

## Confidentiality and Privacy

### Advice to practice staff and explanatory notes

#### **Confidentiality**

One of the cornerstones of medical practice is the duty of confidentiality that medical practitioners owe their patients. This is reflected in the ethical principle that medical practitioners will respect the secrets that are confided in them, even after the patient has died. A breach of this principle is very serious. It can lead to professional disciplinary action being taken against the medical practitioner or other health professionals working in the practice, such as nurses, or even court action against the practice. It is therefore fundamental that you must respect the confidentiality of information that patients provide about themselves. Any breach of patient confidentiality by a member of the staff will be treated as a very serious breach of discipline.

Closely linked to confidentiality is the patient's right to privacy. The Health Information Privacy Code 1994 sets out very detailed rules relating to such topics as the collection of health information from patients, patients' rights of access, the storage and security of information etc. A breach of the Code may result in a complaint to the Privacy Commissioner.

This notice summarises several of the important considerations relating to patient confidentiality and privacy. It is not intended to be exhaustive. Insofar as this notice does not address any issue that arises, you should consult with a practitioner or the practice manager.

#### **Collection of information**

Information about a patient's symptoms, medical history, and life style should be collected privately. Do not collect such information within hearing of members of the public.

You are expected to recognise that health information is of great importance to the individual concerned, and you should therefore take down details in a careful and sympathetic way. Take care to avoid giving the impression that details are being recorded in a casual or off-hand way. Be sensitive to the individual's preferences, for example, to have (or not have) a family member present, or to give personal information to a practitioner or staff member with whom they have developed a relationship rather than to yourself.

You should take particular care not to intrude to an unnecessary extent when collecting information about especially sensitive areas, such as sexual life, ethnicity, addictions, or diseases that have a social stigma.

You must generally gather health information directly from the patient, unless he or she authorises collection from someone else. But there are some recognised exceptions to that principle. Some of the exceptions, which you are most likely to meet in practice, are where:

- The patient is unable to give authorisation, and the information has to be collected from a representative (such as from a parent of a young child);
- the purpose of collecting the information is to assemble a family history (provided that the information is gathered directly from the patient or the patient's representative);
- the information is derived not directly from the patient but from a sample left by the patient for testing.

### **Advice to patients under privacy code**

In any situation where you gather health information from a patient or his/her representative, make sure that the patient or representative is aware of the following:

- The fact that information is being collected and the purpose of collection, if these are not otherwise obvious;
- the intended recipients of the information;
- the name and address of both the agency that is collecting the information and the agency that will hold it;
- whether or not the supply of the requested information is voluntary or compulsory;
- any consequences for the patient if all or part of the requested information is not provided;
- the patient's rights of access to, and correction of, health information held about him or her.

If the patient is a child, or is under an intellectual impairment, give the explanation at their level of understanding.

The preceding information need not be given if you can be satisfied that the patient has already had those matters brought to his or her notice on a recent occasion.

### **Right of access by patients to their own health information**

Essentially, the position is as follows:

- Patients and former patients are entitled to have access to all health information held about them.
- Before information is given, check the individual's identity if he or she is not known personally to you. This can be done by asking to sight the person's driver's licence, social security benefit book, a credit card, a passport or some other document which can be relied on to establish the person's identity.

- If a patient telephones you to seek information such as the result of a blood test, satisfy yourself of the person's identity before releasing the information. If this cannot readily be done you should courteously tell the caller that it will be necessary for him or her to call in to the surgery with means of identification to enable the information to be released.
- At the time that information is given you must tell the individual that he or she may request correction of it.
- If a request for information is made by the patient's agent, you should ask for production of a current written and signed authority. Check the signature against any signature of the patient, which is held on file before releasing records.
- Information is normally to be provided by giving the individual either the original or a copy (eg. of the case note, accident compensation certificate etc). But if the patient is given the original of any record make sure that a copy is retained as the practice may need it for any number of reasons (eg. repeat visits by the patient, HBL audits, or legal action against the practice).
- Where you give information verbally, do so in the privacy of a room away from the public waiting room.

### **Access to information by children under the age of 16**

Children have the right to request health information about themselves. But note that the practice may refuse to disclose information where that would be contrary to the child's interest. Accordingly, obtain clearance from a partner or doctor before disclosing any information to a person under 16.

Parents do not have any right of access to medical files about their children, although disclosure of information may often be made to them - see under the heading *Disclosure of health information to other parties, below*.

### **Disclosure of health information to other parties**

The practice may disclose health information about a patient to third parties in a number of situations. One common situation is where a medical report on an individual is prepared for an insurance company and the patient has given written consent for it to be disclosed. Another common situation is where care of the patient is shared and it is necessary for the patient's proper care that full communication is made to the other health professionals involved.

Disclosure may also be made to a person nominated by the individual concerned or to the principal caregiver or a near relative in accordance with recognised professional practice provided that the individual has made no objection to such disclosure and it would be undesirable or impracticable in the circumstances for the patient's consent to be sought.

Accordingly, for example, disclosure of health information can normally be made to a parent about a young child.

Some specific situations, which may arise, are:

- Couples Ordinarily, a spouse or partner of a patient must not be given the patient's notes without the patient's written consent.
- Disclosure to parents Parents have no *right* of access to records about their children, regardless of age. But disclosure of records may be made to a parent in accordance with recognised professional practice and if disclosure is not contrary to an express request by the child and it would be either not desirable or impracticable to get the child's consent. Sometimes it will be obvious enough that disclosure to a parent may be made. Other situations may present "grey areas" where a decision will need to be made whether (i) it is not desirable (or impracticable) to seek consent but (ii) it is nonetheless in the child's own interests that disclosure should be made. In such cases consult with the partner or doctor who attended the child before disclosing information.
- Disclosure to separated or divorced parents Even greater caution should be applied in this situation than under *Disclosure to parents* above. This is because a non-custodial parent does not have the legal right to the day to day care of the child, so it becomes less likely that information will need to be given to him or her in the best interests of the care of the child. Even so, exceptions to this general rule may apply, eg. if the child is given medical treatment while under the care of the non-custodial parent during a period of access. It will be even more important to consult with the medical practitioner who attended the child patient before releasing information requested by the non-custodial parent than where the request is made by the custodial parent.
- Disclosure of records of deceased patients Disclosure *may* (not *must*) be made to a deceased patient's representative. The "representative" in this context is the patient's executor or administrator. That will not necessarily be the patient's spouse. Records should not be disclosed to the surviving spouse unless that person happens to be the deceased's executor or administrator. Proof that someone is the executor or administrator would be either a copy of the patient's Will stating that the person is the executor, or a "Letter of Administration".
- General If you are in doubt about whether information can safely be disclosed to a third party, the golden rule is to discuss the matter with the partner or doctor who attended the patient. You should consider asking for a signed authority from the patient (where possible). Where you are not able to get consent from the patient, proof may be required in the form of an "Enduring Power of Attorney/Welfare Guardian". Even seemingly innocuous information, such as the result of a blood test which shows no sign of irregularity, should be disclosed only to either the patient or to an agent with an authority.

### **Security of information**

Be careful to safeguard health information. Many of the precautions are common-sense ones. For instance:

- Make sure that filing cabinets are locked when your room is unattended.
- Do not allow unauthorised persons access to parts of the premises where patient records are held.
- Challenge any unrecognised visitor, or person who appears to be in a part of the premises to which visitors would not generally have access.
- Ensure that confidential material is not visible to persons who come to the premises for business purposes (equipment maintenance, sales, etc) or to visit other staff.
- Make sure that the screen of your PC is not positioned in such a way that it can be seen by unauthorised personnel.

Particular care needs to be taken where fax machines are used to transmit health information.

- Generally, you should put through a telephone call to the intended recipient before transmission, both to reduce the risk that an unauthorised person will see the facsimile at the other end (as could arise if, for example, the fax is being sent to the patient's workplace) and to reduce the prospect of the fax arriving at an unattended machine.
- Check the fax confirmation report to ensure correct transmission.
- Incoming Faxes should be delivered securely and promptly to the intended clinical staff.

### **Other security measures to protect confidentiality**

If you are authorised to take health information off the premises, ensure that it is kept in a locked file or case when not being used.

If you leave the practice's employment you must return any keys, identity badge and building access cards in your possession.

### **Accuracy of information**

To ensure that the practice's information is kept up-to-date and accurate, when you are attending a patient:

- Ask him or her to confirm the accuracy of the information at the time it is collected. This can be done by simply repeating the information that you have taken down or entered into the computer system and asking the individual to confirm that it is right

- Update information that is liable to change (eg. name, address, telephone, occupation) at each consultation over a new matter.

## **EXPLANATORY NOTES TO ACCOMPANY “ADVICE TO PRACTICE STAFF ON CONFIDENTIALITY AND PRIVACY”**

The advice notice has been prepared to help practices give guidance to their staff on a number of the more important issues relating to confidentiality and the Health Information Privacy Code 1994. The notice has been prepared for circulation to practice staff.

It should be stressed that the advice notice is primarily directed towards the education and guidance of staff members. It deals with the sorts of issues relating to privacy and confidentiality that nurses, receptionists and clerical staff could expect to encounter.

Hence, it does not address a number of the policy issues that practices may need to consider in this area, such as

- Decisions relating to the technical security of computer equipment;
- the practice's policy on the destruction of medical records;
- whether unique identifiers are to be assigned to patients, and;
- whether copies of records are to be retained when the originals are handed over to the patient.

Nor does it directly address issues which, if they arise, will need to be dealt with by a medical practitioner, such as the circumstances under which access to information might be refused in the case of a child under the age of 16 where the disclosure of the information would be contrary to the child's interests. (In such a situation, however, the notice does advise the staff member to refer the issue to a medical practitioner: see under the heading *Access to information by children under the age of 16* in the notice).

The contents of the advice notice should be treated as minimum standards. Some practices, particularly those with "high tech" computer and communications equipment, may need to consider more elaborate precautions to ensure that they comply with the 1994 Code.

Practices might also consider dealing with certain aspects of the 1994 Code's requirements in a manner alternative to that indicated in the advice notice. In particular, an alternative way of providing the information which appears in the section under the heading *Advice to patients under Privacy Code* may be to set such information out in a pamphlet which as a matter of course would be handed to each patient by the receptionist when they register for an appointment. If a practice were to adopt that method, that particular section in the notice could be replaced by a simpler formulation, advising the employee who attends the patient to check to make sure that the patient has received and has understood the contents of the pamphlet, and to ask whether the patient has any concerns or questions about the matters covered in it.

A person, either the practice manager, or one of the medical practitioners, must be appointed to deal with any complaints about breaches of privacy and his/her name should be inserted on the final page of the notice.

**Bearing in mind that the notice is by no means intended to be an exhaustive summary of all the potential situations that can arise, the NZMA recommends that all practices have on hand a copy of the 1994 Code.**

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## Need more help?

Contact the NZMA:

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