

Disclosure of Medical Secrecy Crime a study based on Jordanian Penal Law

Mohammed Mousa Al-Sweilmeen

Faculty of Planning and Management, Al-Balqa Applied University, P.O. Box: 541505,
PC: 11937, Abu-Nuseir, Jordan

Abstract: This study aimed at clarifying the penal responsibility of the doctors on the disclosure of trade secret by explaining the concept, nature, jurisdiction and the legal grounds of trade secret. The study showed the pillars and penalty of disclosure of medical secret crime, in addition to that, it showed the set reasons of disclosing the medical secret for the public interest. The study revealed the doctors penal responsibility for disclosure of trade secret through answering the following questions: What is the concept of medical trade secret nature and jurisdiction and its legal ground? What are the pillars of the disclosure crime and its penalty? What are the legitimate causes of disclosing medical secrets for the public interest?

Key word: Jordan law, medical disclosure, personal history disclose, international law, penal law

INTRODUCTION

Going back to articles (355) and (437) of Jordanian Penal Law, it is apparent that disclosing of medical secrets crime is based on four pillars^[4,6,7,8].

Jordanian Law of Health^[9]. First when what has been disclosed is in fact a secret, second is the material pillar i.e., disclosure act third opinion is trusted adjective Description of culprit or private description Doctor. As for the fourth pillar is the moral pillar criminal description. In this form, crime of disclosing medical secrecy does have four pillars, which will be discussed in subsequent independent sections.

For the partial criminal responsibility to be realized for the doctor is what has been disclosed must be a medical secret. However, it is rather difficult to define this. Criminal legislation did not define it because Article (355) and (347) of Jordanian Penal Law and the Jordanian Medical Constitution did not define Medical Secrecy. Thus opinion was diversified and differences appeared with regard to definition thereof.

It was agreed from all above that Medical Secrecy is any event or matter which the doctor becomes aware of whether being told by the patient or others through medical examination or diagnoses while practicing his profession or because of it, also if the patient or his family or any other lawful reason for keeping this secret^[11].

It was mentioned above that jurisprudence have been divided into two groups when defining the jurisdiction of medical secrecy. Some favored the theory of trust and others favored secrets theory in its nature. Jordanian law favors the nature of secrets theory

as it was frankly stated in article (355) of Jordanian Penal Law.

However, are all diseases have secretive nature? Some opinion believes that some of it is not permitted to be disclosed like leper and other contagious diseases^[2]. Such diseases have external marks and it has been debated if it was disclosure if the doctor speaks of any negative results. Some think that the doctor who indicates that his patient is free from any illness is in fact disclosing a secret because he denied a certain disease means that his patient suffers from another disease^[3]. But jurisdiction considers mercy on accused and said that punishment is conditional if the results were positive.

Medical secrecy is not limited to information on the type of disease or injuries that the patient has but includes any thing connected with medical work like examination and diagnosis, x-ray and tests^[4]. As for information that are not connected with medical work itself, the legislature does not classify under medical secrecy thus it would not be considered medical secrecy disclosure of which would be considered a criminal responsibility like fees charges for services given to patient. To prove this event or matter as secretive, it must be connected with profession, which the accused is working in. For this description to be named as secret it must be kept and not disclosed.

French courts have ruled that if a doctor was called to make a home visit, during this visit he witnessed the patient's son had committed adultery crime or heard about a crime; in this case he is not obliged to keep the secret as it is not under the medical profession principle that requires secrecy.

Medical trade secret as it goes back to the present condition of the patient, it also connects to his future and therefore, the doctor is not permitted to mention anything about the danger of the illness or possibilities of recovery. It also goes to the circumstances and event of which the illness happens or death. For example, if a man suddenly dies in a woman's room that he should not have visited, in this case the doctor is not permitted to inform the dead man's family that he had died in the woman's room. However, he must inform the authorities. Secret holder may have certain interest in keeping it from being known on his health situation because he might be harmed if the party knew that his free from any illness while he claims that he is not able to do certain acts or his health circumstances requires that he change his job or its location. It also insinuates that denying a certain illness may prove for sure that he suffers from another illness if signs have appeared. It is noticed that article (355) of Jordanian Penal Law did not specify a certain method to know of medical secrecy. Articles stated that who knew of... Without specifying a certain method for that therefore, it is not a must for the patient to ask the doctor frankly to keep the secret. Thus the law does not specify that the secret holder should have legally qualified. The doctor who treats a child or insane person must keep secrets that he was informed of. He must keep the secret no matter what method through which he knew the secret.

The importance of this study lies behind the significance of the topic it tackles and the legal and practical issues that arose from it. It will contribute in enriching the literature regarding this topic.

MATERIALS AND METHODS

In this the obtained results will solely depends on local General Rules in the Jordanian Penal Law, and Jordan Public Health Law. These laws will be investigated and examined its role in developing the ways for Disclosing Medical Secrecy and its Crime according to Jordan's Law. By conducted this investigation the responsibility of medical doctors in front the local courts will help in protect them from the legal responsibility.

The study methodology will depend on extracting the laws related to disclose the information in medical secrecy and these obtained laws will be applied to some specific examples.

RESULTS AND DISCUSSION

Disclosure act: Disclosure means revealing a secret and letting other know of it in any way with specifying the person who is interested in keeping it^[1]. Informing

method does not matter. It might be in writing or orally or insinuating or any other method. Law does not require mentioning victim's name (secret owner) but only revealing some of his characteristics from which he may be know, i.e., this person must not be defined directly.

Disclosure is not permitted even for a known incident as all rumors concentrate of guessing which dissolve with time. If the doctor states any remarks on the matter then it would be evidence that the matter is true. Continuous disclosure does not exempt the matter from being secret but disclosure will subjected to penalty whenever it is repeated unless all who may be concerned are informed of that.

Medical secret is not allowed to be disclosed even if the doctor was a member of the family. Once a doctor was called to examine his sister in law and found out that she had aborted while his brother was away for over nine months. He mentioned that to his brother forcing the wife to file a court case against the doctor claiming compensation and she won the case^[12].

This is a matter of family honor and disclosing it to another member of the family is an allowed. However, the law did not adhere to this defense and passed his sentence to pay compensation. Medical secrets must not be disclosed even from one doctor to another.

Some doctors sit in one room and discuss certain case that they are treating. This is not considered disclosure because it is just taking other opinions on the treatment and utilizes other's instruments.

No doubt that it is of great value to the patient and it is not disclosure of medical secrecy because article (355) of Jordanian Penal Law frankly states that all seated doctors in the examination room or have been consulted are committed to keep the secret which the knew while doing their job. It goes with secrecy of coroner events. Coroner may be asked by authorities to give his opinion on cases suspected to be of criminal nature. It is necessary that disclosure of part or whole secret would result on penalty but it is considered a crime even only part of it has been disclosed.

As for the case in which disclosures is done in some government hospitals of clinics through examining a number of patients, this no doubt would be a reason for disclosing secrets and quick spread of such secrets. Therefore, the doctor must consider examining one patient at a time, which would increase trust and encourage the patient to discuss his case freely.

No importance is given to the method in which the secret is disclosed as the material side is present once disclosure takes place whether in writing, or orally or communication or by taking pictures, or by speeches or through the telephone or publication in newspapers.

No difference whether disclosure took place in private session or a public place because the text did not specify such matter.

Reasons of allowance for common interest: Many commitments have been imposed on doctors to reveal trade secret for common interest whether to ensure justice and combat crime or which dealt with common interest and below the matter shall be discussed separately:

Notification on births, deaths and infectious diseases:

Births: All countries took care of organizing birth records to treat all issues and problems thereof. Jordanian legislator organized births in civil status law no (32) for 1966 in article (27) thereof^[10]. It is the parent's duty to register information; if he is not available, then the relatives living in the same house where the baby is born. If it is done by somebody from outside the house, then in the house where it happened in. Jordanian legislator committed the doctor and midwife to inform the civil record within 30 days of birth in centers and 60 days outside centers from the date of birth. This disclosure is allowed because it comes under common interest.

If the baby dies before registering his birth, his birth then his death must be recorded. Those who are born dead, there is no need to register them and just settle with information given by the doctor or the midwife.

Notification of deaths: The purpose is to know reasons if it was natural or criminal causes. Justice demands to make sure of that before burial. It is important to know reason of death to prevent spread of diseases in contagious illnesses.

Relatives who were present must notify of death as well as the doctor in accordance with article (48) of civil status law.

Registration of death must be recorded by the mayor accompanied with a doctor's certificate stating that the death was natural. If no doctors were available, only mayor's evidence would be sufficient. Jordanian legislator is been criticized because it gave powers to the mayor to write death certificate if it is natural causes in places where no doctors are available because the mayor would not really know if the death was for natural causes of criminal deed. It would have been better if Jordanian legislator has given this power to a party with more experience or information like police station.

Jordanian Medical Constitution has pointed out that doctors were allowed to disclose of medical trade secrets in article (24/z) as it said notification of births and deaths The question is that should doctors write a death certificate if the patient dies in the doctor's private clinic? No doubt that doctor in this situation can not make the certificate because it would seem that he has done some kind of error. Jordanian medical constitution said in article (16) sudden death accidents may happen in private clinics... Must not make a death certificate and must inform the nearest concerned authority and try to inform the family without delay.

Therefore, a doctor who notifies of death is doing his job imposed by the law however, it must be pointed out that doctor would be revealing secrets if he informs parties other than concerned authorities and thus provisions of the law would be applied on him. This is similar to the Iraqi Law.

Notification of contagious diseases: This subject was dealt with previously and it was found justified and allowed because it is done to comply with duty in accordance with Jordanian Health Law.

Crimes notification: Penal Laws states that notification of attacks on individuals must be made. This includes doctors in accordance with what they know from practicing their duties. Penal laws differed in this issue. However, the Jordanian legislator stated in article (355/3) of penal law that disclosed it with out a justified reasons. As for the Criminal trails methods no (9) for 1961, article (25) thereof stated that any official authority or employee who had knowledge while working of any crime or offence, he must inform the concerned attorney general... However, what is the legal value of this commitment? The answer was given in article (207/4, 3) of Jordanian Penal Law which stated that: Every one who treats a person on who crime or offence was inflicted and did not disclose of it to the concerned official authorities shall be imprisoned from three days to three months or pay fine from five dinars to twenty dinars and these crimes shall not stop.

It is clear from above those doctors and those working in medical profession are committed to inform of any crime of offence which they might see or know of while doing their duties. To violate this condition would lead to criminal action.

However, would the matter be limited tot the status which was mentioned above which is treat any person who seems to have criminal or offence acts inflicted on him i.e., does it mean that the medical person have in fact given aid to the victim in order to be obliged to inform? Clause 3 of article (207) clearly states that but

real situation denies this condition as the medical professional might know of the crime and offense and did not have the facilities to offer assistance or it was not the appropriate time to offer treatment so it is of interest to spread the text if the medical professional knew of that and we wish that the Jordanian legislator not to limit the case on giving medical assistance.

In addition, the Jordanian legislator has stated in article (37) from Declaration Law no (30) for 1952, that if lawyers or doctors or agents knew any information or event through their jobs of, he may not disclose it even after the end of his service. This is the case unless he meant to commit an offence or a crime through disclosing it; they must take oath on this information or event whenever they asked to do so on condition that it would not violate their laws.

Thus the Jordanian legislator have succeeded in preventing crimes and protected the community on basis of protecting trade secret through including both crime and offence cases. However, what is criticized is leaving the case of preventing crimes or offence from the text, which make it far from what is insinuated and for nit including it in the necessity of notification.

Giving testimony in front of jurisdiction: Law enforces testimony in order to reach the truth in disputes and in confirming the accusation or denying it. Any one who refuses to give testimony shall be punished. However, is the matter different for doctors because they obtained information because of trust invested in them by clients and therefore they are not allowed to disclose it.

Jurisprudents differed on testimony and whether a doctor should disclose trade secrets if he does? Some said that he would not because he was forced to know data according to his profession and that would save him from being persecuted.

However, others said that doctors should not disclose information and this would cause problems for him. Third party said that if what the witness said would disclose secrets then without knowing he is assisting to give a public service that would benefit the community so there is no harm in disclosing and he will not be persecuted.

As for the Jordanian Law, it has imposed penalty on who discloses of a secret that he came to know from his job according to article (355/1). Any one who denies truth or kept some of it which he is asked by legal authorities according to article (214/1) of Jordanian Penal Law.

Expertise works: Expertise is regarded from the important professions. An expert is a great assistance to

the judge. He places his expertise and knowledge in the service of the judge. He also reveals any matters and makes the way smooth to deal with disputes other than legal issues because they are dealt with by the court. Such works are not necessarily done through written reports to the court. No harm in asking the expert to come to the court if his report is not sufficient and if the courts opt to clarify matters. Court may direct questions to the expert and the judge may not agree to the expert's opinion but reasons must be given in this case.

Court would assign doctor to work as an expert. Doctor has the right to write down remarks on the case even if it required disclosing a trade medical secret because the court allowed the expert to work and not to question him on revealing secrets. He will be considered as a representative to the court and his work will be an integral part thereof. If he reveals a secret to the court then he would be disclosing secret to himself. In this case, two conditions are required: to give report to the court itself.

Here we must make sure of the necessity to increase legal knowledge by giving his issue special importance. People must be well informed of legal culture on different stages.

Accused special description doctor disclosing the secret: Jordanian Penal Law stated in article (355) that whoever has knowledge through his job... clearly means that doctor is committed to keep secrets because his profession which may not be put aside-as if it were not for this profession they would not have had to turn to doctors. That is why they are called trustees because of necessity.

It is a condition even it is necessary that the doctor knows of the secret during practicing his duty. French jurisdiction has adopted this concept. Therefore keeping medical secret must be a commitment for the doctor. I.e. there must be a close link between profession and secret. Doctor remains committed to keep the secret even after he leaves this profession as long as he has obtained it through his work. Contrary to what is the case if he had known about it after leaving his job even if it was because of the trust that links him with his profession?

Some question if veteran doctors are obliged to keep secrets or not. Some think that they do not have access to medical secrets, for which the law may place penalties. Others see that they should be subjected to this law just like doctors. Jordanian medical constitution states that "when need arises to protect the community health security". It would not be accepted if a vet finding some matter that is so secretive and has benefit to the animal owner then he disclosed of that matter. Debate has arisen that medical students should

be committed to keep medical secrecy. Some think that legislators did not specify this matter explicitly; moreover, attending surgical operations is a result of understanding by the patient. Nevertheless, the Jordanian Law was clearer as we find the solution in article 355 of Jordan Penal Law, which stated that all who know of a secret because of his profession, or work nature is one of the necessary trustees and accordingly he is obliged to honor medical secrecy.

In addition, it is not logical and does not conform to justice that doctors and their assistants committed to keep secrets while medical students are not. Pharmacists are also obliged to keep medical secrecy because he has indirect knowledge of patient's case through prescriptions through which he is able to know the nature of the patients' illness. It goes with nurses.

Some go even further to include private secretary, drivers and servants to keep secrets in the medical circumstances. Researches are also conducted to see if a doctor must be licensed to keep secrets or just to have qualifications. In addition, what about doctors on leave? That is why opinion differed but the person who is not licensed shall not be regarded as a real doctor therefore does not abide by article 355 of the Jordanian penal law.

Moral aspect: Intended crime: Intended criminal act, as disclosing of secrets is an intended act. It does not happen by mistake even if the error was serious because the seriousness of the fault does not make it intentional.

Accordingly, those who disclose secrets because of negligence or not taking precautions do not face criminal charges. Like if a doctor for example forgets a piece of paper on which he has written notes on one of his patients in an unsafe place, causing others to see it. This would not be considered celebrate. Legislator requires criminal intention to be present first. However, the doctor will still be blamed for this negligence and shall be questioned for civil obligation caused by his negligence.

Criminal intention in disclosure crime has to factors, knowledge and will. Knowledge states that the doctor must have known that the incident has a secretive feature and this secret has professional characteristics and that his profession is the base of his knowledge of this secret. Therefore, if the doctor is ignorant that the mild illness is not a secret and consequently has disclosed it, then the intention is denied. Ignorance or errors, which deny intention, are based on events and the legal non-criminal adaptation thereof. No one is allowed to blame it on ignorance of the law. As for the will factor, the doctor's will is directed to disclose of the secret and the result

occurring thereof. I.e. to let others know of the event this is not secretive.

In other words, his will is directed to do the act that would inform others of the event and to direct his will to provide this knowledge.

Crime penalty in criminal law: Jordanian Penal Law stated in article (355) that person who knew some thing through his work and discloses it for an unjustified reason would be imprisoned for a period not exceeding three years.

Through article (355) text, this is an offence and the penalty would be imprisonment for not more than three years. Contemplation to do it is possible and expected but it is not punishable because there is not specific clause that deals with it. In article (71) of Jordanian Penal Law stated, Intending and contemplating to commit an offence shall not be punished except in certain cases which are specified in the law. This Law did not specify the punishment of intending to disclose secrets in article (355).

Moreover, participation of this crime may be foreseen however it is one of the crimes that law requires the description of trustee on secret and is called special crimes as the person who commits it may be a participant as an intruder or instigator as stated in article (75) and (80) of Jordanian Penal Law.

Deciding the penalty of intruder and instigator must be set in accordance with article (812). It states that in other cases, instigator and intruder shall be punished with the same punishment of the doer with increasing length from sixth to third however, if there is not tracer of reason for responsibility or transfer it, it is still considered one of the factors which the judge would consider when assessing increasing or decreasing punishment.

As for applying Jordan jurisdiction with regard to doctor's disclosing trade secrets we were not able to find any judicial or administrative decree in this regard/ No Jordanian court decree is available in this regard and Ministry of Health has completely excluded any complaint on this subject. In addition, Jordanian Law did not find honest intention a relaxed excuse frankly but indirectly as shown in the article.

CONCLUSION

Now after finishing this study and explaining the penal responsibility of the doctors for disclosing the trade secret. This study aimed at conducting a comparison and shows our opinion where it deems necessary, I found that the developed countries gave this issue great importance resulting from their legal

awareness and culture, so they don't hesitate to suit against any case of disclosure. On the contrary of what happens in our societies. To pave the way for understanding this subject, I saw that it is necessary to define the doctor, especially that I couldn't find a satisfying definition for him. He was described as a person carries a degree or a diploma from an authority or certain entity that qualifies him to practice the art of prevention, cure and ease or treat what ever disease that can be treated resulting from acts of violence or accidents, whether against humans or animals.

In order to explain the legal grounds of the doctor work, I talked about the case of necessity and the patient consent, also the criminal intention and legal permission. I found that the basis on which the doctor practices his work is the legal permission. As for the other cases which the permission don't cover, their legal grounds lies under doing their duty and serving the public good.

As for the legal nature of the medical trade secret, I found that it started as an ethical, religious and customary obligation and the doctors abided by that even before modern legislations mention it. Then it became a legal obligation and the violation of which will result in taking legal responsibility. The jurisdiction of secret the jurisprudence has two different views about it; one limits its jurisdiction by the theory of putting the trust and the second view limits it by the secrets in nature theory. I found that the Jordanian law has adopted the latter view, also did the Iraqi law. Thus, the two laws are better in this field than their Egyptian and French counterparts.

There are four pillars that are crucial to proof the doctors guilty of breach the freedom of disclosure of the medical secret; the first is that what has been disclosed is a secret. The second is the act of disclosure it self, the third is the special situation of the accused; the actual occurrence of disclosure by the doctor. Finally, the fourth pillar is moral pillar or the criminal intention. In case the four pillars -conditions- along with the absence of any reason of permission, then the doctor shall be convicted and, according to the Jordanian law, sentenced for no more than three years in prison.

The reasons of permitting the disclosure act, there are reasons decided for the individual own interest and reasons for the public interest. These two types agree on permitting the disclosure to accomplish greater benefit.

As for the stance of the Jordanian judiciary, I couldn't find one because there are no rulings in this matter.

In the end, the necessity of increasing the legal awareness should be underlined by giving more attention to this subject and spreading legal awareness and culture on all levels and educate the public that the trade secret is protected by law.

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