

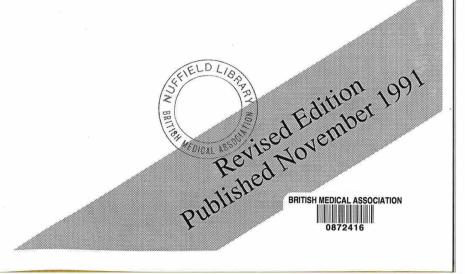
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# Guidance for Doctors on Professional Confidence



NOTE:

This text replaces paragraphs 76 to 85 in the GMC's publication -Professional Conduct and Discipline: Fitness to Practise published February, 1991.

# PROFESSIONAL CONFIDENCE

### Principles

- Patients are entitled to expect that the information about themselves or others which a doctor learns during the course of a medical consultation, investigation or treatment, will remain confidential. Doctors therefore have a duty not to disclose to any third party information about an individual that they have learned in their professional capacity, directly from a patient or indirectly, except in the cases discussed in paragraphs 6-16 below.
- 2. Where a patient, or a person properly authorised to act on a patient's behalf, consents to disclosure, information to which the consent refers may be disclosed in accordance with that consent. An explicit request by a patient that information should not be disclosed to particular people, or indeed to any third party, must be respected save in the most exceptional cases, for example where the health, safety or welfare of someone other than the patient would otherwise be at serious risk.
- 3. Doctors carry prime responsibility for the protection of information given to them by patients or obtained in confidence about patients. They must therefore take steps to ensure, as far as lies in their control, that the records, manual or computerised, which they keep or to which they have access, are protected by effective security systems with adequate procedures to prevent improper disclosure.
- 4. Most doctors in hospital and general practice are working in health care teams, some 11 of whose members may need access to information, given or obtained in confidence about individuals, in order to perform their duties. It is for doctors who lead such teams to judge when it is appropriate for information to be disclosed for that purpose. They must leave those whom they authorise to receive such information in no doubt that it is given to them in professional confidence. The doctor also has a responsibility to ensure that arrangements exist to inform patients of the circumstances in which information about them is likely to be shared and the opportunity to state any objection to this.

5. A doctor who decides to disclose confidential information about an individual must be prepared to explain and justify that decision, whatever the circumstances of the disclosure.

#### Disclosures without the consent of the patient

6. Doctors who are faced with the difficult decision whether to disclose information without a patient's consent must weigh carefully the arguments for and against disclosure. If in doubt, they would be wise to discuss the matter with an experienced colleague or to seek advice from a medical defence society or professional association. The following paragraphs discuss circumstances of this kind.

### Disclosure in relation to the clinical management of a patient

- 7. In exceptional circumstances a doctor may consider it undesirable, for medical reasons, to seek a patient's consent to the disclosure of confidential information. In such cases information may be disclosed to a relative or some other person but only when the doctor is satisfied that it is necessary in the patient's best medical interests to do so.
- B. Deciding whether or not to disclose information is particularly difficult in cases where a patient cannot be judged capable of giving or withholding consent to disclosure. One such situation may arise where a doctor believes that a patient may be the victim of physical or sexual abuse. In such circumstances the patient's medical interests are paramount and may require the doctor to disclose information to an appropriate person or authority.
- 9. Difficulties may also arise when a doctor believes that a patient, by reason of immaturity, does not have sufficient understanding to appreciate what the treatment or advice being sought may involve. Similar problems may arise where a patient lacks understanding because of illness or mental incapacity. In all such cases the doctor should attempt to persuade the patient to allow an appropriate person to be involved in the consultation. If the patient cannot understand or be persuaded, but the doctor is convinced that the disclosure of information would be essential to the patient's best medical interests, the doctor may disclose to an appropriate person or authority the fact of the consultation and the information learned in it. A doctor who decides to disclose information must be prepared to justify that decision and must inform the patient before any disclosure is made.

## Disclosure required by statute

10. Information may be disclosed in order to satisfy a specific statutory requirement, such as notification of an infectious disease or of attendance upon a person known or suspected to be addicted to controlled drugs.

## Disclosure in the public interest

11. Rarely, cases may arise in which disclosure in the public interest may be justified, for example a situation in which the failure to disclose appropriate information would expose the patient, or someone else, to a risk of death or serious harm.

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# Disclosure in connection with judicial proceedings

12. Where litigation is in prospect, unless the patient has consented to disclosure or a court order has been made, information should not be disclosed by a doctor merely in response to demands from other people such as a third party's solicitor or an official of the court. A



doctor may disclose such information as may be ordered by a judge or presiding officer of the court, as may a doctor summoned to assist a Coroner, Procurator Fiscal or similar officer either at an inquest or when the need for an inquest is being considered. In such circumstances the doctor should first establish the precise extent of the information which needs to be disclosed, and should not hesitate to make known any objections to the proposed disclosure, particularly when the order would involve the disclosure of confidential information about third parties.

13. Information may also be disclosed at the direction of the Chairman of a Committee of the Council which is investigating a doctor's fitness to practise, when the Committee has determined that the interests of justice and/or the public require such disclosure, and provided that every reasonable effort has first been made to seek the consent of the patient or patients concerned.

# Disclosure for the purposes of medical teaching, medical research and medical audit

14. Medical teaching, research and medical audit necessarily involve the disclosure of information about individuals, often in the form of medical records, for purposes other than their own health care. Where such information is used in a form which does not enable individuals to be identified, no question of breach of confidentiality will usually arise. Where the disclosure would enable one or more individuals to be identified, the patients concerned, or those who may properly give permission on their behalf, must wherever possible be made aware of that possibility and be advised that it is open to them, at any stage, to withhold their consent to disclosure.

#### Disclosure to employers and insurance companies

15. Special problems relating to confidentiality can arise where doctors have responsibilities not only to patients but also to third parties as, for example, where a doctor assesses a patient for an employer or an insurance company. In such circumstances, the doctor should ensure that at the outset patients understand the purpose of any consultation or examination, are aware of the doctor's obligation to the employer or insurance company and consent to be seen by the doctor on those terms. Doctors should undertake assessments for insurance, or of an employee's fitness to work, only where the patient has given written consent.

## Disclosure after a patient's death

16. The fact of a patient's death does not of itself release a doctor from the obligation to maintain confidentiality. In cases where consent has not previously been given, the extent to which confidential information may properly be disclosed by a doctor after someone's death cannot be specified in absolute terms and will depend on the circumstances. These include the nature of the information disclosed, the extent to which it has already appeared in published material and the period which has elapsed since the person's death.

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