

# Providing information to the police

MPS



Advice correct as of January 2016

With increasing frequency, doctors are approached by the police seeking information about a patient. This factsheet aims to provide general guidance for doctors in the event that they are approached by the police for a statement and/or copies of records containing health information.

By necessity the advice herein is general because each case and its issues must be considered separately. In providing this guidance no criticism is intended of the police, who commonly act in good faith when seeking comment or records or when following up a complaint.

There are two quite distinct circumstances:

- the enquiry from the police may not concern or be about the doctor. This is by far the most common scenario.
- the circumstances of the police investigation may be a result of a complaint by a third party (usually a patient) about you.

You must ascertain from the police why you are being asked to provide the information and/or give a statement. For example, are the police investigating a complaint? What is the nature of the complaint? Are you the subject of or in any way implicated in the complaint? If not, are the police able to obtain the information from another, perhaps more appropriate, source?

Such detail is important to enable you to make an informed and considered choice as to whether or not you should comply with the police request. If you are in any way implicated in the complaint, do not comply without firstly obtaining legal advice. See the further guidance provided below.

## When the police enquiry is about the patient and not you

While it is an understandable reaction to comply with such a request and engage in a discussion, or provide a written statement, it is not always appropriate to do so. More often than not, full details of the matter the doctor is being asked to discuss or comment on are not known or disclosed by the police.

Additionally the dilemma about whether or not to disclose confidential information can have very sharp thorns, particularly for doctors, under the various Privacy Act provisions.

The risk of compliance with such a request inadvertently subjecting you, the doctor, to a Privacy Act complaint or otherwise is ever-present in this situation. For this reason it is advisable to contact Medical Protection if you are at all uncertain to provide information to the police regarding a patient.

## When you are the subject of the police enquiry

Clinical practice is such that at times the patient will misunderstand the purpose or conduct of the doctor. Serious criminal offences are sometimes alleged out of consultations undertaken for proper purpose. It is naive to say this only happens to the guilty doctor, or will only happen to others. You should never try and handle the situation without medicolegal advice. At the first opportunity seek advice.

The police will often provide you with a “caution” before conducting an enquiry of you, but a caution is not required in every situation at the enquiry stage. When given, this caution is to the effect that you have the right to remain silent, but that anything said by you may be used against you. The caution means exactly what it says. Properly advised, it will be a rare circumstance where you should choose not to exercise that right to silence during the police investigation phase. There is plenty of opportunity to make a comment or statement once you have seen the information comprising the police investigation to that point in time.

## Requests to attend the police station

Do not voluntarily accompany the police to the police station if they ask you to do so for the purpose of investigating your conduct or a complaint about you.

You are not required to and generally the sensible course of action is to politely decline. If, notwithstanding the above, you end up at the police station, be sensible — exercise your right to silence. Do not agree to make a statement and most certainly do not agree to be videoed. Even the entirely innocent doctor, outside his/

her comfort zone, in these circumstances, will often portray a demeanour that understandably does not come across well in a videoed interview.

Any statement you choose to make can be used later by the police. As such if you decide to make a statement you can change your mind before doing so and you do not have to go ahead with it.

## Police requests for a statement or comment

When you are being investigated do not be drawn into making any comment or statement until you have seen complete disclosure from the police. This will include what it is you are being criticised for and what evidence the police have, to date, obtained. As a matter of routine the police will not provide disclosure when investigating a complaint or potential offence. Experience has shown, however, that it is extremely unwise to offer any comment or statement at all until that has happened.

- Importantly, and surprisingly not widely known, you are not obligated to provide a verbal or a written statement to the police, no matter what the situation is.
- Remember that “helping with enquiries” is only a half answer. The police do not have to provide an explanation and if they refuse to do so, then it is surely easier and appropriate to decline the request.
- Alternatively, rather than providing a verbal statement you can ask the police to put their questions in writing so that you may consider the matter and if need be provide a written response and/or seek advice. This will also give you the opportunity to, in appropriate circumstances, advise the patient of what you intend to do.
- If you decide to provide a statement make sure you report known facts. Expressions of opinion, speculation or hypothesis are best avoided (unless you are being asked to act as an expert witness, but in that event you certainly should not do so unless full details/disclosure are firstly provided to you).
- Do not comment on matters that you do not know the answer to, or be drawn into giving evidence outside your scope of expertise.
- You do not have to sign a statement even if a statement from you is reduced into writing.
- You should certainly not sign a statement if you feel that you have been bullied, forced, cajoled or in any way made to say what you did not mean to say, or where words may have been put in your mouth.

- Only sign the statement when you have checked it carefully. No statement should be signed blindly. Reading the statement yourself allows you the time to check the statement is accurate.
- Signing it means you are happy that the content is a fair and accurate record of your knowledge.
- Before signing the statement, if you believe that something is missing, ask for it to be added; if something should not be there, ask for it to be removed; or if something is incorrect, ask for it to be changed.
- Finally, if you are not happy with the statement, do not sign it. Medical Protection regularly assists members with police statements.

## Responding to police requests for health information

- Unless a court order, search warrant or Production Order has been obtained requiring you to do so, you do not have to release the health information.
- Otherwise you are permitted to release health information to the police where that information is reasonably required where, for example the safety of a patient or other person(s) is under serious threat or where there is a threat of a serious breach of the law.
- The Health Act allows the police to request access to health information when they need it to investigate an offence. It is within your discretion whether or not to provide the health information, and factors such as the gravity of the alleged offence, protecting the therapeutic relationship and the sensitivity of the health information sought are matters to be taken into consideration.
- In some situations it may not be feasible to discuss the request with the patient but, where at all possible or appropriate, you are wise to do so even if merely to advise the patient you propose to disclose the information.
- Disclosure of health information without the consent of the patient is provided for in Rules 10 and 11 of the Health Information Privacy Code. This is usually a high threshold to meet and doctors are advised to seek medicolegal advice before doing so.
- It is advisable to seek medicolegal advice in this situation.

### Membership enquiries

T 0800 2255 677 (0800 CALL MPS) – toll free within New Zealand | E [membership@mps.org.nz](mailto:membership@mps.org.nz)

**For medicolegal advice please call us on:**

**0800 2255 677 (0800 CALL MPS)**

**Overseas: +64 4 909 7190**

**or email us at: [advice@mps.org.nz](mailto:advice@mps.org.nz)**

**[www.medicalprotection.org/newzealand](http://www.medicalprotection.org/newzealand)**

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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MPS1488:

2 of 2