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Statement No.: WITN3449007  
Exhibits: WITN3449008 -  
WITN3449021  
Dated:

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Exhibit WITN3449020

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# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

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To: The Chief Administrative Officer  
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Board and the Central Services Agency

*Please reply to The Secretary*

Your reference

Our reference A1736/82 (4/24)

Date / August 1983

Dear Sir

## RETENTION OF PERSONAL HEALTH RECORDS (FOR POSSIBLE USE IN LITIGATION)

### SUMMARY

This circular amends Circular HMC 75/62 and recommends new minimum periods of retention for personal health records (other than records held by the Central Services Agency) to take account of the provisions of the Limitation (Northern Ireland) Order 1976 and the Congenital Disabilities (Civil Liability) Act 1976. It does not give new guidance on the destruction of records.

### TIME LIMITS ON ACTIONS FOR PERSONAL INJURIES

1. The Limitation (Northern Ireland) Order 1976 amends the law on the time limits within which actions in respect of personal injuries or death may be brought. The Congenital Disabilities (Civil Liability) Act 1976 clarifies the right of a child born disabled, as distinct from the mother, to bring civil action for damages in respect of that disability. The limitation period in each case is 3 years, but this now runs from when it was first realised that a person has suffered significant injury which may be attributable to the negligence of a third party, or, in the case of a minor, from the time he attains the age of 18 years. The lapse between the 'injury' and 'knowledge' of it is without limit of time.
2. A person of "unsound mind"\* can, as long as he remains under the disability in question, bring an action without limit of time through his "next friend". After the person's death, the period of limitation will run against his personal representative(s). Boards will appreciate that, in the context of current practices in the care and treatment of mentally disordered persons, discharge from hospital cannot be regarded as implying that the person has ceased to suffer from the disability.

\* Under Section 49(2), as amended, of the Statute of Limitations (Northern Ireland) 1958, a person is conclusively presumed to be of "unsound mind" if he is under guardianship or is a formal patient or is an informal in-patient whose treatment has immediately followed a period of formal detention or guardianship. However a Court may find that a person suffering from mental disorder within the meaning of Section 7(1) of the Mental Health Act (Northern Ireland) 1961 (which includes mental handicap and mental illness) should be regarded as of unsound mind for the purposes of the Limitation (Northern Ireland) Order 1976.

3. The limitation period of 3 years applies only to actions which include a claim for damages in respect of personal injuries. In the case of other claims, eg a claim by a mentally disordered patient that he has been falsely imprisoned, the appropriate limitation period prescribed by Section 50 of the Statute of Limitations (Northern Ireland) 1958 is 6 years from the date when the patient ceases to suffer a disability or dies.

#### MINIMUM PERIODS OF RETENTION FOR PERSONAL HEALTH RECORDS

4. Personal health records may now be required as evidence in legal actions for considerably longer than has hitherto been the case. This circular proposes new minimum retention periods which the Department believes are likely to prove acceptable to the Courts. The actual periods for which records are retained will however depend on a number of factors (see paragraph 6 below).
5. Special considerations apply to records relating to children, young people and mentally disordered people. In most other cases, a person or his representative(s) might be expected to know whether he has a cause of action within 5 years of the alleged negligence, from which time the limitation period should be taken to run. It is recommended that the following minimum retention periods should be observed:-

(a) Obstetric Records

25 years.

(b) Records Relating to Children and Young People (including Paediatric, Vaccination and Community Child Health Service Records)

Until the patient's 25th birthday or 8 years after the last entry, if longer.

(c) Records Relating to Mentally Disordered Persons within the meaning of the Mental Health Act (Northern Ireland) 1961

20 years from the date at which, in the opinion of the doctor concerned, the disorder has ceased or diminished to the point where no further care or treatment is considered necessary.

The records described at (a), (b) and (c) above need only to be retained for a minimum of 8 years after the death of a patient (or, in the case of obstetric records, death of the child).

(d) All Other Personal Health Records

8 years after the conclusion of treatment.

#### ACTUAL PERIOD OF RETENTION OF PERSONAL HEALTH RECORDS

6. Subject to the minimum periods proposed, it is for Boards to decide on actual periods of retention, having regard to the wishes of individual consultants with responsibility for the cases in question, the requirements of research and the responsibilities of Boards under the Public Records Act (Northern Ireland) 1923, as well as to implications for litigation.

#### MICROFILMING OF RECORDS

7. Paragraph 8 of Circular HMO 75/62 recommended that microfilming should not be used as a method of reducing the bulk of documents held and that, if documents have been selected for permanent preservation, the original documents must be preserved and it was not permissible to preserve microfilm copies in their place.
8. Legal opinion now indicates that by virtue of the provisions of the Civil Evidence Act (Northern Ireland) 1971 it is acceptable to substitute microfilm copies for the original documents within the period for which those documents must legally be retained. This Act amended the law of evidence in relation to civil proceedings and in particular to the admissibility of statements produced by computers. Section 6 of the Act in its definition of "document" includes "any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom". The Section goes on to define film as including a microfilm.
9. In view of this change and the extension of minimum retention periods for personal health records recommended in this circular, together with the increased pressure on storage space to which this will inevitably lead, Boards who are not already using it may wish to consider the merits of microfilming as a method of reducing the bulk of documents held.

#### MINIFICATION OF X-RAY FILMS

10. The number of radiological examinations and the average number of films produced at these examinations have increased significantly over the past 15 years. In hospitals where the space required for storing this increasing volume of X-ray films is either not available, or only available at a high capital cost, alternative methods of storing X-ray film have been sought. One such method is the copying of full sized radiographs into a miniature form (35 mm for example) which can be stored in approximately 2% of the space required for conventional records and which simplifies the retrieval of films.

The Central Medical Advisory Committee and the Chief Medical Officer's Special Advisory Committee on Radiology have approved the principle of minification as an acceptable solution to the problem of X-ray film storage. With the approval of appropriate medical staff, it will be for Boards and Districts to decide whether to introduce minification into an individual hospital having regard to the availability of space, labour and the financial implications involved.

#### IMPLICATIONS FOR LITIGATION OF DISPOSAL OF RECORDS

11. As records could be required in litigation virtually without limit of time, the Department recognises that some records may be destroyed which may subsequently prove relevant to litigation. The Department's view, however, is that the cost of indefinite retention of records would greatly exceed the liabilities likely to be incurred in the occasional case where defence to an action for damages is handicapped by the absence of records.
12. If an officer involved in litigation claims that prior disposal of relevant medical records has prejudiced the outcome, this should be considered by the Board along with all other factors when the apportionment of any liability as between the officer and Board is being contemplated.



ALIGNMENT OF CURRENT INSTRUCTIONS

13. Much of the guidance contained in Circular HMC 75/62 remains valid and it should be read in conjunction with this circular. With respect to minimum periods of retention and to microfilming of medical records, however, the guidance contained in the above paragraphs should be followed.
14. This circular, relating as it does to personal health records, covers only a small section of the wide range of records held by Boards. It is apparent that there is a need for consolidated guidance on the retention and storage of records in general and this is being considered at present by the Department.

ACTION

15. Boards are asked to observe the minimum periods for retention of personal health records recommended in this circular and to bring this advice to the attention of all staff concerned.
16. This circular does not apply to records held by the Central Services Agency.

Yours faithfully

GRO-C

J SCOTT