



# Confidentiality: disclosing information for education and training purposes

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

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.

40 Research, epidemiology, public health surveillance, health service planning, and education and training are among the important secondary uses made of patient information. Each of these uses can serve important public interests.

41 For many secondary uses, it will be sufficient and practicable to disclose only anonymised or coded information. When identifiable information is needed, or it is not practicable to remove identifiable information, it will often be perfectly practicable to get patients' express consent.

42 You may disclose identifiable information without consent if it is required by law, if it is approved under section 251 of the *NHS Act 2006* or if it can be justified in the public interest and it is either:

- (a) necessary to use identifiable information, or
- (b) not practicable to anonymise or code the information

and, in either case, not practicable<sup>1</sup> to seek consent (or efforts to seek consent have been unsuccessful).<sup>2</sup>

43 In considering whether it is practicable to seek consent you must take account of:

- (a) the age of records and the likely traceability of patients
- (b) the number of records, and
- (c) the possibility of introducing bias because of a low response rate or because particular groups of patients refuse, or do not respond to, requests to use their information.

2 The use of information about patients is essential to the education and training of medical and other healthcare students and trainees. For most of these uses, anonymised information will be sufficient and should be used whenever practicable.

- 3** When it is necessary to use identifiable information about a patient, or it is not practicable to anonymise information, you should seek the patient's consent before disclosing it. You should make sure that the patient is under no pressure to consent. In particular, you should avoid any impression that their care depends on giving consent.

### Publishing case studies

- 4** It may be difficult to anonymise case studies about patients while retaining enough detail to make publication useful. Simply changing a patient's name will often not anonymise the information if other identifying details are included, such as age, sex, location or a detailed account of the patient's illness and treatment.
- 5** If you cannot anonymise the information, you should seek the patient's consent before disclosing it. When seeking the patient's consent, you must provide them with enough information about the nature and purpose of the disclosure to enable them to make an informed decision. This should include a description of the information to be disclosed and an indication of how it will be used, for example, whether it will be published in a journal or shown at a medical conference. You must then disclose that information only for the purposes for which the patient has given consent.
- 6** If for any reason you cannot get a patient's consent, for example, because the information you want to disclose is so old that efforts to trace the patient have been or are likely to be unsuccessful, you will need to consider whether publication can be justified in the public interest.
- 7** You should respect a patient's refusal to consent to publication of their identifiable information.

### Teaching and training

- 8** Most patients understand and accept that the education and training of medical and other healthcare students and trainees relies on their having access to information about patients.
- 9** If trainees<sup>3</sup> are part of the healthcare team providing or supporting a patient's care, they can have access to the patient's personal information like other team members, unless the patient objects.
- 10** If students need access to a patient's personal information, but are not providing or supporting the patient's care, anonymised information should be used

whenever possible. This may not be practicable when they are directly involved in the provision of care, for example, on ward rounds, but it will then usually be practicable to seek the patient's express consent to disclosure.<sup>4</sup>

- 11** It might be necessary to disclose personal information, or not practicable to anonymise it, and also not practicable to seek a patient's express consent to disclosure. However, if information has been made readily available to the patient about the disclosure and of their right to object, and they have not objected, you may disclose personal information necessary for the education of medical and other healthcare students.

### School and college students

- 12** Doctors are sometimes asked to provide work experience for secondary school or further education college students, which may include allowing them to be present during consultations with patients. You should seek the patient's express consent to a student observing their care. You should make sure that the student understands the importance of respecting confidentiality and that their school or college takes seriously its responsibilities for its students' conduct. You should also satisfy yourself that the student's presence does not adversely affect the patient's care, for example, by inhibiting frank discussion.

### Patients who lack capacity

- 13** You should not disclose personal information for education and training purposes about patients who lack capacity if you can practicably use information about other patients instead.
- 14** If you wish to disclose personal information about a patient who lacks capacity but who is likely to regain capacity, you should, if practicable, wait and seek their consent later.
- 15** You may disclose personal information about a patient who lacks capacity to consent if disclosure will benefit or is in the best interests of the patient, or if it is justified in the public interest.<sup>5</sup>
- 16** If you are asked, or want, to disclose information about a patient who lacks capacity, you should seek the views of anyone the patient asks you to consult, or who has legal authority to make decisions on their behalf,<sup>6</sup> or who has a close personal relationship with the patient. They may be able to give you an indication of the patient's previously expressed preferences, views and beliefs.

**17** In the absence of any indication about the preferences of a patient who lacks capacity:

- (a) you should not publish information from which they can be identified, but
- (b) you may disclose personal information to medical and other healthcare students and trainees to the extent necessary for their education and training.

#### Endnotes

- 1** You should consider whether the work needed to anonymise or code the information or to seek patients' consent is reasonably practicable in all the circumstances. Only if unreasonable effort is required should you go on to consider whether disclosure of identifiable information is justified in the public interest.
- 2** If it is not practicable to anonymise or code the information or to seek or obtain patients' consent without unreasonable effort, and the likelihood of distress or harm to patients is negligible, disclosure for an important secondary purpose may be proportionate. You should respect patients' objections to disclosure.
- 3** In this context 'trainees' refers to registered medical practitioners in training grades, while 'students' refers to undergraduates pursuing a medical degree.
- 4** See our guidance on *Consent: patients and doctors making decisions together*, which states that you must give patients the information they want or need about the extent to which students may be involved in their care, and of their right to refuse to take part in teaching.
- 5** See *Adults with Incapacity (Scotland) Act 2000* and *Mental Capacity Act 2005* and their respective codes of practice. There is no specific mental capacity legislation for Northern Ireland, where the common law duty to act in incapacitated patients' best interests endures.
- 6** Welfare attorneys, court-appointed guardians and court-appointed deputies have legal authority to make some decisions on a patient's behalf. In the context of public interest disclosures, you will be seeking their views about the patient's preferences, rather than their consent to disclose.