

## Clinical and scientific letters

### Setting the record straight: patient recordings of consultations

Now that two thirds of UK adults own a smartphone, doctors are increasingly faced with the prospect of patients recording consultations. The Medical Protection Society (MPS) polled 520 doctors and found that one in five had experienced patients recording consultations. In a survey of UK patients, 69% said they wished to record consultations. Half of them stated they would do so openly, while half intended to record covertly.<sup>1</sup>

The MPS poll also found that 97% of doctors were not aware of trust policy in this area. 73% of doctors thought they had a right to say no to consultations being recorded – however, the law is clear, as explained by Dr Zack, medico-legal advisor to the Medical Defence Union:

*Patients do not need their doctor's permission to tape a consultation as the information they are recording is personal to them and therefore exempt from data protection principles.<sup>2</sup>*

The content of the recording is confidential to the patient, so they can do what they wish with it, including sending it to third parties or even posting the recording on the internet.

Recordings of consultations are taken very seriously in law courts and in General Medical Council (GMC) proceedings. GPs have been struck off the register on the evidence of covert patient recordings. Guidance from one GP group is that 'admissibility of such evidence is usually subject to the relevant court/tribunal/panel's discretion but where relevant to matters of contested fact, the weight of authority is usually in favour of admissibility'.<sup>3</sup>

Knowing that a consultation is being recorded can be unsettling. Anyone who has sat Objective Structured Clinical Examination-style examinations will know that we act differently under scrutiny. The very act of recording alters the consultation. But is that necessarily a bad thing?

If a doctor practises in a professional and responsible way, any recording should act in their favour. Surveys of patients have found that they record consultations for a variety of reasons; the British Medical Association suggests 'usually it is to help them remember and cooperate with important advice or share it accurately with family members'.<sup>4</sup> Patients who recorded covertly suggested that they did so because of previous negative reactions from clinicians.

So what should you do if a patient asks to record a consultation with you? GMC advice is that doctors must 'make

sure, wherever practical, that arrangements are made to give the patient any necessary support... using an advocate or interpreter; asking those close to the patient about the patient's communication needs; or giving the patient a written or audio record of the discussion'.<sup>5</sup>

As a doctor, we owe a duty of care to patients, whether they wish to record consultations or not. It is best for the patient-doctor relationship if any recording is upfront. However, if a patient covertly records a consultation, rather than feeling that trust has been irreparably broken, it is more helpful to explain why you feel uncomfortable and to explore the patient's reasons for making the recording. Such recordings are legal and look set to become ever more common. ■

### Conflicts of interest

The authors have no conflicts of interest to declare.

NIALL O'HARA

Foundation doctor, Birmingham City Hospital, Birmingham, UK

LILY WALKER

GP trainee, Birmingham City Hospital, Birmingham, UK

KANWALJIT SINGH

Elderly care consultant, Birmingham City Hospital, Birmingham, UK

### References

- 1 Medical Protection Society. 91% of doctors want more guidance on patient's recording consultations, MPS survey reveals. London: MPS, 2014. <http://www.medicalprotection.org/uk/about-mps/media-centre/press-releases/press-releases/91-percent-of-doctors-want-more-guidance-on-patients-recording-consultations-mps-survey-reveals> [Accessed 25 January 2017].
- 2 Zack P. Patients who record their consultations. GPonline, 2014. <http://www.gponline.com/medico-legal-patients-record-consultations/article/1227228> [Accessed 25 January 2017].
- 3 Bedfordshire and Hertfordshire Local Medical Committee. Patients recording consultations. Beds & Herts Local Medical Committee Ltd newsletter, Issue 56 November 2013. Stevenage: Beds and Herts LMC Ltd, 2013.
- 4 BMA Medical Ethics Department. Everyday medical ethics and law. Chichester: John Wiley & Sons, 2013.
- 5 General Medical Council. Consent: patients and doctors making decisions together. London: GMC, 2008.