

Disclosures without consent



MPS



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Certain circumstances can mean you are obliged to disclose information about a patient, even if you do not have their consent; under other circumstances, disclosure may be justifiable. 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. You should not disclose any more information than is absolutely necessary.

The patient should be made aware of the disclosure, and informed about why you are disclosing the information, unless it is not practicable to do so; for example, if the patient cannot be contacted quickly enough, or if informing the patient would defeat the purpose of the disclosure. It is important to fully document any decisions about the disclosure of information you make.

You should not disclose information about a third party (who is not a healthcare professional involved in the patient's care) that may be contained in your patient's records, without their consent, unless it is reasonable in all the circumstances.

If you have any concerns about disclosing information, you should contact MPS.

Disclosures required by statute

A specific statutory requirement may demand that you disclose information about a patient, such as providing details of a notifiable disease or reporting child or elder abuse. You must also disclose patient information if ordered to do so by a judge or presiding officer of a court. However, there is the opportunity to object if you consider there to be a compulsion to disclose information that is irrelevant – for example, details relating to relatives or partners of the patient, who are not involved in any proceedings.

A statutory regulatory body in any of the healthcare professions may also submit an official request for you to disclose patient information, in such cases where the body deems it necessary in the interests of justice or to

ensure the safety of other patients. Where practicable, this disclosure should be discussed with the patient – but in exceptional cases, a disclosure may be necessary even if the patient objects.

It is also important to note that you should not disclose patient information to a third party such as a lawyer, police officer or officer of a court without the patient's express consent. This excludes the circumstances described at the beginning of this section.

There are also a number of instances in which you may be asked to disclose information about patients who have died. For more details on this, see the MPS factsheet *Disclosures Relating to Patients Unable to Consent*.

Justifiable disclosures in the public interest

The disclosure of information about a patient without their 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 to your relationship with the patient – by disclosing this information will outweigh the benefits resulting from the disclosure.

Before disclosing, you should satisfy yourself that the information cannot be anonymised and that you are only disclosing information relevant to the purpose of the disclosure. You should attempt to seek the patient's consent, but there are certain circumstances when this will not be possible – for example, if the patient lacks capacity, you are not able to trace the patient, obtaining consent undermines the purposes for which the disclosure was being made, or the disclosure must be made quickly, such as cases of detection or control of communicable diseases.

It is important to document any decision you make and your reasons for disclosing the information.

Disclosure to protect the patient or others from harm

The disclosure of a patient's personal information may be in the public interest, if it is likely to assist in the prevention of a serious and imminent threat to public health or national security, or reduce the risk of death or serious harm to the patient or a third party. This includes the prevention, detection and prosecution of a serious crime. The risk of harm must, in your opinion, outweigh the privacy interests of your patient.

If it has not been possible to seek the patient's consent to the disclosure, you need to judge whether or not the benefits to the patient, or to third parties, of disclosing the information outweigh the patient's interests in keeping this information confidential.

If the patient has refused consent to the disclosure, you should consider any reasons provided by the patient. If you still consider that disclosure is necessary to protect a third party from death or serious harm, you should disclose information promptly to the appropriate person or authority.

HIV/AIDS

If a patient forbids the disclosure of their HIV status, then this raises difficult ethical issues with regards to the patient's sexual partner, or partners. The HPCSA advises doctors to use their own discretion when deciding whether or not to inform the partner or partners of the patient's HIV status. The decision to disclose must be taken with great care, and with consideration of the risks to the patient – for example, retaliatory violence – and to the sexual health of the partner(s). The HPCSA ultimately says that any decision to disclose against the patient's wishes must still be made with the full knowledge of the patient.

The HPCSA's booklet, *Ethical Guidelines for Good Practice with Regard to HIV*, contains comprehensive information on this issue.

Further information

- MPS factsheets, *Confidentiality series* – www.medicalprotection.org/southafrica/factsheets
- HPCSA, *Confidentiality: Protecting and Providing Information* – www.hpcsa.co.za
- HPCSA, *Ethical Guidelines for Good Practice with Regard to HIV* – www.hpcsa.co.za
- The National Health Act 2003 – www.doh.gov.za/docs
- Children's Act 38, 2005 section 133 – www.doh.gov.za/docs/reports

For medicolegal advice please call us on:
0800 982 766 (toll free)
or email us at:
medical.rsa@mps-group.org

www.mps-group.org

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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