

## Request for a Deceased Patient's Medical Records

Patient confidentiality endures beyond death and this factsheet will guide you through the considerations which apply if you receive a request for the records of a deceased patient.

Paragraph 32.1 of the Medical Council's *Guide to Professional Conduct and Ethics* (available on the Medical Council website) confirms that the ethical duty of confidentiality continues after 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.*

With this type of request, a doctor should consider the following:

- the wishes of the patient, 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.
- why the request is being made (if the reasons are known) and whether the information would be beneficial or detrimental to the family.
- whether disclosing the records as requested would potentially harm the deceased's reputation. For example, would disclosure of the information lower the standing of the deceased in the eyes of others?
- if a record is inherently private and of a very sensitive nature, then it may not be appropriate to release unless there are compelling reasons to do so. A doctor should consider if it is appropriate to redact sensitive information about the deceased before releasing a copy of the records.

If a decision to disclose is made, then the written consent of the Legal Personal Representative (e.g. executor) should be sought. In most cases, this will be the widow / widower or a child of the deceased but it is not always the "next-of-kin" as the patient may have chosen someone else to be the executor of their estate.

Also, section 33.5 of the Guide states:

*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.*

Section 33.5 does not specifically apply to a request for a deceased patient's records, but we advise that before doctors release copy records they should review the records carefully and consider, on a case by case basis, the requirement to redact information about third parties. An example of third party information that may require redaction would be a comment about another family member's health status. 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 without trace.

The original records should be retained within the practice and copies only provided.

## Freedom of Information

When GPs receive requests for deceased GMS patients' records which specifically refer to the FOI Act, those requests must be referred to the HSE for processing. This is because the GP records of a GMS patient are deemed to be owned by the HSE and held by the GP as custodian only. Also, the HSE deems a deceased patient's health record as information of such a sensitive nature that the access request must be dealt with through the FOI process.

If an FOI request is made, the GP has to provide a full copy of the deceased's records to the relevant HSE FOI Officer so that he / she can process the FOI request. The GP should include the details of any relevant information or concerns which they may have about the release of the records in a cover letter to the FOI Officer e.g. if the GP thinks the records contain third party information or sensitive information about the deceased which should be redacted.

It will fall to the HSE FOI Officer to make the decision whether to release the records or not.

The same principles would apply to the consideration of an FOI request as outlined above.

Even if the requester does not specifically refer to the FOI in their request for access to a deceased GMS patient's records, unless the request is extremely straightforward without any complicating factors, the GP should refer the requester to the HSE FOI process. Details of the local HSE FOI officers and the FOI application form can be found on the HSE's website.

It is important to note that data protection / GDPR does not apply to deceased individuals.

Please do not hesitate to contact Medisec if you have any specific queries regarding a request for information regarding 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.