General Medical Council

What's changed in the *Confidentiality* guidance?

This briefing is designed to help doctors, and others, to familiarise themselves with key changes brought in by the revised *Confidentiality* (2017) guidance.

It is <u>not</u> intended to be an exhaustive summary of all changes and is <u>not</u> a replacement for the guidance.

Doctors must be familiar with guidelines and developments that affect their work. (Good medical practice, Domain 1: Knowledge, skills and performance, para 11)

Structure

Key principles – these underpin the guidance and align as closely as practical with the Caldicott principles for health and social care.

Framework for disclosing personal information - this sets out the four legal bases for disclosing confidential information. These principles apply whatever the purpose of a disclosure.

Decision-making flowchart - this supports the framework by helping doctors ask the right questions, in the right order, to establish what the legal basis for a disclosure is.

The rest of the guidance is structured according to three purposes for which patient information may be used, accessed or disclosed.

- **Disclosures to support the direct care of an individual patient**
  Covering disclosures within the direct care team, and including guidance on when doctors can rely on implied consent to share information for direct care. It also covers sharing information with those close to the patient, and disclosing information about patients who lack the capacity to consent.

- **Disclosures for the protection of patients and others**
  Covering disclosures to protect adults who may be at risk of serious harm (disclosures about children and young people are covered in separate guidance).

It distinguishes between adults who do not have capacity to make decisions and those who do. This section also covers disclosures for public protection reasons.

- **Disclosures for secondary purposes**
  Covering disclosures for all other purposes. These include disclosures for health and social care purposes (such as health service management, research, education and training) and for wider purposes (such as for the administration of justice, financial audit, and insurance or benefit claims).

The final section of the guidance sets out doctors' responsibilities in relation to **managing and protecting information.**

Key changes to the guidance by section

Disclosing information for direct care

- Places stronger emphasis on the importance of sharing information appropriately for direct care, recognising the multi-disciplinary and multi-agency context doctors usually work in.

- Gives more detail on the circumstances in which doctors can rely on implied consent to share patient information for direct care.

- Includes a new statement on the significant role that those close to the patient can play in supporting and caring for patients, and the importance of acknowledging that. The guidance also emphasises that confidentiality is not a justification for refusing to listen to the views of those who are close to the patient.

- Adds a new requirement to explain the potential consequences of a patient's decision to refuse to allow information to be shared for their direct care, to explore their reasons and to seek a compromise if possible. But the advice on abiding by the wishes of a patient who has the capacity to make the decision is unchanged.

Disclosing information for the protection of patients and others

- More clearly reflects legal requirements to disclose information about adults who are at risk of serious harm, where they exist.

- Extends the existing professional obligation to tell an appropriate authority when a patient who lacks capacity may be experiencing, or at risk of, abuse or neglect to cover all forms of serious harm.

- Maintains the position that adults who have capacity are entitled to make their own decisions, even if their decision leaves them (but no one else) at risk of death

or serious harm. But a new endnote indicates that there may be very exceptional circumstances in which disclosure may be justified without consent to prevent a serious crime such as murder, manslaughter or serious assault even where no one other than the patient is at risk.

- Adds a new expression of doctors' duties to protect and promote the health of patients and the public, as well as to respect confidentiality.

- More clearly reflects legal requirements to disclose information – e.g. for the prevention of terrorism.

- Unpacks and expands the list of factors that doctors should take into account when deciding whether or not to disclose information in the public interest.

- Expands the list of examples of circumstances in which patients might pose a risk of serious harm to others, for example through being unfit to drive, or because they have been diagnosed with a serious communicable disease, or because they are unfit to work. Also links to the relevant explanatory statements.

- Adds formal reviews (such as inquests, significant case reviews, case management reviews, and domestic homicide reviews) to the section on responding to requests for information.

Disclosures for secondary purposes

- Gives greater prominence to the expectation that anonymised information must be used in preference to identifiable information for purposes other than direct care where possible.

- Adds a new requirement that doctors should not disclose identifiable information without consent in the public interest for purposes such as research, commissioning, or health service management if there is a statutory process for considering such disclosures, and support has either been refused or has not been sought. These arrangements currently exist in England and Wales, and will soon be introduced in Northern Ireland. There is no comparable statutory framework in Scotland.

- Adds new sections on clinical audit, professional and statutory duties of candour, and disclosures for administrative purposes.

Managing and protecting information

- Adds an explicit new requirement for all doctors to have knowledge of information governance that is appropriate to their role.

- Expressly requires doctors who are data controllers to understand and meet their responsibilities under the *Data Protection Act 1998*. All doctors are expected to follow the data protection policies and procedures where they work whether or not they are data controllers.

- Expands the description of the circumstances in which a patient's privacy might be breached. Reception areas and ward rounds are areas of particular concern for patients.

- Adds new requirements for doctors who have responsibilities for managing or recruiting staff to make sure that they are suitably trained and that employment contracts contain appropriate obligations in relation to confidentiality and data protection.

- Clarifies what disclosures are mandatory and what is a matter for professional judgement after a patient's death.

Legal annex

The legal annex has been expanded to give an overview of the sources of legal rights to confidentiality, privacy and data protection.

We have published a separate legislation fact sheet that gives further detail on laws that require, permit or prohibit disclosures of patient information.

Please note: The GMC does not give legal advice to doctors.

What's new in the explanatory guidance?

Our explanatory statements set out in more detail how the principles of the guidance apply in a range of situations doctors often encounter or find hard to deal with.

Patients' fitness to drive and reporting concerns to the DVLA or DVA

- Emphasises the importance of doctors considering whether a patient's condition or treatment may affect their ability to drive safely.

- Includes an overt expression of doctors' duties to protect and promote the health of patients and the public, as well as to respect confidentiality.

- Confirms that the same principles apply if doctors are concerned about the fitness of drivers and pilots of other kinds of regulated transport, including by rail, water and air.

- Reminds doctors to keep a record of the advice they give, and the disclosures they make.

Disclosing information for employment, insurance and similar purposes

- Clarifies that separate consent is not needed for the examination and the disclosure of any resulting report, as long as the original consent process was suitable and sufficient.

- Advises that doctors should correct errors of fact if asked to do so by patients, but should not amend reports in ways that they believe would make the report misleading.

- States that it may be appropriate to explain to a patient that there may be adverse consequences of withholding a report but also says that the doctor must abide by the patient's wishes unless the disclosure is required by law or can be justified in the public interest.

- Advises that it is reasonable for the doctor to tell the person or organisation that has commissioned a report if patients withdraw consent, or do not attend appointments, but the doctor should not disclose further information.

Disclosing information about serious communicable diseases

- Distinguishes more clearly between disclosures that may be necessary for the safe care of the patient (for example if dangerous drug interactions are not identified), and disclosures that may be necessary to protect others from risks of infection (for example arising from needlestick or other injuries).

- Clarifies that healthcare professionals, like everyone else, are entitled to be protected from risks of serious harm but that disclosure about a patient's infection status is unlikely to be justified without consent if it would not make any difference to the risk of transmission.

- Expands the guidance on informing contacts who are at risk of sexually transmitted serious communicable disease to cover all contacts who are at risk of transmission through all means.

Reporting gunshot and knife wounds

- Clarifies that the decision whether or not to call the police when a patient presents with a gunshot or knife wound is a professional judgement and is not mandatory in all cases. This was always the intention, but emergency doctors expressed concern that the guidance could be applied in a way that was disproportionate and harmful to patients' trust.

- Clarifies that the same principles could apply to other kinds of violent injury.

Disclosing information for education and training

- Adds training records to the section on using patient information in case studies.

- Clarifies that doctors in training or medical or healthcare students who are part of the team providing or supporting a patient's direct care can have access to the patient's personal information, just as other team members do, unless the patient objects.

Responding to criticism in the press

- Clarifies that this goes wider than traditional media, and includes criticism that might be made online or on social media.

Disclosures for financial and administrative purposes

The text of this statement now appears in the core guidance so we have withdrawn the separate explanatory statement.