FACTSHEET

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Patient Access to Medical Records

At Medisec, we are regularly contacted by members seeking advice following receipt of a request from a patient for the release of their medical records. This factsheet provides guidance on the management and processing of such requests.

Right of access

Patients have a right to access their own medical records by virtue of one or a combination of the following:

1. General medical ethical principles
2. Data protection legislation
3. Freedom of information legislation

1. Ethical principles

By virtue of long-established principles of medical ethics, a doctor has a general duty to deliver copies of medical records to his/her patient, subject to certain exceptions. Paragraph 38.4 of the Medical Council's *Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition 2024* (available on the Medical Council website) provides:

"*Patients have the right to get copies of their medical records. Where the contents of this record may pose a risk of serious harm, access can be restricted"*

2. Data protection legislation

Patients, whether private or medical card holders under the GMS scheme, have a right to access their own medical records in accordance with Article 15 of the EU General Data Protection Regulation (GDPR). A request may be made in writing or verbally. The identity of the person making the request should be confirmed using "reasonable means"; if there is any doubt, it is pertinent to ask the patient to provide more information such as date of birth, birth certificate or passport, for example.

The access request should be responded to within 30 days; this time period may be extended by a further two months where requests are complex or numerous. If further time is required, the patient must be informed within one month and provided with an explanation as to why an extension is necessary. Pursuant to the GDPR, no fee is chargeable for providing a copy of the medical record; however, a "reasonable fee" may be charged when a request is "manifestly unfounded or excessive".

Please see our factsheet entitled *GDPR – Data Subject Access Requests*, available on our website, for further guidance.

Children

Patients aged 16 years and over are entitled by law to give their own consent to surgical, medical or dental treatment. Patients aged 18 years and over can consent to in-patient psychiatric treatment. A doctor should be aware that legal guardians may have a right of access to a child's records until they are 18 years and it is therefore important for the minor to understand that their confidentiality cannot be guaranteed.

On receipt of an access request from a legal guardian for the release of their child's clinical records, if the

doctor believes that their minor patient is sufficiently mature to understand the implications of the release of their medical records, their consent should be obtained before allowing access. The ICGP has published helpful guidance in this area, *Processing of Patient Personal Data: A Guideline for General Practitioners,* which provides that:

An individual can only make an Access Request for their own personal data. Legal guardians can also make an access request on behalf of a child. However, once a child is capable of understanding their rights to privacy and data protection, the child should normally decide for themselves whether to request access to data and make the request in their own name. This is not age dependent.

Revealing of medical information of a child who is capable of making decisions themselves will in most situations constitute a breach of the Data Protection Acts if undertaken without the consent of the child capable of making their own decisions.

If the patient is too young and/or lacks capacity to consent to the release of their records, then the records should only be released when the doctor is satisfied that it would be in the child's best interests to do so. It is important that the doctor is satisfied that the person making the request (which will usually be a legal guardian) is genuinely acting on behalf of, and in the best interests of, the child whose data is being requested. In situations where the doctor is of the view that it may not be in the child's best interests to release their clinical information, we advise that the doctor contact their indemnifier/insurer for further advice.

3. Freedom of Information legislation

The Freedom of Information Acts (FOI) 1997- 2014 grant individuals a right of access to their personal records held by public bodies. Although a GP practice is not a public body, the HSE is a public body and; therefore, FOI legislation applies to records of patients who hold medical cards under the GMS scheme. The GP holds those patients' records as custodian on behalf of the HSE.

Often, a GMS patient will make a request for their clinical records expressly referencing FOI legislation and, in such circumstances, the patient should be directed to the FOI department within the HSE to process their request. The patient should submit the FOI request to the HSE and the HSE FOI officer will then ask the doctor for a copy of the patient's records. We recommend that the GP, in a cover letter, put the FOI officer on notice of any information/concerns contained in the records; for example, information that may be inherently sensitive or relate to a third party or that may be harmful to the patient. Ultimately, it will be a decision for the FOI officer to apply any redactions that may be appropriate and to decide whether or not to release the requested records.

Where doctors receive requests for GMS patients' records and those requests do not expressly reference FOI legislation, the doctor should consider managing these requests themselves, unless the medical records are very complex /lengthy or relate to sensitive records such as psychiatric records or records pertaining to children or deceased patients, or if there are any complicating factors arising from the request.

Written request

Although not a strict requirement, it is good practice to seek a written request for the release of patient information and to obtain a written consent from the patient which should be retained on their file.

Capacity and best interests

The doctor should be satisfied that the patient has capacity to make the request and that the request is actually being made by the patient. Unfortunately, it is not unheard of for a family member to purportedly make the request in a patient's name with the intention of intercepting the clinical records. If there is any doubt, we recommend verifying the request which also affords the doctor an opportunity to talk to the patient and confirm capacity. If for any reason the doctor doubts the patient's capacity, they should ask the patient to attend for a consultation to assess capacity and whether it is in the patient's best interests to receive a copy of their clinical records. For example, it may be necessary to restrict access for a patient who has mental health issues, if access to the records is likely to cause serious harm, as mentioned above.

Review before delivery

"Likely to cause serious harm" and the Data Protection (Access Modification) (Health) Regulations, 2022

The Data Protection (Access Modification) (Health) Regulations, 2022 allow for the withholding of records by a data controller who is a health service provider, where granting access to the records is likely to cause serious harm to the physical or mental health of the data subject (patient). The regulations state that records should only be withheld to the extent that is necessary and proportionate, and only for so long as necessary to protect the health of the data subject. The Regulations; therefore, suggest an obligation to keep the matter under review if access has been withheld because with the passage of time, the justification for withholding access may cease to exist.

The above regulations permit data controllers who are *not* health practitioners to consult with a health practitioner who has experience/qualifications to advise on the matter, if they have reasonable grounds for believing granting access is likely to cause serious harm to the physical or mental health of the data subject.

If the patient's medical records contain information relating to the patient's mental health and you believe that granting access to this information could cause serious harm to the patient's physical or mental health, we recommend that you make contact with the relevant author of the correspondence; for example, a consultant psychiatrist, and seek their views on whether they believe the information is likely to cause serious harm to the patient's physical or mental health.

Where a decision is taken to withhold health data to the patient based on the exceptions outlined above, the data controller is obliged to advise the patient that they can nominate another health practitioner to review the health data concerned.

In light of the nuances above, we recommend that doctors deal with these requests rather than members of their administrative staff. We recommend that a doctor carefully reviews and considers each request on a case-by-case basis, which we appreciate can be time consuming. If you do receive such a request, please do not hesitate to contact Medisec for specific advice.

Correspondence from other health professionals

All records held in relation to a patient, including correspondence from other health professionals form part of the complete patient record. While you do not need express consent from those other health professionals, it is open to you, as a matter of courtesy, to let the other health professionals know that the patient's records have been requested and released.

In the event another healthcare professional expressly gave an opinion on the understanding that it would be treated as confidential, then their consent should be obtained before releasing written confirmation of that opinion.

Redacting third party information

Prior to release, there is also a requirement to redact information relating to third parties from the records, e.g., the patient's family members, unless the consent of that third party is obtained before disclosure. The process of redacting records can be complex and requires careful consideration on a case-by-case basis. The doctor should consider the purpose of the request and the best interests of their patient in each case and make a clinical decision as to whether the information should be redacted. We recommend the doctor contacts their indemnifier/insurer for assistance if they have any queries relating to redactions before disclosure.

When the doctor has completed a review of the records and made any necessary/appropriate redactions to the copy records, (made with a black marker for example, to ensure transparency on the face of the records), a complete legible copy should be disclosed; the original patient records should always be retained.

Summary

In summary, patients have a right of access to their clinical information, unless this is likely to cause serious harm to their physical or mental health. We recommend that you seek advice from your indemnifier/insurer prior to releasing any patient information, should you have any queries or if there are any complicating factors arising from the request.

Please also refer to our factsheets, available on our website relating to medical records, to include, *FAQs on access to Medical Records, The Importance of Good Medical Records, Storage and Retention of Medical Records and Third Party Requests for Medical Records.*

Please do not hesitate to contact Medisec for specific advice following a request to release patient information.

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