

Confidentiality: disclosing information about serious communicable diseases¹

1 In our *Confidentiality* guidance, we advise that:

6 Confidentiality is central to trust between doctors and patients. Without assurances about confidentiality, patients may be reluctant to seek medical attention or to give doctors the information they need in order to provide good care. But appropriate information sharing is essential to the efficient provision of safe, effective care, both for the individual patient and for the wider community of patients.

17 You must disclose information to satisfy a specific statutory requirement, such as notification of a known or suspected case of certain infectious diseases.

36 There is a clear public good in having a confidential medical service. The fact that people are encouraged to seek advice and treatment, including for communicable diseases, benefits society as a whole as well as the individual. Confidential medical care is recognised in law as being in the public interest. However, there can also be a public interest in disclosing information: to protect individuals or society from risks of serious harm, such as serious communicable diseases or serious crime; or to enable medical research, education or other secondary uses of information that will benefit society over time.

37 Personal information may, therefore, be disclosed in the public interest, without patients' consent, and in exceptional cases where patients have withheld consent, if the benefits to an individual or to society of the disclosure outweigh both the public and the patient's interest in keeping the

information confidential. You must weigh the harms that are likely to arise from non-disclosure of information against the possible harm, both to the patient and to the overall trust between doctors and patients, arising from the release of that information.

53 Disclosure of personal information about a patient without consent may be justified in the public interest if failure to disclose may expose others to a risk of death or serious harm. You should still seek the patient's consent to disclosure if practicable and consider any reasons given for refusal.

2 Confidentiality is important to all patients. Those who have, or may have, a serious communicable disease might be particularly concerned about their privacy. You should make sure that information you hold or control about a patient's infection status is at all times effectively protected against improper disclosure. All patients are entitled to good standards of care, regardless of their status, what disease they might have, or how they acquired it.

Healthcare workers who have, or may have, a serious communicable disease

3 *Good Medical Practice* states that:

78 You should protect your patients, your colleagues and yourself by being immunised against common serious communicable diseases where vaccines are available.

79 If you know that you have, or think that you might have, a serious condition that you could pass on to patients, or if your judgement or performance

could be affected by a condition or its treatment, you must consult a suitably qualified colleague. You must ask for and follow their advice about investigations, treatment and changes to your practice that they consider necessary. You must not rely on your own assessment of the risk you pose to patients.

- 4 You should raise any reasonable concern you have about any healthcare worker who has a serious communicable disease and practises, or has practised, in a way that places patients at risk of infection.²
- 5 You should inform the healthcare worker's employing or contracting body of your concerns, preferably through its occupational health service or, where appropriate, their regulatory body. You should inform the healthcare worker before passing the information on, as long as it is practicable and safe to do so.
- 6 For more advice on colleagues who might pose a risk to patients, see our guidance on *Raising concerns about patient safety*.

Patients who are diagnosed with a serious communicable disease

- 7 You should make sure information is readily available to patients explaining that personal information about them will be shared within the healthcare team, including administrative and other staff who support the provision of care, unless they object, and why this is necessary.
- 8 If a patient refuses to allow you to inform someone outside the healthcare team of their infection status, you must respect their wishes unless you consider that failure to disclose the information will put healthcare workers or other patients at risk of infection. But such situations are likely to be very rare, not least because of the use of universal precautions to protect healthcare workers and patients, particularly during exposure-prone procedures.
- 9 You should explain to patients how they can protect others from infection, including the practical measures they can take to avoid transmission, and the importance of informing sexual contacts about the risk of transmission of sexually transmitted serious communicable diseases.

Informing sexual contacts of patients with a serious communicable disease

- 10 You may disclose information to a known sexual contact of a patient with a sexually transmitted serious communicable disease if you have reason to think that they are at risk of infection and that the patient has not informed them and cannot be persuaded to do so.³ In

such circumstances, you should tell the patient before you make the disclosure, if it is practicable and safe to do so. You must be prepared to justify a decision to disclose personal information without consent.

- 11 When you are tracing contacts and notifying partners, you should not disclose the identity of the patient, if practicable.

Children and young people

- 12 Your patient must be your first concern; but you should also consider and act in the best interests of your patient's children.
- 13 Most patients with a serious communicable disease who are parents or care for children will do all they can to protect those children from the risk of infection or the effects of the disease. You should make sure that the patient understands the information and advice you provide, which should be tailored to their needs. You should do all you reasonably can to support them in caring for themselves and in protecting their children.

- 14 You should explain to a patient with a serious communicable disease the importance of testing any children who may already be infected, including children without symptoms and young people who might have been vertically infected with a blood-borne virus.

- 15 If you are concerned that a child is at risk of serious harm because their parents cannot be persuaded to protect them from the risk of infection, or because they refuse to allow the child to be tested, you should seek legal advice about whether to apply to court for a determination on the child's best interests.

- 16 See *0-18 years: guidance for all doctors* for more information about confidentiality and consent in respect of children and young people and about child protection, which is a responsibility of all doctors.

Injuries to healthcare workers and others

- 17 You should make sure that a risk assessment is made urgently by an appropriately qualified colleague if a healthcare worker, police officer or anyone else suffers a needlestick or similar injury involving a patient who has, or may have, a serious communicable disease. Post-exposure prophylaxis should be offered in accordance with that risk assessment, which should include consideration of the type of body fluid or substance involved, and the route and severity of the exposure.⁴

18 You should ask for the patient's consent to disclose their infection status after exposure to a serious communicable disease. If the patient cannot be persuaded to consent to disclosure, or if it is not safe or practicable to ask for their consent, you may disclose information in the public interest. This could be, for example, if the information is needed for decisions about the continued appropriateness of post-exposure prophylaxis.

Recording serious communicable diseases on death certificates

19 If a serious communicable disease has contributed to the cause of death, you must record this on the death certificate.

Serious communicable disease control and surveillance

20 You should pass information about serious communicable diseases to the relevant authorities for the purpose of communicable disease control and surveillance. You should use anonymised or coded information, if practicable and as long as it will serve the purpose.

Endnotes

- 1** In this guidance the term 'serious communicable disease' applies to any disease that can be transmitted from human to human and that can result in death or serious illness. It particularly applies to, but is not limited to, HIV, tuberculosis, and hepatitis B and C.
- 2** See *Health clearance for tuberculosis, hepatitis B, hepatitis C and HIV: New healthcare workers* (Department of Health, 2007), *Health Clearance for Tuberculosis, Hepatitis B, Hepatitis C and HIV for new Healthcare Workers with direct clinical contact with patients* (Scottish Government, 2008), *HIV-infected health care workers: Guidance on management and patient notification* (Department of Health, 2005) and *HIV Infected Health Care Workers: Guidance on Management and Patient Notification* (Scottish Government, 2005), which all include examples of advice on exposure-prone practices from the UK Advisory Panel for Health Care Workers Infected with Blood-borne Viruses.
- 3** *The NHS (Venereal Diseases) Regulations 1974, The NHS Trusts (Venereal Diseases) Directions 1991 and The NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000* state that various NHS bodies in England and Wales must 'take all necessary steps to secure that any information capable of identifying an individual... with respect to persons examined or treated for any sexually transmitted disease shall not be disclosed except – (a) for the purpose of communicating that information to a medical practitioner, or to a person employed under the direction of a medical practitioner in connection with the treatment of persons suffering from such disease or the prevention of the spread thereof, and (b) for the purpose of such treatment and prevention'. There are different

interpretations of the Regulations and Directions, and concerns about their compatibility with the European Convention on Human Rights. In particular, there have been concerns that a strict interpretation would prevent the disclosure of relevant information, except to other doctors or those working under their supervision, even with the patient's consent or to known sexual contacts in the public interest. Our view is that the Regulations and Directions do not preclude disclosure if it would otherwise be lawful at common law, for example with the patient's consent or in the public interest without consent.

- 4** *Guidance for clinical health care workers: protection against infection with blood-borne viruses – Expert Advisory Group on AIDS and the Advisory Group on Hepatitis* (Department of Health, 1998); *HIV post-exposure prophylaxis: guidance from the UK Chief Medical Officers' Expert Advisory Group on AIDS* (Department of Health, 2008).