

Invited Comment

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The Challenge of *Electronic Medical Prescriptions* to the Rule of Confidentiality and to the Respect of Patient's Privacy

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“E-health, the application of information and communications technologies (ICT) that affect the health care sector, is developing fast in Europe. In this respect, the European Commission's e-Health Action plan, adopted on 30 April 2004, covers a wide range of issues and applications such as electronic prescriptions and computerised health records. A model of the electronic medical prescription must respect patients' rights and can only be deployed in a system of security in order to protect the confidentiality”.

This is the conclusion of the paper entitled *“The law on electronic medical prescriptions”* by Francis de Clippele – Lawyer and Assistant Lecturer at the University of Antwerp – published in this issue of the Journal.

This paper raised once more the issue of ***the challenge of the computer-based patient record to the rule of confidentiality and to the respect of patient's privacy ?***

The debate on the protection of people's private life is stronger than ever, particularly in the health care sector, where choices have to be made in order to decide between the conflicting interests at stake.

This challenge can only be met by designing measures and modalities allowing to protect the confidentiality.

In the medical sector, invoicing was the first concerned by the development of the computer technologies. Computerisation then extended to clinical databases. Today it is about to revolutionise the management of medical records and drug prescription. Application programs are being designed to computerise the management of these records and prescription. Networks are being set up to interconnect them. Databases, both internal and external to the health care structures, are being created in order to centralise the data of the medical records anonymously. This evolution is not over. *Privacy* and *confidentiality* are especially at risk due to the computerisation that is extending now from drug prescriptions to personal medical data.

The rules protecting the patient's private life form a whole ; the backdrop being the traditional model of the doctor-patient relationship. However, neither the deep changes nor the interferences of all kinds affecting this relationship today can be ignored. These are due to the

invasion of medical practice by a growing number of technologies. Among these, the computer techniques and information technologies, of which the impact on the patient's private life is far from being insignificant, have an important place. In other words, computers represent a real challenge to the health care world in terms of confidentiality and a threat to the basic principle of respect of patient's privacy. His or her right to respect for private life, which aims at protecting not only the confidentiality of his or her private realm and relationships with others, but also his or her freedom of choice regarding this private realm and these relationships, is indeed expressed, in various forms, in a large number of texts of every possible origin. It would be a mistake to regard these as a heap of redundant rules. These texts can be distinguished according to their content, the time of their elaboration and their authors. Although complex, the normative structure that they form is not void of effectiveness.

The second issue is : ***how is this challenge taken up at the normative level ?***

Although computer techniques and information technologies have significant advantages, for instance in terms of medical record management and maybe in terms of large scale drug prescription, they give rise to several problems, particularly concerning the confidentiality of the patient's data with regards to third parties (health care bureaucracy, insurance payers as well as industry). A great number of specific provisions, complementary to the general texts protecting private life, endeavour to solve these problems. It is true that these provisions are recent, have various origins and often appear as rules difficult to understand. Yet, they are partially inspired by a common logic. Relying on these common features, we can recommend two suggestions for the future, in order to avoid that the growing computerisation of medical practice, combined with the invasion by information technologies, eventually destabilise the health care relationship :

- a) Any *dictatorship of confidentiality* must be rejected
- b) Stimulating a sense of *professionalism* is most likely the way to avoid an anarchic and unrealistic development of rules aimed at regulating the health care relationship

In 2002, two review articles were already published in the *Acta Chirurgica* dealing with the “Challenge of the Computer-based patient record to the rule of confidentiality and to the respect of patient’s privacy.” In fact, judicial arguments and a juridical state-of-the-art at the national and European level were developed in those two rather comprehensive articles, that are bringing *a posteriori* some practical enlightenment about the risks for confidentiality mentioned by de Clippele. Furthermore, those two papers were precisely dealing with the two issues we just mentioned. As our fellow surgeons are busy people who do not read that easily paper related to administrative topics – being themselves fed up with an ever growing bureaucratic burden –, the editors of the Journal have decided to re-publish those two papers. Their content could be of interest due to the fact that electronics and information technology are here to stay. But also because health care bureaucracy and third

party payer’s pressure are translated, more than ever, into regulations of all kinds aimed at explaining us how Medicine should work and how Surgery should be done ! Last but not least, some of us could perhaps find in those two papers some defensive arguments for lawsuit. In fact, the most compelling proof of the impact of those two papers is the fact that some lawyers have expressed interest for their content.

References

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