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Medico-legal guide to Confidentiality
Disclosure without consent

**Important steps**

If you are considering disclosure of patient information without consent:

1. Normally, you should inform the patient that a disclosure will be made and why, even if consent has not been sought – unless it would be impracticable, put others at risk of harm, or prejudice the purpose of the disclosure.

2. Disclose the information promptly to the appropriate body.

3. Disclose only the minimum information necessary.

4. Document in the patient's record any steps you took to seek or obtain consent, your reasons for disclosing information without consent, and why you have not informed the patient if that is the case.

There are circumstances in which you may disclose confidential information without patient consent.

**Public interest**

It is important that patients can seek medical care safe in the knowledge that their details will remain private. There may, however, be cases where public interest overrides doctor/patient confidentiality.

You may only disclose confidential information in the public interest without the patient’s consent, or if consent has been withheld, where the benefits to an individual or society of disclosing outweigh the public and patient’s interest in keeping the information confidential.

When weighing up whether to disclose confidential information in the public interest, you must balance the potential harm to the patient, against the benefit to be gained from releasing the information. If you believe it is in the public interest to disclose information, you should still ordinarily seek your patient’s consent unless to do so would be impracticable, would put others at risk of harm, or would prejudice the purpose of disclosure. If you cannot obtain their consent, or decide you should not seek it, you should disclose information promptly to the appropriate person or authority, and let the patient know that you have done so, if it would not prejudice the purpose of disclosure.

If your reason for disclosing confidential information is to protect a competent patient who makes an informed refusal to disclosure, their wishes should usually be respected, even if their decision leaves them, but no one else, at risk of harm. Ask the patient for his reasons and consider these carefully. If, in your view, disclosure is still necessary in the public interest, you should do so promptly to
the appropriate person or authority, and document your reasons.

Disclosure in the public interest without consent may be justified if failure to make the disclosure could expose others to a risk of serious harm or death. This may arise where disclosure might assist in the prevention, detection or prosecution of a serious crime. Ordinarily you should first seek consent, unless this would prejudice the purpose of disclosure or risk harm to others.

If the intention of the disclosure is to protect a patient without capacity, you would be expected to disclose relevant information. If you believe that the patient might be a victim of neglect or physical, sexual or emotional abuse you must give information promptly to an appropriate person or authority if you believe it is in the patient's best interests or necessary to protect others from a risk of serious harm. If you think that disclosure is not in the best interests of such a patient you should discuss the issues with an experienced colleague. You should record your discussions and reasons for your decision, and be prepared to justify what you decide.

The GMC also advises that practitioners should participate in procedures set up to protect the public from violent and sex offenders, and should co-operate with requests for relevant information about patients who may pose a risk of harm to others.

**Anonymised data**

Wherever possible or relevant, anonymised data should be used. Let your patient/s know beforehand if you intend to release anonymised information, and seek their express consent (oral or written) if the material cannot be anonymised.

**Social services**

From time to time, you may have to share a patient's personal information with an organisation or agency giving social care. It is important that the patient is aware of this and consents. The person to whom information is disclosed must also be bound by a duty of confidentiality and know that the information is confidential. Only share the minimum information necessary, taking care not to breach another person's confidentiality (e.g., a parent, if the patient is a child).

You are expected to inform an appropriate responsible person or statutory agency (such as social services) if you believe:

- a patient is being neglected, or physically, sexually or emotionally abused and
- that patient cannot give or withhold consent for disclosure.

Only rarely would you withhold information on the grounds of the patient's best interests.

Dentists, nurses and other healthcare practitioners who have concerns about a patient may wish to contact the patient's GP or consultant first.

**Solicitors**

A solicitor acting for the patient 'stands in the patient's shoes'. Information can be disclosed to a solicitor as though he was the patient. In practice, most solicitors will provide the patient's signed consent when requesting confidential information.

**Courts and tribunals**

You may be asked to supply information to, or be summoned to appear as a witness at, a court or tribunal.

- As a witness, you may be asked for information that would breach patient confidentiality. It may be apparent that the patient consents to the provision of information – for example if you are called by the patient to give evidence. If, though, there is no consent or it is not clear if the patient consents, you should seek direction from the judge or presiding officer as to whether or not the information should be provided.

- The defendant in a criminal case may seek information from or the records of a third party who is also a prosecution witness. If you hold those records, you should first ascertain if the patient consents to the release. It may be...
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If you are asked to disclose indirectly related information — such as matters relating to the patient’s partner or relatives who are not parties to the proceedings, you should object to the judge or presiding officer.

If appointment books and diaries are requested, disclosure may compromise the confidentiality of other patients. Information about other identifiable patients must not be submitted as evidence (original documents may be photocopied and entries blanked out before submission). Anonymised information can be used if relevant.

The coroner

The coroner (in England and Wales) or procurator fiscal (in Scotland) may need to obtain confidential patient information during investigation of a death and you must disclose clinical notes and relevant information about the deceased to the coroner, coroner’s officer or procurator fiscal on request.

You should not, however, disclose information about living patients without the express consent of each patient. The coroner may order you to disclose such information without consent, but this would be very rare.

In cases of suspected murder or manslaughter, the coroner will pass the investigation to the police. You may disclose the deceased’s medical notes to the police or Home Office pathologist if you are satisfied the notes are relevant to the enquiry.

Police

Legal obligation to disclose

There are limited circumstances in which you are legally obliged to give confidential patient information to the police. They include:

- A driver alleged to be guilty of a road traffic offence may seek treatment for an injury. You must divulge their name and address, if asked by the police.
- If you have information which you know or believe might be of material assistance in preventing the commission of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person in the UK for an offence involving the commission, preparation or instigation of an act of terrorism, you must disclose it to the police as soon as reasonably practicable. Failure to do so without reasonable excuse is a criminal offence.

Knife and gunshot wounds

A gunshot wound or injury sustained from an attack with a knife, blade or sharp instrument, must be reported to the police whenever a victim arrives at hospital. Accidental injury from, or self harm with, a knife or blade will not usually require notification. Identifying details such as name and address should usually only be disclosed with the patient’s consent. If the patient refuses, the information may only be disclosed if you consider it is in the public interest, or you are required to by court order.

Data Protection Act

The police can request disclosure of confidential patient information to assist in the detection or prosecution of crime, citing Section 29(3) of the Data Protection Act 1998 (DPA). This provision exempts personal data from the non-disclosure provisions of the DPA. However, you are not obliged to disclose the information, and all other legal and ethical considerations relating to confidentiality still apply. If you refuse, the police may seek a court order. In such circumstances, please seek advice from the MDU.

Other grounds for disclosure

Although the fact that someone is your patient is normally confidential, there are circumstances in which you may think it justifiable to release information to the police without consent:

- If you or your staff have been threatened or assaulted by a patient. Information disclosed should be the minimum necessary to protect you, staff, colleagues or property.

GMC and other bodies

The GMC or other regulatory body can require you to produce information or documentation during an enquiry into one of their members and they would expect you to seek consent before disclosing identifiable patient information. If consent cannot be obtained, the MDU can advise you what to do.

Other bodies may require you to supply information. These include:

- Care Quality Commission (CQC)
- Parliamentary and Health Service Ombudsman (PHSO)
- NHS Protect
- Accountable officers (under controlled drugs regulations)

The PHSO has the power to require disclosure of confidential patient information to help it fulfil its statutory duties.

The CQC, NHS Protect and accountable officers each have a code of practice that requires the request for information to be proportionate and the minimum needed to fulfil statutory duties. It may therefore be possible for doctors to provide anonymised information. Please seek advice from the MDU on this matter.

Communicable diseases

England

You must inform the proper officer of your local authority if you suspect a patient has contracted, or has died while infected or contaminated by, a communicable disease (the Health Protection Agency website www.hpa.org.uk has the most up-to-date list). Notification should be in writing to the local authority ‘as soon as is reasonably
practicable’ or within three days of forming a suspicion about the patient’s illness.

Patient consent is not necessary but it is good practice to inform the patient, where practicable, unless to do so would undermine the purpose of the disclosure.

Operators of diagnostic laboratories must now notify the Health Protection Agency (HPA) if they identify a causative agent in a human sample. The HPA can request details of the patient concerned from the person who requested the laboratory tests and this information must be provided in writing or orally within three days.

Scotland

Notify your health board if you have a reasonable suspicion that a patient has one of the listed communicable diseases (see Scottish Government/NHS Scotland website for the latest list). You are advised not to wait for laboratory confirmation of the suspected disease before notification – by telephone, if urgent, or in writing within three days of forming your suspicion.

Wales

Similar provisions to those applying in England apply in Wales. These are administered by the Public Health Wales Communicable Disease Surveillance Centre (CDSC) working as the epidemiological investigation arm of the National Public Health Service for Wales.

Controlled drugs

Doctors and other healthcare workers are responsible for following the legislation on controlled drugs in accordance with the Misuse of Drugs Act 1971 and the Misuse of Drugs Regulations 2001.

‘Accountable officers’, appointed by the primary care body, are responsible for ensuring that their organisation or those working on its behalf (such as GPs) have suitable arrangements in place for managing controlled drugs, and may carry out unannounced visits to examine controlled drug stocks and records relating to their use. If the accountable officer asks to see identifiable confidential patient information, you may refuse and request proof that the disclosure is necessary.

Her Majesty’s Revenue and Customs

Tax inspectors have powers to obtain documents under Schedule 36 Part 1 of the Finance Act 2008, which allows them to request any information or document it is reasonable for them to have to assist in checking a taxpayer’s position. The tax inspector must give notice in writing of the information he requires. If the request is for disclosure of patient identifiable information you should satisfy yourself that it is reasonable to provide that information as section 19 of the Schedule places limits on the disclosure of personal (i.e. medical) information. For further advice, please contact the MDU.

Questions and answers

Q I have had a request for information from a firm of solicitors who act on behalf of my patient’s employers. My patient is suing his employers over a back injury he got at work. Should I release this information?

A Information should only be released to the employer’s solicitors with the patient’s full and informed consent or a court order. If the patient refuses to consent to the release of information, the employer’s solicitors may apply for a court order to have it released. If you are served with a court order you will be obliged to comply with it.

Q One of my patients was at my surgery a week ago with lacerations to his forehead. He said that he had crashed his car the previous night. I have now been approached by the police who tell me that they know I treated this man and they want his name and address. I have told them that I cannot release any information about my patients without consent. Is this correct?

A Normally a patient’s identity and address are confidential. However, under the Road Traffic Act 1988 a doctor is obliged, if asked, to give a police officer any information in his possession which may help identify a person who is alleged to be guilty of an offence under the Act. You are obliged to give the police the patient’s name and address, but you should not disclose any clinical information without your patient’s written consent, unless directed to do so by a presiding officer of a court.

References

1. GMC, Confidentiality 2009, para 63
2. Road Traffic Act 1988
3. Terrorism Act 2000
4. Health Protection (Notification) Regulations 2010

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For individual medico-legal advice:

24-hour advisory helpline
T 0800 716 646
E advisory@themdu.com
W themdu.com