



General  
Medical  
Council

# Confidentiality:

a public consultation on our revised  
explanatory statements and the  
confidentiality section in  
*0–18: guidance for all doctors*

Working with doctors Working for patients

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# About this consultation

## We are consulting on revised guidance for all doctors on confidentiality

Confidentiality is central to the trust between doctors and patients. Patients have a right to expect that information about their health will be kept in confidence by their doctors. But confidentiality is not absolute, and doctors need to strike a balance between protecting confidential patient information and sharing information appropriately.

Our current guidance *Confidentiality* was published in 2009.<sup>\*</sup> Over the past year, we have been reviewing it to make sure that it is clear, helpful, relevant to doctors' needs and compatible with the law throughout the UK.<sup>†</sup> We have also reviewed the seven explanatory statements that give more detailed advice on how to apply the principles in the confidentiality guidance to situations that doctors often encounter, or find hard to deal with.

Our guidance is intended mainly for doctors, but it may also help patients, the public and other health and social care staff to understand what they can expect from doctors.

## Have your say on the explanatory statements

In this document, we are asking for feedback on the revised explanatory statements:

- **section A:** patients' fitness to drive and reporting concerns to the DVLA or DVA
- **section B:** disclosing information for employment, insurance and similar purposes
- **section C:** disclosing records for financial and administrative purposes
- **section D:** disclosing information about serious communicable diseases
- **section E:** reporting gunshot and knife wounds
- **section F:** disclosing information for education, training and for learning from adverse incidents and near misses
- **section G:** responding to criticism in the press.

Each section sets out the revised guidance and the consultation questions relating to it. You do not have to comment on all of the guidance if you prefer to focus on specific issues.

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<sup>\*</sup> You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>†</sup> You can find information about how we have developed the draft guidance at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview).

## Give us your views on the confidentiality section of *0–18: guidance for all doctors*

In **section H** of this document we are also asking for feedback on our current guidance for doctors on how the principles of confidentiality apply to children and young people.

We provide specific guidance on that in *0–18: guidance for all doctors*, which we intend to review over the next year. In preparation for that we are asking for your views on our current guidance.

### How do I take part?

This consultation runs from **25 November 2015** to **10 February 2016**. We welcome responses from anyone who has a view about this draft guidance.

The simplest way to read the explanatory statements and answer the questions is on our consultation website: <https://gmc.e-consultation.net>. You can also answer the questions using the text boxes in this document and send your completed response by:

- email to [confidentiality@gmc-uk.org](mailto:confidentiality@gmc-uk.org)
- post to Standards and Ethics team, General Medical Council, Regents Place, 350 Euston Road, London NW1 3JN.

Please contact us using the details above if you would like a printed copy.

### Consultation on the core guidance

We are separately consulting on the revised version of the core guidance *Confidentiality*.

You can respond to the detailed consultation on the draft core guidance or to a shorter questionnaire on the core guidance. You can access these online on our consultation website: <https://gmc.e-consultation.net>. You can also download the consultation documents from our guidance review pages at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview). You can also contact us at the details above if you would like a printed copy.

### How your responses will help

Your responses will help us to ensure that the guidance we give to doctors is clear, realistic and gives the right advice.

Our remit is UK wide, so our guidance needs to take into account the different healthcare and legal systems of Scotland, Northern Ireland, England and Wales. We welcome feedback on any areas where the guidance could be improved in this respect.

We have carefully considered the aims of the public sector equality duty in developing the guidance. The *Equality Act 2010* identifies nine characteristics that are protected by the legislation.\* Responses to this consultation will help us to understand how the principles in the guidance will affect doctors, patients and the public from across the protected characteristics. We therefore welcome your comments on whether any areas from the guidance could be strengthened from an equality perspective.

We may also use your response to help us develop case studies and other materials to illustrate how the guidance applies in practice.

We hope to publish the final version of the guidance in 2016.

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\* Age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

# Section A: Patients' fitness to drive and reporting concerns to the DVLA or DVA

## Draft guidance

**1** In our [draft] *Confidentiality* guidance we say:

7 Trust is an essential part of the doctor-patient relationship and confidentiality is central to this. Patients may avoid seeking medical help, or may under-report symptoms, if they think that their personal information will be disclosed by doctors without consent, or without the chance to have some control over the timing or amount of information shared.

122 Disclosing personal information without consent may be justified in the public interest if failure to disclose may expose others to a risk of death or serious harm.

124 Before considering whether disclosure of personal information would be justified in the public interest, you should seek the patient's consent to disclosure if it is safe and practicable to do so and consider any reasons given for refusal.

127 If a patient's refusal to consent to disclosure leaves others exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, or if it is not practicable or safe to seek the patient's consent, you should disclose the information promptly to an appropriate person or authority. You should inform the patient before disclosing the information, if it is practicable and safe to do so, even if you intend to disclose without their consent.

## Doctors' and patients' responsibilities

- 2** The Driver and Vehicle and Licensing Agency (DVLA) in England, Scotland and Wales and the Driver and Vehicle Agency (DVA) in Northern Ireland are legally responsible for deciding if a person is medically unfit to drive. This means they need to know if a person holding a driving licence has a condition or is undergoing treatment that may now, or in the future, affect their safety as a driver.
- 3** The driver is legally responsible for telling the DVLA or DVA about any such condition or treatment. Doctors should alert patients to conditions and treatments that might affect their ability to drive and remind them of their duty to tell the appropriate agency.

- 4 In some circumstances, patients may not be willing or able to tell the DVLA or DVA about a relevant treatment or condition. Doctors owe a duty of confidentiality to their patients, but they also have a wider duty to protect and promote the health of patients and the public.<sup>1</sup>
- 5 If a patient's failure or refusal to inform the DVLA or DVA exposes others to a risk of death or serious harm, doctors may be justified in disclosing information to the appropriate agency without the patient's consent.<sup>2</sup>

### **Assessing a patient's fitness to drive**

- 6 When diagnosing a patient's condition, or providing or arranging treatment, you should consider whether the condition or treatment may affect their ability to drive safely.
- 7 You should:
  - refer to the DVLA's guidance *For medical practitioners – at a glance guide to the current medical standards of fitness to drive*,<sup>3</sup> which includes information about disorders and conditions that can impair a patient's fitness to drive
  - seek the advice of an experienced colleague or the DVLA or DVA's medical adviser if you are not sure whether a patient may be unfit to drive.<sup>4</sup>

### **Reporting concerns to the DVLA or DVA**

- 8 If a patient has a condition or is undergoing treatment that could impair their fitness to drive, you should:
  - explain this to the patient
  - advise them that they have a legal duty to inform the DVLA or DVA.
- 9 If a patient is incapable of understanding this advice – for example, because of dementia – you should inform the DVLA or DVA as soon as practicable.
- 10 If a patient refuses to accept the diagnosis, or the effect of the condition or treatment on their ability to drive, you can suggest that they seek a second opinion, and help arrange for them to do so. You should advise the patient not to drive in the meantime.
- 11 If a patient continues to drive when they may not be fit to do so, you should make every reasonable effort to persuade them to stop. As long as the patient agrees, you may discuss your concerns with their relatives, friends or carers.

- 12 If you do not manage to persuade the patient to stop driving, or you discover that they are continuing to drive against your advice, you should ask for the patient's consent to disclose relevant information to the DVLA or DVA.
- 13 If the patient refuses to give consent, you should consider any reasons they give for refusing. If you conclude that a patient's refusal to give consent leaves others exposed to a risk of death or serious harm, you should contact the DVLA or DVA immediately and disclose any relevant medical information, in confidence, to the medical adviser.
- 14 Before contacting the DVLA or DVA, you should try to inform the patient of your decision to disclose personal information. You should then also inform the patient in writing once you have done so.

### **Responding to requests for information from the DVLA or the DVA**

- 15 If you agree to prepare a report or complete or sign a document to assist the DVLA's or the DVA's assessment of a patient's fitness to drive, you should do so without unreasonable delay.

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#### **Endnotes**

<sup>1</sup> See *The duties of a doctor registered with the General Medical Council* in *Good medical practice*, which you can find at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>2</sup> The principles in this guidance also apply if you are concerned that a patient who holds a private or commercial pilot licence may be medically unfit to fly an aircraft. You can contact the UK Civil Aviation Authority's medical department on 01293 573700 or at [medicalweb@caa.co.uk](mailto:medicalweb@caa.co.uk) for advice.

<sup>3</sup> You can find this at [www.gov.uk/government/publications/at-a-glance](http://www.gov.uk/government/publications/at-a-glance).

<sup>4</sup> You can contact the DVLA's medical advisers on 01792 782337 or at [medadviser@dvla.gsi.gov.uk](mailto:medadviser@dvla.gsi.gov.uk), and the DVA on 028 703 41369.

## What has changed in *Patients' fitness to drive and reporting concerns to the DVLA or DVA*?

This revised draft has not changed substantially from the current guidance *Confidentiality: reporting concerns about patients to the DVLA or the DVA*<sup>\*</sup> except that it:

- contains a more overt expression of doctors' duties to protect and promote the health of patients and the public, as well as to respect confidentiality
- makes clear that doctors should consider whether a patient's condition or treatment may affect their ability to drive safely
- confirms that the same principles apply if doctors are concerned that a patient who holds a private or commercial pilot licence may be medically unfit to fly an aircraft.

## Questions

**A1** Do you agree with the advice in *Patients' fitness to drive and reporting concerns to the DVLA or DVA*?

Yes ☐

No ☐

Not sure ☐

## Comments

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<sup>\*</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality.asp](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp).



# Section B: Disclosing information for employment, insurance and similar purposes

## Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

111 As a rule, you should seek a patient's explicit consent before disclosing identifiable information for purposes other than the provision of their care or local clinical audit, such as financial audit and insurance or benefits claims.

112 Third parties, such as a patient's insurer or employer, or a government department, or an agency assessing a claimant's entitlement to benefits, may ask you for personal information about a patient, either following an examination or from existing records. In these cases, you should:

- be satisfied that the patient has sufficient information about the scope, purpose and likely consequences of the examination and disclosure, and the fact that relevant information cannot be concealed or withheld from a report
- obtain or have seen written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf. You may accept an assurance from an officer of a government department or agency or a registered health professional acting on their behalf that the patient or a person properly authorised to act on their behalf has consented
- only disclose factual information you can substantiate, presented in an unbiased manner, which is relevant to the request. You should not usually disclose the whole record, although it may be relevant to some benefits paid by government departments and to other assessments of a patient's entitlement to pensions or other health-related benefits
- offer to show your patient, or give them a copy of, any report you write about them for employment or insurance purposes before it is sent, unless:
  - they have already indicated they do not wish to see it
  - disclosure would be likely to cause serious harm to the patient or anyone else

- disclosure would be likely to reveal information about another person who does not consent.<sup>1</sup>

113 If a patient refuses or withdraws consent, or if it is not practicable to get their consent, you can still disclose information if it is required by law or can be justified in the public interest.

- 2 One of the core duties of a doctor registered with the GMC is to make the care of their patient their first concern. The term 'patient' in this guidance also refers to employees, clients, claimants, athletes and anyone else whose personal information you hold or have access to, whether or not you care for them in a traditional therapeutic relationship.<sup>2</sup>

### **When do doctors have dual obligations?**

- 3 There are many circumstances in which you might be asked to disclose information from existing records or after examining a patient, and in which you face dual obligations. By this we mean that you have obligations both to the patient and to the person or organisation that has requested the information.
- 4 Usually, dual obligations arise when a doctor works for, is contracted by, or otherwise provides services to:
  - a patient's employer (as an occupational health doctor)
  - an insurance company
  - an agency assessing a claimant's entitlement to benefits
  - the police (as a police surgeon)
  - the armed forces
  - the prison service
  - a sports team or association.<sup>3</sup>
- 5 Alternatively, a person or organisation you have previously had no direct relationship with, such as your patient's employer or insurance company, might ask you to provide a medical report or information about a patient. You might be offered payment for your own or your staff's time and effort, giving rise to an obligation in addition to the one you have to your patient.

## How much information should you disclose?

- 6 You should only disclose information that is relevant to the request, which means that you should not usually disclose a patient's whole record. There are two exceptions to this general rule.
- **Benefit claims:** the patient's whole record may be relevant to some benefits paid by government departments or agencies.
  - **Legal processes:** a solicitor may need to see their client's whole record to assess which parts are relevant, for example, to personal injury claims. If the claim goes ahead, the person against whom the claim is made may ask for copies of important documents, which could include records containing the patient's medical history. Under court rules in England and Wales, they can see the patient's whole record and the solicitor should explain this to the patient. In Northern Ireland and Scotland, you should disclose your patient's record in accordance with their wishes or as ordered by a court.<sup>4</sup>

## Writing reports

- 7 When writing a report<sup>5</sup> you must:
- make sure that it is not false or misleading – you must take reasonable steps to check the information in the report is correct, and you must not deliberately leave out relevant information
  - restrict the report to areas in which you have direct experience or relevant knowledge
  - make sure that any opinion you include is balanced, and be able to state the facts or assumptions on which it is based.<sup>6</sup>

## Disclosing a report about a patient

- 8 You do not need to ask for separate consent to release a report following an examination as long as you are satisfied that the patient has given informed consent both for the examination and for the release of any subsequent reports (see paragraph 112 of *Confidentiality*, which is reproduced at the top of this statement).
- 9 You should, however, usually offer to show your patient or give them a copy of any report you write about them for employment or insurance purposes before it is sent.<sup>7</sup>
- 10 If a patient asks you to amend a report, you should correct any errors of fact and any opinion that is based on errors of fact. You should not remove information, opinion or advice if you believe the report would be false or misleading as a result.

- 11** If a patient withdraws consent for the report to be disclosed, it may be appropriate for you to explain to the patient the potential consequences for them of that decision. For example, the absence of occupational health information could disadvantage the patient in negotiations with their employer. You must, however, respect the patient's wishes unless the disclosure is required by law or can be justified in the public interest.<sup>8</sup>
- 12** When you are satisfied a report should be disclosed, you should complete and send the report without unreasonable delay.

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## Endnotes

<sup>1</sup> If any of the exceptions apply, you should still disclose as much of the report as you can. The Department for Work and Pensions publishes advice about reports for benefits purposes at [www.gov.uk/government/collections/healthcare-practitioners-guidance-and-information-from-dwp](http://www.gov.uk/government/collections/healthcare-practitioners-guidance-and-information-from-dwp).

<sup>2</sup> This guidance applies to disclosure of information obtained directly from a patient, or from a patient's medical record, or from another health professional. It does not apply if opinions are based solely on information provided by the person or body that is commissioning the opinion.

<sup>3</sup> Doctors might provide their services to professional sports clubs (where the dual obligation is to both the patient and the club, which is very similar to the dual obligation of an occupational health doctor) or to associations (where the dual obligation is both to the patient and to a governing body or team of selectors).

<sup>4</sup> The Law Society and British Medical Association jointly publish model consent forms authorising the release of health records to solicitors under the *Data Protection Act 1998*. The forms include notes for clients, solicitors and medical records controllers. You can find them at [www.bma.org.uk/support-at-work/ethics/confidentiality-and-health-records](http://www.bma.org.uk/support-at-work/ethics/confidentiality-and-health-records).

<sup>5</sup> See *Good medical practice*, paragraphs 71–74, which you can find at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>6</sup> See *Acting as a witness in legal proceedings*, which you can find at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>7</sup> In some circumstances, patients are entitled to see a report that has been written about them under the *Access to Medical Reports Act 1988*. See the legal annex of *Confidentiality* for more details. If the patient has no legal right to see the report, you should follow the guidance in paragraph 111 (d) of *Confidentiality*, which is reproduced at the start of this explanatory statement.

<sup>8</sup> Disclosing personal information about a patient without consent may be justified in the public interest if failure to do so may expose others to a risk of death or serious harm.

## What has changed in *Disclosing information for employment, insurance and similar purposes*?

### Our guidance on sharing reports with patients before they are disclosed

In the current *Confidentiality* guidance, we say that doctors should offer to show patients reports they write about them for employment or insurance or similar purposes before sending to the person or organisation that asked for the report, unless:

- the patient has already indicated that they do not wish to see it
- disclosure would be likely to cause serious harm to the patient or anyone else
- disclosure would be likely to reveal information about another person who does not consent.

This guidance is reproduced in the current explanatory statement *Confidentiality: disclosing information for insurance, employment and similar purposes*.<sup>\*</sup>

The purpose of this advice is to make sure that patients have the opportunity to correct errors of fact before they are seen by the person or organisation that asked for the report. It is also to make sure that there are no surprises for patients about what doctors tell employers and others about them.

Some doctors have however expressed concern that this advice gives patients the opportunity to withdraw consent to disclose a report if they disagree with its contents. They have told us that this can cause significant difficulties for the people or organisations asking for the report – such as employers or pension fund administrators – as they cannot access information about the patient's health that they need to make an informed decision.

### The basis for our guidance and proposed changes to it

As far as we understand the position, patients are entitled to withdraw consent for a report to be disclosed unless there are legal requirements or overriding public interests involved – for example, disclosure without consent may be justified if failure to share the report might leave someone at risk of death or serious harm. We also know that patients place great value on being able to influence the timing or content of information that is disclosed about them.

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<sup>\*</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

We have therefore retained the advice that all doctors should offer to show reports to patients before sending them to the commissioner, but we have amended the guidance to address other concerns that have been raised. For example:

- we now make clear 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
- we say 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
- we say that it may be appropriate to explain to a patient the potential consequences of withholding a report – for example, that they may be disadvantaged in negotiations with their employer – if the patient indicates that they wish to withdraw consent.

## Questions

**B1 Do you agree that all doctors should offer to show reports to patients before they are sent to the person or organisation who has commissioned the report, unless one of the conditions set out in the guidance applies?**

Yes ☐ No ☐ Not sure ☐

**Comments**

**B2 Do you have any other comments on *Disclosing information for employment, insurance and similar purposes*?**

Yes ☐ No ☐

**Comments**

# Section C: Disclosing records for financial and administrative purposes

## Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

81 There are many important uses of patient information that contribute to the overall delivery of healthcare, but which fall outside the scope of direct care. Examples of indirect care uses include health services management, research, epidemiology, public health surveillance, and education and training.

82 Without patient information the health and social care system would be unable to plan, develop, innovate, conduct research or be publicly accountable for the services it provides. But anonymised or de-identified information will often be sufficient for such purposes and must be used in preference to identifiable patient information wherever possible. When identifiable information is needed, or it is not practicable to remove identifiable information, it will often be possible to get a patient's explicit consent.

94 You must disclose information if it is required by law. You should:

- satisfy yourself that there is a legal basis for the disclosure
- only disclose information that is relevant to the request, and only in the way required by the law
- tell patients about disclosures whenever practicable, unless it would undermine the purpose of the disclosure to do so
- respect patient objections where there is provision to do so.

96 You may disclose identifiable information without consent if the disclosure has been approved through a statutory process such as that provided by section 251 of the *National Health Service Act 2006*. You should not disclose personal information if the patient has objected.

29 Personal information may be disclosed in the public interest, without a patient's consent, and in exceptional cases where a patient has refused consent, if the disclosure serves an important public interest and the benefits

to an individual or to society of the disclosure outweigh both the public and the patient's interest in keeping the information confidential. You must weigh the harms that are likely to arise from non-disclosure of information against the possible harm both to the patient, and to the overall trust between doctors and patients, arising from the release of that information.

103 Before considering whether disclosure of identifiable information without patients' consent may be justified in the public interest, you must be satisfied that it is:

- necessary to use identifiable information
- not reasonably practicable to anonymise or de-identify the information.

In either case, you must be satisfied that it is not practicable to seek consent or that efforts to contact the patient to ask for consent have been unsuccessful.

## **Managing patient records**

- 2 If you are responsible for managing health records or other information about patients, you should make sure that financial and administrative information is recorded separately from clinical information.

## **Responding to requests for information**

- 3 If you are asked to disclose information about patients for financial or administrative purposes, you should give it in an anonymised or de-identified form, if that is practicable and will serve the purpose.<sup>1</sup> If identifiable information is needed, you should, if practicable, seek the patient's explicit consent before disclosing it, unless the disclosure is required by law.
- 4 If it is not practicable to seek consent, identifiable information may be disclosed if it is approved under section 251 of the *NHS Act 2006*,<sup>2</sup> or if it can be justified in the public interest.<sup>3</sup>
- 5 Identifiable information may also be disclosed if it is permitted under another regulation that provides a statutory exemption to the common law duty of confidentiality. For example, commissioners have some rights to request personal information held by general practices for reviews as part of the quality and outcomes framework, or for managing healthcare services, although they should usually respect patients' objections. See the directions on confidentiality and disclosure of information and the code of practice for the relevant country for more information.<sup>4</sup>



- 6 You must disclose information if it is required by law – for example, when the NHS Counter Fraud Service is investigating fraud.<sup>5</sup>
- 7 You should satisfy yourself that anyone who will have access to patients' personal information is bound by a duty of confidentiality not to disclose it further.

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## Endnotes

<sup>1</sup> For guidance on anonymised and de-identified information, see paragraphs 83–89 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview).

<sup>2</sup> Section 251 of the *NHS Act 2006* (which only applies in England and Wales) allows the Secretary of State for Health to make regulations to set aside the common law duty of confidentiality for defined medical purposes where it is not possible to use anonymised information and where seeking consent is not practicable. See also paragraphs 96–99 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview).

<sup>3</sup> See paragraphs 100–106 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview).

<sup>4</sup> *Confidentiality and Disclosure of Information Directions (General Medical Services, Personal Medical Services, Alternative Provider Medical Services) Directions 2013* and *Code of Practice (Department of Health, 2013)*

*Confidentiality and Disclosure of Information: General Medical Services and Alternative Provider Medical Services Directions (Northern Ireland) 2006* and *Code of Practice (Department of Health, Social Services and Public Safety, 2006)*

*Confidentiality and Disclosure of Information: General Medical Services (GMS), Section 17c Agreements, and Health Board Primary Medical Services (HBPMS) Directions 2005* and *Code of Practice (Scottish Executive Health Department, 2005)*

*Confidentiality and Disclosure of Information: General Medical Services and Alternative Provider Medical Services Directions 2006* and *Code of Practice (Welsh Assembly Government, 2005)*.

<sup>5</sup> See paragraphs 93–95 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview).

## What has changed in *Disclosing records for financial and administrative purposes*?

The current guidance *Confidentiality: disclosing records for financial and administrative purposes*<sup>\*</sup> contains the following paragraph:

4 You must draw attention to any system that prevents you from following this guidance, and recommend change. Until changes are made, you should make sure that information is readily available to patients explaining that their personal information may be disclosed for financial, administrative and similar purposes, and what they can do if they object. If a patient asks, you should explain the nature and purpose of disclosures made for financial and administrative purposes. You should do your best to act on any objections. If you are satisfied that it is not possible to comply with the patient's wishes, and still provide care, you should explain this to the patient and explain their options.

The purpose of this paragraph is to recognise that doctors might find themselves working within administrative systems that prevent them meeting the standards in our guidance. We have removed this paragraph to test the continuing need for it.

We have also clarified in paragraph 5 of the revised statement that information may be disclosed if it is permitted under a regulation that provides a statutory exemption to the common law duty of confidentiality. We do not give detailed guidance on how these regulations operate, however, and instead direct doctors to the relevant code of practice.

## Questions

**C1 Do you think we should continue to include paragraph 4 of the current statement?**

Yes ☐ No ☐ Not sure ☐

**C2 Do you have any other comments on *Disclosing records for financial and administrative purposes*?**

Yes ☐ No ☐

## Comments

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<sup>\*</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

# Section D: Disclosing information about serious communicable diseases

## Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

7 Trust is an essential part of the doctor-patient relationship and confidentiality is central to this. Patients may avoid seeking medical help, or may under-report symptoms, if they think that their personal information will be disclosed by doctors without consent, or without the chance to have some control over the timing or amount of information shared.

23 You must disclose information if it is required by statute, or if you are ordered to do so by a judge or presiding officer of a court.

26 You should only disclose information that is relevant to the request. Wherever practicable you should tell patients about disclosures, unless that would undermine the purpose (for example, by prejudicing the prevention or detection of serious crime).

122 Disclosing personal information without consent may be justified in the public interest if failure to disclose may expose others to a risk of death or serious harm.

124 Before considering whether disclosure of personal information would be justified in the public interest, you should seek the patient's consent to disclosure if it is safe and practicable to do so and consider any reasons given for refusal.

127 If a patient's refusal to consent to disclosure leaves others exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, or if it is not practicable or safe to seek the patient's consent, you should disclose the information promptly to an appropriate person or authority. You should inform the patient before disclosing the information, if it is practicable and safe to do so, even if you intend to disclose without their consent.

2 Confidentiality is important to all patients. Those who have, or may have, a serious communicable disease might be particularly concerned about their privacy. You should make sure that information you hold or control about a patient's infection status is at all times effectively protected against improper disclosure. All patients are

entitled to good standards of care, regardless of their status, what disease they might have, or how they acquired it.

### **Protecting patients from any risk posed by your or your colleagues' health**

#### **3** *Good medical practice*<sup>1</sup> says:

28 If you know or suspect that you have a serious condition that you could pass on to patients, or if your judgement or performance could be affected by a condition or its treatment, you must consult a suitably qualified colleague. You must follow their advice about any changes to your practice they consider necessary. You must not rely on your own assessment of the risk to patients.

29 You should be immunised against common serious communicable diseases (unless otherwise contraindicated).

- 4 You should raise any reasonable concern you have about a colleague who has a serious communicable disease and practises, or has practised, in a way that puts patients at risk of infection.
- 5 You should inform your colleague's employing or contracting body of your concerns, preferably through its occupational health service or, where appropriate, their regulatory body. You should inform your colleague before passing the information on, as long as it is practicable and safe to do so.
- 6 For more advice on colleagues who might pose a risk to patients, see our guidance *Raising and acting on concerns about patient safety*.

### **Disclosing information about patients who are diagnosed with a serious communicable disease**

- 7 You should make sure information is readily available to patients, explaining that personal information about them will be shared within the healthcare team, including with administrative and other staff who support the direct care of the patient, unless they object, and why this is necessary.
- 8 If a patient refuses to allow you to tell someone outside the healthcare team about their infection status, you must respect their wishes unless you believe that failing to disclose the information will put your colleagues or other patients at risk of infection. Such situations are likely to be very rare, not least because of the use of universal precautions to protect healthcare professionals and patients, particularly during exposure-prone procedures.<sup>2</sup>

- 9 You should explain to patients how they can protect others from infection. This includes the practical measures they can take to avoid transmission, and the importance of informing people with whom they have sexual contact about the risk of sexual transmission of serious communicable diseases.

### **Informing people at risk of sexual transmission of disease**

- 10 You may disclose information to a person who has sexual contact with a patient who has a sexually transmitted serious communicable disease if you have reason to think that:

- they are at risk of infection
- the patient has not informed them and cannot be persuaded to do so.

You should tell the patient before you disclose the information if it is practicable and safe to do so. You must be prepared to justify a decision to disclose personal information without consent.

- 11 When you are tracing and notifying people, you should not disclose the identity of the patient, if practicable.

### **Disclosing information when children and young people are at risk of a serious communicable disease**

- 12 Your patient must be your first concern but you should also consider, and act in the best interests of, your patient's children.
- 13 Most patients with a serious communicable disease who are parents of, or care for, children will do all they can to protect the children from the risk of infection or the effects of the disease. You should make sure that the patient understands the information and advice you provide, which should be tailored to their needs. You should do all you reasonably can to support them in caring for themselves and in protecting their children.
- 14 You should explain to a patient with a serious communicable disease the importance of testing any children who may already be infected, including children without symptoms and young people who might have been vertically infected with a blood-borne virus.
- 15 If you are concerned that a child is at risk of serious harm because their parents cannot be persuaded to protect them from the risk of infection, or because they

refuse to allow the child to be tested, you should seek legal advice about whether to apply to court for a decision on the child's best interests.

- 16** See *0–18 years: guidance for all doctors* for more information about confidentiality and consent when caring for children and young people and *Protecting children and young people: the responsibilities of all doctors* for specific guidance on child protection.

### **Disclosing information about injuries to colleagues and others**

- 17** If a colleague, police officer or anyone else suffers a needlestick or similar injury involving a patient who has, or may have, a serious communicable disease, you should make sure that a risk assessment is made urgently by an appropriately qualified colleague. Post-exposure prophylaxis should be offered in accordance with that risk assessment, depending on the type of body fluid or substance involved and the route and severity of the exposure.
- 18** You should ask for the patient's consent to disclose their infection status after other people have been exposed to a serious communicable disease. If the patient cannot be persuaded to consent to disclosure, or if it is not safe or practicable to ask for their consent, you may disclose information in the public interest. This could be, for example, if the information is needed for decisions about the continued appropriateness of post-exposure prophylaxis.

### **Recording serious communicable diseases on death certificates**

- 19** If a serious communicable disease has contributed to the cause of death, you must record this on the patient's death certificate.

### **Control and surveillance of serious communicable diseases**

- 20** You should pass information about serious communicable diseases to the relevant authorities for communicable disease control and surveillance. You should use anonymised or de-identified information, if practicable and as long as it will serve the purpose.

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#### **Endnotes**

<sup>1</sup> You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>2</sup> Universal precautions, otherwise known as standard infection control precautions, are the basic infection prevention and control measures necessary to reduce the risk of transmitting infectious agents. Disclosing information about a patient's infection status is unlikely to be justified if the risk of transmission is likely to be managed through the use of standard precautions that are already in place. Guidance on infection control is provided by Health Protection Scotland, NHS Wales, DHSSPS Northern Ireland and the Department of Health in England.

## What has changed in *Disclosing information about serious communicable diseases*?

We often receive enquiries about whether information about a patient's infection status should be passed without consent to a healthcare professional providing treatment, particularly if they are carrying out exposure-prone procedures (such as dentistry or surgery).

Our current guidance *Confidentiality: disclosing information about serious communicable diseases*<sup>1</sup> says that disclosure without consent can be justified in the public interest if failure to disclose the information will put your colleagues or other patients at risk of infection. But we say that it is likely to be rare where universal precautions (otherwise known as standard infection control precautions) are in use.

In the revised draft guidance, we have expanded on this in the footnote to say that disclosing information about a patient's infection status is unlikely to be justified if the risk of transmission is likely to be managed through the use of standard precautions that are already in place.

The rest of the statement is substantially unchanged from the current guidance.

## Questions

**D1** Do you agree with the advice in *Disclosing information about serious communicable diseases*?

Yes ☐

No ☐

Not sure ☐

## Comments

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<sup>1</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

# Section E: Reporting gunshot and knife wounds

## Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

7 Trust is an essential part of the doctor-patient relationship and confidentiality is central to this. Patients may avoid seeking medical help, or may under-report symptoms, if they think that their personal information will be disclosed by doctors without consent, or without the chance to have some control over the timing or amount of information shared.

122 Disclosing personal information without consent may be justified in the public interest if failure to disclose may expose others to a risk of death or serious harm.

124 Before considering whether disclosure of personal information would be justified in the public interest, you should seek the patient's consent to disclosure if it is safe and practicable to do so and consider any reasons given for refusal.

127 If a patient's refusal to consent to disclosure leaves others exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, or if it is not practicable or safe to seek the patient's consent, you should disclose the information promptly to an appropriate person or authority. You should inform the patient before disclosing the information, if it is practicable and safe to do so, even if you intend to disclose without their consent.

2 The guidance in *Confidentiality* applies to all serious crime, but gunshot and knife wounds raise issues that warrant special consideration.

3 This guidance describes a two-stage process.

- a 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. This will enable the police to assess the risk to the patient and others, and to gather statistical information about gun and knife crime in the area. Personal information, such as the patient's name and address, should not usually be disclosed in the initial contact with the police.



- b** You should seek the patient's consent to disclose personal information to the police if it is safe and practicable to do so. If consent is refused or cannot be obtained, you should make a professional judgement about whether disclosing personal information about a patient, including their identity, is justified in the public interest.

## **Reporting gunshot and knife wounds**

- 4** The police are responsible for assessing the risk posed by a member of the public who is armed with, and has used, a gun or knife in a violent attack. They need to consider:
  - the risk of a further attack on the patient
  - the risk to staff, patients and visitors in the emergency department or hospital
  - the risk of another attack near to, or at, the site of the original incident.
- 5** For this reason, the police should be informed whenever a person arrives at hospital with a gunshot wound. Even accidental shootings involving lawfully held guns raise serious issues for the police about, for example, firearms licensing.
- 6** The police should also be informed when a person arrives at a hospital with a wound from an attack with a knife, blade or other sharp instrument.
- 7** The police should not usually be informed if a knife or blade injury is accidental, or a result of self-harm. If you are in doubt about the cause of the injury, you should if possible consult an experienced colleague.
- 8** Quick reporting at this stage may help prevent further incidents or harm to others. If you are responsible for the patient, you should make sure that the police are contacted, but you can delegate this task to another member of staff.
- 9** Personal information, such as the patient's name and address, should not usually be disclosed in the initial contact with the police. The police will respond even if the patient's identity is not disclosed. The police need to be informed quickly to respond to the risk to patients, staff and the public. They also need statistical information about the number of gunshot and knife injuries, and when and where they occur, to inform their own and their crime reduction partners' operational and strategic priorities.

## **Making the care of the patient your first concern**

- 10** When the police arrive, you should not allow them access to the patient if this will delay or hamper treatment or compromise the patient's recovery.
- 11** If the patient's treatment and condition allow them to speak to the police, you or another member of the healthcare team should ask the patient whether they are willing to do so. If they are not, you should explain what the consequences, if any, might be. You, the rest of the healthcare team, and the police must abide by the patient's decision.

## **Disclosing personal information without consent**

- 12** If it is probable that a crime has been committed, the police will ask for more information. If practicable, you should ask for the patient's consent before disclosing personal information unless, for example, doing so:
  - may put you or others at risk of serious harm
  - would be likely to undermine the purpose of the disclosure, by prejudicing the prevention, detection or prosecution of a crime.
- 13** If the patient cannot give consent (eg because they are unconscious) or refuses to disclose information or to allow you or your colleagues to do so, you can still disclose information if it is required by law or if you believe it is justified in the public interest.
- 14** Disclosures in the public interest may be justified when:
  - failure to disclose information may put the patient, or someone else, at risk of death or serious harm
  - disclosure is likely to help in the prevention, detection or prosecution of a serious crime.
- 15** If there is any doubt about whether disclosure without consent is justified, the decision should be made by, or with the agreement of, the consultant in charge or the healthcare organisation's Caldicott or data guardian.
- 16** You must document in the patient's record your reasons for disclosing information without consent and any steps you have taken to seek their consent or inform them about the disclosure, or your reasons for not doing so.
- 17** You should tell the patient that a disclosure has been made unless it is not practicable or safe to do so.

- 18** If there is no immediate reason for disclosing personal information in the public interest, no further information should be given to the police. The police may seek an order from a judge or a warrant for the disclosure of confidential information.<sup>1</sup>
- 19** You should tell those responsible for the continuing care of the patient that further discussion with the patient is needed to make sure, for example, that they are fit to hold a shot gun or firearms licence.<sup>2</sup>

## Children and young people

- 20** Any child or young person under 18 years arriving with a gunshot wound or a wound from an attack with a knife, blade or other sharp instrument will raise child protection concerns. You must inform an appropriate person or authority promptly of any such incident.
- 21** Knife or blade injuries from domestic or occupational accidents might also raise serious concerns about the safety of children and young people. You should consider the advice in *Protecting children and young people: the responsibilities of all doctors*<sup>3</sup> whenever you are concerned that a child may be the victim of abuse or neglect.
- 22** You must be able to justify a decision not to share a concern that children or young people are at risk of abuse, neglect or other serious harm, having taken advice from a named or designated doctor for child protection, an experienced colleague or a defence or professional body.

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## Endnotes

<sup>1</sup> See schedule 1 of the *Police and Criminal Evidence Act 1984*, schedule 1 of the *Police and Criminal Evidence (Northern Ireland) Order 1989* and section 135 of the *Criminal Procedure (Scotland) Act 1995*. The police can also use powers to seize evidence, such as clothing, that may help in detecting or prosecuting crime.

<sup>2</sup> The police are responsible for deciding whether an individual is fit to hold a shot gun or firearms licence. Disclosure of information to the police may be justified in the public interest to inform this decision if failure to disclose the information may expose others to a risk of death or serious harm.

<sup>3</sup> You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

## What has changed in *Reporting gunshot and knife wounds*?

We have re-sequenced this guidance to make it easier to follow. The advice is however substantially unchanged from the current guidance *Confidentiality: reporting gunshot and knife wounds*,\* except that we now expressly say (in the footnotes) that disclosures to the police for shot gun and firearms licensing can be justified in the public interest if failure to disclose the information may expose others to a risk of death or serious harm.

### Questions

**E1** Do you agree with the advice in *Reporting gunshot and knife wounds*?

Yes ☐

No ☐

Not sure ☐

### Comments

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\* [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

# Section F: Disclosing information for education, training and for learning from adverse incidents and near misses

## Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

81 There are many important uses of patient information that contribute to the overall delivery of healthcare, but which fall outside the scope of direct care. Examples of indirect care uses include health services management, research, epidemiology, public health surveillance, and education and training.

82 Without patient information the health and social care system would be unable to plan, develop, innovate, conduct research or be publicly accountable for the services it provides. But anonymised or de-identified information will often be sufficient for such purposes and must be used in preference to identifiable patient information wherever possible. When identifiable information is needed, or it is not practicable to remove identifiable information, it will often be possible to get a patient's explicit consent.

29 Personal information may be disclosed in the public interest, without a patient's consent, and in exceptional cases where a patient has refused consent, if the disclosure serves an important public interest and the benefits to an individual or to society of the disclosure outweigh both the public and the patient's interest in keeping the information confidential. You must weigh the harms that are likely to arise from non-disclosure of information against the possible harm both to the patient, and to the overall trust between doctors and patients, arising from the release of that information.

103 Before considering whether disclosure of identifiable information without patients' consent may be justified in the public interest, you must be satisfied that it is:

- necessary to use identifiable information
- not reasonably practicable to anonymise or de-identify the information.

In either case, you must be satisfied that it is not practicable to seek consent or that efforts to contact the patient to ask for consent have been unsuccessful.

- 2 The use of information about patients is essential to the education and training of medical students, doctors in training and other healthcare students and trainees, and for learning lessons from adverse incidents and near misses.
- 3 For most of these uses, anonymised information will be sufficient and must be used whenever practicable. If it is necessary to use identifiable information about a patient, or it is not practicable to anonymise information, you should ask for the patient's explicit consent before disclosing it to anyone who is not part of the healthcare team that is providing or supporting the patient's direct care.
- 4 You should make sure that the patient is under no pressure to consent. In particular, you should avoid any impression that their care depends on giving consent.

### **Teaching and training**

- 5 Most patients understand and accept that the education and training of medical students, doctors in training and other healthcare students and trainees relies on them having access to information about patients.
- 6 If doctors in training are part of the healthcare team providing or supporting a patient's direct care, they can have access to the patient's personal information like other team members, unless the patient objects.<sup>1</sup>
- 7 If students need access to a patient's personal information, but are not providing or supporting the patient's care, anonymised information should be used whenever possible. This may not be practicable when they are directly involved in the patient's care, for example, on ward rounds, but it will then usually be practicable to ask for the patient's explicit consent to disclose their information.<sup>2</sup>
- 8 It might be necessary to disclose personal information, or not practicable to anonymise it, and also not practicable to ask for a patient's explicit consent to disclosure. However, if information has been made readily available to the patient about the disclosure and of their right to object, and they have not objected, you may disclose personal information necessary for educating medical and other healthcare students.

## **Disclosing information to secondary school and college students**

- 9** Doctors are sometimes asked to provide work experience for secondary school or further education college students, which may include allowing them to be present during consultations with patients.
- 10** You should ask for the patient's explicit consent to a student observing their care. You should also satisfy yourself that the student's presence does not adversely affect the patient's care, for example, by inhibiting frank discussion.
- 11** You should make sure that the student understands the importance of respecting confidentiality and that their school or college takes seriously its responsibilities for its students' conduct.<sup>3</sup>

## **Patients who lack capacity**

- 12** You should not disclose personal information for education and training purposes about patients who lack capacity if you can practicably use information about other patients instead.
- 13** If you wish to disclose personal information about a patient who lacks capacity but who is likely to regain capacity, you should, if practicable, wait and ask for their consent later.
- 14** If you are asked, or want, to disclose information about a patient who lacks capacity, you should seek the views of anyone the patient asks you to consult, or who has legal authority to make decisions on their behalf,<sup>4</sup> or who has a close personal relationship with the patient. They may be able to give you an indication of the patient's previously expressed preferences, views and beliefs.
- 15** You may disclose personal information about a patient who lacks capacity to consent if disclosure is justified in the public interest, and it is not contrary to the best interests of the patient to disclose the information.
- 16** In the absence of any indication about the preferences of a patient who lacks capacity, you should not publish information from which they can be identified. You may, however, disclose personal information to medical students, doctors in training and other healthcare students and trainees to the extent necessary for their education and training.

## **Training records and case studies**

- 17** You must anonymise patient information in training records and case studies if it is practicable to do so.

- 18** It may be difficult to anonymise information about patients while retaining enough detail to make the case study or record useful. Simply changing a patient's name will often not anonymise the information if other identifying details are included, such as age, sex, location or a detailed account of the patient's illness and treatment.
- 19** If you cannot anonymise the information, you should ask for the patient's consent before disclosing it. When asking for the patient's consent, you must provide them with enough information about the nature and purpose of the disclosure to enable them to make an informed decision. This should include a description of the information to be disclosed and an indication of who will have access to it and how it will be used, for example, whether it will be published in a journal or shown at a medical conference.
- 20** You must then disclose that information only for the purposes for which the patient has given consent.
- 21** If for any reason you cannot get a patient's consent – for example, because the information you want to disclose is so old that efforts to trace the patient have been or are likely to be unsuccessful – you will need to consider whether disclosing the information can be justified in the public interest.<sup>5</sup>
- 22** You should respect a patient's refusal to consent to the use or publication of their identifiable information.

### **Learning from adverse incidents and near misses**

- 23** When something goes wrong with a patient's care, it is crucial that it is reported at an early stage so that lessons can be learnt quickly and patients can be protected from harm in the future. Healthcare organisations should have a policy for reporting adverse incidents and near misses, and you must follow your organisation's policy.<sup>6</sup>
- 24** It is also important for the healthcare team and wider organisation to share lessons learnt from analysing adverse incidents and near misses, and to change practice where needed. Opportunities such as morbidity and mortality meetings, case studies, newsletters and presentations can be effective in highlighting the sorts of things that can go wrong in clinical practice, why these happen and how patient safety incidents can be prevented.
- 25** It should not usually be necessary to use identifiable patient information for these purposes and you should remove as much identifiable information as practicable. It may, however, be difficult to anonymise information about patients while retaining enough detail to make an example useful (see paragraph 18).



- 26** If you are sharing information about adverse incidents or near misses within the healthcare team that provided or supported the direct care of the patient, you can use identifiable information unless the patient objects. If you are sharing information outside the direct care team, and it is not practicable to anonymise the information, you should seek the patient's consent before using it.
- 27** If for any reason you cannot get a patient's consent – for example, because the patient lacks capacity to make the decision or cannot be contacted – you will need to consider whether use of the information can be justified in the public interest (see paragraphs 12–16 for guidance on patients who lack capacity). If the likelihood of distress or harm to patients is considered to be negligible, disclosure of limited information that might identify a patient may be proportionate if it is likely to prevent patient safety incidents in the future.

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## Endnotes

<sup>1</sup> See paragraphs 37–43 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview), for advice on implied consent.

<sup>2</sup> See our guidance on *Consent: patients and doctors making decisions together*, which states that you must give patients the information they want or need about the extent to which students may be involved in their care, and of their right to refuse to take part in teaching. You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>3</sup> Practical guides on arranging work experience have been published by NHS Wales, *Enabling work experience in the health sector in Wales*, and by Health Education England, *More than photocopying: a toolkit for work experience in the NHS*.

<sup>4</sup> Welfare attorneys, court-appointed guardians and court-appointed deputies have legal authority to make some decisions on a patient's behalf. For disclosure in the public interest, you will be seeking their views about the patient's preferences, rather than their consent to disclose.

<sup>5</sup> See paragraphs 100–106 of our draft *Confidentiality* guidance, which you can find at [www.gmc-uk.org/confidentialityreview](http://www.gmc-uk.org/confidentialityreview), for detailed advice on assessing the public interest.

<sup>6</sup> See *Good medical practice*, paragraphs 22 and 23, and *Openness and honesty when things go wrong: the professional duty of candour*, paragraphs 22–28. You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance). Our standards for education and training also say 'Organisations must demonstrate a culture that investigates and learns from mistakes and reflects on incidents and near misses. Learning will be facilitated through effective reporting mechanisms, feedback and local clinical governance activities.' You can read our standards for education and training at [www.gmc-uk.org/education/standards.asp](http://www.gmc-uk.org/education/standards.asp).

## What has changed in *Disclosing information for education, training and learning from adverse incidents and near misses*?

We have expanded the current guidance *Confidentiality: disclosing information for education and training purposes*<sup>\*</sup> to cover learning from analysing adverse incidents and near misses. This is in response to feedback that doctors can be uncertain about the extent to which patient information can be shared for such purposes.

We have also amended the guidance on disclosing information about patients who lack capacity to consent to disclosure. In the current guidance we say that doctors 'may disclose personal information about a patient who lacks capacity to consent if disclosure will benefit or is in the best interests of the patient, or if it is justified in the public interest'.

In our discussions before the consultation, some respondents commented that it is clearly in the public interest for students or trainees to gain experience of caring for adults who lack capacity so they are better equipped to care for such patients in future, but it is less clear how this experience would be in the best interests of the individual patient.

We have therefore amended paragraph 15 of this draft statement to say that information can be shared if it is justified in the public interest and not contrary to the best interests of the patient to do so.

We have also added training records to the section on using patient information in case studies. Respondents working in medical education told us that doctors in training do not always appreciate the importance of maintaining confidentiality in training records.

## Questions

**F1 Do you agree that we should include guidance on learning from adverse incidents and near misses in this statement?**

Yes ☐ No ☐ Not sure ☐

**F2 Do you find the additional guidance on learning from adverse and near misses helpful?**

Yes ☐ No ☐ Not sure ☐

## Comments

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<sup>\*</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

**F3    Do you agree with the revision to paragraph 15?**

Yes ☐      No ☐      Not sure ☐

**Comments**

**F4    Do you agree with the addition of training records?**

Yes ☐      No ☐      Not sure ☐

**Comments**

**F5    Do you have any other comments on *Disclosing information for education, training and learning from adverse incidents and near misses?***

Yes ☐      No ☐

**Comments**

## Section G: Responding to criticism in the press

### Draft guidance

1 In our [draft] *Confidentiality* guidance we say:

7 Trust is an essential part of the doctor-patient relationship and confidentiality is central to this. Patients may avoid seeking medical help, or may under-report symptoms, if they think that their personal information will be disclosed by doctors without consent, or without the chance to have some control over the timing or amount of information shared.

- 2 Doctors are sometimes criticised in the press or on social media<sup>1</sup> by their patients<sup>2</sup> or by someone who is close to, or who represents, a patient. The criticism can include inaccurate or misleading details of the doctor's diagnosis, treatment or behaviour.
- 3 Although this can be frustrating or distressing, it does not relieve you of your duty to respect your patient's confidentiality. Disclosures of patient information without consent can undermine the public's trust in the profession as well as your patient's trust in you. Disputes between patients and doctors conducted in the media can also prolong or intensify conflict and may undermine public confidence in the profession, even if they do not involve the disclosure of personal information without consent.
- 4 You must not put information you have learned in confidence about a patient in the public domain without that patient's explicit consent. You should usually limit your public response to press reports to an explanation of your legal and professional duty of confidentiality.
- 5 However, from time to time, press reports might cause patients to be concerned about your practice, or that of a health service you are associated with. In such cases it may be appropriate to give general information about your normal practice. You must be careful not to reveal personal information about a patient, or to give an account of their care, without their consent. If you deny allegations that appear in the press, you must be careful not to reveal, directly or by omission or inference, any more personal information about the patient than a simple denial demands.
- 6 You should seek advice from your professional or defence body, or from a solicitor, on how to respond to criticism in the press and, if appropriate, any legal redress available to you.

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## Endnotes

<sup>1</sup> See also our guidance *Doctors' use of social media*. You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

<sup>2</sup> In this guidance, 'patient' is used to refer to both current and former patients.

## What has changed in *Responding to criticism in the press*?

This statement is substantially unchanged from the current guidance *Confidentiality: responding to criticism in the press*<sup>\*</sup> except that it now makes an explicit link with our social media guidance.

## Questions

**G1** Do you agree with the advice in *Responding to criticism in the press*?

Yes ☐

No ☐

Not sure ☐

## Comments

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<sup>\*</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

## Section H: Current guidance on confidentiality in 0–18 years: guidance for all doctors

### Principles of confidentiality

**42** Respecting patient confidentiality is an essential part of good care; this applies when the patient is a child or young person as well as when the patient is an adult. Without the trust that confidentiality brings, children and young people might not seek medical care and advice, or they might not tell you all the facts needed to provide good care.

**43** The same duties of confidentiality apply when using, sharing or disclosing information about children and young people as about adults. You should:

- a** disclose information that identifies the patient only if this is necessary to achieve the purpose of the disclosure – in all other cases you should anonymise<sup>1</sup> the information before disclosing it
- b** inform the patient<sup>2</sup> about the possible uses of their information, including how it could be used to provide their care and for clinical audit
- c** ask for the patient's<sup>†</sup> consent before disclosing information that could identify them, if the information is needed for any other purpose, other than in the exceptional circumstances described in this guidance
- d** keep disclosures to the minimum necessary.

For further information see GMC guidance on confidentiality.<sup>3</sup>

### Sharing information with the consent of a child or young person

**44** Sharing information with the right people can help to protect children and young people from harm and ensure that they get the help they need. It can also reduce the number of times they are asked the same questions by different professionals. By asking for their consent to share relevant information, you are showing them respect and involving them in decisions about their care.

**45** If children and young people are able to take part in decision-making, you should explain why you need to share information, and ask for their consent. They will usually be happy for you to talk to their parents and others involved in their care or treatment.

## Sharing information without consent

**46** If a child or young person does not agree to disclosure there are still circumstances in which you should disclose information:

- a** when there is an overriding public interest in the disclosure
- b** when you judge that the disclosure is in the best interests of a child or young person who does not have the maturity or understanding to make a decision about disclosure
- c** when disclosure is required by law.

## Public interest

**47** You can disclose, without consent, information that identifies the child or young person, in the public interest. A disclosure is in the public interest if the benefits which are likely to arise from the release of information outweigh both the child or young person's interest in keeping the information confidential and society's interest in maintaining trust between doctors and patients. You must make this judgement case by case, by weighing up the various interests involved.

**48** When considering whether disclosure would be justified you should:

- a** tell the child or young person what you propose to disclose and why, unless that would undermine the purpose or place the child or young person at increased risk of harm
- b** ask for consent to the disclosure, if you judge the young person to be competent to make the decision, unless it is not practical to do so.

**49** If a child or young person refuses consent, or if it is not practical to ask for consent, you should consider the benefits and possible harms that may arise from disclosure. You should consider any views given by the child or young person on why you should not disclose the information. But you should disclose information if this is necessary to protect the child or young person, or someone else, from risk of death or serious harm. Such cases may arise, for example, if:

- a** a child or young person is at risk of neglect or sexual, physical or emotional abuse
- b** the information would help in the prevention, detection or prosecution of serious crime, usually crime against the person<sup>4</sup>

- c a child or young person is involved in behaviour that might put them or others at risk of serious harm, such as serious addiction, self-harm or joy-riding.

**50** If you judge that disclosure is justified, you should disclose the information promptly to an appropriate person or authority and record your discussions and reasons. If you judge that disclosure is not justified, you should record your reasons for not disclosing.

### **Disclosures when a child lacks the capacity to consent**

**51** Children will usually be accompanied by parents or other adults involved in their care, and you can usually tell if a child agrees to information being shared by their behaviour. Occasionally, children who lack the capacity to consent will share information with you on the understanding that their parents are not informed. You should usually try to persuade the child to involve a parent in such circumstances. If they refuse and you consider it is necessary in the child's best interests for the information to be shared (for example, to enable a parent to make an important decision, or to provide proper care for the child), you can disclose information to parents or appropriate authorities. You should record your discussions and reasons for sharing the information.

### **Disclosures required by law**

**52** You must disclose information as required by law. You must also disclose information when directed to do so by a court.

### **Access to medical records by children, young people and their parents**

**53** Young people with capacity have the legal right to access their own health records and can allow or prevent access by others, including their parents.<sup>5</sup> In Scotland, anyone aged 12 or over is legally presumed to have such capacity. A child might of course achieve capacity earlier or later. In any event you should usually let children access their own health records. But they should not be given access to information that would cause them serious harm or any information about another person without the other person's consent.

**54** You should let parents access their child's medical records if the child or young person consents, or lacks capacity, and it does not go against the child's best interests. If the records contain information given by the child or young person in confidence you should not normally disclose the information without their consent.<sup>6</sup>

**55** Divorce or separation does not affect parental responsibility and you should allow both parents reasonable access to their children's health records.



## Sexual activity

**64** A confidential sexual health service is essential for the welfare of children and young people. Concern about confidentiality is the biggest deterrent to young people asking for sexual health advice.<sup>7</sup> That in turn presents dangers to young people's own health and to that of the community, particularly other young people.

**65** You can disclose relevant information when this is in the public interest (see paragraphs 47 to 50). If a child or young person is involved in abusive or seriously harmful sexual activity, you must protect them by sharing relevant information with appropriate people or agencies, such as the police or social services, quickly and professionally.

**66** You should consider each case on its merits and take into account young people's behaviour, living circumstances, maturity, serious learning disabilities, and any other factors that might make them particularly vulnerable.

**67** You should usually share information about sexual activity involving children under 13, who are considered in law to be unable to consent.<sup>8</sup> You should discuss a decision not to disclose with a named or designated doctor for child protection and record your decision and the reasons for it.

**68** You should usually share information about abusive or seriously harmful sexual activity involving any child or young person, including that which involves:

- a** a young person too immature to understand or consent
- b** big differences in age, maturity or power between sexual partners
- c** a young person's sexual partner having a position of trust
- d** force or the threat of force, emotional or psychological pressure, bribery or payment, either to engage in sexual activity or to keep it secret
- e** drugs or alcohol used to influence a young person to engage in sexual activity when they otherwise would not
- f** a person known to the police or child protection agencies as having had abusive relationships with children or young people.

**69** You may not be able to judge if a relationship is abusive without knowing the identity of a young person's sexual partner, which the young person might not want to reveal. If you are concerned that a relationship is abusive, you should carefully balance the benefits of knowing a sexual partner's identity against the potential loss of trust in asking for or sharing such information.

## Contraception, abortion and sexually transmitted infections (STIs)

**70** You can provide contraceptive, abortion<sup>9</sup> and STI advice and treatment, without parental knowledge or consent, to young people under 16 provided that:

- a** they understand all aspects of the advice and its implications
- b** you cannot persuade the young person to tell their parents or to allow you to tell them
- c** in relation to contraception and STIs, the young person is very likely to have sex with or without such treatment
- d** their physical or mental health is likely to suffer unless they receive such advice or treatment, and
- e** it is in the best interests of the young person to receive the advice and treatment without parental knowledge or consent.<sup>10</sup>

**71** You should keep consultations confidential even if you decide not to provide advice or treatment (for example, if your patient does not understand your advice or the implications of treatment), other than in the exceptional circumstances outlined in paragraphs 46 to 52 and paragraphs 64 to 69.

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### Endnotes

<sup>1</sup> See *Confidentiality*, Glossary, which defines 'anonymised data'.

<sup>2</sup> Or, where appropriate, those with parental responsibility for the patient.

<sup>3</sup> [www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality).

<sup>4</sup> The *NHS Confidentiality Code of Practice* explains that 'the definition of serious crime is not entirely clear. Murder, manslaughter, rape, treason, kidnapping, child abuse or other cases where individuals have suffered serious harm may all warrant breaching confidentiality. Serious harm to the security of the state or to public order and crimes that involve substantial financial gain or loss will also generally fall within this category. In contrast, theft, fraud or damage to property where loss or damage is less substantial would generally not warrant breach of confidence.' It goes on to explain that less serious crimes, such as 'comparatively minor prescription fraud' might be linked to serious harm, such as drug abuse, which may justify disclosure.

<sup>5</sup> There are circumstances in which disclosures may be made to parents and others without consent (see paragraphs 46–52).

<sup>6</sup> Information obtained as a result of examinations or investigations to which children or young people consented in the expectation of confidentiality should not normally be disclosed without consent either. See *s.5(3) of The Data Protection (Subject Access Modification) (Health) Order 2000*. See also paragraphs 46–52 on disclosing information without consent.

<sup>7</sup> *Best Practice Guidance for Doctors and other Health Professionals on the provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health* (DH, 2004).

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<sup>8</sup> See *Sexual Offences Act 2003*, *Sexual Offences (Northern Ireland order) 2008* and *Sexual Offences (Scotland) Act 2009*.

<sup>9</sup> The Abortion Act 1967 does not extend to Northern Ireland and the grounds on which abortion may be carried out are more restrictive than in the rest of the UK.

<sup>10</sup> *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112. See also *R (on the application of Sue Axon) v The Secretary of State for Health & Anor* [2006] EWHC 37 (Admin), [2006] 1FCR 175 and *Best Practice Guidance for Doctors and other Health Professionals on the provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health* (DH, 2004).

## Seeking views on the confidentiality section from *0–18: guidance for all doctors*

The paragraphs reproduced here are taken from our current guidance for doctors on how the principles of confidentiality apply to children and young people in *0–18: guidance for all doctors*.<sup>\*</sup> Over the next year we will be reviewing the *0–18* guidance and would like to seek feedback now on this section of the guidance.

In particular, we know from our scoping work that there can be particular challenges around confidentiality in relation to providing advice and treatment about contraception, abortion and sexually transmitted diseases to young people under 16 without parental knowledge. We would appreciate any feedback you have on our guidance on confidentiality in these areas.

We also provide specific advice on confidentiality as it relates to child protection in *Protecting children and young people: the responsibilities of all doctors*. The child protection guidance was published in 2012 and is not yet due for review, but please do tell us about any confidentiality issues relating to that guidance that you think we should be aware of.

### H1 Do you have any comments on the confidentiality sections of the *0–18* guidance?

Yes ☐

No ☐

#### Comments

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<sup>\*</sup> You can find all of our guidance online at [www.gmc-uk.org/guidance](http://www.gmc-uk.org/guidance).

**Thank you for taking the time to give us your comments.**

**Please tell anyone you think might be interested in responding to this consultation.**

**The final section asks for some information about you to help us to analyse the responses.**

# About you

Finally, we'd appreciate it if you could give some information about yourself to help us analyse the consultation responses.

## Your details

---

Name

Job title (if responding as an organisation)

Organisation (if responding as an organisation)

Address

Email

Contact telephone (optional)

Would you like to be contacted about our future consultations?

☐

Yes

☐

No

If you would like to know about our upcoming consultations, please let us know which of the areas of our work interest you:

☐

Education

☐

Standards and ethics

☐

Fitness to practise

☐

Registration

☐

Licensing and revalidation

### Data protection

The information you supply will be stored and processed by the GMC in accordance with the *Data Protection Act 1998* and will be used to analyse the consultation responses, check the analysis is fair and accurate, and help us to consult more effectively in the future. Any reports published using this information will not contain any personally identifiable information. We may provide anonymised responses to the consultation to third parties for quality assurance or approved research projects on request.

The information you provide in your response may be subject to disclosure under the *Freedom of Information Act 2000* which allows public access to information held by the GMC. This does not necessarily mean that your response will be made available to the public as there are exemptions relating to information provided in confidence and information to which the *Data Protection Act 1998* applies. Please tick if you want us to treat your response as confidential. ☐

## Responding as an individual

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### Are you responding as an individual?

☐ Yes ☐ No

If yes, please complete the following questions. **If not, please complete the 'responding as an organisation' section on page 49.**

### Which of the following categories best describes you?

- ☐ Doctor ☐ Medical educator (teaching, delivering or administering)
- ☐ Medical student ☐ Member of the public
- ☐ Other healthcare professional
- ☐ Other (please give details) \_\_\_\_\_

### Doctors

For the purposes of analysis, it would be helpful for us to know a bit more about the doctors who respond to the consultation. If you are responding as an individual doctor, could you please tick the box below that most closely reflects your role?

- ☐ General practitioner ☐ Consultant
- ☐ Other hospital doctor ☐ Doctor in training
- ☐ Medical director ☐ Other medical manager
- ☐ Staff and associate grade (SAS) doctor
- ☐ Sessional or locum doctor ☐ Medical student
- ☐ Other (please give details) \_\_\_\_\_

What is your current practice setting? (Please tick all that apply)

- ☐ NHS ☐ Independent or voluntary ☐ Other

### What is your country of residence?

- ☐ England ☐ Northern Ireland ☐ Scotland ☐ Wales
- ☐ Other – European Economic Area
- ☐ Other – rest of the world (please say where) \_\_\_\_\_

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To help make sure our consultations reflect the views of the diverse UK population, we aim to monitor the types of responses we receive to each consultation and over a series of consultations. Although we will use this information in the analysis of the consultation response, it will not be linked to your response in the reporting process.

**What is your age?**

- ☐ 0–18      ☐ 19–24      ☐ 25–34      ☐ 35–44
- ☐ 45–54      ☐ 55–64      ☐ 65 or over

**What is your gender?**

- ☐ Female      ☐ Male

**Do you have a disability, long-term illness or health condition?**

- ☐ Yes      ☐ No      ☐ Prefer not to say

The *Equality Act 2010* defines a person as disabled if they have a physical or mental impairment, which has a substantial and long-term (ie has lasted or is expected to last at least 12 months) and adverse effect on the person's ability to carry out normal day-to-day activities.

**Which of the following options best describes your sexual orientation?**

- ☐ Bisexual      ☐ Gay man      ☐ Gay woman/lesbian
- ☐ Heterosexual/straight      ☐ Prefer not to say
- ☐ Other (please give details) \_\_\_\_\_



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**What is your ethnic group? (Please tick one)**

**Asian or Asian British**

- ☐ Bangladeshi ☐ Chinese ☐ Indian ☐ Pakistani
- ☐ Any other Asian background (please specify) \_\_\_\_\_

**Black, African, Caribbean, black British**

- ☐ African ☐ Caribbean
- ☐ Any other black, African or Caribbean background (please specify) \_\_\_\_\_

**Mixed or multiple ethnic groups**

- ☐ White and Asian ☐ White and black African ☐ White and black Caribbean
- ☐ Any other mixed or multiple ethnic background (please specify) \_\_\_\_\_

**Other ethnic group**

- ☐ Arab
- ☐ Any other ethnic group (please specify) \_\_\_\_\_

**White**

- ☐ British, English, Northern Irish, Scottish or Welsh
- ☐ Irish ☐ Gypsy or Irish traveller
- ☐ Any other white background (please specify) \_\_\_\_\_

## Responding as an organisation

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Are you responding on behalf of an organisation?

☐ Yes

☐ No

If yes, please complete the following questions. **If not, please complete the 'responding as an individual' section on page 46.**

Which of the following categories best describes your organisation?

☐ Body representing doctors

☐ Body representing patients or the public

☐ Government department

☐ Independent healthcare provider

☐ Medical school (undergraduate)

☐ Postgraduate medical institution

☐ NHS or HSC organisation

☐ Regulatory body

☐ Other (please give details) \_\_\_\_\_

In which country is your organisation based?

☐ UK wide

☐ England

☐ Northern Ireland

☐ Scotland

☐ Wales

☐ Other – European Economic Area

☐ Other – rest of the world (please say where) \_\_\_\_\_

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