any code in quoting published material. For the ordinary citizen confidentiality is an entitlement during life and for some time after death; for the national decision maker I doubt whether it can be. In their lifetimes the lay journalist has a legitimate interest in the health of the great (witness the current hullabaloo about Andropov); once they are dead the historian needs to be able to evaluate the possible influence of illness on important decisions. Just as politicians recognise that they can be talked and written about in terms that would entitle a layman to sue for libel, I believe that they would accept that their health is a public concern. As a historian, Malcolm Elwin, pointed out in *The Times* correspondence about Lord Moran:

"If Sir Winston Churchill had felt impelled by his infirmities to withdraw from public into private life, then an intrusion might have been justly resented by his family representatives. But rightly or wrongly Sir Winston in 1951 elected to continue in public life and therefore all personal information about him is legitimate and possibly essential material for the historian and biographer."

Perhaps Lord Moran should have waited 30 years to release the medical information, the delay laid down for most government documents, and it may be that good taste would suggest that the facts should have been made available to scholars as documents (as occurred last week) rather than published as a book. On the other hand, the historian Denis Brogan (who, like Leslie Witts in his *BMJ* review, was in no doubt about the value of Moran's book for scholars) thought that there was some advantage in publishing such records while some of the people were still alive and could answer the points raised—and the recent Reith lecturer, Sir Douglas Wass, has argued for a shorter period than the 30 year limit.

All this, of course, is not necessarily to say that doctors should aid and abet historians, but there is a cogent case for ensuring that the facts are right. Thus, secondly, I believe that doctors should be allowed to give details in public about the illness of a dead person where this will serve to correct a serious error and rehabilitate an individual's reputation. Wingate's attempted suicide is one such example; another is Lord Northcliffe's alleged neurosyphilis—which was shown in a letter to *The Times* by a former house physician of Lord Horder to have really been subacute bacterial endocarditis.

Effect on historians

Thirdly, the GMC needs to examine the effects of its code on the historian. At present the code is founded on statute law rather than case law and inevitably absurdities will result. It puts the historian with a medical qualification at a disadvantage compared with his lay colleagues; in particular, it does not specify any time limit for disclosure—is one behaving unethically, for instance, in repeating the observations of George III's physicians, or those of Chekhov, Somerset Maugham, or Freud on identifiable patients?

To take another example of my own, in the Christmas issue of the *BMJ* I published an account of Yeats's Steinach operation which included extracts from some letters by Oliver St John Gogarty. Gogarty was a lifelong friend and fellow poet of W B Yeats; he was also on occasion his medical adviser. How can a biographer with the disadvantage of a medical qualification distinguish which facts have been disclosed under medical confidentiality and which in the course of ordinary conversation—and, given that the whole of literary Dublin in the 1930s was buzzing with accounts of Yeats's Steinach operation, is this not taking confidentiality to absurd limits?

These difficulties, and others, are expounded in the article by Dr Loudon below (which I have placed in a separate appendix lest he should not agree with all the points I make here).

Fourthly, medical editors are sometimes placed in difficulties over accounts in obituaries. Usually these cloak the details of a person's final illness in conventional phrases, but sometimes they give full clinical descriptions; given that such accounts may be written by the person's own doctor or colleagues, does this contravene the code of confidentiality, even though the relatives are happy for the details to be given?

As an example, a few weeks ago the *BMJ* was asked by two doctors to publish an obituary tribute to Professor Dorothy Russell; this stated that she wished it to be known that until middle age she had suffered from epilepsy, as this fact would encourage those with the same condition. Knowing that the writers were eminent in their specialty, and that this was just the sort of attitude Dorothy Russell would have taken, we had no hesitation in printing the tribute—but again this decision could be challenged on a strict interpretation of the code of confidentiality.

Finally, it needs to be pointed out that people other than doctors have had agonising decisions to take about making personal facts public. Such a problem was faced by Nigel Nicolson in deciding whether to publish the moving and revealing account by his mother, Vita Sackville-West, of her lesbian relationship with Violet Trefusis. "I do not believe," Nicolson wrote in his introduction to *Portrait of a Marriage*, "that she would deplore the revelation of her secret, knowing that it could help and encourage those similarly placed today"—adding "let not the reader condemn in ten minutes what I have pondered for ten years."

Clearly decisions of these kinds must depend on the motive behind publication rather than the mere facts as stated. Every case must be judged on its merits, and there is an urgent need to reconsider the whole issue. In my view the GMC should consider doing this.

How it strikes a historian

IRVINE LOUDON

In the nineteenth century it was certainly common for medical men to write, and editors of medical periodicals to publish, clinical details in obituary notices. Before 1850 clinical reports on the last illness of medical men and postmortem reports were very often included in published obituaries, and someone who has examined thousands of such obituaries assures me that no one ever complained nor was there ever evidence of permission being sought prior to publication. No one today would want to return to such practices, and I am not sure whether our present strict attitudes on medical confidentiality evolved slowly or by sudden steps through cases such as Moran and Churchill. But if one reads the recent (August 1983) publication by the GMC, *Professional Conduct and Discipline: Fitness to Practice* (particularly p 19 lines 3-5, and p 20-21 para 6), in conjunction with the report in the *BMJ* on professional conduct (12 November, p 1488) it seems that the position of the medically qualified historian, among others, is far from clear.

For two reasons I have recently become aware in a wider context that codes concerning medical confidentiality are often much less clear than is generally supposed, to the confusion of those who try to impose rules strictly.

Firstly, much of my time is now spent in research based on medical records in county record offices throughout England. Through this I have found that the time limit imposed by county archivists varies

Wellcome Unit for the History of Medicine, Oxford OX2 6PE

IRVINE LOUDON, DM, FRCGP, Wellcome research fellow in the University of Oxford

arbitrarily from one county to another. Sometimes clinical records are "closed" for 50 years, sometimes for 100, and sometimes for in between. I wonder occasionally if a medically qualified historian has any special privileges of access. There are no rules and I would personally find it hard to justify any claim for privileged access.

Secondly, I was one of a group of people who, early in 1983, gave evidence to the Select Committee on Public Records. All of us worked with medical records (in epidemiology, community medicine, or medical history) and were concerned with the implications of confidentiality. The longer we talked the more obvious was the uncertainty concerning rules and guidelines.

None of this has so far hindered me personally because virtually all my work is within the period 1750-1850. For example, I am now working on some detailed clinical notes recorded by a country surgeon between 1757 and 1760; and I intend to publish an account of these records with verbatim extracts. It would appear, although it sounds absurd, that in the absence of a stated time limit by the GMC I could be guilty of a breach of confidentiality.

Twentieth century attitudes

But suppose I was concerned with the twentieth rather than the eighteenth century, and suppose I wished to write, with a non-medical historian, a book on politicians and disease in the twentieth century. The subject would be the extent to which political decisions had been influenced by unrecognised, or recognised but incurable, diseases affecting "prominent people." I have no intention of doing anything of the kind but the book might be passed by a publisher and his legal advisers as legally acceptable and morally impeccable. My non-medical colleague would be safe. I might not be.

Clearly and rightly I could not include in such a book any material about my personal patients, if any had been "prominent people." But could I publish material obtained from the medical attendants of prominent people who had died within, for example, the past 10 to 20 years? Apparently not. Could I publish extracts from an already published source, such as an obituary notice or biography, if those contained clinical details obtained from the medical attendant of a patient recently dead? Apparently, and rather surprisingly, not. But I can see that if the original disclosure was considered unethical, although it happened to escape censure at the time, republication must also be unethical.

Therefore I could not in fact write such a book unless it was confined to people who died before—before when? 1953, 1933, 1883, or when? It is inconceivable there is no time limit at all—not even for ancient Egyptian medicine—and if there is a limit, what principle is used to decide what it should be apart from an inevitable liking for round numbers?

But wait a minute; suppose I got consent from the relatives of a patient who died only a few years ago? What then? But who would come under the definition of "relatives"? Wives and husbands; sons and daughters; grandchildren possibly; or the nearest surviving relative, and what if that was a distant cousin? Would he or she do instead? And would the consent need to be ratified by a solicitor? Can the say so of relatives overrule the rules of confidentiality? Since the GMC implies that the duty of confidentiality to a patient survives after his death (for an indefinite period) to protect his dignity and reputation, I suspect that the consent of relatives to disclosure would be irrelevant.

Here there might well be a serious problem for the writer of such a book as I have suggested, if the medical author unearthed some medical evidence which, for example, showed that a person's outrageous behaviour during his last year in office was not evidence of a psychopathic tendency but was due to undetected organic brain disease such as to impair his judgment and his character. If the relatives have no right to give consent for publication they might implore me to publish this and exonerate or rehabilitate their husband's/wife's/father's reputation, but I might be unable to do so. And if the family themselves published the evidence and the fact that I was the source I might be in the curious position of being unable to republish the family's publication. (Would my telling the family be, in itself, a breach of confidentiality?) Here it becomes so confusing that I am uncertain whether the confusion is solely in my mind or arises out of uncertainties in the GMC guidelines.

But one thing seems clear. The medically qualified historian of the twentieth century is in a potentially disadvantageous position compared with his colleague who is non-medical, and the medically qualified historian is unable to contribute to that area of history in which he has special skill.

Perhaps this is as it should be, for if you become a doctor you accept the ethical rules for the rest of your life, or at least for as long as you wish to remain on the register. But one is left with a sense of unfairness due to the disadvantage attached to medically qualified writers when the relationship between writer and the subject he is writing about has never been either directly or indirectly a doctor-patient relationship. This is surely the heart of the matter.

Possible time limit

Thus there seem to be arguments for specifying a time limit (for example, 50 years), although rigid rules lessen the opportunity for flexibility or the sensitive application of ethical principles. But one man's plea for flexibility and sensitivity may seem to another as immoral opportunism; and flexibility makes official bodies nervous. It would surely be difficult to justify one rule for the famous in order to allow earlier disclosure in "the interests of history," and another, more strictly enforced, for the obscure.

While there ought to be clearer guidelines on time limits and the problem of republishing published material, there will probably always be difficult grey areas, particularly where prior publication for exoneration or rehabilitation is concerned. Would it be reasonable to suggest that the GMC itself set up a person, tribunal, or committee which had the power to investigate such grey areas at the request of an author, and adjudicate? In other words, there might be a method of obtaining clearance. It may be argued that the defence organisations are there to advise; but their advice in grey areas would always be cautious. I admit I do *not* like the idea of submitting a manuscript to a committee, even if only on rare occasions. But when doubt arises about the wisdom of publishing there ought to be a better method of testing that doubt in medical confidentiality than putting one's head in the guillotine to see what happens.

To place such power of decision into the hands of one or more members of the GMC might be resisted by writers—and even by the GMC itself. But it seems to be one possibility that ought to be discussed, unless one believes that the GMC will be able to devise rules that are so clear that no grey areas exist any more.