Disclosures without consent

Advice correct as of April 2015

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 information you disclose.

You should not disclose information about an identifiable 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

Legislation provides for the obligatory disclosure of information, under particular circumstances. Examples include the Criminal Appeal Act 1995, Terrorism Prevention and Investigation Measures Act 2011, Public Health (Control of Disease) Act 1984 and the Road Traffic Act 1988. For a comprehensive list of legislation requiring disclosure, and the circumstances in which disclosure is required, you should refer to the FAQ booklet that accompanies the GMC’s guidance on confidentiality.

Note, in particular, the following obligations:

- **NHS Counter Fraud investigations**
  Under the NHS Act 2006, investigations into fraud in the NHS may require access to confidential patient information. The investigators have the power to require the disclosure of the relevant parts of a patient’s record, should they believe that this is important to the investigation.

- **Disclosures to the GMC – investigation of a doctor’s fitness to practise**
  Under the Medical Act 1983, the GMC has the power to request access to a patient’s medical records for the purposes of an investigation into a doctor’s fitness to practise. Unless you are the doctor under investigation, you are obliged to comply with that request. However, it would be wise to ask the GMC if the patient’s consent can be obtained before disclosing confidential information. Where a patient declines to consent to disclosure they should usually be informed that disclosure will still need to take place.

Requests for confidential medical information from the police and other bodies may be accompanied by a reference to section 29a of the Data Protection Act 1998. This is an enabling act and does not compel disclosure of information, nor does it relieve a doctor of their ethical duty of confidentiality. The usual considerations as to whether the information should be disclosed would need to be weighed, namely whether the patient’s consent should be sought, and if consent was not forthcoming whether the disclosure could be justified in the public interest.

If you are uncertain whether you may be under a statutory obligation to disclose confidential information, you should contact MPS.

**Coroners’ investigations**

In certain circumstances, the coroner is required to investigate the circumstances of a death – for example, if the death occurred in a violent manner or in custody (for further information, see the MPS factsheet Reporting Deaths to the Coroner). You are obliged to disclose any information you may hold about the deceased that is likely to be relevant to the investigation.

**Courts or litigation**

Both civil and criminal courts have powers to order the disclosure of information in various circumstances.
A judge or presiding officer of the court can require you to disclose patient information. You should highlight the lack of patient consent and should object to the judge or the presiding officer if attempts are made to compel you to disclose what appear to you to be irrelevant matters, eg, matters relating to relatives or partners of the patient who are not party to the proceedings. The patient whose information is sought should be told about the order, unless that is not practicable or would undermine the purpose for which disclosure is sought.

Reporting patients to the DVLA

The Driver and Vehicle and Licensing Agency (DVLA) is legally responsible for deciding if a person is medically unfit to drive, and needs to know if a driver has a condition, or is undergoing treatment that may now, or in their future, affect their safety as a driver. The driver is legally responsible for informing the DVLA about such a condition or treatment. If a patient refuses to accept the diagnosis or will not inform the DVLA, you should speak to them, and if they continue to drive against your advice you should contact the DVLA and disclose any relevant information. You should tell the patient that you intend to make this disclosure and inform them in writing once you have done so.

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 the overall trust between doctors and patients – by disclosing this information will outweigh the benefits resulting from the disclosure.

You should try to ensure that the information is anonymised, if practicable, and that you are only disclosing information relevant to the purpose of the disclosure. Only in exceptional circumstances should non-anonymised data be disclosed.

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.

Disclosures 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 protect individuals or society from risks of serious harm, such as serious communicable diseases or serious crime, to reduce the risk of death or serious harm to the patient or a third party, or as a result of gunshot or knife wounds.

If it has not been possible to seek the patient’s consent, you may disclose personal information without consent if the benefits to an individual or to society of the disclosure outweigh both the public and patient’s interest in keeping the 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.

The ultimate decision about whether or not a disclosure was made in the public interest is determined by the courts. If you do disclose the information, and are required by the GMC to justify your decision, you need to ensure that your reasons are clearly documented.

However, if the purpose of the disclosure is to protect an incompetent patient from serious harm, there is an expectation that you will disclose the relevant confidential information – and if you chose not to disclose the information, you may be required to justify why you did not do so.

Communicable diseases

If a patient refuses to allow you to inform someone outside the healthcare team of their infection status, you must respect their wishes unless you consider that failure to disclose the information will put healthcare workers or other patients at risk of infection.

You should pass information about serious communicable diseases to the relevant authorities for communicable disease control and surveillance, using anonymised information if practicable.

Reporting gunshot and knife wounds

The GMC states that:

- You should inform the police quickly whenever a person arrives with a gunshot wound or an injury from an attack with a knife, blade or other sharp instrument (unless the knife or blade injury is
accidental, or a result of self-harm, in which case the police should not usually be informed). If you are unsure about the cause of the injury, the GMC advises that you should consult an experienced colleague, if possible.

The police are responsible for assessing the risk posed by those who are armed with, or have used, a gun or knife in a violent attack.

Personal information, such as the patient’s name and address, should not usually be disclosed in the initial contact with the police.

You should make a professional judgment about whether disclosure of personal information about a patient, including their identity, is justified in the public interest.

### Children and young people

If a child or young person under 18 presents with a gunshot, knife or other sharp instrument wound, you must inform an appropriate child protection lead or authority. Knife or blade injuries from domestic or occupational accidents might also raise concerns about the safety of children and young people.

See the child protection guidance in 0-18 Years: Guidance for all Doctors or the MPS factsheet on Safeguarding Children whenever you are concerned a child may have experienced or be at risk of harm.

If you are faced with further specific difficulties in relation to an individual patient, you should contact MPS for further advice.

### Further information

- GMC, Supplementary guidance – Confidentiality: Reporting Concerns About Patients to the DVLA or DVA (2009) – www.gmc-uk.org
- MPS factsheet, Safeguarding Children – www.medicalprotection.org/uk/factsheets