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Medical Secrecy in the Context of the Response Against the Covid-19 Health Crisis in Cameroon: Analysis From the United#Covid-19

Le Secret Médical dans le Contexte de la Réponse à la Crise Sanitaire de la COVID-19 au Cameroun : Analyse de United#Covid-19

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ABSTRACT

The medical secrecy is the cornerstone of the patient-caregiver relationship. It is a commitment taken by the caregiver (physician, nurse, pharmacist, etc.) towards the patient, that imposes him/her to secrecy regarding all patient's information seen, heard, or discovered in the course of his/her professional practice. It is regulated by the professional codes of ethics and the penal code. The medical secrecy, therefore, lies at the crossroads of health, law, morals and some aspects of society. It has been progressively questioned with the advent of digitalization and, in some countries, with the interests of transparency. In the context of the covid-19 pandemic, the medical secrecy is in jeopardy. Indeed, for the sake of the principles of public health and general safety, many cases of violation of the medical secrecy, either by health professionals or administrative authorities, have been reported. In this article, we discuss the impact of the pandemic on this crucial element of the patient-caregiver relationship, and we suggest professional, social and legal solutions to help preserve it.

RÉSUMÉ

Le secret médical est la pierre angulaire de la relation patient-soignant. Il s'agit d'un engagement pris par le soignant (médecin, infirmier, pharmacien, etc...) à l'égard du patient, qui lui impose de garder le secret sur toutes les informations du patient vues, entendues ou découvertes dans le cadre de son exercice professionnel. Il est réglementé par les codes de déontologie et le code pénal. Le secret médical se situe donc au carrefour de la santé, du droit, de la morale et de certains aspects de la société. Il a été progressivement remis en question avec l'avènement de la numérisation et, dans certains pays, avec les intérêts de la transparence. Dans le contexte de la pandémie de COVID-19, le secret médical est en danger. En effet, au nom des principes de santé publique et de sécurité générale, de nombreux cas de violation du secret médical, soit par des professionnels de santé, soit par des autorités administratives, ont été rapportés. Dans cet article, nous discutons de l'impact de la pandémie sur cet élément crucial de la relation patient-soignant, et nous proposons des solutions professionnelles, sociales et juridiques pour aider à le préserver.

CURRENT CONTROVERSY

The principle of medical secrecy is the oldest rule of medical law. First stated in the Hippocratic oath, it is taken up by many modern laws. Specifically in the Cameroonian law, in addition to the general text, it is stated by article 4 of the law n° 90-36 of august 10th 1990 relating to the practice and organization of the profession of physician. This article stipulates that the physician in the public or private sector is subject to professional secrecy. It is protected, although insufficiently, by the criminal laws and recalled by several deontological or statutory texts relating to the various health and social professions [1]. It obliges the physician not to reveal, to third parties what has been entrusted to him, or what he has seen or heard or discovered in the context of his relationship with his patient [2]. In certain situations, however, its effectiveness is severely tested, and its relevance is questionable. This is particularly the case in health crises, such as COVID-19, a disease that has overwhelmed the world since December 2019 and is responsible for more than 4,800,000 deaths [3]. In fact, in this context, the rules in force and the practices, which are developing within the population or the media, are likely to disrupt confidentiality. This is, however, the cornerstone of the private health data protection regime, especially concerning the patient's follow-up, and the tracking of contacts. The tendency is therefore to believe that to better fight against the health threat, it is necessary to protect medical secrecy. This reasoning suggests that respecting medical secrecy, the *sine qua none* condition of the caregiver-patient relationship, on one hand, and the effectiveness of a health conflict, on the other hand, are contradictory expectations. However, it appears that the two objectives are reconcilable. The usefulness of medical secrecy for public health allows us to say that the health system for its effectiveness, must preserve medical secrecy. In this article, we discuss the impact of the COVID-19 pandemic on medical secrecy and elaborate solutions that help to preserve and maintain an effective response to the pandemic.

THE TENDENCY TO MAINTAIN MEDICAL SECRECY

The convergence of two factors characterizes this trend: the primacy given to transparency issues and the imperative nature of the measures put in place to stop the spread of COVID-19.

Regarding the primacy given to transparency issues, it appears that information and telecommunication (ICT) that makes up the current era is hostile to the culture of medical secrecy. Respect for private life now appears to be an obsolete concept and concepts such as "Bank secrecy" seem to be dying out [4,5]. Even before the whole world was touch by COVID-19, several public health procedures such as quarantine or the declaration of certain diseases were already gaps as far as medical secrecy is concerned. All these are worsened by debates that already wanted the declaration of a lapse to the said secret [6]. The context of health crisis reinforces this feeling; people need not only medicines and food but also the right information. In the digital era, the problem is more of an overabundance of information flow than that of lack of information [7]. The Governments and the media are therefore required to deal with this mass of information before communicating to raise awareness, educate and reassure; the right information remains the key to stop the pandemic. However, by communicating on everything, there is the risk that medical secrecy will be affected, because, by nature, the notions of secrecy and communication are antithetical. This concern for transparency also promotes the development of intrusive practices. First, there is an intrusion of third parties into medicine. The example of temperature measurement in public places can be cited. However, this is a medical act in that it can determine whether the state of health of the person concerned presents a potential risk to public health. As such, it must be performed by authorized health personnel [8]. The usefulness of additional personnel to support health personnel in times of health crisis, however, raises the question, of the applicability of medical ethics to these occasional collaborators. The danger lies in particular not specifically on temperature measurement, but in their ability to understand and preserve medical secrecy. The other intrusive practice is found in the use of digital technologies. These tools both increase the autonomy of individuals but increase the risk of mass control [7]. Their uses are not always ethical. Of course, digital technologies are a major assets in favor of the device against COVID-19 (physical distancing and teleworking, distancing measures, etc...) are made possible by digital technologies). But it has an intrusive side; the debates on the use of digital technologies against the spread of COVID-19, such as applications for tracking patients or COVID-19 contacts, like "stop-COVID" in France, crystalize many people on the issue of privacy and specifically medical secrecy [9]. Regarding the imperative nature of the measures put in place to stop the spread of COVID-19, they reflect the idea of public health order. Their impact on fundamental rights is simply impressive [10, 11]. The physician's obligation to inform the health services of communicable diseases as well as the statistical elements necessary for public health particularly affects medical secrecy [2]. The need to strengthen scientific research resources in order to reduce the spread of this disease also justifies the massive collection of health data. Indeed, knowing health data and their use is essential for determining health policy, for practicing health democracy, for the action of health system actors and the diagnostic and therapeutic strategy [12]. These actions which are moreover essential for mapping the cause of the disease and interrupting the chain of propagation of the disease, are in some cases accompanied by the disclosure of patient's data. Their act is therefore questionable as far as medical secrecy is concerned.

THE NEED TO PRESERVE MEDICAL SECRECY IN THE CONTEXT OF A HEALTH CRISIS

In instituting medical secrecy, the designer of the formula of the Hippocratic oath primarily intended to get physicians to preserve the privacy of their patients in any event. Thus, Kahn affirms that in the hierarchy of the

duties of the doctor we have, firstly his obligations towards the patient t, secondly his responsibility towards the thirds and the society [6]. We would add that the data he processes in this content are sensitive because health itself is one of the most sensitive social concerns [12, 13]. Medical secrecy is therefore a permanent principle. Each time a physician comes in contact with a patient, professional secrecy is necessarily applied. It is the substrate of the singular contract that unites him with his patient. One cannot act as a physician without being bound to medical secrecy. This is undoubted while the penal code authorizes exceptions to professional secrecy for the benefit of certain people, it continues to make the physician subject to it [1, 2]. It thus covers absolute medical confidentiality by using secrecy when he refers to it, the adverbs "always". He is also aware of the fact that, the confidence covered by secrecy is the essential basis of the relationship between the physician and his patient, and that it survives to the death of the patient, which the Cameroon medical council takes care of in the case of an autopsy, to reveal the protected data only to a limited number of persons, bound themselves by this secrecy, which helps limit its propagation [2]. Moreover, in law n° 90-36 mentioned early, no exemption was formulated to this rule thus placing the patient under the protection of his physician. The context of COVID-19 does not change that fundamentally. In this period, on one hand, medical secrecy must be treated as a public health institution because, by protecting the privacy of patients, we increase the confidence in the health system and health facilities, and on the other hand, the possibility of getting back to these for adapted care. This causes patients to consult doctors for confident treatment, which helps limit the spread of the disease in society and control the mortality of other chronic diseases that may take a back seat in this pandemic. Protecting medical secrecy is preventing the stigma that leads to social tragedies. One of the fears expressed by the population is that of being assigned the status of a COVID-19 patient, with the consequences of real exclusion from family, friends and even colleagues. A relation can be established between this situation and the stigmatization of human immune deficiency virus (HIV) positive patients encountered in the 1990ˢ and which continue to exist in our community [14].

PRESERVATION OF MEDICAL CONFIDENTIALITY IN THE CONTEXT OF COVID-19 HEALTH EMERGENCY: THE CASE OF CAMEROON

In Cameroon, similarly to many countries, a health emergency against COVID-19 has been declared. This imposes preventive measures against the disease, which restricts certain individual freedom. In addition, several cases of violation of medical secrecy by both nursing staff and administrative authorities have been denounced in this content. For example, we can cite a press release from the university health center asking to find a student suspected of COVID-19 or that of an administrative authority calling by name individuals suspected of COVID-19 infection to report to the adequate hospital facilities. The spectacular burials of suspected or confirmed COVID-19 patients, the publicized raids by disinfection teams in the homes of confined COVID-19 patients and the disclosure on social networks of information related to them and even their families, by health personnel are a violation of the preservation of medical confidentiality.

Even immersed in a health crisis, society must not give up preserving individual freedoms, and human dignity. Despite exceptional health measures, breaches of medical confidentiality must be limited. This is the principle of minimization [15]. Sometimes, it is sufficient to seek the voluntary participation of the person concerned; consent is the corner store of the personal data protection regime. It helps to preserve medical confidentiality in the sense that the patient voluntarily opens up to the doctor. At the basis of medical confidentiality, there is the patient's privacy, which, in the form of confidence, he shares with the physician. Initially, the private life of, the patient is opposable to the physician. It will protect the patient's right not to disclose everything to third parties, even to another physician. At the onset, there is the patient's privacy which is opposable to the doctor. He would protect the patient's right not to reveal anything to third parties, even to another doctor [16]. The legal framework for the impact of a health emergency on medical secrecy is just slightly explored in Cameroon. It is therefore complicated to establish a standard, this situation being unprecedented in our country. However; we could draw some conclusions from the experience of other countries in this context. Thus, in France, the national medical council has obtained guarantees on the preservation of medical secrecy despite the health emergency [17]. They include:

- the protection of personal health data collected, and which does not only concerns the status of patients for COVID-19 infection ;
- the information that the doctor should give to the patient;
- the prohibition on communicating this data to a third party without the consent of the patient;
- transparency in the use of this data and;
- the temporary nature of the storage of these data.

These constraints on the disclosure of medical secrecy must however be adapted to our context in which the computerization of data is less important and professional orders have less impact on the state or Government. Solutions to the violations of medical confidentiality in our context could include:

- The humanization of burials of death covid-19 patients, whose remains could be properly treated and then returned to families with specific measures, so that mourning takes place more in accordance with local habits and customs;
- Communication through the training of personnel in charge and better coordination by the appropriate bodies [18];
- The training of health and administrative personnel in medical ethics and the strict conditions of medical secrecy violations. In addition to these two types of staff, journalists and support staff in hospitals should also benefit from such training.

Beyond prevention measures, vigorous actions should be taken to sanction at the administrative and judicial levels, cases of unjustified violations of medical secrecy. These corrective measures should target both nursing staff and authorities in strict compliance with the code of ethics or penal code.

CONCLUSION

In health crises such as COVID-19, it is very difficult for health personnel and even states to enforce medical secrecy. They are sometimes faced with the dilemma of preserving an individual's medical secrecy versus protecting the health of the population. In this fight, the help of regulatory texts or, on the contrary, the creation of legal exceptions to them is the solutions offered by law to health professionals and states. The fact is that confidence in medical secrecy will emerge even more contested from this health crisis. The contribution of professional orders, training on respect for ethics and patient rights are essential for preserving it at least.

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Conflict of interests

The authors declare that they have no competing interests

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REFERENCES

1. Presidency of Republic of Cameroon. Cameroon penal codes. Article 310. 2016/007 2016. Available on: https://www.wipo.int/edocs/lexdocs/laws/fr/cm/cm014fr.pdf
2. The President of Republic of Cameroon. Décret portant Code de Déontologie des médecins. n° 83-166, 1983. Available on: https://www.medcamer.org/wp-content/uploads/2011/01/CODEONTOLOGIECAMEROUN.pdf
3. WHO Coronavirus Disease (COVID-19) Dashboard. https://covid19.who.int. Accessed on October 6th, 2021.
4. Boenisch G. Jean-Marc Manach, La vie privée, un problème de vieux cons ?. Limoges, Éd. Fyp, coll. Présence, 2010. Quest Commun. Presses universitaires de Nancy; 2011;(19):397-9.
5. Ziegler J. Mort programmée du secret bancaire suisse. Monde Dipl. 2001;12. Available on : https://www.monde-diplomatique.fr/2001/02/ZIEGLER/1879
6. Kahn A. Le secret médical : d'Hippocrate à internet. Recl Dalloz.2009;185(39):2623.
7. Benghozi P-J. L'économie numérique : une économie disruptive ? Pierre-Jean Benghozi. Cah Fr. 2016;(392):7.
8. World Health Organization. Règlement sanitaire international (2005) Brève introduction à son application dans le cadre de la législation nationale. Geneva, Switzerland: Organisation Mondiale de la Santé; 2009.p. 1-10. Report No.: WHO/HSE/IHR/2009.2. Available on: https://www.who.int/ihr/legal_issues/Brief_introduction_to_legislative_implementation_fr.pdf?ua=1
9. Ekong I, Chukwu E, Chukwu M. COVID-19 Mobile Positioning Data Contact Tracing and Patient Privacy Regulations: Exploratory Search of Global Response Strategies and the Use of Digital Tools in Nigeria. JMIR MHealth UHealth. 27 2020;8(4):e19139.
10. Gelblat A, Marguet L. État d'urgence sanitaire : la doctrine dans tous ses états ? Rev Droits L'homme Rev Cent Rech D'études Sur Droits Fondam. Centre de recherches et d'études sur les droits fondamentaux (CREDOF); 2020; Available on: https://journals.openedition.org/revdh/9066
11. Beaud O, Guérin Bargues C. L'état d'urgence sanitaire : était-il judicieux de créer un nouveau régime d'exception ? Recl Dalloz. 2020;981. Avalaible on: http://www.recht-als-kultur.de/en/news/
12. Truchet D. Droit de la santé publique. 9ème édition. Dalloz; 2016. 320 p. Available on : https://www.librairiedalloz.fr/livre/9782247161744-droit-de-la-sante-publique-9e-edition-didier-truchet/
13. Mattatia F. Le cadre juridique du traitement des données de santé. In: Poirot-Mazères I, éditeur. Santé, numérique et droit-s. Toulouse: Presses de l'Université Toulouse 1 Capitole; 2019. p. 221-41. Available on: https://books.openedition.org/putc/4409
14. Cobos Manuel I, Jackson-Perry D, Courvoisier C, Bluntschli C, Carel S, Muggli E, et al. Stigma and HIV: relevant for everyone. Rev Med Suisse. 2020;16(690):744-8.
15. Desgens-Pasanau G. Traçage des données mobiles : ne sacrifions pas la protection de nos données sur l'autel de la crise sanitaire. Le Club des Juristes. 2020. Available on: https://www.leclubdesjuristes.com/blog-du-coronavirus/libres-propos/tracage-des-donnees-mobiles-ne-sacrifions-pas-la-protection-de-nos-donnees-sur-lautel-de-la-crise-sanitaire/
16. Dufourmantelle A. Défense du secret. Paris: Éd. Payot & Rivages; 2015. Available on: http://excerpts.numilog.com/books/9782228913294.pdf
17. Martin Agudelo L. Secret médical et Covid-19 : le CNOM satisfait des garanties données par le gouvernement. Available on : https://www.larevuedupraticien.fr/article/secret-medical-et-covid-19-le-cnom-satisfait-des-garanties-donnees-par-le-gouvernement
18. Nemedeu R. Le respect du secret médical, des droits fondamentaux des malades, des droits des défunts à l'épreuve du Covid 19. Quotid Jour. 2020;(3164):9. Available on: https://www.lequotidienlejour.info/pr-robert-nemedeu-les-defunts-ont-des-droits/.