

Confidentiality – disclosures in the public interest

All patients have the right to receive confidential medical treatment. Occasions can arise when these rights must be weighed up against other considerations, such as protecting the health and welfare of patients, and others who may be unable to protect themselves.

There may be other occasions when disclosing confidential information is permissible in the public interest, such as when the benefits to an individual or society as a whole outweigh the patient's rights to a duty of confidence. For example, disclosure could be justified to protect individuals or society from the risk of harm or death, such as from a serious communicable disease or violent crime.

All such disclosure decisions must be based on the prevailing circumstances, and where there is uncertainty you should seek the advice of a Caldicott Guardian or an MDDUS adviser.

Basic Considerations

Before taking any decision to disclose personal information for the protection of an individual or others, you should first seek the patient's consent to do so, unless the information in question is required by law or doing so is considered unsafe or not practicable. You should always listen to and consider any reasons given by the patient for refusing to provide consent.

An example of disclosure justified in the public interest would be in the prevention, detection or prosecution of serious crime, especially crimes against the person. It is not uncommon for victims of serious criminal acts to refuse police involvement but disclosure may still be justified if a threat remains to others, for example if it is suspected that weapons have been involved or in cases of domestic violence, where children remain at risk.

Other situations where a failure to disclose confidential information could expose others to a risk of death or serious harm include patients continuing to drive when considered medically unfit, posing a serious risk to others through being unfit for work, or having been diagnosed with a serious communicable disease.

In assessing whether there is a public interest argument in disclosing confidential information without consent, you must decide if it outweighs the patient's and the public interest in keeping the information confidential. Some practical areas to consider include:

- Is there potential for harm or distress to the patient arising from the disclosure in relation to their future engagement with clinical treatment?
- Is there a risk of damage to public trust in the medical or dental profession generally through adverse publicity and a change in public perception and confidence?
- Is there any potential harm to others if the information is not disclosed?
- Are there any potential benefits to an individual or to society as a whole from disclosing the information?
- Can harm be avoided or benefit gained without breaching a patient's confidentiality and, if not, is there a minimum level of disclosure that would satisfy the purpose under consideration?

Ultimately, if you consider that a failure to disclose would leave individuals or society exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, you should disclose relevant information promptly to an appropriate person or authority.

A number of laws also require disclosure of patient information, for example the notification of infectious diseases, provision of health and social care services, prevention of terrorism and the investigation of road traffic accidents.

GMC guidance states that you "must disclose information if it is required by law". In coming to a decision you should:

- Confirm that the disclosure is required by law.
- Disclose only relevant information in the way required by the law in question.
- Tell the patient about of your decision whenever practicable, unless it would undermine the purpose of the disclosure. (This would also apply in relation to public interest disclosures.)
- Abide by a patient's objection to withhold the information in question if there is specific provision and right to do so under law.

The courts also have powers to order disclosure of information in various circumstances, and you must disclose information if ordered to do so by a judge or presiding officer of a court. Under these circumstances, only disclose the information required by the court and object to the request if you are being compelled to disclose what appears to be irrelevant details, such as information about a patient's relative who is not involved in the proceedings.

Common pitfalls

- Failure to consider or seek a patient's consent to disclose confidential information or to weigh up stated objections to disclose against the prevailing risk to others.
- Disclosure of confidential information in relation to an alleged crime or offence which is not serious in nature.
- Failing to disclose confidential information where there is a risk of death or serious harm to others.
- Failure to disclose confidential information in the public interest promptly where justification exists.
- Failure to document in the patient's record the reasons for disclosing confidential information with or without consent. This would include the need to document the steps taken to seek the patient's consent, to inform them about the disclosure or reasons for not doing so.

Key points

- The provision of confidential medical care is in itself recognised in law as being in the public interest and patients are therefore actively encouraged to seek advice and treatment from health professionals.
- Occasions arise when disclosure of confidential information in the public interest is necessary to protect society from the risks of serious harm.
- Seek out advice and support from your MDDUS information governance officer or Caldicott guardian if necessary or practicable when considering the disclosure of confidential information.

Further guidance

- GMC. *Confidentiality: good practice in handling patient information* (Disclosures for the protection of patients and others): <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/disclosures-for-the-protection-of-patients-and-others>
- ICO. Health sector resources: <https://ico.org.uk/for-organisations/resources-and-support/health-sector-resources/>
- GDC. *Focus on standards* (Principle 4: Maintain and protect patients' information): <https://standards.gdc-uk.org/pages/principle4/principle4.aspx>

MDDUS Training & CPD resources: <https://www.mddus.com/training-and-cpd/training-for-members>