, and prepare and submit an annual medical reports for the employer, xxx

OSHA CFR Part 1910.1020:

Access to Employee Exposure and Medical Records

- The purpose of this section is to provide employees and their designated representatives a **right of access to relevant exposure and medical records.**

Applicability [1910.1020\(b\)\(2\)](#)

- Applies to all **employee exposure and medical records**, and analyses thereof, of such employees, **whether or not** the records are mandated by specific occupational safety and health standards.

Employee medical record [1910.1020\(c\)\(6\)](#)

- a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician xxxx



Employee medical record, includes:

[1910.1020\(c\)\(6\)\(i\)\(A-F\)](#)

- 1. Medical and employment questionnaires or histories (including job description and occupational exposures),**
- 2. The results of medical examinations**
- 3. Medical opinions, diagnoses, progress notes, and recommendations,**
- 4. First aid records,**
- 5. Descriptions of treatments and prescriptions, and**
- 6. Employee medical complaints.**

Employee medical record, does not include [1910.1020\(c\)\(6\)\(ii\)](#)

1. **Physical specimens**
2. **Records concerning health insurance claims**
3. **Records created solely in preparation for litigation** which are privileged from discovery under the applicable rules of procedure or evidence; or
4. **Records concerning voluntary employee assistance programs**

Preservation of records [1910.1020\(d\)\(1\)\(i\)](#)

Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

- **"Employee medical records."** The medical record for each employee shall be preserved and maintained for at least the **duration of employment plus thirty (30) years.**

Note: Subject to existing regulations, all medical records, whether in electronic and/or paper format, shall be stored for fifteen (15) years. For medico-legal cases, records shall be stored for a lifetime. (Health Privacy Code)

Preservation of records (Exemptions)

[1910.1020\(d\)\(1\)\(i\)\(A-C\)](#)

- 1. Health insurance claims records maintained separately**
- 2. First aid records (not including medical histories) of one-time treatment**
- 3. The medical records of employees who have worked for less than (1) year**

Access to medical records

1910.1020(e)(1)(i)

Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a **reasonable time, place, and manner**.

Each employer shall, **upon request**, assure the access of each employee to employee medical records of which the employee is the subject, (with exceptions):

Access to medical records (Exception)

1910.1020(e)(2)(ii)(D)

Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a **terminal illness or a psychiatric condition** could be **detrimental to the employee's health**, the employer may inform the employee that **access will only be provided to a designated representative of the employee having specific written consent**, and deny the employee's request for direct access to this information only.



Written Consent: [1910.1020\(e\)\(2\)\(ii\)\(B\)](#)

Each employer shall, upon request, assure the access of each **designated representative** to the employee medical records of any employee who has given the designated representative specific **written consent**.



Specific written consent [1910.1020\(c\)\(12\)](#)

means a written authorization containing the following:

1. The **name and signature** of the employee authorizing the release of medical information,
2. The **date** of the written authorization,
3. The name of the individual or organization that is **authorized to release** the medical information,
4. The name of the designated representative (individual or organization) that is **authorized to receive** the released information,
5. A general description of the **medical information** that is authorized to be released,
6. A general description of the **purpose** for the release of the medical information, and
7. A **date or condition** upon which the written authorization will expire (if less than one year).

Written consent: When **invalid**

[1910.1020\(c\)\(12\)\(ii\)](#)

A written authorization does not operate to authorize the release of medical information **not in existence** on the date of written authorization, unless the release of future information is expressly authorized, and **does not operate for more than one year** from the date of written authorization.

[1910.1020\(c\)\(12\)\(iii\)](#)

A written authorization may be revoked in writing prospectively at any time.

Laws:

Law – a body of rules, regulations, and legal opinions of conduct and action that are made by controlling authority and are legally binding

Protection of Privacy: Philippines Laws

- Art. III Bill of Rights, Section 3. (1)

“The privacy of communication and correspondence shall be **inviolable** except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.”

Protection of Privacy: Philippines Laws

- **R.A. 386 (The Civil Code of the Philippines) Article 26, Chapter 2:**

“Art. 26. Every person shall respect the dignity, personality, **privacy** and peace of mind of his neighbors and other persons.”

Protection of Privacy: Philippines Laws

- R.A. 386 (The Civil Code of the Philippines) Article 19,
Chapter 2:

“Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe **honesty and good faith.**”

Protection of Privacy: Philippines Laws

- R.A. 3815 (The Revised Penal Code of the Philippines) Arts. 290, 291, 292

“Art. 290. Discovering secrets through seizure of correspondence.”

“Art. 291. *Revealing secrets with abuse of office.*”

“Art. 292. Revelation of industrial secrets.”



Protection of Privacy: Philippine Laws

Republic Act No. 10173 (Data Privacy Act of 2012)

Section 13. Sensitive Personal Information and Privileged Information.

General Rule:

The processing of **sensitive personal information** and **privileged information** shall be prohibited ... (with exceptions)

Protection of Privacy: Philippine Laws

- **R.A. 8504 (Philippine AIDS Prevention and Control Act of 1998)**

- “Sec. 30. Medical confidentiality. – All health professionals, medical instructors, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of any medical record, file, data, or test results are directed to strictly observe confidentiality in the handling of all medical information, particularly the identity and status of persons with HIV.”

Protection of Privacy: Philippine Laws

- R.A. 8504 (Philippine AIDS Prevention and Control Act of 1998)

Section 31. Exceptions to the mandate of confidentiality. – Medical confidentiality shall not be considered breached in the following cases:

(a) when complying with **reportorial requirements** in conjunction with the AIDSWATCH programs provided in Sec. 27 of this Act;

Protection of Privacy: Philippine Laws

- R.A. 8504 (Philippine AIDS Prevention and Control Act of 1998) cont...

Section 31. Exceptions to the mandate of confidentiality. – Medical confidentiality shall not be considered breached in the following cases:

(b) when informing other health workers directly involved or about to be involved in the **treatment or care of a person** with HIV/AIDS: Provided, That such treatment or care carry the risk of HIV transmission: Provided, further, That such workers shall be obliged to maintain the shared medical confidentiality;

Protection of Privacy: Philippine Laws

- R.A. 8504 (Philippine AIDS Prevention and Control Act of 1998) cont...

Section 31. Exceptions to the mandate of confidentiality. – Medical confidentiality shall not be considered breached in the following cases:

(c) when responding to a **subpoena duces tecum** and **subpoena ad testificandum** issued by a Court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual: Provided, That the confidential medical record shall be properly sealed by its lawful custodian after being double-checked for accuracy by the head of the office or department, hand delivered, and personally opened by the judge: Provided, further, That the judicial proceedings be held in executive session.

Protection of Privacy: Philippine Laws

- R.A. 7277 (Magna Carta of Disabled Persons)

SECTION 33. Employment Entrance Examination. Upon an offer of employment, a disabled applicant may be subjected to medical examination, on the following occasions:

(a) all entering employees are subjected to such an examination regardless of disability;

(b) information obtained during the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record

Protection of Privacy: Philippine Laws

- **DOLE Advisory No. 05** (Guidelines for the Implementation of a Workplace Policy and Program on Hepatitis B)

- **Confidentiality**

“Job applicants and workers shall not be compelled to disclose their Hepatitis B status and other related medical information. Co-workers shall not be obliged to reveal any personal information about fellow workers. Access to personal data relating to a worker’s Hepatitis B status shall be bound by the rules of confidentiality and shall be strictly limited to medical personnel or if legally required.”

Protection of Privacy: Philippine Laws

- **DOLE Department Order No. 53-03: IRR on Drug Free Workplace & R.A. 9165 (The Comprehensive Dangerous Drugs Act)**

“requires an employer to maintain confidential all information relating to drug tests or the identification of drug users in the workplace, except when required by law or overriding public health and safety concerns, or when authorized in writing by the person concerned.”

Protection of Privacy: Philippine Laws

- **R.A. 4200, (The Anti-Wiretapping Law)**

Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described.

Protection of Privacy: Philippine Laws

- **R.A. 8792 (Electronic Commerce Act of 2000)**

“provides that any person with access to electronic data messages or documents has the obligation of confidentiality or the duty not to convey the information to, or share it with, any other person. Under this law, unauthorized access to computer systems is punishable by law.”

Protection of Privacy: Philippine Laws

- Section 24, Rule 128 of the Rules of Court

“Rule 128, Section 24: Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases: xxx

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient. xxx “

What are Sensitive Personal Information (R.A. 10173, Sec. 13 (I))

- (1) About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an **individual's health**, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current **health records**, licenses or its denials, suspension or revocation, and tax returns; and
- (4) Specifically established by an executive order or an act of Congress to be kept classified.

What is a Privilege Communication

Definition of Privilege Communication:

- Privileged information refers to any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication.
- Conversation or working relationship which takes place between two parties within the context of a protective relationship such as between healthcare provider and a patient.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

1. Data subject consent

- *Form of waiver or consent:*

- written
- electronic
- recorded
- *by authority or agent*

What is an e-signature?

- printed name at the bottom of an e-mail;
- a digitized copy of a handwritten signature;
- a biometric mark;
- a sound; or
- digital structure

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

2. Existing Laws and Regulations

a. under Republic Act No. 3753 (Law on Registry of Civil Status), births and deaths should be registered.

b. under Republic Act No. 3573 (Law of Reporting of Communicable Diseases), reporting of certain communicable diseases is mandatory.

c. under Executive Order No. 212, medical practitioners shall report treatment of patients for serious and less serious physical injuries

d. Presidential Decree No. 603, as amended (Child and Youth Welfare Code), practitioners should report cases of child abuse or maltreatment.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

2. Existing Laws and Regulations (cont...)

e. Prescription and dangerous drugs dispensed by pharmacies are recorded and retained in books for inspection by appropriate authorities.

(Kilusang Mayo Uno vs. Director-General, National Economic Development Authority (487 SCRA 623, 2006

f. Specific Cases: Testing of certain populations for dangerous drugs is mandatory and reportable.

g. 1997 Rules of Civil Procedure: Upon court order under very specific circumstances, a person may be compelled to be tested for HIV, or submit himself or herself to a mental and physical examination.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

2. Existing Laws and Regulations (cont...)

h. Under Republic Act No. 9745 or the Anti-Torture Act of 2009, a person claiming torture by the authorities is given the right to a physical examination and psychological evaluation, to be contained in a medical report.

i. Code on Sanitation of the Philippines (Presidential Decree No. 856) authorizes the Court and police authorities to order the performance of an autopsy on the remains of an individual.

2.f. Specific cases (Drug testing)

“Comprehensive Dangerous Drugs Act of 2002”, Republic Act No. 9165, Section 36. Authorized Drug Testing. The following shall be subjected to undergo drug testing:

- (a) Applicants for driver's license
- (b) Applicants for firearm's license and for permit to carry firearms outside of residence
- (c) Students of secondary and tertiary schools
- (d) Officers and employees of public and private offices
- (e) Officers and members of the military, police and other law enforcement agencies

- (f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall have to undergo a mandatory drug test;
- (g) All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

3. To protect the life and health of data subject

- subpoena, warrant, or adjudicative order from a court, a law enforcement agency, an administrative agency authorized by law, or an arbitration panel.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

4. Lawful and non-commercial objectives of public organizations and associations

- if the processed personal information are used only for the needs of scientific and statistical research, provided that the personal information shall be held **under strict confidentiality** and used only for the declared purpose

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

5. Medical treatment

- “Philippine AIDS Prevention and Control Act of 1998”,
Republic Act No. 8504:

Section 31, Article VI Exceptions to the Mandate of Confidentiality when informing other health workers directly involved or about to be involved in the treatment or care of a person with HIV/AIDS: Provided, That such treatment or care carry the risk of HIV transmission: Provided, further, That such workers shall be obliged to maintain the shared medical confidentiality;

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

5. Medical treatment

In compliance with Act No. 3573 also known as the “Law on Reporting of Communicable Diseases”, all notifiable diseases, syndromes, events and conditions shall be immediately collected and reported to the local and national authorities.

Conforming to Executive Order No. 292 (s.1987), relevant information on the country’s health situation shall be collected, analyzed and disseminated by appropriate authorities provided that health information of patients shall be protected and shall statistical data shall only be provided.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

6. Protection of lawful rights and interest of natural or legal person in court proceedings;

- “Philippine AIDS Prevention and Control Act of 1998”, Republic Act No. 8504

Section 31, Article VI: Exceptions to the Mandate of Confidentiality (c) :

(c) when responding to a subpoena duces tecum and subpoena ad testificandum issued by a Court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual: Provided, That the **confidential medical record** shall be properly **sealed** by its lawful custodian after being **double-checked** for accuracy by the head of the office or department, **hand delivered and personally opened** by the judge: Provided, further, That the judicial proceedings be held in executive session.

Exemptions to Privacy Protection (Sec. 13, Data Privacy Act)

7. Establishment, exercise or defense of legal claims

- *For purposes of insurance compensation*

*Republic Act No. 7875, National Health Insurance Act of 1995

Exemptions to Privacy Protection (Sec. 4, Data Privacy Act)

*8. When the **personal information** are provided to governments or public authority*

(a) Information about any individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual, including:

(1) The fact that the individual is or was an officer or employee of the government institution;

(2) The title, business address and office telephone number of the individual;

(3) The classification, salary range and responsibilities of the position held by the individual; and

(4) The name of the individual on a document prepared by the individual in the course of employment with the government;

How to handle Medical Information

1. Employees must be informed about how their medical information will be kept confidential and about laws and regulations that require the release of and/or require confidentiality of their information.
2. Employees must grant authority or permission for the release of information not covered by laws and regulations.
3. The company must respect and treat the employees' health information as confidential.

Ethical Responsibilities of Health Practitioner

Morals - formed from personal values and reflect one's concept of right and wrong (developed through the influence of family, culture, and society)

– acting morally toward others involves treating them the way you would like to be treated.

Ethics

Ethics – set of principles dealing with right and wrong

- knowledge of what is right and wrong
conduct

- Provide a standard of conduct or code of
behavior

Code of Ethics, (PMA and BON)

Philippine Medical Association, Section 6, Article 2:

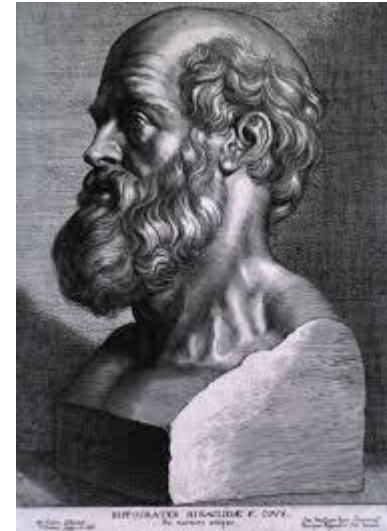
The physician should hold as sacred and highly confidential whatever may be discovered or learned pertinent to the patient even after death, except when required in the promotion of justice, safety and public health.

Board Of Nursing, Article II (3):

Personal information acquired in the process of giving nursing care shall be held in strict confidence.

Hippocratic Oath...

“All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal.”



Thank
you!