Physicians’ feelings and reactions in Taiwan: A rejoinder

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1. Introduction

With recent advances in technology, smartphones can become instant recording devices at the touch of a button. This information technology provides patients and their families with the ability to record conversations with physicians easily – including surreptitiously. However, the increase of such recordings, both known and unknown, provokes feelings in patients and reactions from physicians. In response to the paper by Elwyn and colleagues, this commentary reports some standpoints in Taiwan, arguing that recorded conversations may provide some benefit for patients, but can potentially affect patient–physician relationships and the provision of healthcare.

2. Tensions in the patient–physician relationship

In Taiwan, universal healthcare insurance was launched in 1995 (Ministry of Health and Welfare, Taiwan 1995). However, with attention focused on improving healthcare quality in the face of increasingly complex clinical settings, the physician–patient relationship has come to be characterised by an unprecedented level of distrust. According to statistics from the Department of Medical Affairs of the Ministry of Health and Welfare, the number of medical disputes involving legal action is at least 350 per year in Taiwan (Ministry of Health and Welfare, Taiwan 2022). Patients do not trust physicians, and physicians do not trust patients. With the availability of supportive information technology gadgets, there are more and more cases of ‘recordings during clinical encounters’ – not just by patients, but also physicians recording patient–physician conversations, including covertly, during clinical encounters (Rodriguez et al. 2015). However, can recordings be made involving physicians and patients working together? Can recordings really protect either patient or physician in the unfortunate event of a medical dispute?

In view of the increasing number of medical disputes and the recognisably tense relationships between physicians and patients, some physicians will bring their own ‘practice recorders’ to record the clinical encounter for self-protection. However, video recordings may capture intimate images, while personal disclosures in clinical settings may indicate an illness of which the patient was unaware. Do recordings have a strict control mechanism to prevent them from being used improperly? Are hospitals and clinics properly informed about the existence of such recordings made on their premises? Is this recording practice legal? In addition, if there is a dispute in the future, does the patient also have the right to request access to recordings? Medical institutions have regulations, and an NGO in Taiwan called the Medical Reform Commission has called for mutual...
informed consent to be documented or announced properly prior to the consultation (Chang 2013). If ‘recordings from medical encounters’ are not set up uniformly by the hospital management and the recordings are not stored and used following a standard protocol, this might damage the rights and interests of patients or damage the mutual trust between physicians and patients.

3. The law regarding patient recording in Taiwan

The Taiwan Ministry of Justice has referred to patient recording in a letter (Chang 2013) in which they interpret two legal provisions relating to privacy. First, as regards the Personal Data Protection Act (Chapter 1, Paragraph 1, Article 8 – National Development Council, Taiwan, 2015):

When a physician prepares a ‘medical recorder’ to collect video and audio recordings when diagnosing and treating a patient, the ‘written consent’ of the patient should be obtained first.

Second, as regards Chapter 28 of the Criminal code of the Republic of China, concerned with ‘Offenses Against Privacy’ (Article 315-1 – Ministry of Justice, Taiwan, 2019),

Whether the audio and video recordings made with a voice recorder or pinhole photography constitute the crime of obstructing the privacy of private life under the criminal law shall be determined on a case-by-case basis to determine whether there are justified reasons.

Regrettably, the Taiwan Ministry of Health and Welfare (formerly the Department of Health), which is in charge of medical affairs, has yet to provide further explanations and norms regarding the above situation. The ministry has in the past announced the ‘Privacy protection regulations for outpatient medical care’, which stipulates that if audio or video recording is required during the diagnosis and treatment process, the consent of both the physician and the patient should be obtained first (Ministry of Health and Welfare, Taiwan 2015), but there is no penalty if this is breached and it is not stated or explained whether it is applicable to just hospitalisation or to medical institutions and outpatient clinics.

There are also no clear regulations about whether audio or video recordings need to be approved by hospitals, or about the use and preservation of files and whether patients have the right to apply for access. Because norms can only be regarded as administrative guidance by medical institutions, not legal requirements, practices are not often regarded as mandatory. Further, most medical institutions in Taiwan have not been able to implement standard rules. The main reason for this might be that clear notification of the regulations would cause more medical disputes or result in further penalties.

4. The underlying purpose of patient recordings

Patient recordings typically serve three purposes: (1) documentation; (2) for patients’ peace of mind; and (3) ensuring physicians’ instructions to patients are conveyed accurately (Chang 2020). Patient recording is like using a smart phone to take a photo of food served in a restaurant. Sometimes it is done for sharing and showing off, and sometimes it serves the purpose of diary keeping. Patients afraid of missing physicians’ advice have recorded consultations for listening to slowly after returning home. Especially for patients with a chronic disability and for older adults, understanding and remembering physicians’ words may be helped by repeated listening, sometimes also with the assistance of transcripts. Furthermore, some daily healthcare routines or exercise training programs could be too complicated to be fully absorbed within the brief clinical encounter. However, just like in the university setting, when many students will record a lecture, thinking they will play it back and listen to it afterwards, very few actually do so. Another reason for recording is for conveying the physician’s instructions. In such cases, a representative or caregiver present in a consultation wants to transmit what the physician said to other family members when he or she returns home. In order to avoid being misunderstood, the representative simply plays back the recording for everyone to listen to.
However, the practice of patients self-recording in secret damages the patient–physician relationship and may potentially cause physicians to distrust the patient and their family, which could obviously result in restricting treatment activities (Arborelius and Timpka 1990; Rodriguez et al. 2015). In order to ensure self-protection and avoid saying the wrong thing, physicians instead resort to not saying what should be said or what can be said, and even feel compelled to transfer or refer their patient to other healthcare facilities. Thus, the ultimate loser is the patient himself/herself.

5. The unsolved problem of patient recording

The Personal Data Protection Act (National Development Council, Taiwan 2015) means that Taiwan now has some of the strictest patient privacy and personal information protections in the world. However, judicial authorities in Taiwan have opened a small crack in the door, allowing audio and video recordings without informed consent to be used as evidence in legal proceedings or in lawsuits. This leads to confusion in how the law should be applied, and further strains the patient–physician relationship (Chang 2013).

How to promote trust between physicians and patients and agreement on mutual recording methods? It is recommended that the number of patients seen by a physician through health insurance should be limited, so that physicians will have more time to see a patient and explain their illness (something that also requires related support). This may be the best solution to ease the relationship between physicians and patients at present. With more time to carry out consultations, to think carefully about what tests may be needed and to explain to patients in detail their medical condition and treatment plan, medical uncertainties and risks will be reduced. Currently in Taiwan, the consultation time allocated to each patient is usually three to five minutes when it involves a prestigious senior physician (Hsiao 2016). When one considers the time needed for writing medical records and medical prescriptions, it is estimated that physicians have less than one minute for each patient. Very speedily, the patient’s condition will be diagnosed, the patient’s condition will be explained and then in a flash the examination and treatment that the patient needs will be determined. With such time constraints, it is no wonder that medical disputes will gradually increase, and the relationship between physicians and patients will become more distrustful.

It is suggested that the public should not be overawed by ‘famous physicians, who have too many patients to be diagnosed and treated during one clinic (Hsiao 2016), and so are willing to spend only a little time on any one patient. Only those who inquire, assess, diagnose and communicate comprehensively with patients are good physicians who really help. However, due to uncertainty in diagnosing and treating diseases, it may be unrealistic to expect physicians to make an accurate diagnosis and give the appropriate treatment in each clinical instance.

In general, most patients in Taiwan respect and appreciate the hard work of the healthcare professionals, and the physicians do their best to treat their patients well. With changing social circumstances and the fact that there are too many patients but insufficient resources and manpower in the ‘blood, sweat and tears’ hospital, it is inevitable that a few irrational medical disputes will arise. However, it is imperative that physicians and patients both should be more considerate in communicating with empathy and avoid arguments. Recording conversations between physicians and patients in a secret way would not only endanger mutual trust but also would cause unnecessary controversy or even legal problems. If a patient has any doubts, they can coordinate and communicate through hospital channels to rebuild a warm and trusting physician–patient relationship.

References

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