

Request for Medical Records/Information of a Deceased Patient

Patient information remains confidential even after death. This factsheet sets out the considerations and guidance that applies, should you receive a request for the release of medical records/clinical information relating to a deceased patient.

Paragraph 32.1 of the Irish Medical Council (IMC) *Guide to Professional Conduct and Ethics* (available on the IMC website) provides that a doctor's duty to maintain patient confidentiality continues after the patient's death:

Patient information remains confidential even after death. If it is unclear whether the patient consented to disclosure of information after their death, you should consider how disclosure of the information might benefit or cause distress to the deceased's family or carers. You should also consider the effect of disclosure on the reputation of the deceased and the purpose of the disclosure. Individual discretion in this area might be limited by law.

Prior to releasing any records/information relating to a deceased patient, a GP should have regard to the following:

- The wishes of the patient expressed during their lifetime, if known. If the patient had specifically requested or expressed a preference that their medical information should not be disclosed to third parties after their death, a doctor should respect that wish.
- The purpose of the request and whether the information being requested may potentially harm the deceased patient's reputation. For example, would disclosure of the information lower the standing of the deceased in the eyes of others?
- Is the requested information likely to cause harm or distress to the family of the deceased patient or is the requested information inherently private and/or of a very sensitive nature?

If so, it may not be appropriate to release that information unless there are compelling reasons to do so. Consideration should be given to redacting that information from the records, prior to releasing.

(It is important to be aware that where redactions are being made, it should be clear that this is the case, i.e., "blackout text" or marker should be used to redact text, rather than a page be omitted or text deleted from the records without trace; transparency on the face of the record in respect of any redaction is extremely important.)

- Does the record contain third party information?

Paragraph 33.5 of the Guide provides that *Patients have a right to get copies of their medical records except where this is likely to cause serious harm to their physical or mental health. Before giving copies of the records to the patient, you must remove information relating to other people, unless those people have given consent to the disclosure.*

Although paragraph 33.5 does not specifically apply to a request for a deceased patient's records, we advise that before doctors release a copy of the records, they should review the records carefully and consider, on a case by case basis, the requirement to redact information about third parties, i.e., someone mentioned in the records who is not the deceased.

An example of third-party information that may require redaction would be a comment recorded about another family member's health status, for example, *mother and sister had breast cancer*. (As mentioned above, any redactions made should be obvious on the face of the record and information should never be deleted or pages removed from the patient records)

Consent to release

If, having regard to the above considerations, a decision to disclose the requested information/clinical records is made, it is important to seek appropriate written consent from the Executor/Legal Personal Representative of the deceased patient's estate, prior to releasing the requested information. A copy of that consent should be retained on the deceased's clinical file.

In most cases, the Executor/LPR will be the widow/widower or a child of the deceased. It is important to bear in mind; however, that an Executor/LPR may be a separate individual to the patient's "next-of-kin"; for example, the patient may have named a close friend as Executor in their Will to manage their affairs and administer their estate on their death. It is therefore appropriate to make enquires and to seek the express consent of the Executor/LPR prior to disclosing any information relating to the deceased. A copy of that consent should be retained on the deceased's file.

Prior to releasing the requested information/records, in some circumstances it may be prudent to invite the Executor/LPR to review the documentation to ensure that they understand the nature and extent of the intended disclosure and are providing informed express consent to release. Again, the Executor/LPR's consent following their review should be recorded on the deceased's file.

It is important that the original records are retained within the practice and only copies of the records are released on foot of the request.

Requests made pursuant to Freedom of Information Legislation

GPs often receive requests to release information relating to a deceased patient which specifically refer to Freedom of Information legislation. The Freedom of Information Acts (FOI) 1997- 2014 grant individuals a right of access to personal records concerning the individual, which are held by public bodies. Although a GP practice is not a public body, the HSE is and therefore FOI applies to medical records of GMS patients and those patients who held a GMS card prior to their death. The GP holds the records of GMS patients as custodian on behalf of the HSE.

FOI legislation does not apply to clinical records of private patients.

Where a GP receives a request to release information/records relating to a deceased GMS patient and the request specifically refers to FOI legislation, in circumstances where the HSE deems a deceased patient's health record as information of a sensitive nature and recommends that the access request be directed to the HSE Freedom of Information department and dealt with through the FOI process, we advise that such requests be directed to the HSE for processing.

If a request is made through the HSE FOI department, the GP will be contacted by the relevant HSE FOI Officer and requested to provide them with a complete unredacted copy of the deceased's records, so that he/she can process the FOI request.

We suggest that the GP, by way of courtesy 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/private or relate to a third party. Prior to releasing the requested information, the FOI officer will consider the principles as outlined above, when processing a request made pursuant to FOI legislation. Ultimately, it will be a decision for the FOI officer to apply any redactions that may be appropriate and they will decide whether it is appropriate to release the requested records.

If a GP receives a request for the release of records/information relating to a deceased GMS patient and the requester does not specifically refer to FOI legislation in their request, unless the request is extremely straightforward without any complicating factors, we advise that the GP should refer the requester to the HSE FOI department.

Details of how to make a request under FOI legislation can be found on the HSE's website; *Making a Request under the Freedom of Information Act*, and it can be of assistance to direct family members/requesters to this information page.

It is important to note that data protection legislation / GDPR does not apply to deceased persons or to requests for the release of records/information relating to deceased individuals.

Please do not hesitate to contact Medisec if you have any specific queries regarding a request for the release of information relating to a deceased patient.

The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice.