Witness Name: Caroline Leonard
Statement No.: WITN3449007
Exhibits: WITN3449008 - WITN3449021
Dated:

Exhibit WITN3449021

Performance Review and Secondary Care Directorate

HSS EXECUTIVE

Circular HSSE (SC) 3/96

The General Manager/Chief Executive,
Director of Public Health and
Director of Nursing of each
Health and Social Services Board
The Chief Executives of HSS Trusts
The Chief Executive of the Central Services Agency

Our ref: BP 2418/95

7 November 1996

Dear Sir/Madam

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

Summary

1. This circular, which updates guidance in Circular HSS (OS3) 1/83 and HMC 75/62,: -

   - recommends new minimum periods of retention for maternity records and x-ray film;
   - allows Boards/HSS trusts to determine what should be regarded as a permanent constituent of a health record; and
   - provides new guidance on the destruction of confidential health records.

   It does not apply to records held by the Central Services Agency.

Time Limits on Actions for Personal Injuries

2. The Limitation (Northern Ireland) Order 1989 makes provision for 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. This runs from either the date on which the cause of action accrued or when it was first realised (if later) that a person has suffered significant injury which may be attributable to the negligence of a third party. In the case of a minor, the period runs from the time he attains the age of 18 years.

Health and Social Services Executive
Dundonald House Upper Newtownards Road Belfast BT4 3SF Northern Ireland Telephone 01232 520500 Facsimile 01232 524421

3. A person of "unsound mind"[1] can, as long as he remains under the disability in question, bring an action without limit of time through his "next friend".[2] After the person's death, the period of limitation will run against his personal representative(s). In the context of current community care practice 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.

4. 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 Article 48 of the Limitations (Northern Ireland) Order 1989 is 6 years from the date when the patient ceases to suffer a disability or dies.

Minimum Period of Retention for Personal Health Records

5. This circular recommends the minimum retention periods which the Department believes are likely to prove acceptable to the Courts. It is not necessary however to keep every single piece of paper received in connection with patients. Boards and HSS trusts should determine, in consultation with their health professionals, their policy on the elements which should be regarded as a permanent constituent of the record, and those elements which should be regarded as of a transitory nature and which may be discarded as their value ceases (but see Annex A for obstetric records).

6. 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.

---

[1] Under Article 47 (2) of the Limitation (Northern Ireland) Order 1989 a person is of "unsound mind" if he is a person who, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, is incapable of managing and administering his property and affairs. Under Article 47 (3) 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.

[2] A "next friend" is an officer of the court appointed to look after that person's interests and has the conduct of the proceedings in his hands but he is not actually a party to the proceedings and he is not, as next friend, entitled to appear in them in person.

(a) **Obstetric Records**

Taking into account discussions between the Department of Health in England, the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, and the Royal College of Obstetricians and Gynaecologists, the Department recommends that each woman's maternity records *including those records of episodes of maternity care that end in stillbirth or where the child dies*) be retained for a minimum of 25 years.

The document at Annex A, agreed by the relevant professional bodies as a Joint Position on the Retention of Maternity Records, gives helpful guidance on the elements which should be retained.

The Public Record Office of Northern Ireland (PRONI) has advised that maternity records which might be retained after 25 years could include records relating to stillbirths, or where the child dies shortly after birth, or where the child is born with a handicap. Medical staff should be responsible for identifying these.

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

Retain until: -
the patient's 25th birthday
or
8 years after the last entry, if longer
or
8 years after the death of the patient.

(c) **Records Relating to Mentally Disordered Persons within the meaning of the Mental Health (Northern Ireland) Order 1986**

Retain for: -
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
or
8 years after the death of the patient.

The Public Record Office of Northern Ireland considers that case files relating to mentally disordered persons are of particular informational value for historical research (especially social and economic research) and also as a source for medical research. With regard to the selection of records for medical research purposes, PRONI advises that only medical staff should select records for permanent preservation. Decisions should be based on the medical research potential of the records, for example, on the different forms of mental

illness (genetic or otherwise) and on the different treatments. Boards/HSS trusts may find useful the PRONI guidance on the retention of records for mentally disordered patients at Annex B.

(d) **All Other Personal Health Records**

Retain for 8 years after the conclusion of the treatment.

Actual Period of Retention of Personal Health Records

7. After the appropriate minimum period has expired the need to retain the records further for local use should be carefully and, if necessary, periodically reviewed. Boards and HSS trusts should take account of the wishes of individual consultants with responsibility for the case in question, the requirements of research and responsibilities under the Public Records Act (Northern Ireland) 1923, as well as implications for litigation. Health records which may merit permanent preservation (for example, those of patients who have committed very serious crimes) should not be immediately destroyed but first offered to the Public Record Office of Northern Ireland (PRONI) after expiry of the minimum periods of retention.

Microfilming of Records

8. Legal opinion 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. Boards/HSS trusts who are not already using microfilming may wish to consider the merits of using it as a method of reducing the bulk of documents held.

Computerised Records

9. Boards/HSS trusts may store personal health records on computer provided that a senior official takes responsibility for ensuring that the data input and stored on the computer is accurate. In such cases, where the personal health records are held on computer, the manual records need not be retained. The same rules on the retention period for personal health records apply to records stored on computer as to manually held records. It should be noted that personal health records once stored on computer become "data" within the meaning of the Data Protection Act 1984 and the provisions of that Act apply to the records. Personal health records stored on computer are admissable as evidence in civil proceedings.

Implications for Litigation of Disposal of Records

10. As records could be required in litigation virtually without limit of time, the Department recognises that some records may be destroyed that might otherwise have been required for 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. If a hospital doctor involved in litigation claims that prior disposal of the relevant medical records has prejudiced the outcome, this should be considered by the Board/HSS trust along with all other factors when the apportionment of any liability as between the doctor and Board/HSS trust is being contemplated.

Retention of X-ray Films

11. Storage space for x-rays is becoming increasingly expensive. Microfilming and minification of x-rays as alternative methods of storage of hard images have not been particularly successful.

12. The Department's views on unlimited retention of health records for litigation purposes are set out in paragraph 10 above. Boards/HSS trusts should determine, in consultation with relevant clinicians, how long x-ray films should be retained, taking account of clinical need, special interest groups, cost of storage and availability of storage space. X-ray reports are an integral part of the main health record and are therefore subject to the appropriate minimum retention periods recommended above. The Department's legal advisers advise that the retention of the x-ray report alone would be sufficient for medico-legal purposes.

Destruction of Confidential Records

13. The methods used for destruction of confidential records should ensure that their confidentiality is fully maintained. Paper should be destroyed by shredding and other material by incineration. Where these services are provided by a contractor it is the responsibility of the Board/HSS trust to satisfy itself that the methods used throughout all stages, including transport to the destruction site, provide satisfactory safeguards against accidental loss or disclosure.

Action

14. Boards/HSS trusts should ensure that there are adequate and secure storage facilities provided for the storage of health records. Boards/HSS trusts are asked to note the minimum periods for the retention and destruction of personal health records recommended in this circular and to bring this advice to the attention of all staff concerned. Circular HSS (OS3) 1/83 should be cancelled.

Enquiries

15. Any enquiries about the content of this circular should be addressed to: -
Room 104A Dundonald House, Upper Newtownards Road,
BELFAST BT4 3SF.

Yours faithfully

GRO-C

P TREACY

cc: The Dean, Faculty of Medicine, Queen's University of Belfast
Professor of Nursing, Queen's University of Belfast
Professor of Nursing, University of Ulster
The Chairman of the Northern Ireland Standing Committee of the Royal College of Radiologists
The Honorary Secretary of the Ulster Radiological Society

Distribution as per F. M'Laughlin 11/11/96.

A.C.M - Mr Frawley

Dr W M' Connell

S. Cuddy

T. Brown

R. Middleton

M. Gormley.

ANNEX A

British Paediatric Association
Royal College of Midwives
Royal College of Obstetricians and Gynaecologists
and the
United Kingdom Central Council for Nursing, Midwifery and Health Visiting

Joint Position on the Retention of Maternity Records

Principles to be used in determining policy regarding the retention and storage of essential maternity records.

1. All essential maternity records should be retained. 'Essential' maternity records mean those records relating to the care of a mother and baby during pregnancy, labour and the puerperium.

2. Records that should be retained are those which will, or may, be necessary for further professional use. 'Professional use' means necessary to the care to be given to the woman during her reproductive life, and/or her baby, or necessary for any investigation that may ensue under the Congenital Disabilities (Civil Liabilities) Act 1976, or any other litigation related to the care of the woman and/or her baby.

3. Local level decision making with administrators on behalf of the health authority must include proper professional representation when agreeing policy about essential maternity records. 'Proper professional' in this context should mean a senior medical practitioner(s) concerned in the direct clinical provision of maternity and neonatal services and a senior practising midwife.

Health and Social Services Executive
Dundonald House Upper Newtownards Road Belfast BT4 3SF Northern Ireland

4. Local policy should clearly specify particular records to be retained AND include detail regarding transfer of records, and needs for the final collation of the records for storage, for example, the necessity for inclusion of community midwifery records.

5. Policy should also determine details of the mechanisms for return and collation for storage, of those records which are held by mothers themselves, during pregnancy and the puerperium.

List of maternity records to be retained

6. Maternity Records retained should include the following:

6.1 documents recording booking data and pre-pregnancy records where appropriate;

6.2 documentation recording subsequent antenatal visits and examinations;

6.3 antenatal in-patient records;

6.4 clinical test results including ultrasonic scans, apha-feto protein and chorionic villus sampling;

6.5 blood test reports;

6.6 all intrapartum records to include, initial assessment, partograph and associated records including cardiotocographs;

6.7 drug prescription and administration records;

6.8 postnatal records including documents relating to the care of mother and baby, in both the hospital and community settings.

Health and Social Services Executive
Dundonald House Upper Newtownards Road Belfast BT4 3SF Northern Ireland

ANNEX B

THE PUBLIC RECORD OFFICE OF NORTHERN IRELAND - GENERAL GUIDANCE ON THE RETENTION OF HEALTH RECORDS FOR MENTALLY DISORDERED PATIENTS

1. A recent case study in England recommended that all pre-1948 files be retained in toto for two reasons: -

   (a) there is more medical literature available from 1950 onwards; and

   (b) the files contain information about pre-1948 poor law administration.

2. For post-1948 files they recommended retaining all files for each census year beginning with 1951 and the remaining files to be destroyed except for:

   (a) suicide cases or where the cause of death was uncertain

   (b) cases which have already been the subject of medical research by doctors or record drug trials

   (c) cases of medical research potential

   (d) psychiatric social worker's reports and related records (eg personal "life testimonies" by patients - retained because of their social historical content); and

   (e) criminal lunatic cases.