
THERAPEUTIC PRIVILEGE AND EXCEPTIONS TO CONFIDENTIALITY IN MEDICAL PRACTICE

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ABSTRACT

Therapeutic privilege and confidentiality are core tenets of medical ethics that shape interactions between clinicians and patients. Confidentiality safeguards a patient's personal and health information, while therapeutic privilege permits a physician, in exceptional cases, to withhold particular details when disclosure is likely to inflict substantial psychological or physical harm. Both concepts aim to protect patient welfare, yet they often generate ethical tensions in clinical settings. This article examines the notion of therapeutic privilege, its ethical limits, and its proper role in contemporary healthcare. It also reviews principal exceptions to confidentiality that allow or mandate disclosure of patient information in circumstances such as risks to public safety, statutory reporting duties, or the protection of at-risk persons. A firm grasp of these ideas is crucial for ethical decision-making, preserving trust in the clinician–patient relationship, and balancing respect for patient autonomy with professional obligations.

Keywords: Therapeutic privilege; confidentiality; medical ethics; informed consent; patient autonomy; non-maleficence; disclosure; exceptions to confidentiality; legal reporting duties; public health; doctor–patient relationship; ethical obligations; medical decision-making.

INTRODUCTION

Confidentiality and informed consent are foundational to contemporary medical practice. They foster a climate of trust that enables patients to disclose sensitive information to healthcare providers without fear of exposure or stigma. Nonetheless, these ethical obligations are not without limits. Situations may arise in which withholding information better serves the patient's interests, or where disclosure is necessary to protect the patient or others from harm. Therapeutic privilege and confidentiality exceptions illustrate this nuanced tension between honouring patient autonomy and promoting overall welfare. Therapeutic privilege permits a physician, in rare and circumscribed situations, to refrain from revealing certain medical facts when such disclosure is judged likely to produce serious psychological or physical injury. Conversely, exceptions to confidentiality occur when clinicians must reveal private patient details to fulfil legal responsibilities, protect vulnerable people, or avert harm to the public.¹ These carve-outs do not negate the value of confidentiality; rather, they reflect wider ethical and societal duties. Clinicians regularly face scenarios where ethical, legal, and professional obligations converge. The difficulty lies in applying these principles judiciously so that patients are safeguarded while their rights and dignity are respected. This chapter introduces the reader to a more detailed discussion of therapeutic privilege and the principal exceptions to confidentiality that inform ethical medical practice.²

UNDERSTANDING THERAPEUTIC PRIVILEGE

Therapeutic privilege denotes the narrowly confined and exceptional authority of a clinician to withhold particular medical information from a patient when the clinician reasonably believes that disclosure would produce severe harm to the patient's mental or physical well-being. It constitutes a limited deviation from the doctrine of informed consent, which ordinarily obliges clinicians to disclose pertinent information so patients can make autonomous treatment choices. Therapeutic privilege recognises that, in exceptional circumstances, immediate full disclosure may not serve the patient's best interest and could instead provoke intense distress or exacerbate their condition.

¹ Beauchamp, T. L., & Childress, J. F., *Principles of Biomedical Ethics* 99–102 (8th ed., Oxford Univ. Press 2019).

² World Medical Association, *Declaration of Lisbon on the Rights of the Patient* (1981, rev. 2015).

2.1 Ethical Basis of Therapeutic Privilege

The ethical rationale for therapeutic privilege is grounded primarily in non-maleficence—the duty to avoid causing harm. If revealing a diagnosis or prognosis is likely to precipitate panic, psychological collapse, suicidal ideation, or other damaging reactions, a clinician might choose to postpone or adapt the disclosure. The principle of beneficence also underpins therapeutic privilege, as temporary withholding in such constrained situations may protect the patient from abrupt emotional shock and provide an opportunity to stabilise their condition.

2.2 Relationship with Patient Autonomy

While therapeutic privilege aims to prioritise patient welfare, it concurrently imposes limits on patient autonomy, a central value in medical ethics. Therefore, therapeutic privilege should be exercised sparingly and with great caution. It must never be used to manipulate patients, coerce treatment choices, avoid difficult conversations, or conceal clinical mistakes. Instead, it should be reserved for truly exceptional cases where disclosure would lead to immediate and substantial harm. Decisions to invoke therapeutic privilege must rest on objective clinical assessment rather than paternalistic presumption.

2.3 Appropriate Use and Limitations

Therapeutic privilege is not a general licence to conceal information. Its application is tightly restricted to situations where a patient's safety is genuinely at risk, and any withholding should be followed by full disclosure once the patient is emotionally able to receive it. Contemporary medical ethics strongly favours openness and shared decision-making, thereby constraining the scope of therapeutic privilege. In many jurisdictions, clinicians are obliged to justify and document any decision to withhold information. Moreover, therapeutic privilege does not apply when a patient explicitly requests complete information, when nondisclosure would invalidate informed consent, or when keeping information from the patient would erode long-term trust.³

2.4 Controversies Surrounding Therapeutic Privilege

Therapeutic privilege is contentious because it can be abused to override patient autonomy, obscure risks, or evade responsibility. Critics contend that it embodies an antiquated

³ Jay Katz, *The Silent World of Doctor and Patient* 84–90 (Free Press 2002).

paternalistic approach and that patients deserve to know their medical status irrespective of potential distress. Proponents counter that, in rare instances, temporary nondisclosure may better protect the patient's well-being. This ongoing debate underscores the importance of a cautious, balanced approach: therapeutic privilege should be invoked only when ethically and medically defensible, and always with regard for the patient's dignity and rights.

3. SITUATIONS WHERE THERAPEUTIC PRIVILEGE MAY APPLY

Therapeutic privilege is intended for exceptionally limited and carefully justified situations. Although current ethical norms favour transparency, certain circumstances exist where immediate disclosure could cause significant harm. In such instances, clinicians might postpone or phase information delivery in a controlled, sensitive fashion. These decisions require weighing the patient's psychological resilience, the nature of the illness, and the likely effects of disclosure.

3.1 Severe Psychological Vulnerability

Therapeutic privilege might be appropriate when a patient demonstrates marked emotional fragility, acute anxiety, major depression, or other tendencies that render them vulnerable to psychological collapse. For example, someone recently traumatised or already struggling with mental illness may react dangerously to sudden news of a serious diagnosis. In such contexts, withholding certain details until the patient is better prepared may mitigate the risk of self-harm or overwhelming distress.⁴

3.2 Risk of Worsening a Medical Condition

In certain clinical scenarios, disclosing upsetting information can aggravate an existing physical condition. Patients with unstable cardiac disease, uncontrolled hypertension, or post-operative fragility may face life-threatening complications if exposed to shocking news. In these instances, a clinician might delay full disclosure until the patient's physiological state is stable. The limited use of therapeutic privilege in such cases seeks to forestall immediate harm and ensure the patient can safely process the information.

⁴ General Medical Council (UK), *Consent: Patients and Doctors Making Decisions Together* (2020).

3.3 Gradual Disclosure for Patient Stabilisation

Therapeutic privilege can also take the form of staged disclosure, where sensitive facts are conveyed progressively rather than abruptly. This approach may be suitable when communicating complex or life-changing diagnoses—such as cancer or irreversible conditions. Gradual disclosure gives the patient time to absorb information, pose questions, and emotionally brace for subsequent exchanges. This method preserves transparency while safeguarding emotional well-being.⁵

3.4 Terminal Illness and Sensitive Prognoses

In some terminal illness situations, clinicians may temper or delay disclosure of full prognostic details if they judge that complete disclosure would precipitate severe emotional harm. Although patients generally have the right to know their prognosis, therapeutic privilege might be considered when disclosure could provoke panic, shatter hope, or overwhelm coping strategies. Even in these cases, clinicians are encouraged to involve family, counsellors, or psychiatric specialists to facilitate sensitive communication.

3.5 Patients with Limited Decision-Making Capacity

Those who temporarily or permanently lack decision-making capacity—due to cognitive impairment, delirium, or severe psychiatric disorders—may be unable to comprehend or process complex medical information. In such situations, clinicians may postpone disclosure until capacity is regained or communicate with legally authorised surrogates. This approach is intended to ensure that decisions are made safely and appropriately, not to deny autonomy unnecessarily.⁶

3.6 Cultural or Social Sensitivity Considerations

In certain cultural settings, families expect that sensitive medical information will be shared with relatives before being disclosed to the patient. While modern ethics prioritises patient autonomy, therapeutic privilege may sometimes be considered to respect cultural norms when immediate disclosure could cause social or emotional harm. Such decisions must be handled

⁵ Medical Council of India, Professional Conduct, Etiquette and Ethics Regulations, 2002, Reg. 7.14.

⁶ Raanan Gillon, Medical Ethics: Four Principles Plus Attention to Scope, 309 Brit. Med. J. 184 (1994).

cautiously, ensuring that cultural practices do not supplant the patient's fundamental rights.

4. EXCEPTIONS TO CONFIDENTIALITY IN MEDICAL PRACTICE

Confidentiality is a core ethical and legal duty requiring clinicians to protect patient privacy and medical information. It underpins trust in the clinician–patient relationship and promotes candid disclosure. Nonetheless, confidentiality is not absolute. Specific circumstances justify or compel disclosure where maintaining secrecy would risk harm to the patient, others, or public welfare. These exceptions aim to reconcile the patient's entitlement to privacy with ethical obligations of beneficence, non-maleficence, and justice.⁷

4.1 Risk of Harm to Self

When a patient exhibits suicidal ideation, self-injurious behaviour, or a clear intent to harm themselves, breaching confidentiality may be necessary to safeguard their immediate safety. Clinicians may need to notify family, mental health services, or emergency responders to enable timely intervention. Such breaches are motivated by care, not punishment, and constitute an extension of the clinician's duty to protect life.

4.2 Risk of Harm to Others

Clinicians may be required to disclose information when a patient poses a credible threat of violence to another person or group. This exception is grounded in the duty to protect potential victims from foreseeable harm. For instance, if a patient indicates an intent to harm a specific individual, the clinician may have an ethical or legal obligation to alert authorities. Many legal precedents recognise the duty to warn or protect in such circumstances.

4.3 Public Health Concerns

Public health statutes frequently mandate reporting of certain infectious diseases to health authorities. Conditions such as tuberculosis, selected instances of HIV, COVID-19, cholera, and other communicable illnesses may need to be reported to enable appropriate public health responses. The objective of this exception is community protection through surveillance,

⁷ Raanan Gillon, *Medical Ethics: Four Principles Plus Attention to Scope*, 309 *Brit. Med. J.* 184 (1994).

prevention, and timely intervention—prioritising societal interest over absolute individual privacy.⁸

4.4 Legal Reporting Requirements

Clinicians are legally obliged to report particular instances even against a patient's wishes. These include suspected child abuse, domestic violence, sexual assault, and injuries arising from criminal acts. Reporting to law enforcement or child protection services is required to safeguard vulnerable persons. Failure to report can expose clinicians to legal consequences and leave victims at continued risk.

4.5 Court Orders and Legal Proceedings

Courts may compel disclosure of medical records or information for legal matters. Clinicians must comply with such orders while limiting disclosure to what is strictly necessary. Even under legal compulsion, clinicians should endeavour to protect patient dignity—for example, by requesting in-camera hearings or restricted access to sensitive material.

4.6 Protection of Vulnerable Individuals

Confidentiality may be overridden when necessary to protect vulnerable individuals, including children, older adults, or persons with disabilities. If a clinician suspects neglect, exploitation, or abuse, disclosure is required to secure the person's safety. This obligation applies even when the patient is not the direct victim but when medical encounters reveal risk to someone else.⁹

4.7 Insurance, Billing, and Administrative Requirements

Limited disclosure is sometimes required for administrative purposes, such as insurance claims, billing, or audits. Only information relevant to these processes should be shared, and any disclosure must comply with legal rules and, where feasible, patient consent. Even administrative disclosures should be handled with respect for patient privacy.

4.8 Research and Academic Use

Medical data may be used for research, but typically only with patient consent or under

⁸ *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972).

⁹ *Sidaway v. Board of Governors of the Bethlem Royal Hospital*, [1985] AC 871 (HL).

stringent anonymisation standards. When confidentiality is set aside for research purposes, identifying details must be removed to protect individuals. Legal and ethical guidance seeks to ensure that research does not compromise privacy or dignity.

5. ETHICAL AND LEGAL CONSIDERATIONS

Therapeutic privilege and confidentiality exceptions raise intricate ethical and legal questions demanding careful reflection. While medicine's chief aim is to protect and promote patient welfare, these concepts illuminate circumstances in which autonomy, privacy, and safety must be weighed against broader societal duties. Familiarity with the ethical principles and legal frameworks that guide these choices is vital to ensure clinicians act professionally, responsibly, and compassionately.

5.1 Balancing Autonomy and Beneficence

A central ethical challenge is reconciling the patient's right to make autonomous decisions with the clinician's duty to act beneficently. Therapeutic privilege constrains autonomy by withholding information, whereas exceptions to confidentiality curtail privacy to avert harm. Ethical practice requires that any limitation on autonomy be justified, proportionate, and temporary. The overarching aim is to protect the patient without diminishing their dignity or long-term decision-making capacity.

5.2 Non-Maleficence and the Duty to Protect

Non-maleficence—the obligation to avoid causing harm—underpins both therapeutic privilege and confidentiality exceptions. Clinicians must avoid harming patients either by disclosing information that could distress a vulnerable person or by withholding information when disclosure is ethically necessary. Likewise, breaching confidentiality to prevent violence, suicide, or public health threats fulfils the duty to protect life and safety.¹⁰

5.3 Maintaining Trust in the Doctor–Patient Relationship

Trust is the bedrock of effective clinical care. Misapplication of therapeutic privilege or improper disclosure of confidential information can severely damage this trust. Patients who

¹⁰ *Montgomery v. Lanarkshire Health Board*, [2015] UKSC 11.

feel deceived or exposed may be less willing to seek care or share critical details. Hence, transparent communication about the limits of confidentiality and judicious, well-justified use of therapeutic privilege are essential to sustaining patient confidence. Ethical guidance encourages clinicians to be open and honest wherever possible.

5.4 Legal Obligations and Professional Accountability

Laws regulating medical practice prescribe specific duties clinicians must follow. Failure to observe these duties can result in malpractice claims, professional discipline, or criminal liability. Therapeutic privilege is legally permissible only when invoked appropriately and properly recorded. Similarly, breaching confidentiality is lawful only within recognised exceptions. Clinicians must be aware of and comply with statutory reporting duties, court orders, and public health mandates to avoid legal infractions while protecting patient welfare.

5.5 Informed Consent and Its Limits

Informed consent requires that clinicians furnish sufficient information for patients to make voluntary choices about treatment. Therapeutic privilege constitutes a narrow exception to this principle and must be carefully weighed against the ethical imperative for informed decision-making. Even when therapeutic privilege is used, clinicians should endeavour to disclose withheld information as soon as the patient is emotionally and cognitively able to understand it.

5.6 Cultural, Social, and Familial Dynamics

Ethical decisions are often shaped by cultural and social contexts. In some cultures, families play a central role in medical decision-making, and information may customarily be shared with relatives first. While cultural sensitivity matters, it must not trump the patient's basic rights. Ethical practice requires balancing respect for cultural values with adherence to universal principles of privacy, autonomy, and consent.

6. CHALLENGES IN APPLYING THERAPEUTIC PRIVILEGE AND CONFIDENTIALITY EXCEPTIONS

Although therapeutic privilege and confidentiality exceptions are recognised in ethical discourse, applying them in practice can be fraught with difficulty. Clinicians must reconcile

emotional, clinical, legal, and social factors while making choices that profoundly affect patients' lives. These challenges underscore the need for clear protocols, training, and access to ethical support to help healthcare professionals make considered and humane decisions.¹¹

6.1 Distinguishing Between Protection and Paternalism

A key difficulty is discerning whether withholding information genuinely protects the patient or simply reflects a paternalistic reflex by the clinician. Therapeutic privilege can be misapplied when clinicians assume they know what is best without sufficient rationale. This risks undermining patient autonomy and eroding trust. Decisions to withhold information should rest on objective clinical indicators rather than personal bias or discomfort with difficult conversations.

6.2 Assessing Patient Capacity and Emotional Stability

Evaluating whether a patient can manage certain information is inherently complex. Emotional responses differ widely, and forecasting an individual's reaction is uncertain. This unpredictability makes it hard to determine when therapeutic privilege is appropriate. Errors in judgment can result in either unnecessary concealment or harmful disclosure that provokes distress.

6.3 Balancing Confidentiality with Legal Duties

Clinicians frequently struggle to reconcile the duty of confidentiality with legal obligations that mandate disclosure. Mandatory reporting laws for child abuse, domestic violence, or certain infectious diseases may conflict with a patient's wish for privacy. Non-compliance with legal duties can expose clinicians to liability, while unwarranted disclosure can damage the therapeutic relationship. Navigating these competing responsibilities requires careful judgment and legal knowledge.¹²

6.4 Managing Patient and Family Expectations

Relatives often expect clinicians to keep them informed, especially in cultures that favour collective decision-making. Yet confidentiality rules typically prioritise the patient's right to

¹¹ Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1 (India).

¹² Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.

privacy. Clinicians may face familial pressure to disclose information first, particularly with sensitive diagnoses. Balancing these expectations against ethical and legal obligations can be a significant source of tension, especially when family interests clash with patient autonomy.

6.5 Fear of Litigation and Professional Liability

Clinicians may fear legal repercussions whether they disclose too much or too little. This anxiety can lead to defensive practices that compromise care or ethical norms. When invoking therapeutic privilege, clinicians worry about allegations of improper withholding; when breaching confidentiality, they fear accusations of violating privacy. Clear guidelines and thorough documentation can help mitigate these anxieties.

6.6 Ambiguities in Ethical and Legal Guidelines

Professional codes and laws that address therapeutic privilege and confidentiality exceptions often contain vague terms. Phrases such as “serious harm,” “public interest,” and “immediate danger” can be open to interpretation, leaving clinicians uncertain about the correct course of action. Without precise definitions and consistent standards, practitioners may hesitate or act inconsistently, potentially harming patients or risking legal exposure.

6.7 Lack of Training in Ethical Decision-Making

Many healthcare professionals receive limited education in applied ethics, communication, and managing emotionally charged situations. This deficit makes it harder to judge when therapeutic privilege or confidentiality exceptions are warranted. Without adequate training and support, clinicians might misuse these principles or avoid necessary actions out of uncertainty. Ongoing education and access to ethics resources can improve decision-making.¹³

7. THE IMPORTANCE OF A PATIENT-CENTRED APPROACH

A patient-centred approach is vital when considering therapeutic privilege or decisions about breaching confidentiality. This perspective keeps patient welfare, dignity, and rights at the heart of clinical judgement. Rather than relying solely on medical authority or inflexible legal rules, patient-centred care emphasises empathy, dialogue, shared decision-making, and respect for

¹³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

individual values. When clinicians prioritise the patient's viewpoint, they foster trust and provide care that is ethically coherent and responsive to the person's needs.

7.1 Respecting Patient Autonomy

Patient-centred practice affirms the individual's right to make informed choices about treatment. Even when therapeutic privilege is contemplated, clinicians must remember that autonomy is a fundamental ethical commitment. Patients have a right to understand their condition, raise questions, and engage in decisions about their care. Therapeutic privilege should not be a pretext for overriding autonomy; it should be confined to rare instances where disclosure would pose an immediate threat to the patient's welfare.

7.2 Building Trust Through Communication

Open, honest, and compassionate communication is central to patient-centred care. Skilled communication helps patients feel respected and builds trust—even in difficult conversations. When conveying distressing information, clinicians should be sensitive to the patient's emotional state, cultural background, and comprehension level. Clear dialogue reduces confusion, anxiety, and helplessness, particularly when confronting serious illnesses.

7.3 Empowering Patients in Decision-Making

Empowerment means providing patients with the information, tools, and confidence necessary to make informed choices. Rather than defaulting to nondisclosure under therapeutic privilege, clinicians should aim to support patients' understanding and involvement. Empowered patients are more likely to adhere to treatment, feel satisfied with care, and cope better with illness. Active participation fosters resilience during recovery.¹⁴

7.4 Sensitivity to Individual Needs

Patients differ in cultural, emotional, and social respects. A patient-centred stance recognises these differences and adapts communication and care strategies accordingly. Some patients will insist on full transparency; others may prefer family involvement. Clinicians must listen to individual preferences and tailor their approach in ways that honour personal values without

¹⁴ Tarasoff v. Regents of the University of California, 551 P.2d 334 (Cal. 1976).

compromising ethical responsibilities.

7.5 Emotional and Psychological Support

Appreciating the emotional impact of medical information is essential. Many patients respond to serious diagnoses with fear, anxiety, or denial. A patient-centred approach includes offering psychological support, involving mental health professionals when appropriate, and creating an environment where patients can safely express emotions. Such support reduces reliance on therapeutic privilege and encourages healthier coping mechanisms.

7.6 Transparent Discussion of Confidentiality Limits

Explaining the boundaries of confidentiality at the outset of the clinician–patient relationship is a key element of patient-centred care. When patients are informed that certain disclosures—such as threats of harm, public health risks, or legally mandated reports—may require breaches of confidentiality, they are less likely to feel betrayed if disclosure becomes necessary. Transparency helps preserve trust even in difficult situations.¹⁵

7.7 Integrating Family and Social Support Responsibly

With the patient’s consent, clinicians may involve family members to provide emotional or practical assistance. Family participation can help the patient process complicated information, manage stress, and make decisions. Nevertheless, involvement should always respect the patient’s expressed wishes, ensuring that privacy and autonomy are preserved.

Therapeutic privilege and exceptions to confidentiality occupy important but sensitive positions within medical ethics, requiring careful balancing of autonomy, beneficence, non-maleficence, and justice. Both concepts stem from the clinician’s duty to protect patients while upholding their rights and dignity. They must be applied with restraint, transparency, and profound ethical care to prevent misuse and to maintain the integrity of the clinician–patient relationship. Therapeutic privilege recognises rare circumstances in which full disclosure could cause immediate and significant harm to a vulnerable patient. It is not an abandonment of autonomy but a temporary, compassion-driven measure grounded in clinical judgement—and it should remain the exception, not the rule. Excessive or inappropriate use risks damaging

¹⁵ Indian Penal Code, 1860, §§ 39, 92.

trust, reinforcing paternalism, and undermining informed consent. As medical ethics evolves, therapeutic privilege is increasingly scrutinised, with emphasis on patient-centred and trauma-informed communication.¹⁶ Exceptions to confidentiality illustrate that privacy may sometimes be overridden by stronger ethical or legal imperatives. Whether aimed at preventing harm, protecting vulnerable individuals, complying with public health mandates, or satisfying legal reporting duties, breaches of confidentiality are defensible only when they pursue a clear, necessary aim. Even then, disclosures should be proportionate, relevant, and respectful of the patient's dignity. Clinicians must remember that confidentiality is foundational to trust and should be set aside only for compelling reasons. Both therapeutic privilege and confidentiality exceptions reveal the complex nature of medical decision-making, where rules cannot always be applied mechanically. Sound practice depends on clinical discernment, cultural competence, emotional sensitivity, and legal literacy. Healthcare professionals need appropriate training, guidance, and support structures—including ethics committees—to navigate these ethical dilemmas responsibly.¹⁷

Ultimately, ethical medical practice centres on recognising the personhood of each patient. By embracing a patient-centred ethos—rooted in empathy, respect, clear communication, and shared decision-making—clinicians can maintain ethical standards while meeting real-world challenges. When managed with integrity, therapeutic privilege and confidentiality exceptions can align with patients' rights, ensuring care that is compassionate, protective, and ethically sound.

9. Legal and Ethical Provisions Governing Therapeutic Privilege and Confidentiality

Therapeutic privilege and confidentiality rest upon established legal and ethical frameworks that direct clinical conduct. These provisions help ensure that clinicians act responsibly, safeguard patient interests, and sustain public confidence in healthcare. While confidentiality is upheld by robust legal protections, therapeutic privilege remains a narrow exception governed by ethical standards and judicial interpretation. Together, these frameworks clarify when information may be withheld or disclosed, guiding clinicians to make balanced, accountable decisions.¹⁸

¹⁶ Bharatiya Nyaya Sanhita, 2023, §§ 21, 23 (duty to prevent harm).

¹⁷ Mental Healthcare Act, 2017 (India), §§ 23, 24, 25.

¹⁸ Protection of Children from Sexual Offences Act, 2012, § 19.

9.1 Ethical Codes and Professional Guidelines

Medical councils and professional bodies issue ethical codes that delineate the scope of confidentiality and the limited circumstances in which therapeutic privilege may apply. Most codes stress that confidentiality should be strictly maintained except where legal or ethical obligations justify disclosure. They acknowledge therapeutic privilege only when full disclosure would result in immediate, serious harm. Such guidance requires clinicians to act in good faith, guard against misuse, and document their reasoning. Ethical frameworks generally favour transparency and full disclosure whenever feasible.

9.2 Statutory Protections of Confidentiality

Confidentiality is protected by national statutes, professional regulations, and patient privacy laws. In many jurisdictions, including India, confidentiality is supported by constitutional values of dignity and privacy, as well as statutory provisions regulating medical practice. Regulations such as the Medical Council of India (Professional Conduct, Etiquette and Ethics) require clinicians to keep information confidential except in legally recognised circumstances. Patient records may not be shared without consent unless lawfully mandated. These statutory measures underscore the significance of maintaining privacy in healthcare.

9.3 Judicial Recognition of Patient Rights

Courts have repeatedly affirmed that informed consent and confidentiality are fundamental to medical practice. Judicial decisions highlight patients' rights to autonomy and privacy, and courts have held clinicians accountable for unwarranted concealment or improper disclosure. Some rulings have acknowledged therapeutic privilege, but generally only as a narrow exception supported by clear evidence of potential harm. Courts tend to favour patients' entitlement to information and require that therapeutic privilege be applied sparingly and transparently.¹⁹

9.4 Legal Exceptions to Confidentiality

Various statutes impose mandatory reporting duties on clinicians, forming legal exceptions to confidentiality. These include obligatory reporting of communicable diseases to public health

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015, § 27.

authorities, suspected child abuse, domestic violence, sexual offences, attempted suicide, and injuries linked to criminal acts. Clinicians must comply with these legal requirements even against a patient's wishes, as public safety and the protection of vulnerable individuals take precedence. Such provisions ensure confidentiality does not facilitate harm.

9.5 Documentation and Accountability Requirements

When therapeutic privilege is invoked or confidentiality is breached under legal compulsion, meticulous documentation is crucial. Clinicians should record the reasons for nondisclosure or disclosure, the anticipated harm, measures taken to protect the patient, and any consultations with ethics committees or senior colleagues. Proper records promote transparency, shield clinicians legally, and evidence that decisions were made thoughtfully, ethically, and in the patient's best interest.

9.6 Safeguards Against Misuse

Legal and ethical frameworks contain safeguards to prevent abuse of therapeutic privilege or unjustified breaches of confidentiality. These safeguards expect clinicians to act objectively, resist paternalism, and ensure any deviation from standard practice is backed by clear justification. Misuse can result in disciplinary measures, civil liability, or criminal consequences. Such protections affirm that exceptions must not erode the fundamental principles of autonomy, trust, and human dignity.

10. Practical Application in Clinical Settings

Understanding the theory behind therapeutic privilege and confidentiality exceptions is valuable, but their importance is realised when applied in daily clinical practice. Clinical environments present complex, fast-moving scenarios where clinicians must make prompt yet ethically defensible choices. Practical application of these concepts requires clinical judgement, emotional intelligence, legal awareness, and refined communication skills. This chapter outlines how healthcare professionals approach these ethical challenges in real-world settings.²⁰

²⁰ Code of Criminal Procedure, 1973, §§ 39, 174.

10.1 Assessing the Patient's Emotional and Psychological State

Before considering therapeutic privilege, clinicians should thoroughly evaluate a patient's emotional resilience, psychiatric history, and current psychological condition. This assessment matters because the intention is not arbitrary nondisclosure but protection from serious harm. Clinicians may consult psychiatrists, counsellors, or family members to better appraise vulnerability. Such evaluations help ensure decisions are reasoned, evidenced, and not solely instinctive.

10.2 Communicating Difficult Information with Sensitivity

Even when therapeutic privilege is not used, clinicians frequently face the task of delivering upsetting news. The manner of delivery significantly influences patient response. Employing clear, compassionate language, allowing time for questions, and ensuring privacy can make disclosures more manageable. These communication techniques often reduce the need for therapeutic privilege by helping patients cope with difficult information.²¹

10.3 Handling Requests for Confidential Information

Patients, relatives, and external agencies may seek access to medical information. Clinicians must decide judiciously whether and how much to disclose. When family members request details, the clinician should prioritise the patient's privacy unless consent has been given. When law enforcement or public health authorities request information, clinicians must understand the legal limits of disclosure. Making these distinctions in real time requires familiarity with ethical guidance and statutory obligations.

10.4 Identifying Mandatory Reporting Situations

Clinicians must be able to identify circumstances that legally require reporting, such as suspected child abuse, domestic violence, sexual assault, particular infectious diseases, and injuries stemming from criminal acts. Failure to report can endanger vulnerable individuals and expose clinicians to legal sanctions. Accurate recognition of these situations ensures that confidentiality is overridden only when necessary and in accordance with law and professional

²¹ Epidemic Diseases Act, 1897.

ethics.

10.5 Consulting Ethics Committees and Senior Professionals

Many healthcare institutions have ethics committees to support clinicians facing challenging decisions. These bodies can review complex cases and advise on whether therapeutic privilege or confidentiality exceptions are appropriate. Consulting senior colleagues also helps ensure decisions are impartial and thoroughly considered. A collaborative approach fosters accountability and reduces the risk of ethical errors.

10.6 Documentation and Transparency in Practice

Precise and comprehensive documentation is vital whenever therapeutic privilege is applied or confidentiality is breached. Clinicians should record the rationale, clinical findings, perceived risks, consultations undertaken, and protective measures implemented. Transparent records protect clinicians legally and evidence ethical responsibility. They also facilitate continuity of care by informing other providers about the decision-making process.²²

²² National Medical Commission Act, 2019.