

Confidentiality: disclosing information for insurance, employment and similar purposes

1 In our *Confidentiality* guidance, we advise that:

7 ...You must inform patients about disclosures for purposes they would not reasonably expect, or check that they have already received information about such disclosures.

33 As a general rule, you should seek a patient's express 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.

34 If you are asked to provide information to third parties, such as a patient's insurer or employer or a government department or an agency assessing a claimant's entitlement to benefits, either following an examination or from existing records, you should:

- a 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
- b 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
- c only disclose factual information you can substantiate, presented in an unbiased manner, relevant to the request; so 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 patients' entitlement to pensions or other health-related benefits, and

- d 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:
 - i they have already indicated they do not wish to see it
 - ii disclosure would be likely to cause serious harm to the patient or anyone else
 - iii disclosure would be likely to reveal information about another person who does not consent.¹

35 If a patient refuses consent, or if it is not practicable to get their consent, information can still be disclosed if it is required by law or can be justified in the public interest (see paragraphs 36 to 56). If the purpose is covered by a regulation made under section 251 of the *NHS Act 2006*, disclosures can also be made without a patient's consent, but not if the patient has objected.

2 The first duty 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, 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.

3 There are many circumstances in which a doctor might be asked to disclose information, either following an examination of a patient or from existing records, and in which they face 'dual obligations'. Usually, dual

obligations arise when a doctor works for, is contracted by, or otherwise provides services to:

- a a patient's employer (as an occupational health doctor)
- b an insurance company
- c an agency assessing a claimant's entitlement to benefits
- d the police (as a police surgeon)
- e the armed forces
- f the prison service, or
- g a sports team or association.²

4 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.

Extent of the disclosure

5 You should disclose only information relevant to the request for disclosure, which means you should not usually disclose a patient's whole record. Exceptions to this general rule include benefit claims and litigation.

6 The whole record may be relevant to some benefits paid by government departments or agencies.

7 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 the claim is made against 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 all the patient's health records. The solicitor should explain this to the patient. In Scotland and Northern Ireland, you should disclose records in accordance with your patient's wishes or as ordered by a court.³

Writing reports

8 When writing a report you must:

- a do your best to make sure that it is not false or misleading; you must take reasonable steps to verify the information in the report, and must not deliberately leave out any relevant information
- b complete and send the report without unreasonable delay⁴
- c restrict the report to areas in which you have direct experience or relevant knowledge, and
- d make sure that any opinion you include is balanced, and be able to state the facts or assumptions on which it is based.⁵

Endnotes

- 1 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 further advice about reports for benefits purposes (see www.dwp.gov.uk/healthcare-professional/guidance).
- 2 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).
- 3 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* (see www.bma.org.uk/ethics/health_records). The forms include notes for clients, solicitors and health professionals.
- 4 See *Good medical practice* (2013), paragraphs 71-74.
- 5 See *Acting as a witness in legal proceedings* (2013).

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