



Confidentiality: supplementary guidance

General
Medical
Council

Regulating doctors
Ensuring good medical practice

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Reporting concerns about patients to the DVLA or to the DVA

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.

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 The Driver and Vehicle Licensing Agency (DVLA) and Driver and Vehicle Agency (DVA) (Northern Ireland) are legally responsible for deciding if a person is medically unfit to drive. This means they need to know if a driving licence holder has a condition or is undergoing treatment that may now, or in the future, affect their safety as a driver.
- 3 You should seek the advice of an experienced colleague or the DVLA or DVA's medical adviser if you are not sure whether a patient may be unfit to drive. You should keep under review any decision that they are fit, particularly if the patient's condition or treatments change. The DVLA's publication *For Medical Practitioners – At a glance Guide to the current Medical Standards of Fitness to Drive* includes information about a variety of disorders and conditions that can impair a patient's fitness to drive.
- 4 The driver is legally responsible for informing the DVLA or DVA about such a condition or treatment. However, if a patient has such a condition, you should explain to the patient:
 - (a) that the condition may affect their ability to drive (if the patient is incapable of understanding this advice, for example, because of dementia, you should inform the DVLA or DVA immediately), and
 - (b) that they have a legal duty to inform the DVLA or DVA about the condition.
- 5 If a patient refuses to accept the diagnosis, or the effect of the condition on their ability to drive, you can suggest that they seek a second opinion, and help arrange for them to do so. You should advise the patient not to drive in the meantime.

- 6** If a patient continues to drive when they may not be fit to do so, you should make every reasonable effort to persuade them to stop. As long as the patient agrees, you may discuss your concerns with their relatives, friends or carers.
- 7** If you do not manage to persuade the patient to stop driving, or you discover that they are continuing to drive against your advice, you should contact the DVLA or DVA immediately and disclose any relevant medical information, in confidence, to the medical adviser.
- 8** Before contacting the DVLA or DVA you should try to inform the patient of your decision to disclose personal information. You should then also inform the patient in writing once you have done so.

Disclosing records for financial and administrative purposes

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

33 As a general rule, you should seek a patient's express consent before disclosing identifiable information for purposes other than the provision of their care or local clinical audit, such as financial audit and insurance or benefits claims.

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*,¹ 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 practicable² to seek consent (or efforts to seek consent have been unsuccessful).³

2 If you are responsible for the management of patient records or other patient information, you should make sure that financial and administrative information is recorded separately from clinical information.

- 3 If you are asked to disclose information about patients for financial or administrative purposes you should, if practicable, provide it in anonymised or coded form, if that will serve the purpose. If identifiable information is needed, you should, if practicable, seek the patient's express consent before disclosing it.
- 4 You must draw attention to any system that prevents you from following this guidance, and recommend change. Until changes are made, you should make sure that information is readily available to patients explaining that their personal information may be disclosed for financial, administrative and similar purposes, and what they can do if they object. If a patient asks, you should explain the nature and purpose of disclosures made for financial and administrative purposes. You should do your best to act on any objections. If you are satisfied that it is not possible to comply with the patient's wishes, and still provide care, you should explain this to the patient and explain their options.
- 5 You should satisfy yourself that anyone who will have access to the information is bound by a duty of confidentiality not to disclose it further.
- 6 Disclosure may be required by law in some cases, for example, in the investigation of fraud by the NHS Counter Fraud Service, or approved under section 251 of the *NHS Act 2006*.⁴
- 7 For more information on commissioners' access to personal information held by general practices for purposes such as Quality and Outcomes Framework reviews, see the relevant *Confidentiality and Disclosure of Information Directions* and *Code of Practice*.⁵

Endnotes

- 1 Section 251 of the *NHS Act 2006* applies only to England and Wales, where doctors should seek and abide by the independent advice of the Ethics and Confidentiality Committee of the National Information Governance Board.
- 2 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.
- 3 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.
- 4 For further advice see paragraphs 17 to 20 (*Disclosures required by statute*) and 40 to 50 (*Research and other secondary uses*) of the main *Confidentiality* guidance.
- 5 *Confidentiality and Disclosure of Information: General Medical Services (GMS), Personal Medical Services (PMS) and Alternative Provider Medical Services (APMS) Directions 2005* and *Code of Practice* (Department of Health, 2005).

Confidentiality and Disclosure of Information: General Medical Services (GMS), Section 17c Agreements, and Health Board Primary Medical Services (HBPMS) Directions 2005 and *Code of Practice* (Scottish Executive Health Department, 2005).

Confidentiality and Disclosure of Information: General Medical Services and Alternative Provider Medical Services Directions 2006 and Code of Practice (Welsh Assembly Government, 2005).

Confidentiality and Disclosure of Information: General Medical Services and Alternative Provider Medical Services Directions (Northern Ireland) 2006 and Code of Practice (Department of Health, Social Services and Public Safety, 2006).

Reporting gunshot and knife wounds

- 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.
 - 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.
 - 54 Such a situation might arise, for example, when a disclosure would be likely to assist in the prevention, detection or prosecution of serious crime,¹ especially crimes against the person. When victims of violence refuse police assistance, disclosure may still be justified if others remain at risk, for example, from someone who is prepared to use weapons, or from domestic violence when children or others may be at risk.
 - 55 If a patient's refusal to consent to disclosure leaves others exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, or if it is not practicable or safe to seek the patient's consent, you should disclose information promptly to an appropriate person or authority. You should inform the patient before disclosing the information, if practicable and safe, even if you intend to disclose without their consent.

- 2 The guidance in *Confidentiality* applies to all violent crime, but gunshot and knife wounds raise issues that warrant special consideration. That is not to suggest that information should not be disclosed to assist in the prevention, detection or prosecution of other serious crime.
- 3 This guidance describes a two-stage process:
 - (a) You should inform the police quickly whenever a person arrives with a gunshot wound or an injury from an attack with a knife, blade or other sharp instrument. This will enable the police to make an assessment of risk to the patient and others, and to gather statistical information about gun and knife crime in the area.
 - (b) You should make a professional judgement about whether disclosure of personal information about a patient, including their identity, is justified in the public interest.

Reporting gunshot and knife wounds

- 4 The police are responsible for assessing the risk posed by a member of the public who is armed with, and has used, a gun or knife in a violent attack. They need to consider:
 - (a) the risk of a further attack on the patient
 - (b) the risk to staff, patients and visitors in the A&E department or hospital, and
 - (c) the risk of another attack near to, or at, the site of the original incident.
- 5 For this reason, the police should be informed whenever a person arrives at hospital with a gunshot wound. Even accidental shootings involving lawfully held guns raise serious issues for the police about, for example, gun licensing.

- 6** The police should also be informed when a person arrives at a hospital with a wound from an attack with a knife, blade or other sharp instrument.
- 7** The police should not usually be informed if a knife or blade injury is accidental, or a result of self-harm. If you are in doubt about the cause of the injury, you should if possible consult an experienced colleague.
- 8** Quick reporting at this stage may help prevent further incidents or harm to others. If you have responsibility for the patient, you should make sure that the police are contacted, but you can delegate this task to another member of staff.
- 9** Personal information, such as the patient's name and address, should not usually be disclosed in the initial contact with the police. The police will respond even if the patient's identity is not disclosed. The police need to be informed quickly in order to respond to the risk to patients, staff and the public. They also need statistical information about the number of gunshot and knife injuries, and when and where they occur, to inform their own and their crime reduction partners' operational and strategic priorities.
- 10** When the police arrive, you should not allow them access to the patient if this will delay or hamper treatment or compromise the patient's recovery.
- 11** If the patient's treatment and condition allow them to speak to the police, you or another member of the healthcare team should ask the patient whether they are willing to do so. If they are not, you should explain what the consequences, if any, might be. You, the rest of the healthcare team, and the police must abide by the patient's decision.

Disclosing personal information without consent

- 12** If it is probable that a crime has been committed, the police will ask for more information. If the patient cannot give consent because, for example, they are unconscious, or refuses to disclose information or to allow you or your colleagues to do so, you can still disclose information if it is required by law or if you believe it is justified in the public interest.
- 13** Disclosures in the public interest may be justified when:
- (a)** failure to disclose information may put the patient, or someone else, at risk of death or serious harm, or
 - (b)** disclosure is likely to help in the prevention, detection or prosecution of a serious crime.
- 14** If there is any doubt about whether disclosure without consent is justified, the decision should be made by, or with the agreement of, the consultant in charge, or the Caldicott Guardian.
- 15** If practicable, you should seek the patient's consent to the disclosure, or tell them that a disclosure has been made unless, for example, that:
- (a)** may put you or others at risk of serious harm, or
 - (b)** would be likely to undermine the purpose of the disclosure, by prejudicing the prevention, detection or prosecution of a crime.
- 16** You must document in the patient's record your reasons for disclosing information without consent and any steps you have taken to seek their consent, to inform them about the disclosure, or your reasons for not doing so.

- 17** If there is no immediate public interest reason for disclosing personal information, no further information should be given to the police. The police may seek an order from a judge or a warrant for the disclosure of confidential documents.²
- 18** You should tell those responsible for the continuing care of the patient that further discussion with the patient is needed to ensure, for example, that they are fit to hold a firearms licence.

Children and young people

- 19** Any child or young person under 18 arriving with a gunshot wound or a wound from an attack with a knife, blade or other sharp instrument will raise obvious child protection concerns. You must inform an appropriate person or authority promptly of any such incident.
- 20** Knife or blade injuries from domestic or occupational accidents might also raise serious concerns about the safety of children and young people. You should consider the advice on child protection in *0-18 years: guidance for all doctors* whenever you are concerned that a child may be the victim of abuse or neglect.
- 21** You must be able to justify a decision not to share a concern that children or young people are at risk of abuse, neglect or other serious harm, having taken advice from a named or designated doctor for child protection or an experienced colleague, or a defence or professional body.
- 22** See *0-18 years: guidance for all doctors* for more information and advice about doctors' roles and responsibilities towards children and young people.

Endnotes

- 1 There is no agreed definition of 'serious crime'. *Confidentiality: NHS Code of Practice* (Department of Health, 2003) gives some examples of serious crime (including murder, manslaughter, rape and child abuse; serious harm to the security of the state and public order and 'crimes that involve substantial financial gain or loss' are mentioned in the same category). It also gives examples of crimes that are not usually serious enough to warrant disclosure without consent (including theft, fraud, and damage to property where loss or damage is less substantial).

- 2 See Schedule 1 to the *Police and Criminal Evidence Act 1984*, Schedule 1 to the *Police and Criminal Evidence (Northern Ireland) Order 1989* and section 135 of the *Criminal Procedure (Scotland) Act 1995*. The police can also use powers to seize evidence, such as clothing, that may help in detecting or prosecuting crime.

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).

Disclosing information for insurance, employment and similar purposes

- 1 In our *Confidentiality* guidance, we advise that:
 - 7 ...You must inform patients about disclosures for purposes they would not reasonably expect, or check that they have already received information about such disclosures.
 - 33 As a general rule, you should seek a patient's express consent before disclosing identifiable information for purposes other than the provision of their care or local clinical audit, such as financial audit and insurance or benefits claims.
 - 34 If you are asked to provide information to third parties, such as a patient's insurer or employer or a government department or an agency assessing a claimant's entitlement to benefits, either following an examination or from existing records, you should:
 - (a) be satisfied that the patient has sufficient information about the scope, purpose and likely consequences of the examination and disclosure, and the fact that relevant information cannot be concealed or withheld
 - (b) obtain or have seen written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf; you may accept an assurance from an officer of a government department or agency or a registered health professional acting on their behalf that the patient or a person properly authorised to act on their behalf has consented

- (c) only disclose factual information you can substantiate, presented in an unbiased manner, relevant to the request; so you should not usually disclose the whole record, although it may be relevant to some benefits paid by government departments and to other assessments of patients' entitlement to pensions or other health-related benefits, and
- (d) offer to show your patient, or give them a copy of, any report you write about them for employment or insurance purposes before it is sent, unless:
 - (i) they have already indicated they do not wish to see it
 - (ii) disclosure would be likely to cause serious harm to the patient or anyone else
 - (iii) disclosure would be likely to reveal information about another person who does not consent.¹

- 35 If a patient refuses consent, or if it is not practicable to get their consent, information can still be disclosed if it is required by law or can be justified in the public interest (see paragraphs 36 to 56). If the purpose is covered by a regulation made under section 251 of the *NHS Act 2006*, disclosures can also be made without a patient's consent, but not if the patient has objected.
- 2 The first duty of a doctor registered with the GMC is to make the care of their patient their first concern. The term 'patient' in this guidance also refers to employees, clients, athletes and anyone else whose personal information you hold or have access to, whether or not you care for them in a traditional therapeutic relationship.

- 3** There are many circumstances in which a doctor might be asked to disclose information, either following an examination of a patient or from existing records, and in which they face 'dual obligations'. Usually, dual obligations arise when a doctor works for, is contracted by, or otherwise provides services to:
- (a)** a patient's employer (as an occupational health doctor)
 - (b)** an insurance company
 - (c)** an agency assessing a claimant's entitlement to benefits
 - (d)** the police (as a police surgeon)
 - (e)** the armed forces
 - (f)** the prison service, or
 - (g)** a sports team or association.²
- 4** Alternatively, a person or organisation you have previously had no direct relationship with, such as your patient's employer or insurance company, might ask you to provide a medical report or information about a patient. You might be offered payment for your own or your staff's time and effort, giving rise to an obligation in addition to the one you have to your patient.

Extent of the disclosure

- 5** You should disclose only information relevant to the request for disclosure, which means you should not usually disclose a patient's whole record. Exceptions to this general rule include benefit claims and litigation.
- 6** The whole record may be relevant to some benefits paid by government departments or agencies.

- 7 A solicitor may need to see their client's whole record to assess which parts are relevant, for example, to personal injury claims. If the claim goes ahead, the person the claim is made against may ask for copies of important documents, which could include records containing the patient's medical history. Under court rules in England and Wales, they can see all the patient's health records. The solicitor should explain this to the patient. In Scotland and Northern Ireland, you should disclose records in accordance with your patient's wishes or as ordered by a court.³

Writing reports

- 8 When writing a report you must:
- (a) do your best to make sure that it is not false or misleading; you must take reasonable steps to verify the information in the report, and must not deliberately leave out any relevant information
 - (b) complete and send the report without unreasonable delay⁴
 - (c) restrict the report to areas in which you have direct experience or relevant knowledge, and
 - (d) make sure that any opinion you include is balanced, and be able to state the facts or assumptions on which it is based.⁵

Endnotes

- 1 If any of the exceptions apply, you should still disclose as much of the report as you can. The Department for Work and Pensions publishes further advice about reports for benefits purposes (see www.dwp.gov.uk/healthcare-professional/guidance).
- 2 Doctors might provide their services to professional sports clubs (where the dual obligation is to both the patient and the club, which is very similar to the dual obligation of an occupational health doctor) or to associations (where the dual obligation is both to the patient and to a governing body or team of selectors).
- 3 The Law Society and British Medical Association jointly publish model consent forms authorising the release of health records to solicitors under the Data Protection Act 1998 (see www.bma.org.uk/ethics/health_records). The forms include notes for clients, solicitors and health professionals.
- 4 See *Good Medical Practice* (GMC, 2006), paragraphs 63 to 69.
- 5 See *Acting as an expert witness* (GMC, 2008).

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 and 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 practicable¹ to seek consent (or efforts to seek consent have been unsuccessful).²

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 trainees³ 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.⁴
- 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.⁵

- 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,⁶ 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.

Responding to criticism in the press

- 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.
- 2 Doctors are sometimes criticised in the press by their patients¹ or by someone their patients have a close personal relationship with. The criticism can include inaccurate or misleading details of the doctor's diagnosis, treatment or behaviour.
- 3 Although this can be frustrating or distressing, it does not relieve you of your duty to respect your patient's confidentiality. Disclosures of patient information without consent can undermine the public's trust in the profession as well as your patient's trust in you. You must not put information you have learned in confidence about a patient in the public domain without that patient's express consent.
- 4 Disputes between patients and doctors conducted in the media often serve no practical purpose; they can prolong or intensify conflict and may undermine public confidence in the profession, even if they do not involve the disclosure of personal information without consent. You should usually limit your public response to press reports to an explanation of your legal and professional duty of confidentiality.

- 5** However, from time to time, press reports might cause patients to be concerned about your practice, or that of a health service you are associated with. In such cases it may be appropriate to give general information about your normal practice. You must be careful not to reveal personal information about a patient, or to give an account of their care, without their consent. If you deny allegations that appear in the press, you must be careful not to reveal, directly or by omission or inference, any more personal information about the patient than a simple denial demands.
- 6** You should seek advice from your professional or defence body, or from a solicitor, on how to respond to press criticism and, if appropriate, any legal redress available to you.

Endnotes

- ¹ In this guidance, 'patient' is used to refer to both current and former patients.

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