

# **KERAHSIAAN DATA PERUBATAN DAN AKSES KEPADA REKOD PERUBATAN**

**PROF DR PUTERI NEMIE JAHN KASSIM  
AHMAD IBRAHIM KULLIYAH OF LAWS  
INTERNATIONAL ISLAMIC UNIVERSITY  
MALAYSIA**

# MEDICAL CONFIDENTIALITY AND ACCESS TO HEALTH RECORDS

**PROF DR PUTERI NEMIE JAHN KASSIM  
AHMAD IBRAHIM KULLIYYAH OF LAWS  
INTERNATIONAL ISLAMIC UNIVERSITY  
MALAYSIA**

# Duty of confidentiality

- Confidentiality – one of the core tenets of medical practice
- However, duty of confidentiality is by no means an absolute concept
- To balance patient's interest in his privacy and other potentially conflicting interests.
- Conflict between confidentiality, fidelity, veracity, beneficence and justice.

# Gillon R, Philosophical Medical Ethics, 1986

- “If patients did not believe that doctors would keep their secrets then either they would not divulge embarrassing but potentially medically important information, thus, reducing their chances of getting the best medical care.”

# Definition of confidentiality

- Confidentiality refers to the legal or ethical duty to keep private the information gathered during the course of a professional relationship. Literally speaking, confidentiality means to keep secret that is not to be divulged.
- The principle of keeping secure and secret from others, information given by or about an individual in the course of a professional relationship – *British Medical Association*

# What can be protected?

- All identifiable patient information, whether written, computerised, visually or audio recorded or held in the memory of medical professionals, is subject to the duty of confidentiality. These include (i) any clinical information about an individual's diagnosis or treatment; (ii) a picture, photograph, video, audiotape or other; (iii) images of the patient; (iv) the identity of the patient's doctor and the information about the clinics the patients had attended; (v) anything else that may be used to identify patients directly or indirectly so that any of the information above, combined with the patient's name or address or full postcode or the patient's date of birth, can identify be made to them

# Justifications for confidentiality

- **Patient autonomy** – respect for the patient's sense of individuality and privacy
- **Doctor's integrity** -doctor's undertaking to the patient about what use will be made of the information that has been obtained
- **The Consequences for future relationship** – patients may not tell vital information

# The Duty of medical confidentiality

- Duty is enshrined in ethics and law
- **Ethics** : –
  - Hippocratic Oath – “All that may come to my knowledge in the exercise of my profession...I will keep secret and never reveal”
  - Declaration of Geneva – “I will keep the secrets that have been confided in me, even after the patient has died



# Continuation – Ethical duty

*International Code of Medical Ethics* - “A doctor shall preserve absolute secrecy on all he knows about his patients because of the confidence entrusted in him.”

- *Code of Ethics – Malaysian Medical Council* - paragraph 2.22 Abuse of Confidence – A practitioner may not improperly disclose information which he obtains in confidence from or about a patient.

# Provision 1 – MMC Guidelines on Confidentiality 2011

- Patients have the right to expect that there will be no disclosure of any personal information, which is obtained during the course of a practitioner's professional duties, unless they give consent. The justification for this information being kept confidential is that it enhances the patient- doctor relationship. Without assurances about confidentiality patients may be reluctant to give doctors the information they need in order to provide good care.

**Code of Professional Conduct for Nurses 1998 by the Nursing Board Malaysia specifically provides that “the nurse must not disclose information which she obtained in confidence from or about a patient unless it is to other professionals concerned directly with the patient’s care” (at Provision 3.5).**

- The source of the obligation of confidentiality can further be found in the **common law, principles of equity and various statutory provisions.**
- Generally, the medical professional has a duty in law not to voluntarily disclose, without the consent of the information which he has gained in his **professional capacity** (Hunter v Mann [1974] QB 767).

**The rules under  
medical law**

# 1. Contractual Obligation

- Every contract between a patient and a doctor gives rise to an implicit agreement to preserve patient's confidences and such breach give rise to an action for breach of contract.
- Where patient pays for the treatment, the relationship between the doctor and the patient is contractual.
- There exist an implied term that patient's affairs are confidential and should not be disclosed without just cause.

## 2. Principles in Tort Law

- If negligent disclosure of confidential information gives rise to some foreseeable injury to the patient.
- In **AG v Guardian Newspapers (No 2) [1990] AC 109**, Lord Goff stated that
- “...a duty of confidence arises when confidential **information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the information is confidential**, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others...”

# Three limitations...

- (i) It only applies to information to the extent that it is confidential. In particular, once it has entered **public domain**, no longer confidential;
- (ii) It does not apply to **useless information** or to trivia;
- (iii) The **public interest** in preserving confidences may be outweighed by some other countervailing public interest which favours disclosure.

# THE EXCEPTIONS

---



# Justifications for breaching confidentiality - The Exceptions

- The duty is not absolute – the law recognised several justifications for breaching confidentiality:
- **Disclosure with patient's consent** – elements of legally valid consent to be satisfied – express or implied consent
- **Disclosure allowed by Statute** – e.g. Prevention and Control Diseases Act 1988, Poisons Act 1952, Criminal Procedure Code (Chapter 6)
- **Disclosure in the Public Interest**

The Malaysian Medical Council Revised Guidelines 2011 on Confidentiality stated that a practitioner may “disclose personal information if (a) **it is required by law** (b) the patient consent either implicitly for the sake of their own care or expressly for other purposes; or (c) it is justified in the **public interest**”.

## *Provision 3*

# 1. Disclosure with patient's consent

- Express or Implied Consent
- Patient must have the mental competence (reached the age of majority and of sound mind), sufficient understanding of the treatment proposed (the consent must be informed in nature) and by with their own free will.

**Even when the practitioner have contractual obligations with the third parties such as insurance companies or managed care organisations, the practitioner shall obtain the patient's consent before undertaking any examination or writing a report for a third party and ensure that the patient's consent is obtained prior to the submission of the report (MMC Guidelines 2011, at Provision 29).**

## 2. Disclosure allowed by statute

- A number of statutory provisions provide for the disclosure of information by doctors.
- E.g. Section 10(2) of the Prevention and Control of Infection Diseases Act 1988 requires medical practitioners to provide information of infectious diseases to the nearest Medical Officer of Health in the prescribed form.

# Abused children....

- It is widely accepted that the public interest exception would justify informing the social services or police when evidence comes to light in confidential consultations to suggest that a patient may be abusing a child.
- Sec 15 of the Child Act 2001 – restrictions on media reporting and publication – cannot reveal name, address, educational institution that can identify the child.
- Sec 27 – Duty of medical officer or medical practitioner – believes on reasonable grounds that a child is abused, must inform the Protector

# DEOXRIBONUCLEIC ACID (DNA) IDENTIFICATION ACT 2009

- **Section 20. Obligation of secrecy.**
- (1) The Head of DNA Databank, Deputy Head of DNA Databank and DNA Databank officers or any person who for any reason, has by any means access to any data, record, book, register, correspondence, document whatsoever, or material or information, relating to the DNA profiles and any information in relation thereto in the DNA Databank which he has acquired in the performance of his functions or the exercise of his powers, **shall not give, divulge, reveal, publish or otherwise disclose to any person, such document, material or information** unless the disclosure is required or authorized—
  - (a) under this Act or regulations made under this Act;
  - (b) under any written law;
  - (c) by any court; or
  - (d) for the performance of his functions or the exercise of his powers under this Act or regulations made under this Act.
- (2) Any person who contravenes subsection (1) **commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.**

## 3. Disclosure in the public interest

- Public interest includes matters which affects the life and even the liberty of members of the society – Examples:
- Disclosure to maintain freedom of the press
- Disclosure in the interests of national security
- Disclosure to prevent harm to third party
- Disclosure to prevent crime



**The Malaysian Medical Council Revised Guidelines 2011 on Confidentiality stated that a practitioner may “disclose personal information if (a) it is required by law (b) the patient consent either implicitly for the sake of their own care or expressly for other purposes; or (c) it is justified in the public interest” (at Provision 3).**

In such cases the practitioner shall still try to seek patient's consent, unless it is not practicable to do so, for example because (a) the patients are not competent to give consent; or (b) the records are of such age and/or number that reasonable efforts to trace patients are unlikely to be successful; or (c) the patient has been, or may be violent; or obtaining consent would undermine the purpose of the disclosure (e.g. disclosures in relation to crime); or (d) action must be taken quickly (for example in the detection or control of outbreaks of some communicable diseases) and there is insufficient time to contact patients (MMC Guidelines 2011, provision 35)

## Disclosure to maintain freedom of press (Common Law exception)

- There is a public interest in the freedom of the press and other forms of media to investigate and report on matters of legitimate public concern.

# X v Y [1988] 2 All ER 648

- it was for the court to judge whether it was in the public interest – in this case the public interest had to be weighed against three competing principles:
- - the principle that hospital records should remain confidential
- - the public interest in ensuring that employees did not disclose confidential information obtained in the course of their employment
- - the particular need to guarantee that AIDS sufferers could use hospitals without this being revealed.

# Disclosure to prevent harm to third party

- There has to be a balance drawn between the public interest in effective treatment of mental illness and the consequent requirement of protecting confidentiality
- The protective privilege ends where the public peril begins

# Continuation...

- Mentally ill patients – *Tarasoff v Regents of the University of California* (1976) 551 P 2d 334

Facts: P, voluntary outpatient receiving mental therapy – informed therapist his desire to kill an identifiable woman – therapist contacted police – P detained temporarily – released - killed woman – no one warned the woman about the threat – Her parents sued the therapist

Held: A duty of care was owed by the therapist to the woman murdered by P.

# Continuation - Tarasoff

- Mr Justice Tobriner said:

“When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus, it may call for him to warn the intended victim or others likely to appraise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.”

# Criticisms of Tarasoff

2 major criticisms:

- Doctor has to assess the seriousness of patient's mental problem – unreliability of predicting future violence
- Damages doctor and patient relationship



# Position in English Law

- English courts have treated imposing duty to control actions of third party with hostility
- *Hill v Chief Constable of West Yorkshire* [1988] – such duty does not exist unless there is a special relationship, over and above ordinary relationship based on foreseeability
- Approved *Home Office v Dorset Yacht* [1970] – victim must be identifiable

# Protecting third parties even if no threat of potential crime

- *Re C (A Minor) (Evidence: Confidential Information)* (1991) 7 BMLR 138:

Facts: Proposed adoption of a one year old baby – mother withdrew consent a day before the adoption hearing – documents on mother’s mental condition and fitness to bring up a child was produced in court – mother claimed breach of medical confidentiality

Held: The documents were admissible

## 4. Disclosure of HIV/AIDS status...

- Common law - disclosure of a patient's HIV status is allowed provided that two conditions are satisfied: first, that there is a real risk to the people to be informed; secondly, that disclosure is the only practical way to protect them

# Patients having HIV/AIDS...

- General Medical Council in England advises doctors to explain to patients the nature and implications of their disease, how they can protect others from infection and the importance of giving professional carers information about their condition. However, if patients still refuse to allow others to be informed of their status, disclosure is accepted as ethical provided that the doctor judges that there is a serious risk of death or serious harm and that patients are told that the information will be disclosed.

## Patients having HIV/AIDS...

- Malaysia, the HIV/AIDS Charter for Doctors states that “doctors should, without prejudice and discrimination, when carrying out blood or other tests, ensure that adequate pre and post-test counseling is conducted to ensure consent to testing.” The Charter further reads that patients who are HIV positive “shall be encouraged to inform the attending doctor/s of their HIV status and information about a patient’s HIV status shall be restricted to medical professionals and other authorised personnel on a need-to-know basis.”

# Disclosure to prevent crime

- Disclosure may be justified to protect those at risk of death or serious harm.
- *W v Egdell* [1990] – Dr E wanted report that W was still dangerous be made available to Home Office and hospital – court allowed disclosure as public interest justified it – balance to be struck between the two conflicting interests.

# W v Egdell

- Court of Appeal refused to prevent disclosure of the report – public interest justified disclosure to the medical director and the Home Office. The report contained the dangerousness of W that is not known to many. To suppress it would have prevented material relevant to public safety from reaching the authorities responsible for protecting it. It was in the public interest to ensure that they took decisions on the need for such protection on the basis of the best available information.

# W v Egdell

- **Three guidelines emerged from Egdell:**
- - **It is probable that a real and serious risk of danger to the public must be shown before the public interest exception is made out. The public interest exception can only justify disclosure so long as the threat persists**
- - **Disclosure must be to a person with a legitimate interest in receiving the information**
- - **Even where the public interest requires disclosure, it is necessary to confine it to the extent strictly necessary**



## Continuation...*W v Egdell*

- Bingham LJ:  
“The breach of such a duty [of confidentiality] is...dependent on circumstances...the law recognizes an important public interest in maintaining professional duties of confidence but the law treats no such duties as absolute....[it can] be overridden where there is held to be a stronger public interest in disclosure.”
- *W v Egdell* approved in *R v Crozier* (1990)

## Position in Malaysia

- Lack of legal precedents
- The Evidence Act 1950 and the Medical Act 1971 do not grant the medical profession any right of confidentiality - communications between doctor and patient are not privileged
- *W v Egdell* applied in *Public Prosecutor v Dato' Seri Anwar bin Ibrahim & Anor* [2001]

---

**Breach of confidentiality  
through social networks**

# Introduction

The popularity of social networks has grown rapidly in recent years.

There is a widespread use of sites such as Facebook and Twitter amongst medical students and doctors without knowing the potential risks that may arise.....

# Types of information discussed

---

- Patient medical history
- Patient's diagnosis
- Patient's treatment
- Patient himself/herself
- Patient's character and attitude
- Patient's family
- Events affecting the patient

# LEGAL IMPLICATIONS

# 1. BREACH OF LEGAL DUTY OF CONFIDENTIALITY

As discussed earlier, the duty of confidentiality is not only an ethical duty but a legal duty as well.....therefore by discussing information pertaining to the patients on social networks can amount to a breach of the legal duty of confidentiality

## 2. VIOLATING PATIENT'S RIGHT OF PRIVACY

- ❑ Acting against provision 5(1) of the Federal Constitution
- ❑ An individual can bring an action against another under the law of tort for invasion of privacy as stated under the case of *Lee Ewe Poh...*



# Respecting patient's privacy

- *Lee Ewe Poh v Dr Lim Teik Man & Anor*  
[2011] MLJ 835
- Facts: Pff suffered haemorrhoids/piles – 1<sup>st</sup> def – a colorectal surgeon successfully perform a procedure to treat pff – pff found that 1<sup>st</sup> def had taken photos of her private parts without her knowledge and consent.

# The Claim

- Pff claim that 1<sup>st</sup> def should not have taken photos of her anus without her knowledge and consent
- 2<sup>nd</sup> def- hospital vicariously liable

1<sup>st</sup> def – violation of privacy not a recognised tort/cause of action

Photos taken in the course of surgical procedure intended for pff's medical record and there was no publication

Pff's identity was protected and not known

# The Judgment

- **Invasion of privacy** of a female modesty, decency and dignity **is a cause of action** and actionable and also there is breach of confidence
- Photos was taken while she was under anesthesia **without her express consent**
- Altho no unauthorised use of the photos but pff was informed by the nurse of the photos, photos no longer confidential, **there was publication**
- **Consent by female patient an absolute requirement** especially as this involve intimate parts and the taking of these photos were only discretionary not compulsory.

# Therefore....

- The Doctor **must obtain prior consent** from the patient , particularly in this case from female patients before he can take photographs of her or their intimate parts of the female anatomy.
- **Modesty and decency of the female patients must be respected** and not violated.
- Failure to do so constitute an invasion of the plaintiff's privacy or a breach of trust and confidence.

### 3. CAN BE DEFAMATORY IN NATURE

Informal, personal and derogatory comments about patients or colleagues may trigger an action in defamation.....

# What is Defamation?

---

A statement made to lower a person's right of reputation amongst right thinking member of society and caused him to be regarded with contempt, hatred and ridicule

# Two types of defamation

---

1. **Libel** - defamatory statement in a permanent form, visible to the eye
2. **Slander** - defamatory statement conveyed by spoken words or gestures – generally not actionable *without proof of damage*

# How to establish defamation?

**Have to satisfy three essential elements**



# First Element

❖ Words used must be defamatory in nature  
either

(i) The words can be defamatory by itself or

(ii) The words may have hidden meaning i.e.

Innuendos = Allusive Remarks

❖ Two Types of Innuendo

(i) True or Legal Innuendo

(ii) False or Popular Innuendo

❖ Juxtaposition

## Second Element

---

The words must refer to the plaintiff/ patient  
Either by the use of name or pseudo name  
but understood by the readers

## Third Element

---

Words must be published ie known  
to at least another person

# Defences available for a defamation action

---

1. Justification
2. Consent
3. Unintentional Defamation and Offer of amends
4. Fair Comment
5. Qualified and Absolute privilege

❑ Patients have the right to expect that there will be no disclosure of any information, which is obtained during the course of a practitioner's professional duties, unless they give consent.

❑ The justification for this information being kept confidential is that it enhances the patient-doctor relationship.

**Malaysian Medical Council revised  
guidelines on Confidentiality 2011**

## **British Medical Association (BMA) guidelines for doctors and students using social media**

---

Disclosing identifiable information about patients without consent on blogs, medical forums or social networking sites would constitute a breach of General Medical Council (GMC) standards and could give rise to legal complaints from patients.

# BMA guidelines....continue...

---

❖ Posting comments under a username does not guarantee anonymity as any comments made online can be traced back to the original author.

❖ **Doctors and medical students need to exercise sound judgement when posting online and avoid making gratuitous, unsubstantiated or unsustainable negative comments about individuals or organisations**

# BMA Guidelines....continue

- ❖ Doctors and medical students who post online have an ethical obligation to declare any conflicts of interest.
- ❖ The BMA recommends that doctors and medical students should not accept Facebook friend requests from current or former patients.
- ❖ Doctors and medical students should be conscious of their online image and how it may impact on their professional standing.



# Good Medical Practice – General Medical Council (UK)

---

- Be aware of how content is shared online.
- Regularly review your privacy settings and social media content.
- Treat colleagues fairly and with respect in all interactions.
- Direct patients to your professional profile where appropriate



nation  
**AUTHORITIES BITE BACK  
BIDDERS' OFFER ON  
HUGE PYTHON.** >5

nation  
**TRANSPORT MINISTRY AND  
MAC TO DISCUSS  
PASSENGER RIGHTS.** >8



focus  
**STEMMING THE  
BRAIN DRAIN.**  
>21

web thestar.com.my facebook.com/TheStarOnline twitter.com/staronline Customer Service: 1300 88 7827 customerservice@thestar.com.my WeChat ID: TheStarOnline

# SUNDAY Star

*the people's paper*

world  
**Thailand faces  
terror threat**  
Uighur and  
Chechens may be  
planning attacks.  
>29



# Keep it private, docs

Doctors in the public sector have been given a prescription - they must not discuss their patients' condition on social media. This is to ensure privacy in an age where leaks on the Internet often get out of hand. >See Page 5 for report by **SARBAN SINGH**



# 'Don't discuss patients online'

By **SARBAN SINGH**  
and **LOSHANA K. SHAGAR**  
newsdesk@thestar.com.my

## Govt docs urged to prevent security breaches

**SEREMBAN:** Social media may be the "in" thing for Malaysians nowadays to post instant alerts but not for doctors.

Doctors in government service have been told not to discuss their patients' medical issues on social media such as Facebook, Twitter or Instagram to prevent breaches in confidentiality.

Neither should they carry out clinical consultations on these platforms where such information could be accessed by other people, said Health Ministry director-gener-

al Datuk Dr Noor Hisham Abdullah. The order came about to minimise the risk of ethical and legal complications and to uphold the integrity of the medical profession, he said in a circular.

"Social media sites cannot guarantee confidentiality with whatever privacy settings currently in place.

"Once information is published online, it can be difficult to remove it as others may have already distributed it further, thus easily breaching patient confidentiality," he said.

He explained that the directive

came about as more health care providers were using social media in their work.

However, Dr Noor Hisham said doctors could set up a social media platform for group consultation provided there was a "moderator" and there was a profile of the members and where the content of the conversation was not accessible to public.

"However, the uploading and transmitting of still images or in video format should not include any information which could reveal the patient's identity," he said.

Doctors in such group consultation must also get written consent from their patients before uploading any information about them on social media.

"The only exception would be in an emergency where the patient may not be able to give consent," he said, adding that doctors were responsible for the confidentiality of any information they send out via social media.

Dr Noor Hisham said doctors were also duty-bound to delete all stored information of their patients in their mobile devices after the

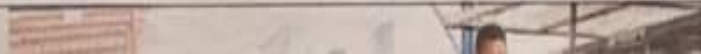
completion of the consultation.

All personal information or images from any consultation could not even be used for the purpose of health education to others.

"Social media platforms cannot be used for referral cases as they include patient-identifiable information," he said.

Despite the advantages of social media, Dr Noor Hisham said doctors should always opt for direct consultation or over the telephone whenever possible.

In cases of emergencies, he said doctors or other healthcare providers were supposed to consult their peers over the telephone first before opting for the social media.



MMA: Clinical





**KETUA PENGARAH KESIHATAN MALAYSIA  
DIRECTOR GENERAL OF HEALTH MALAYSIA**

Kementerian Kesihatan Malaysia  
Aras 12, Blok E7, Kompleks E  
Pusat Pentadbiran Kerajaan Persekutuan  
62590 PUTRAJAYA



Tel. : 03-8883 2545  
Faks : 03-8889 5542  
Web : [anhisham@moh.gov.my](mailto:anhisham@moh.gov.my)

---

Ruj. Kami : KKM.600-1/2/3( )

Tarikh : 31 Mac 2016

Semua Pengarah Kesihatan Negeri  
Pengarah Hospital Kuala Lumpur

*YBhg. Datuk/Dato'/Datu/To' Puan/Datin/Tuan/Puan,*

**SURAT PEKELILING KETUA PENGARAH KESIHATAN BIL. 10/2016:  
GARIS PANDUAN PENGGUNAAN MEDIA SOSIAL DALAM PERKHIDMATAN  
PENJAGAAN PESAKIT DI FASILITI KEMENTERIAN KESIHATAN MALAYSIA (KKM)**

**1. TUJUAN**

Pekeliling ini dikeluarkan bertujuan sebagai garis panduan penggunaan dan juga pemantauan penggunaan media sosial di kalangan anggota kesihatan semasa melakukan perundingan penjagaan pesakit (*consultation*).

---

# **GETTING ACCESS TO HEALTH RECORDS FOR MEDICAL NEGLIGENCE CLAIMS**

# Access to Health Records

- One of the procedural hurdles that a patient must face in bringing a claim for medical negligence is obtaining medical records prior to commencing court action.
- The need to obtain these records is important in order for the plaintiff to discover whether he has a good cause of action before he issues proceedings.
- The difficulty of obtaining medical records stems from the fact that the documents are within the possession of the defendant in the proceedings
- The fact that the medical records may be destroyed is beyond the control and knowledge of the patient.

# Position in England

- Several legislations were enacted to allow the patients to get access to their medical records.
- Such provisions would allow the patient not only to ensure that the records are in an accurate form but it may also be relevant in the context of litigation as a means of discovering whether something was amiss in the treatment given.
- By getting such information, the patient can then seek expert medical advice on the matter.

# English Legislations

- Data Protection Act 1984 gives an individual a right of access to information held about him in a computerised form
- Access to Health Records 1990 confers a right of access on the part of the patients or persons acting on their behalf to non-computerised health records.
- Access to Medical Reports Act 1988 grants an individual a right of access to any medical report relating to the individual for the purpose of employment and insurance.



# Problem in Malaysia

- Unlike England, patients in Malaysia face tremendous difficulty in obtaining their medical records.
- This is not only due to the unavailability of legislations to allow access to such records but also medical records have not been properly kept by medical practitioners especially those connected with the government hospitals.
- Personal Data Protection Act 2010 – to what extent the provisions can be used to ease the obtaining of medical records

# PERSONAL DATA PROTECTION ACT 2010

- (1) The Personal Data Protection Act 2010 9 (“PDPA”) was gazetted on 10th June 2010 and came to in force on 15th November 2013.
- (2) Section 2 of the PDPA provides that the PDPA applies to any person who processes, has control over or authorises the processing of any personal data in respect of a commercial transaction.
- (3) As such, the PDPA applies to private hospitals but not to Government hospitals.

# PERSONAL DATA PROTECTION ACT 2010

## Section 8:

Subject to section 39, no personal data shall, without the consent of the data subject, be disclosed –

(a) for any purpose other than –

(i) the purpose for which the personal data was to be disclosed at the time of collection of the personal data; or

(ii) a purpose directly related to the purpose referred to in subparagraph (i); or

(b) to any party other than a third party of the class of third parties specified in paragraph 7(1)(e).

**Section 39** provides the exceptions to the general prohibitory rule in section 8

and they are essentially:

- (i) where consent for disclosure is given.
- (ii) where disclosure is necessary to prevent or detect crime or for the purposes of investigations.
- (iii) where disclosure is required or authorised by or under any law or by the order of a court.
- (iv) where there is reasonable belief that there is a legal right to disclose the data.
- (v) reasonable belief that consent would have been given if the giving of the data and the circumstances of disclosure is known.
- (vi) public interest as determined by the minister.

# PERSONAL DATA PROTECTION ACT 2010

## Exemption

- (i) Medical practitioners and hospitals are not exempted from the provisions of the Personal Data Protection Act 2010.
- (ii) However, the Act allows for the minister to order, published by the gazette or notification, any person or class of persons to be exempted from all or any of the provisions of the Act.

- Is there any other law regulating *“such access to personal data”*?
- Regulation 44 of the Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 (“PHFSA (Reg) 2006”)

*“No patient’s medical record shall be taken out from the private healthcare facilities... except under a court order”*

# Nurul Husna Muhammad Hafiz & Anor v Kerajaan Malaysia & Ors [2015] 1 CLJ 825, HC

*“The physician or hospital may refuse to disclose partly or wholly the medical records to the patient in certain limited circumstances, such as, but not limited to, situations when such disclosure would be detrimental or prejudicial to the patient's health in that the information is likely to cause serious harm to the physical or mental health of the patient or of any other individual contained in the medical records; or when such disclosure would divulge information relating to or provided by an individual, other than the patient, who could be identified from that information”*

# Nurul Husna Muhammad Hafiz & Anor v Kerajaan Malaysia & Ors [2015] 1 CLJ 825, HC

*“Reg. 44(2) does not primarily deal with the patient’s right of access to medical records. It deals with the security of the original medical records. Regulation 44 (2) does not stipulate that whenever a patient wishes to have access to his medical records, he must get a court order. Therefore the reliance of private healthcare operators on reg. 44(2) to withhold patient’s access to medical records until the patient obtains a court order is entirely misconceived. There is no requirement in law that the patient first obtains a court order to get access to his medical records.”*



# Thank you...

- If you need more details on medical law, please purchase my books on

**1. Nursing Law and Ethics”**

**2. Medical Negligence Law in Malaysia**

**3. Cases and Commentary on Medical Negligence**

**4. Law and Ethics relating to Medical Profession**

- Email: [nemie@iium.edu.my](mailto:nemie@iium.edu.my)

Dr Puteri Nemie Jahn Kassim IIUM