Confidentiality: A Legal and Ethical Issues in Healthcare Service Businesses

Description of Confidentiality as a legal and Ethical Issue

According to Morrison (2015), organizational and institutional ethics have become gradually more common expressions when individuals converse on the extant healthcare services provision industry. Organizational structural design, employer-employee relations and the financing mechanisms have all been emphasized as areas in which value conflicts and ethical challenges have been on the increase. Furthermore, the tensions that develop as a consequence of divergences in organizational, professional and individual values can be observed when managers and administrators deal with ways of operationalizing the goals of the business without infringing on the professional and personal values. Managers have increasingly become dispirited with organizations that fail to personify values constant with the ones they desire to live.

A study performed by Lowrance (2012) disclosed that most of the younger managers reported to have been requested unreservedly to carry out deeds they deemed as unethical and illegal. On the other hand, well-intentioned managers were noted to depend on a mixture of corporate credos, training programs, statements of individual beliefs, ombudsmen and ethics hotlines in setting up legal and ethical values of their businesses. Owing to the incoherent organizational legal and ethical standards, unsettling patterns have emerged and these include the acknowledgment of a cynical perception of business or organizational ethics by the younger managers. The study by Lowrance (2012) emphasized the requisite for legal and ethics education, as well as greater comprehension ethical decision making for the managers.

With regards to the healthcare service provision context, there has been a incessant presence of issues that can be regarded as both legal and ethical and are also embedded in the

daily activities. One such issue is confidentiality of the client data. Herold and Beaver (2014) opines that keeping information on a client confidential is a means of showing respect to the individual's autonomy; disclosing such data may cause damage to the client/patient. As such, certain laws have been put in place and pertain to the disclosure of such data, for instance, the Health Insurance Portability and Accountability Act. The laws offer a definition on the information that can be disclosed and to whom. For example, insurance firms do not have the authority to a given aspect of a client's health records; nonetheless, a moral healthcare expert may break the confidentiality law so as to prevent harm to a third party.

For the managers, confidential information within the healthcare context extends beyond the client's health records to the wider information systems that take in the healthcare organization as both a workplace and a business. Management of confidential data within the healthcare context, therefore, calls for ethical knowledge, awareness, and decision making abilities. To prevent the disparaging perception of the significance of ethically managing confidential data by managers, increased discussion and education on the issues must occur. Creative ways of effectually answering queries on confidentiality can be answered through retrospective evaluation, ethics education and discussions.

It is, therefore, worth observing that managers are tasked with respecting the confidentiality of data the organization acquires, maintain, and utilize in their function as organization's agent. The confidential data might take in, but is not restricted to the workers' individual information, as well as compensation data. Access to such confidential information carries with itself a fiduciary responsibility to respect privacy and ensure due care by not to disclosing and releasing the data outside the necessary course of the confines of business endeavors.

Analysis of Legal Issues in Patient Information Confidentiality

Lowrance (2012) observes that legally, the healthcare experts are tasked with the duty of maintaining confidentiality of all information that they may have access to in the duration of their relations with clients. The duty safeguards any information acquired, generated and disclosed either directly or indirectly during the course of the relationship between the client and healthcare service provider. Moreover, every individual as well as the management employees in an organization's healthcare system who comes across confidential information as a vital part of healthcare provision process is also tasked with the duty of maintaining the information's confidentiality. Thus, the general rule is that confidence as a task averts the disclosure of private information to organizations and persons not engaged in provision of healthcare services.

Nonetheless, several legally acceptable exceptions exist and allow disclosure of classified patient information to third parties. Still, it is worth observing that task of confidence does not come to an end upon the cessation of professional-client relationship, and neither does it come to an end following the death of the client. A good example of a statutory duty regarding confidence is the Mental Health Act of 1996's Section 206(1), which maintains that; "an individual should neither directly nor indirectly disclose any individual information acquired through the reason of a duty that he/she has, or at any point had, during the administration of either Mental Health Act 1962 or this Act." The penalty for such an unauthorized employee information disclosure is pegged at $2000 (Scott, 2011).

Legally, a contravention of the duty of confidence may have several consequences. For example, it might result in a disciplinary action by the disclosing party's employer. Secondly, an action that takes in damages against the individual who disclosed the information as well as his/her employer. Thus, the court of law may require the individual who disclosed the

information and his/her employer to pay for the damages caused to the client through such disclosures. Thirdly, a disciplinary proceeding might be instituted on the individual who disclosed the information and the employer based on the regulatory statutes of the professional. Lastly, a fine may be imposed in instances where the statutory duty of confidence has been contravened.

Nevertheless, a number of statutes have also offered instances in which a healthcare professional is legally authorized to disclose confidential client information. These are as follows.

According to McWay (2015), a statute might compel a legal task on the healthcare professionals and other persons to divulge given information. For instance, the Health Act of 1911 Section 300 calls on the healthcare professionals to notify the Department of Health's Executive Director and the Public Health in-charge of any individual who has been diagnosed with a venereal illness in a communicable phase.

On the other hand, a statute might allow the divulging of confidential information under specific situations without having the legal compulsion to do so. For instance, Sections 10C (4) and 146C (3) of CWA authorizes disclosure of patient information to the DCD in restricted number of situations. Lastly, in instances where a statutory authority permits the disclosure of confidential patient information is divulged to a responsible body or agency then no actionable violation of confidence duty may be instituted. Still, under the above circumstances, only the necessary amount of information may be disclosed so as to meet the statutory needs, or to a degree that is permissible under pertinent statutory provisions.

Analysis of Ethical Concerns Raised by the Situation

The need for a stringent Code of Ethics that does not only serve the professional privileges but is rather made up of roles and bound to social moral principles, is of principal significance, so as to ensure that the public interests are protected (Arnold, Beauchamp, Bowie, & Bowie, 2014). Within such ethical contexts, confidentiality becomes a principle that is derived from the independence and tends to cover the intimacy of people, as well as their image and honor. It is, therefore, presumed that so as to guarantee an individual's privacy, the preservation of the confidentiality of the information pertaining to the person must be performed. Thus, it's the duty of the healthcare professionals and the organization to protect such private information (Perera, Holbrook, Thabane, Foster, & Willison, 2011).

Within the healthcare services provision industry, privacy has been linked directly to professional confidentiality, which refers to a unique kind of secrecy where the confidant is a member of a given profession, and information disclosed by the client has to be offered the level of privacy it deserves. This might also be construed as a pledged confidentiality given that the professional involved, through an oath taken during his/her graduation, avows to safeguard the privacy of the client (Lowrance, 2012).

Even though it is of extreme significance to maintain professional confidentiality (Tran, Morra, Lo, Quan, Abrams, & Wu, 2014), it has been noted that fewer health care professionals and students have acknowledged the importance of patient information confidentiality as most of them have not had classes on ethics during their studies (McWay, 2015). Such incoherence discloses the future healthcare experts might not be adequately prepared with regards to legislation and ethics, which form the basis of the classes, intended to enhance their comprehension of the intricate expert/family/client relations.

Nonetheless, some of the notable instances in which confidentiality of client information might be infringed on include instances that require obligatory notification on an illness; instances of forensic dental assessments within its limits; instances where cooperation with the justice system is required and proved by the extant laws; austere protection of genuine interest of the expert; and revelation of classified information to the parent/guardian of a lawfully debilitated person (Pozgar, 2011). Moreover, McWay (2015) observe that the ethical concerns about confidentiality tend to decline as it becomes increasingly hard or impracticable to link the information with a given person. Such concerns may also vary depending on the information's sensitivity, as well as the degree to which right to use, disclosure and access might harm the person or group.

The safeguarding of healthcare professional privacy is dependent on the observation that professionals including physicians, nurses and dentists amongst others, in addition to technical support staff comprehend what confidential information is and are, therefore, through laws and ethical codes and values compelled to preserve such information in secrecy (Pozgar, 2011). Even though information exchange is essential within an interdisciplinary healthcare service team, every professional has to limit data disclosure to a level that is believed to be obligatory in the planning and achievement of the procedures in the best interest of the client (Scott, 2011). For the healthcare experts, confidentiality encompasses all data to which they are granted access to through clinical interview, patient care, physical assessment, radiological and lab results, as well as clinical meetings with other healthcare experts concerned in the treatment (Thompson, Black, Duff, Black, Saliba, & Dawson, 2011). The pledge to maintain patient/client information confidentiality, therefore, refers to the assurance required by the patient to conquer the humiliation of responding to queries asked in the course of a clinical interview.

Ethical Theories

According to Morrison (2015), confidentiality is an essential aspect of every ethical healthcare practice statements. The professional healthcare agencies and bodies have not only stipulated confidentiality as a moral obligation, but have additionally allowed contraventions of confidentiality in specific situations, for instance, to safeguard third parties from probable injury. According to Arnold, Beauchamp, Bowie, and Bowie (2014), healthcare ethics is a rational branch of ethical philosophy that deals with the conflicts in obligations, as well as their probable outcomes. Two major thought strands have always existed in ethics with regards to the decision making; utilitarian and deontological. In concurrence, Morrison (2015) notes that several discussions on patient information confidentiality often take utilitarian or deontological perspectives, and have been discussed below.

Utilitarianism

According to Morrison (2015), the utilitarian theory maintains that an action can be regarded to be either right or wrong on the premise of the outcomes of the action, as well as the consequences of the action on the bulk of the population (Arnold, Beauchamp, Bowie, & Bowie, 2014). This implies that a practice or action is morally appropriate in case it produces increased amounts of positive outcomes compared to negative ones amongst the individuals involved. Based on this observation, utilitarianism, therefore, conforms to the rule that a deed is considered to be moral founded on the principle and rules that may bring maximum effectiveness to the largest number of individuals (Morrison, 2015). This is in contradiction to the deontological ethics theory given that utilitarian supposes that compromising should not be there during the determination of the morality standpoint. Further, utilitarianism has additionally been perceived as a consequentiality approach given that the results are used to establish the ethicality of an

action, and the approach may, while offering maximum benefits to a larger group of individuals, harm others.

Perera, Holbrook, Thabane, Foster and Willison (2011) maintain that confidentiality has to be assured in case the clients are to disclose personal information frankly and freely to healthcare professionals to enable the provision of apt diagnosis and treatment. The failure to assure confidentiality may result in the non-presentation, misdiagnosis, treatment failure, in addition to ultimately causing more damage compared to ensuring confidentiality. Moreover, legal precedents have also assumed the utilitarian arguments/perspectives.

According to Scott (2011), the utilitarian rationalization for ensuring patient healthcare information confidentiality rests finally on the computation of the consequences of disclosure and confidentiality on the behaviors of the present and future clients. The calculation is normally founded on hypothetical perceptions of the manner clients are prone to behave. It is presumed that clients regard confidentiality as vital and are less prone to seek treatment in institutions that do not guarantee the required level of privacy.

Kantian deontology

According to Morrison (2015), the Kantian deontology emphasizes that an action may be regarded as ethical in case it may be acknowledged as a common law by all persons (Arnold, Beauchamp, Bowie, & Bowie, 2014). The deontological theory was initially introduced by Immanuel Kant who believed that morality has to follow a set of laws devoid of exceptions. As such, deontological ethics theory looks at the categorical principles in which instructions and imperatives are offered with regards to the way and individual has to act (McWay, 2015). In this regard, it is worth observing that the healthcare professional-expert relationship or interaction is deontological by nature given that medical teaching practices indoctrinate such traditions, and

upon the breach of deontological practices then the perspective of medical negligence is bound to arise. Such traditions, therefore, serve to drive healthcare professionals to do good to their clients, in addition to reinforcing the professional-client relationship.

Unlike utilitarianism, deontology has always been regarded as the ethics of duty, in which an action's ethicality is reliant on its nature, for instance, harm is objectionable regardless of its outcomes. Over and above that, deontological theory additionally calls for the treating of a patients and the information they provide with utmost respect and confidentiality. Thus, in the context of healthcare service provision, the medical professionals should not use patient data as a means of getting to an end. Thus, the healthcare professionals are obligated and bound to their duties to follow a set of rules and regulations on release and disclosure of confidential information as this assist them in determining the appropriateness of their actions.

Areas of Law Impacted

One area of the law that has been addressed during the course and is applicable to confidentiality issues is the Privacy Act of 1974. According to Herold and Beaver (2014), the American public place increased value on personal choices, private sphere and individual rights safeguarded from intrusion. Healthcare information and records normally take in a number of the intricate data on an individual's life as they record the mental and physical health of an individual, and might additionally include information on one's social behaviors, fiscal status and personal relationships. Hence, by safeguarding personal privacy, the Privacy Act of 1974 serves to safeguard the interests of patients. In agreement to this observation, Institute of Medicine (2006) observes that the Privacy Act of 1974 ensures safety of information on both the healthcare professionals and the patients, collected or held by the government, and might be retrieved using individual identifiers, for instance, social security number and name among other

data. The Privacy Act of 1974 allows a government agency to disclose individually exclusive data to identified individuals bearing written approval or pursuant to one of the earlier noted disclosure exemptions.

The other notable area of law that has been affected by confidentiality issues is the Privacy Law through Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA as a privacy standard tackles the utilization and divulgence of a person's healthcare information, commonly referred to as cosseted information, by institutions subject to the 'covered entities' privacy rule, in addition to the persons' privacy rights to control and comprehend how information regarding their health is used. In the Department of Health and Human Services, the Civil Rights Office is tasked with the responsibility of executing and imposing HIPAA, in relation to civil funds fines and voluntary agreement activities.

Lastly, the other notable area of law that is impacted by confidentiality issues is the constitutional law. According to Herold and Beaver (2014), in instances where a body or agency has a federal or state governmental status, then the constitutional confidentiality standards will be applicable to the handling of information on an individual's health by the body. The provisions stipulated in the United States' bill of rights are targeted at safeguarding citizens from potential abuse by the government, even as the limited case laws form the foundation of the privacy rights.

Conclusion and Recommendations

Health information security will go on to increase in significance as the health services provision industry makes strides towards the greater execution of the electronic healthcare records systems. This has been facilitated by the passing of several bills regulating the transition by the U.S. Congress. Also, information technology advancements are prone to make it much

easier to execute the measures as the audit will track and access controls (Tran, Morra, Lo, Quan, Abrams, & Wu, 2014).

Moreover, effectual health information confidentiality protections necessitate effectual information security measures (Scott, 2011). HIPAA privacy rules have already prepared the ground for the information safety standards in various bodies; however, not every enterprise operating in the healthcare service provision sector is subject to the regulations by HIPAA. Still, studies have also observed that the public confidence on the confidentiality of health information has not improved in spite of the enactment of both HIPAA Privacy Rule and HIPAA Security Rule (Lowrance, 2012). As a result, it is recommended that all organizations should put in place adequate measures to reinforce patient information safety.

Nonetheless, owing to the divergences amongst the activities and goals of organizations operating in the healthcare services provision industry, a degree of flexibility with regards to the execution of given information safety measures are essential. Improved information security is prone to minimize data theft over and above strengthening the society's trust and belief in healthcare services organizations as a result of the declining anxiety on the possible accidental exposé of confidential information.

References

Arnold, D. G., Beauchamp, T. L., Bowie, N. E., & Bowie, N. L. (2014). *Ethical Theory and Business.* Upper Saddle River, New Jersey: Pearson.

Herold, R., & Beaver, K. (2014). *The Practical Guide to HIPAA Privacy and Security Compliance, Second Edition.* Boca Raton, Florida: CRC Press.

Institute of Medicine. (2006). *Effect of the HIPAA Privacy Rule on Health Research: Proceedings of a Workshop Presented to the National Cancer Policy Forum.* Washington, D.C.: National Academies Press.

Lowrance, W. W. (2012). *Privacy, Confidentiality, and Health Research.* Cambridge, United Kingdom: Cambridge University Press.

McWay, D. C. (2015). *Legal and Ethical Aspects of Health Information Management.* Boston, Massachusetts: Cengage Learning.

Morrison, J. (2015). *Business Ethics: New Challenges in a Globalised World.* Basingstoke, United Kingdom: Palgrave Macmillan.

Perera, G., Holbrook, A., Thabane, L., Foster, G., & Willison, D. J. (2011). Views on health information sharing and privacy from primary care practices using electronic medical records. *Informatics in Medicine Unlocked, Vol. 80, Issue 2.* , 94–101 .

Pozgar, G. D. (2011). *Legal Aspects of Health Care Administration.* Burlington, Massachusetts: Jones & Bartlett Publishers.

Scott, R. W. (2011). *Legal, Ethical, and Practical Aspects of Patient Care Documentation: A Guide for Rehabilitation Professionals.* Burlington, Massachusetts: Jones & Bartlett Publishers.

Thompson, L. A., Black, E., Duff, W. P., Black, N. P., Saliba, H., & Dawson, K. (2011). Protected Health Information on Social Networking Sites: Ethical and Legal Considerations. *Journal of Medical Internet Research, Vol.13 (1)* , 54-69.

Tran, K., Morra, D., Lo, V., Quan, S. D., Abrams, H., & Wu, R. C. (2014). Medical Students and Personal Smartphones in the Clinical Environment: The Impact on Confidentiality of Personal Health Information and Professionalism. *Journal of Medical Internet Research, Vol. 16, No 5* , 5-11.