

## **Medical Confidentiality Breach Crime**

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### **Abstract**

This study addresses the crime of medical confidentiality breach. This is committed by a physician, by defining the concept of medical confidentiality. It is entrusted to the physician to safeguard, as well as outlining the conditions of medical confidentiality, and specifying the elements of this crime, represented by the legal, material, and moral aspects, along with the legal basis for preserving patient confidentiality. It also discusses situations where disclosure of patient secrets is permissible and the termination of the obligation of medical confidentiality. Furthermore, it elucidates the penalties imposed on perpetrators of this crime according to legal texts. To clarify the subject of the paper; the study aims to demonstrate; the Concept of Medical Confidentiality, Conditions of Medical Confidentiality, Elements of the Crime of Medical Confidentiality Breach by the Forensic Physician, Legal Basis for Patient Confidentiality, Cases Permitting Disclosure of Patient Secrets, Termination of the Obligation of Medical Secrecy, and Penalties for Violating Medical Secrecy.

**Keywords:** Physician justice, crime, medical confidentiality breach, judiciary.

### **Introduction**

The rules of the medical profession bind any physician to maintain medical confidentiality because the relationship between a physician and a patient is fundamentally based on trust. Breaching medical confidentiality constitutes a betrayal of this trust, as the purpose of medical confidentiality is not only to protect individuals' interests but also to safeguard the public interest (Al-mu'ayyidah, 2006, p.43).

Medical confidentiality is considered one of the fundamental obligations imposed on physicians. Indeed, it is one of the most important professional behaviors they should exhibit. This is because the right to privacy is an inherent human right embodied in confidential information, entrusted to a physician, or those working in the medical field, but it is a

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right of the patient that the physician is not permitted to disclose (Al-Husseini, 2011, p.37). The crime of medical confidentiality breach is punishable under the Jordanian Penal Code, where the responsibility of the physician lies if their action aims to harm the patient. In such cases, the criminal intent is present, and consequently, they are held criminally liable. This includes both commission and omission by the physician.

Forensic medicine, for example, is a medical specialty that focuses on determining the cause of death through post-mortem examination (Abual-zain, 2020 p.46). This examination is conducted by a forensic physician, usually as part of investigations into criminal cases. Often, judges request forensic investigations to confirm the identity of a deceased individual. The forensic physician investigates and examines cases of deaths and injuries occurring under mysterious, suspicious, or unusual circumstances.

Therefore, in the eyes of criminal justice, the forensic physician is a technical expert tasked with providing the relevant court with expert opinions on precise technical matters concerning both the victim, whether alive or deceased, and the accused regarding their mental state, and mental health. (Abdelghaffar, 2020, p. 54).

The forensic physician delineates the psychological, and psychiatric map and clarifies its nuances before the judiciary in the lawsuits within their jurisdiction. Hence, there are formal guidelines for the forensic physician's report to assist the judge in achieving criminal justice, as well as ethical guidelines that must be adhered to by the forensic physician. Violation of these guidelines constitutes a breach of the integrity of their profession. The formal guidelines include providing a general external description of the case, describing the tools used in the crime, and determining the cause of death in homicide cases (Bakoush, 2011, p.31).

As for the ethical guidelines, they entail sincerity of intention, and truthfulness in work and performance, which requires precision, because the forensic physician's report can determine the guilt, or innocence of the accused in lawsuits. It is the result of technical expertise provided to the judiciary upon request, or representation. (Bakoush, 2011, p.39).

Moreover, the forensic physician assists the judiciary in issuing judicial rulings and thereby achieving criminal justice. Therefore, the forensic physician must take all necessary precautions when writing their report. It plays a positive role in the legal proceedings, but being fallible, they may commit actions that harm themselves, justice, and the judiciary.

Consequently, they may commit the following acts: presenting false expertise reports, giving false testimony about their report in legal proceedings, failing to clarify the forensic medical report, forging

documents submitted to them, destroying or altering one or more documents received, disclosing the expertise report to one of the adversaries before submitting it to the court assigned to conduct the expertise, non-compliance with the court's decision regarding the adversaries for discussion in the expertise report provided by them, soliciting a bribe from one of the adversaries. Therefore, we can say that the forensic physician may commit financial crimes and non-financial crimes that warrant punishment as stipulated by law.

Thus, the study will focus on elucidating the crime of medical confidentiality breach. This crime has been given particular attention in the research because it is one of the crimes that are conceivable to be committed by a physician (Abdulghaffar, 2020, p.43).

### **Methodology of the paper**

The study relies on the descriptive and analytical approach to legal texts related to the subject of the study.

### **Concept of Medical Confidentiality**

The term medical confidentiality refers to all the information that a physician obtains about their patient in their capacity as a doctor, or expert (Yousef, 2010, p.49), whether during the practice of their profession or because of it, whether provided by the patient or extracted by the physician through examination and treatment. Medical confidentiality also encompasses information that reaches the physician even if no one has disclosed it to them, whether by chance or through their technical expertise. Article (5) of the Jordanian Public Health Law stipulates that individuals obligated to maintain medical confidentiality and refrain from disclosing it.

These include those engaged in medical and health-related professions, such as medicine, dentistry, pharmacy, nursing, anesthesia, radiology, speech therapy, audiology, optometry, and the preparation of medical glasses, among others.

Medical confidentiality encompasses all information that reaches the forensic physician, regardless of its nature, relating to the patient's condition, and surrounding circumstances, whether obtained directly from the patient, or discovered during the practice of their profession. Medical confidentiality is considered one of the fundamental obligations imposed on the expert (Yousef, 2010, p.45), and it is among the most important professional behaviors expected of physicians. The right to privacy is an inherent human right embodied in the confidential information entrusted to the forensic physician (Qasim, 2006, p.38).

However, it is a right of the patient that the forensic physician is not permitted to disclose, as confirmed by legal texts in criminal law, and medical ethics. Disclosing medical confidentiality means revealing entrusted secrets by the forensic physician outside the circumstances in which it is necessary or permissible. (Salim, 2020, p. 65). Therefore, maintaining confidentiality is fundamental to professional expertise, and the forensic physician must not disclose any secrets learned during their duties.

The secrets learned by the forensic physician are numerous and diverse. For example, the prosecutor may assign a forensic physician to verify the intactness of the hymen of a minor who has been subjected to sexual assault. In this case, if the forensic physician finds that the hymen has been torn, they are obligated not to inform the girl's parents, the media (Abual-Zain, 2020, p. 23), or any other party of this result. Instead, they should only inform the prosecutor.

### **Conditions of Medical Confidentiality**

Medical confidentiality can be described as a medical necessity that must meet several conditions including, (Al-Maayta, 2006, p.60):

- The secret must reach the physician during the performance of their duties or because of it.
- The information must be relevant to the physician.
- The patient must have an interest in keeping the matter confidential.
- The matter must not be common knowledge to the public.

### **Elements of the Crime of Medical Confidentiality Breach by the Forensic Physician**

The elements of the crime of medical confidentiality breach are as follows:

- The Legal Aspect of the Crime of Medical Confidentiality Breach:

The legal aspect refers to the act being considered a crime as stipulated in the Penal Code or complementary laws, with the legislator specifying a criminal penalty for it, thus adhering to the principle of legality (El-beh, 1993, p.531). Therefore, the act of disclosing medical confidentiality is deemed a crime punishable by law, and thus the legal aspect is fulfilled in the crime of medical confidentiality breach (Mustafa, 1999, p.45).

- Punishment: Anyone who, under their position, or official capacity, obtains official secrets, and discloses them to unauthorized individuals, or those who do not require access to them under the public

interest shall be punished with imprisonment for a term not exceeding three years (Faraj, 2007, p.152).

The legislation explicitly includes the obligation of physicians not to disclose patient secrets, as in the French legislation in Law No. 303 of 2002 regarding patient rights, and healthcare quality in Article 1110/4, and in Jordanian legislation in Article 23 of the Medical Constitution.

- **Material Element of the Crime of Medical Confidentiality Breach:** The material element comprises two components: the medical confidentiality, and its disclosure.

The medical confidentiality that is criminalized for disclosure is information that, if disclosed, would cause harm to its owner, whether such harm is confirmed or potential. Jordanian penal law does not punish bad intentions unless they manifest through an act. The action expressing criminal intent or legal error constitutes the material element of the crime.

The action can be either negative or positive. In the crime of medical confidentiality breach, the material element is the act of the forensic physician entrusted with disclosing the secrets of their patients by virtue of their job. The forensic physician is considered a public employee who is prohibited from disclosing secrets they become aware of by virtue of their job, or while performing a public service, or a specific task for the judiciary, such as providing their expert opinion on a specific matter beyond the judge's knowledge. (Faraj, 2007, p.155).

Thus, the forensic physician must ensure that their report includes all the information they obtained through medical examinations, and the information provided by the victim, or perpetrator during the performance of their duties. (Shaaban, 2008, p. 30). They must keep this secret if it is relevant to the investigation. If the secret could constitute a crime, the forensic physician must report it. The forensic physician assists in the administration of justice and is required to inform the judge of anything they become aware of during their work.

Moreover, the forensic physician is not bound by medical confidentiality when summoned before the court; rather, they are obliged to provide their testimony. If a court appoints a forensic physician to conduct a visual or medical examination on the victim for specific technical matters requiring a report, Jordanian legislation obliges them to disclose professional secrets to achieve justice. However, disclosure must be within the scope of their profession. (Alhendi, 2022, p.6).

### **The Moral Element of the Crime of Medical Confidentiality Breach:**

Medical confidentiality breach is considered an intentional crime, and its moral element takes the form of criminal intent, and the resulting consequences. This crime cannot be committed without the defendant having the intention, even if a serious mistake is made. When disclosure occurs due to negligence, oversight, or lack of precaution, the keeper of the secret is not held accountable. (Shaaban, 2008, p. 39).

For instance, if a forensic physician leaves their private notes about a patient on their desk, or in an insecure location, and someone accidentally accesses them, the physician is not criminally liable for their failure to maintain confidentiality. However, they may be held civilly liable for any damages resulting from their negligence, or lack of precaution, requiring compensation. Moreover, it is forbidden for a forensic physician to disclose a secret obtained through the practice of forensic medicine to defend themselves, as medical confidentiality is established to protect the patient, and it cannot be exploited for personal gain. (Aljadaani, 2020, p. 4).

Therefore, the forensic physician cannot defend themselves by revealing information protected by professional secrecy, even if the accusation against them is unfair. If the elements are present in the crime of medical confidentiality breach, the legal framework for this crime is complete, and the perpetrator deserves the penalties applied to this offense. (Shaaban, 2008, p. 40). Thus, the forensic physician, being fallible, might commit acts that undermine justice.

### **Legal Basis for Patient Confidentiality**

Article (23) of the Jordanian Medical Constitution No. (49) of 1889 stipulates that "a physician must not disclose, without the patient's consent, information obtained during their professional relationship except in cases required by law. The patient's consent is not required for confidentiality to be observed by the physician."

The physician's obligation to maintain patient confidentiality is rooted in the sanctity of private life, a principle mandated by divine legislation, and surrounded by guarantees, and protections. (Alhendi, 2022. P. 5).

Legislative provisions have incorporated this principle, adapted it to the evolving societal norms, outlined its boundaries, and codified it into written laws. Restrictions have been placed on violating the sanctity of private life and breaching its confidentiality. Consequently, the sanctity of private life has become one of the fundamental principles enshrined in the constitution. Article (7) of the Jordanian Constitution ensures the preservation of personal freedom and stipulates that 'any infringement upon

the rights and freedoms of Jordanians or the sanctity of their private lives constitutes a crime punishable by law’.

### **Cases Permitting Disclosure of Patient Secrets**

The general principle dictates that a physician should not disclose a patient's secrets obtained through their interaction or examination, except for certain circumstances for which the legislator has allowed the disclosure of the patient's secret. Article (24) of the Jordanian Medical Constitution permits the disclosure of professional secrets for the following reasons: to the patient regarding their illness or future, and to the guardian or legal representative concerning the secret of an unconscious or minor patient.

Moreover, to the patient's family if it is deemed beneficial for the patient's treatment and the patient's condition hinders their awareness of this benefit. during judicial or forensic medical expertise. And when necessary to preserve public health security (Al-Khawli, 1997, p. 42).

It is noticeable that the cases permitting the disclosure of medical secrets mostly relate to maintaining the patient's own condition, such as informing the patient about their condition and its impact on their future and private life or informing those responsible for their care if they are a minor or incapable of understanding their condition. (Shaaban, 2008, p. 55) and ensuring their care and well-being. Additionally, some cases concern public order and protecting society, such as reporting a patient's infection with a contagious or epidemic disease requiring isolation to prevent its spread and alerting the community to take necessary precautions to avoid infection or pandemics, like the COVID-19 coronavirus. Furthermore, some cases are governed by the law in situations defined by the legislator. (Al-Billeh, 2023. P.8)

### **Termination of the Obligation of Medical Secrecy**

There are circumstances in which the obligation of a physician to keep medical secrets ceases to exist, and it is permissible for them to disclose them. These circumstances include **Patient Disclosure:** If the patient reveals the secret, thereby relieving the physician of the obligation to keep it. (Bouskia, 2005. P. 87). It's important to note that disclosure implies the patient making the matter public rather than simply informing close associates or family members. (Al-Billeh, 2023. P.8), and **Patient Authorization:** If the patient authorizes the physician to disclose their medical secret or inform others about the nature of their illness and condition. Moreover, **legal Justifications:** Cases where the law permits the disclosure of the secret. (Alwalidat, 2010. P. 10).

**Public Health Concerns:** If the matter relates to public health, such as a patient being infected with a contagious disease where keeping the matter secret would endanger public health or hinder necessary measures to confront it. And **greater Harm from Keeping the Secret:** When keeping the secret would result in greater harm than disclosing it. (Alqablawi, 2011, p. 35).

### **Penalties for Violating Medical Secrecy**

If the elements of the crime of disclosing medical secrets are present, the legal framework for this crime is complete, and the perpetrator deserves the penalties prescribed for it in the Penal Code. For instance: (Alhendi, 2022. P. 7)

- In French law, Article 1110/4 of the health Law prescribes imprisonment for up to one year and a fine of 15,000 euros for disclosing medical secrets, reflecting the importance of safeguarding patient rights and privacy. (Alshawarbi, 2020. P. 5).

- Article (355) of the Penal Code stipulates the punishment for disclosing professional secrets, which may lead to imprisonment for up to three years. This applies to individuals who obtain official secrets under their position and disclose them without authorization, or who retain confidential documents, drawings, or copies without the right to do so, among other scenarios. (Emar, 2021, p.7)

Moreover, patients have the right to seek civil compensation if the elements of civil liability, such as damage, fault, and causal relationship, are present. This ensures that patients can seek redress for any harm caused by the violation of medical secrecy (Alhendi, 2022. P. 2).

### **Conclusion**

This study has examined the issue of committing the crime of disclosing medical secrets by forensic physicians. It has been established that the forensic physician is a technical expert, tasked with providing the competent court, with expert opinions on precise technical matters, concerning both the victim, whether alive or deceased, and the accused, regarding their mental state and mental health. The forensic physician presents the mental and psychological map and clarifies its intricacies before the judiciary in cases falling under their jurisdiction.

The crime of disclosing medical secrets refers to revealing entrusted secrets by the forensic physician in situations where it is neither necessary nor permissible.



Therefore, maintaining confidentiality is fundamental to their professional expertise, and they must refrain from disclosing any secrets they come across during their duties.

The elements of the crime of disclosing medical secrets consist of both material and moral aspects. The material aspect comprises the secret itself and its disclosure, while the moral aspect revolves around the criminal intent, as the crime of disclosing secrets is intentional.

Regarding the penalties imposed on forensic physicians for committing the crime of disclosing medical secrets:

### **Recommendations**

- **Strict Enforcement of Punishments:** There should be strict enforcement of penalties on forensic physicians when they commit such crimes due to the gravity of their task, which plays a crucial role in the functioning of the judiciary.
- **Judicial Accuracy, Fairness, and Integrity:** Courts should exercise precision, fairness, and integrity when selecting individuals to serve as forensic physicians to safeguard the rights of individuals.
- In essence, it is imperative to ensure that justice is upheld, and that the trust placed in forensic physicians by society is not betrayed.

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