Manifesto in defence of confidentiality and medical secrecy[1]

Madrid, June 2003[2]

In consideration of the medical professional's duty to keep medical secrecy and the right of all patients to intimacy and confidentiality of their data, and in view of the facility now existing to infringe such rights, the platform in defence of confidentiality and medical secrecy proposes:

■ Intimacy is an ethical and judicial value protected by the Constitution and by the laws in force in our country, and as such it must be demanded and protected by professionals and users.

■ The supreme value of life and defence of health are reasons for secrets, that are not confided to even the closest persons, to be revealed in the intimacy of the medical consultation, and for this reason confidentiality and medical secrecy are essential in the doctor-patient relationship.

■ Medical data belong to each patient, and the patient holds every right over them. The health professional, in whom the patient confides his data, will act as trustee, exercising these rights as agent and with responsibility towards his patient.

■ Medical data are so relevant that, if there is not confidentiality, not only is intimacy endangered, but also the exercise of other fundamental rights, such as the right to work, to education, or defence of health and of life. The right to confidentiality which all patients have is the only guarantee for defending their intimacy.

■ The patient has the right to be informed so that he can understand: about the responsible person, the destination and use of his personal data; that his prior consent is required to obtain and to use the data, and the right to access, to correct and to cancel this data; in short, the patient has autonomy and power for using his personal data. The Constitutional Court lays down that all patients have the fundamental right to protection of their personal data, that pursues guaranteeing a power of control over their data, their use and their destination.

■ Secrecy is the doctor's duty and the patient's right. Medical secrecy must be protected in the processing of health data, whether in manual or electronic means, as set out in the current legislation, demanding suitable security measures that guarantee the protection of the patients' personal data. Without these security measures, health data should not be processed.

■ Only on very few occasions and under the imperative of the Law, may the right to confidentiality be subordinated to other considerations. To intrude on intimacy, like house-breaking, may only be justified by superior rights of others, or the common good, as in the case of public health; but it should be considered that, as compared with house and other assets, once intimacy is lost, it cannot be replaced.

■ On almost all occasions, strict anonymity is identical to secrecy and anonymous data may fulfil almost all administration tasks. Only very few personalised clinical information is relevant for the clinical management and none is relevant for the actual information management, and consequently none of these excuses may be used to justify the mass or centralised storage of personalised health information.

■ The electronic processing of consultations and electronic health records constitutes a factor of progress, but their use however should consider the dangers for confidentiality of the data, their storage easy to hide, their infinite capacity to be copied and transferred – undetectable and to a minimum cost – and their unlimited processing and exchange possibilities. It cannot be guaranteed that the protection of centralised medical data cannot be pirated, considering that the interest and value of such information is high: just one leak is sufficient, at a single point, for the damages to be catastrophic and irreparable. Mass centralised storage of clinical information is what implies the greatest risks for secrecy and confidentiality, compared with the distributed databases. Incentives should therefore be given to small and shared technological solutions, that are now possible, to avoid such a high risk.

■ The concentration of data makes them a coveted property, and there should therefore be reasons that cannot be refuted to justify the mass or centralised storage of information. The threat to confidentiality created in this way demands total transparency in this type of initiatives, sanctioned by the consensus of independent groups (scientific, professional, judicial, political, citizen, economic and commercial) as regards the pertinence and relevancy of the necessary data. The time for storing such information should also be determined – in a phase previous to any implementation of mass or centralised storage – and the guarantees and means of irreversible destruction of the information and all its copies, once its function has been fulfilled.

1 La version française de cet article a été publiée dans le numéro 18 de PrimaryCare.

2 On the 23rd June, the act of presentation of the "Manifesto in defence of confidentiality and medical secrecy" took place in Madrid at the headquarters of the General Council of Official Medical Colleges. Its aim is to make patients and doctors alike aware of the importance of maintaining and assuring confidentiality and medical secrecy as a core element of the doctor-patient relationship and, in particular, with regard to the risks derived from the centralised model of technical development of the computerised clinical records. The text is reproduced with kind permission from Doctor Juan José Rodriguez Sendin (General Secretary OMC, l'Organización Médica Colegial de España).

■ Small and shared systems permit the protection of confidentiality, the intimacy of patients and medical secrecy, as set out in the Code of Medical Ethics: the necessary security measures will be implemented in medical computing systems to prevent other people from having access to the patients' data. In addition, all files carrying clinical records and health data will be under the responsibility of a doctor, and files with health data should not be connected to networks other than medical ones, like certain institutional networks. At the moment, this is not respected.

■ Specific laws must be established to protect the intimacy of patients, so that nobody may be discriminated by information relating to health, and to safeguard medical secrecy; specifically developing articles 14 and 18 of the Constitution. It is vital that the health of a person and data relating to such a person may never be used against them or to discriminate them, whether or not by their "legitimate" trustees.

■ All citizens must defend and require medical secrecy from the health professionals who are caring for them. Legislation is important, but it must be the patients themselves who demand their right to be informed about what is done with the data, to decide who handles them and to defend medical secrecy.

■ Secrecy is also the doctor's prerogative, an expression of his right to conscientious objection in administrative, professional or any other kind of relations, parallel to the relation between the doctor and his patient.

The sponsors of the "Manifesto in defence of confidentiality and medical secrecy" have been:
- Commission of Liberties and Computing (CLI);
- General Council of Official Medical Colleges (OMC);
- Federation of Associations for the Defence of Public Health (FADSP);
- 10-minutes Platform;
- Spanish Primary Care Network (REAP);
- Canary Society of Family and Community Medicine;
- Catalan Society of Family and Community Medicine (Scmfic);
- Spanish Society of General Practice (SEMG).