

## **Confidentiality (1995)**

This guidance was withdrawn in **September 2000** and is no longer in effect. It is provided here for information only.

Confidentiality

GENERAL  
MEDICAL  
COUNCIL

*Protecting patients,  
guiding doctors*



## **Guidance to doctors**

*Being registered with the General Medical Council gives you rights and privileges. In return, you must meet the standards of competence, care and conduct set by the GMC.*

*This booklet sets out the GMC's guidance on confidentiality. It enlarges on the principles described in the booklet 'Good medical practice'.*

## Principles of confidentiality

1. Patients have a right to expect that you will not disclose any personal information which you learn during the course of your professional duties, unless they give permission. Without assurances about confidentiality patients may be reluctant to give doctors the information they need in order to provide good care. For these reasons:
  - When you are responsible for confidential information you must make sure that the information is effectively protected against improper disclosure when it is disposed of, stored, transmitted or received;
  - When patients give consent to disclosure of information about them, you must make sure they understand what will be disclosed, the reasons for disclosure and the likely consequences;
  - You must make sure that patients are informed whenever information about them is likely to be disclosed to others involved in their health care, and that they have the opportunity to withhold permission;
  - You must respect requests by patients that information should not be disclosed to third parties, save in exceptional circumstances (for example, where the health or safety of others would otherwise be at serious risk);
  - If you disclose confidential information you should release only as much information as is necessary for the purpose;
  - You must make sure that health workers to whom you

disclose information understand that it is given to them in confidence which they must respect;

- If you decide to disclose confidential information, you must be prepared to explain and justify your decision.

These principles apply in all circumstances, including those discussed in this booklet.

## **Disclosure of confidential information with the patient's consent**

2. You may release confidential information in strict accordance with the patient's consent, or the consent of a person properly authorised to act on the patient's behalf.

## **Disclosure within teams**

3. Modern medical practice usually involves teams of doctors, other health care workers, and sometimes people from outside the health care professions. The importance of working in teams is explained in the GMC's booklet 'Good medical practice'. To provide patients with the best possible care, it is often essential to pass confidential information between members of the team.
4. You should make sure – through the use of leaflets and posters if necessary – that patients understand why and when information may be shared between team members, and any circumstances in which team members providing non-medical care may be required to disclose information to third parties.
5. Where the disclosure of relevant information between health care professionals is clearly required for treatment to which a patient has agreed, the patient's explicit consent may not be required. For example, explicit consent would not be needed where a general practitioner discloses relevant information to a medical secretary to have a referral letter typed, or a physician makes relevant information available to a radiologist when requesting an X-ray.

6. There will also be circumstances where, because of a medical emergency, a patient's consent cannot be obtained, but relevant information must in the patient's interest be transferred between health care workers.
7. If a patient does not wish you to share particular information with other members of the team, you must respect those wishes. If you and a patient have established a relationship based on trust, the patient may choose to give you discretion to disclose information to other team members, as required.
8. All medical members of a team have a duty to make sure that other team members understand and observe confidentiality.

### **Disclosure to employers and insurance companies**

9. When assessing a patient on behalf of a third party (for example, an employer or insurance company) you must make sure, at the outset, that the patient is aware of the purpose of the assessment, of the obligation that the doctor has towards the third parties concerned, and that this may necessitate the disclosure of personal information. You should undertake such assessments only with the patient's written consent.

### **Disclosure of information without the patient's consent**

#### *Disclosure in the patient's medical interests*

10. Problems may arise if you consider that a patient is incapable of giving consent to treatment because of immaturity, illness, or mental incapacity, and you have tried unsuccessfully to persuade the patient to allow an appropriate person to be involved in the consultation. If you are convinced that it is

essential in the patient's medical interests, you may disclose relevant information to an appropriate person or authority. You must tell the patient before disclosing any information. You should remember that the judgment of whether patients are capable of giving or withholding consent to treatment or disclosure must be based on an assessment of their ability to appreciate what the treatment or advice being sought may involve, and not solely on their age.

11. If you believe a patient to be a victim of neglect or physical or sexual abuse, and unable to give or withhold consent to disclosure, you should usually give information to an appropriate responsible person or statutory agency, in order to prevent further harm to the patient. In these and similar circumstances, you may release information without the patient's consent, but only if you consider that the patient is unable to give consent, and that the disclosure is in the patient's best medical interests.
12. Rarely, you may judge that seeking consent to the disclosure of confidential information would be damaging to the patient, but that the disclosure would be in the patient's medical interests. For example, you may judge that it would be in a patient's interests that a close relative should know about the patient's terminal condition, but that the patient would be seriously harmed by the information. In such circumstances information may be disclosed without consent.

### *Disclosure after a patient's death*

13. You still have an obligation to keep information confidential after a patient dies. The extent to which confidential information may be disclosed after a patient's death will

depend on the circumstances. These include the nature of the information, whether that information is already public knowledge, and how long it is since the patient died. Particular difficulties may arise when there is a conflict of interest between parties affected by the patient's death. For example, if an insurance company seeks information about a deceased patient in order to decide whether to make a payment under a life assurance policy, you should not release information without the consent of the patient's executor, or a close relative, who has been fully informed of the consequences of disclosure.

14. You should be aware that the Access to Health Records Act 1990 gives third parties right of access, in certain circumstances, to the medical records of a deceased patient.

### **Disclosure for medical teaching, medical research, and medical audit**

#### ***Research***

15. Where, for the purposes of medical research there is a need to disclose information which it is not possible to anonymise effectively, every reasonable effort must be made to inform the patients concerned, or those who may properly give permission on their behalf, that they may, at any stage, withhold their consent to disclosure.
16. Where consent cannot be obtained, this fact should be drawn to the attention of a research ethics committee which should decide whether the public interest in the research outweighs patients' right to confidentiality. Disclosures to a researcher may otherwise be improper, even if the researcher is a registered medical practitioner.

## *Teaching and audit*

17. Patients' consent to disclosure of information for teaching and audit must be obtained unless the data have been effectively anonymised.

## **Disclosure in the interests of others**

18. Disclosures may be necessary in the public interest where a failure to disclose information may expose the patient, or others, to risk of death or serious harm. In such circumstances you should disclose information promptly to an appropriate person or authority.
19. Such circumstances may arise, for example, where:
  - A patient continues to drive, against medical advice, when unfit to do so. In such circumstances you should disclose relevant information to the medical adviser of the Driver and Vehicle Licensing Agency without delay. Further guidance is given in appendix 1.
  - A colleague, who is also a patient, is placing patients at risk as a result of illness or another medical condition. Guidance on this issue, and on the rights of doctors who are ill, is contained in the GMC's leaflet 'HIV infection and AIDS: the ethical considerations' and in a separate note about the GMC's health procedures.
  - Disclosure is necessary for the prevention or detection of a serious crime.

## **Disclosure in connection with judicial or other statutory proceedings**

20. You may disclose information to satisfy a specific statutory requirement, such as notification of a communicable disease or of attendance upon a person dependent upon certain controlled drugs. You may also disclose information if ordered to do so by a judge or presiding officer of a court, or if you are summoned to assist a Coroner, Procurator Fiscal, or other similar officer in connection with an inquest or comparable judicial investigation. If you are required to produce patients' notes or records under a court order you should disclose only so much as is relevant to the proceedings. You should object to the judge or the presiding officer if attempts are made to compel you to disclose other matters which appear in the notes, for example matters relating to relatives or partners of the patient who are not parties to the proceedings.
21. In the absence of a court order, a request for disclosure by a third party, for example, a solicitor, police officer, or officer of a court, is not sufficient justification for disclosure without a patient's consent.
22. When a Committee of the GMC investigating a doctor's fitness to practise has determined that the interests of justice require disclosure of confidential information, you may disclose information at the request of the Committee's Chairman, provided that every reasonable effort has been made to seek the consent of the patients concerned. If consent is refused the patient's wishes must be respected.

## **Disclosure to inspectors of taxes**

23. If you have a private practice, you may disclose confidential information in response to a request from an inspector of taxes, provided you have made every effort to separate financial information from clinical records.

**Doctors who decide to disclose confidential information must be prepared to explain and justify their decisions.**

*October 1995*

## Appendix 1

### **Disclosure of information about patients to the Driver and Vehicle Licensing Agency (DVLA)**

1. The DVLA is legally responsible for deciding if a person is medically unfit to drive. They need to know when driving licence holders have a condition which may now, or in the future, affect their safety as a driver.
2. Therefore, where patients have such conditions you should:
  - Make sure that the patients understand that the condition may impair their ability to drive. If a patient is incapable of understanding this advice, for example because of dementia, you should inform the DVLA immediately.
  - Explain to patients that they have a legal duty to inform the DVLA about the condition.
3. If the patients refuse to accept the diagnosis or the effect of the condition on their ability to drive, you can suggest that the patients seek a second opinion, and make appropriate arrangements for the patients to do so. You should advise patients not to drive until the second opinion has been obtained.
4. If patients continue to drive when they are not fit to do so, you should make every reasonable effort to persuade them to stop. This may include telling their next of kin.
5. If you do not manage to persuade patients to stop driving, or you are given or find evidence that a patient is continuing to

drive contrary to advice, you should disclose relevant medical information immediately, in confidence, to the medical adviser at the DVLA.

Before giving information to the DVLA you should inform the patient of your decision to do so. Once the DVLA has been informed, you should also write to the patient, to confirm that a disclosure has been made.

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Cover shows a detail from the painting  
*'The Sick Lady'* (mid 17th century)  
by Jan Steen  
The Rijksmuseum

Picture courtesy of the Rijksmuseum, Amsterdam