

Confidentiality – disclosures without consent

MPS



Putting members **first**

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Certain circumstances can mean you are obliged to disclose information about a patient, even if you do not have the patient's consent. You may also be asked to provide information from the medical records of patients who are incapable of giving consent, are aged under 18, or have died. This factsheet gives you further information about these circumstances.

An obligation to disclose

Under certain circumstances, the disclosure of medical information is required by law. In these situations, consent from the patient is not required. Having said that, you should not disclose any more information than is necessary.

For example, under the Prevention and Control of Disease Regulation (Cap 599A), a health officer may, for the purpose of facilitating the investigation of a case or suspected case of a specified infectious disease, require you to give to the health officer any relevant information. You should comply with such a requirement.

Disclosures to third parties

Usually, you should obtain the patient's consent before disclosing confidential information to a third party. However, s.1.4.2 of the Medical Council of Hong Kong's Code of Professional Conduct (January 2009) – or the Code – says there are exceptional circumstances where consent is not necessary: “(i) where disclosure is necessary to prevent serious harm to the patient or other persons; (ii) when disclosure is required by law.”

Courts or litigation

Both civil and criminal courts have powers to order the disclosure of information in various circumstances. A judge can require you to disclose patient information.

In certain circumstances, the coroner is required to investigate the circumstances of a death – for example, if a person dies suddenly, by accident or violence, or under suspicious circumstances. You may be asked by the coroner, usually through the police, to disclose information about the deceased that is likely to be relevant to the investigation without the consent of the deceased's family.

Justifiable disclosures in the public interest

The disclosure of information about a patient without the patient's express consent may be justifiable, if the public interest in disclosing the information outweighs the patient's interests in keeping it confidential.

In all cases, you must decide whether or not the possible harm caused to the patient – and the overall trust between doctors and patients – by disclosing this information will outweigh the benefits resulting from the disclosure.

You should attempt to seek the patient's consent, but there are certain circumstances when this will not be possible. It is important to document any decision you make and your reasons for disclosing the information.

Communicable diseases

The Code provides that in any given cases when it appears that others, i.e. spouses, those close to the patient, other doctors and health workers, may be at risk if not informed that a patient has a serious infection, you should discuss the situation fully and completely with the patient. You should endeavor to obtain the patient's permission for the disclosure of the facts to those at risk.

Should permission be refused and if the welfare of other health workers may be properly considered to be endangered, MCHK would not consider it to be unethical if those who might be at risk of infection whilst treating the patient were to be informed of the risk.

If the patient refuses to consent to the disclosure of their health to spouses or other partners who may be at risk, MCHK says you may “consider it a duty to inform the spouse or other partner”.

Children and young people

Many young people have the capacity to consent to the disclosure of their medical records. If the child or young person (under 18 years of age) is able to understand the purposes and consequences of disclosure, he or she may consent or refuse consent to the disclosure.

If a child or young person under 18 refuses consent, you should nevertheless disclose the information if this is necessary to protect the child, young person or someone else from serious harm, or if disclosure is justifiable in the public interest.

If the child or young person lacks the capacity to consent to the disclosure of information, those with parental responsibility can consent on his or her behalf. The consent of only one person with parental responsibility is needed for consent for disclosure.

Adults lacking capacity

The overriding principle is that the disclosure of confidential information is made in the best interests of the persons lacking capacity. This may involve releasing information about their condition – for example, to their carer, to ensure they receive the best treatment.

Further information

- Medical Council of Hong Kong, *Code of Professional Conduct* – www.mchk.org.hk
- Personal Data (Privacy) Ordinance (Cap 486) – www.pcpd.org.hk
- Hong Kong Medical Association, *Patients' Rights and Responsibilities* – www.hkma.org
- Mental Health Ordinance – www.legislation.gov.hk

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