



Website: <https://sites.google.com/site/hkpdahome/>
Email: enquiry@hkpda.org.hk
Tel 23741268 Fax 23966465

Hong Kong
Public Doctors' Association
香港公共醫療醫生協會

Unit C, 3/F, Worldwide Centre,
123 Tung Chau Street, Kowloon

2019-2020

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21st November 2019

Dr. Tony KO Pat-sing

Chief Executive

Hospital Authority

Dear Dr. Ko,

Hong Kong Public Doctors' Association ("HKPDA") is gravely concerned by reports that over the past months of protests in Hong Kong, the Hospital Authority ("HA") has disclosed patients medical records to police without the knowledge and consent of patients. This was purportedly in response to service of search warrants taken out by police.

This concern is all the graver because of reports that such search warrants related to persons who are victim-complainants, where the persons who are the subject of such criminal complaints are police officers.

We understand that one such patient has even had to take out legal proceedings (HCAL 2643/2019) to obtain a copy of the search warrant in order to even be in a position to challenge the legality of the search warrant. This was necessary, in part, because the HA refused to provide the patient with a copy of the search warrant.

This is disturbing in two respects, firstly because it would appear that despite the hospital authority having a duty to uphold doctor patient confidentiality, the HA did not itself take immediate steps to challenge the legality of the search warrants and secondly, because the HA obstructed the patient from challenging the legality of the search warrant by refusing to provide the patient with the search warrant or sufficient details in respect of the warrant to facilitate prompt legal challenge.

We further note the recent disturbing case of Ms X, a young female rape complainant who has filed a criminal complaint of being raped by police officers in Tsuen Wan police station. In this case police took out a search warrant to seize the medical records from the private

doctor of Ms X. Quite properly, Ms x's private doctor immediately informed her legal representatives when he was served a search warrant on 4 November for the seizure of Ms X's medical records. Her legal representatives then promptly challenged the issuance of the search warrant in court on 5th November and the search warrant was immediately suspended by the issuing magistrate. This confirms that legal challenge of search warrants can and should be taken out in cases where doctors are ordered to hand over medical records of their patients.

The requirement to maintain doctor-patient confidentiality is a fundamental tenet of professional medical conduct. It underpins the vital trust that exists between a doctor and patient and the need, in the provision of proper medical care, for disclosure by patients of personal data of the most private and intimate nature on the understanding that such data will be kept confidential.

Under the Code of Professional Conduct 1.4, a doctor should obtain consent from a patient before disclosure of medical information to a third party not involved in the medical referral. Disclosure of medical information about a patient to a third party without the patient's consent can only be made in very exceptional circumstances where disclosure is necessary to prevent serious harm to the patient or another person and when disclosure is required by law. A doctor making disclosure without the patient's consent must weigh carefully the arguments for and against disclosure and be prepared to justify the decision.

In this regard the HKPDA wishes to know on how many occasions the HA has provided medical records of patients to police over the last 6 months, without the patients' knowledge and consent, and what was the justification for doing so.

HKPDA acknowledges the duty of the HA to comply with lawfully taken out search warrants. However, the HKPDA also notes the duty of the HA to preserve doctor patient confidentiality. Where that conflict of duty exists, as it does in any case where a search warrant is taken out in respect of a patient's medical records, the HKPDA considers that the HA, in furtherance of its duty to jealously guard doctor patient confidentiality, should take

all steps to test the legality of any such search warrants , should seek suspension of execution of such search warrants prior to court determination on the legality of the search warrants and, if necessary, should give undertakings to police to preserve and not tamper with such medical records pending determination of the legality of such search warrants by the courts.

We believe anything less is an abrogation of the HA responsibility to uphold doctor patient confidentiality.

HKPDA further seeks reassurance from the HA that it will-

1. exhaust all legal avenues to challenge any search warrants taken out by police or other authority for the seizure of patient medical records, without a patients' knowledge and consent.
2. In addition, facilitate the legal challenge of search warrants by the patients in respect of their own medical records, but not least, providing patients with copies of search warrants served upon the HA in respect of seizure of the patients' medical records.
3. Exhaust all means to negotiate the suspension of execution of a search warrants, until the legality of such search warrants is tested in the courts.
4. Take immediate steps to obtain an injunction or other proceedings to seal any seized medical records and prevent the police from using data from medical records, in the event that police refuse to suspend the execution of a search warrant pending legal challenge to the search warrant in the courts.

We look forward to your timely reply Thank you for your attention.

Best Regards,

Dr. Arisina Ma

President of Hong Kong Public Doctor's Association