

## Third Party Requests for Records

Doctors often receive requests from third parties such as solicitors, insurance companies or family members for information relating to a patient or for copies of patient records. This factsheet sets out the issues that arise when doctors are presented with such requests.

### Confidentiality

Confidentiality is a time-honoured principle of medical ethics and essential to maintaining patients' trust and enabling patients to speak honestly and fully about their lives and symptoms. Doctors must remember that where a patient has capacity, patient consent must be sought before disclosing any patient information to a third party. Confidentiality should not be breached and records should not be released without patient consent, subject to rare exceptions (set out below). Please see our factsheet on *Confidentiality* available on our website.

### Medical Records Requests

We recommend that requests for records (either from patients or from third parties) should be in writing and held on the patient's file.

We advise that before doctors release copy records to a patient or a third party they consider the issues below and that they review the records carefully and consider, on a case by case basis, the requirement to redact any information in relation to third parties.

#### Patient requests

As a general principle, patients are entitled to a copy of their own records. The exception is where the release of the records to the patient would compromise the health of the patient or breach the confidentiality of others. Please see our factsheet on *Patient Requests for Medical Records*, available on our website.

#### Requests from insurance companies / solicitors

Insurance companies and solicitors may seek certain information relating to claims made by patients. Sometimes, doctors are asked to write reports and / or provide copies of patients' medical records. A written and dated consent form signed by the patient to disclosure of information / records should be sought and stored on the patient file. If the consent / authority to disclose has not been dated recently, we recommend that you contact your patient to make sure that they are still agreeable to having their confidential information / records disclosed and that they understand the extent of the information requested.

It is important for doctors to ensure they have full, valid and informed consent from the patient to disclose any information to an insurance company or solicitor. Doctors must be conscious of the extent of the patient's consent to the release of information to such entities and take steps to ensure the patient understands the nature and extent of the records to be released. You should not disclose any information that goes beyond the parameters of the request. We recommend contacting the patient in advance of releasing the information and explaining to the patient the information that you intend to release. This approach will either provide you with confirmation that the patient consents, or it will give the patient a chance to raise any concerns / rescind consent. For example, a patient may not appreciate that a certain request incorporates old medical records, records related to previous unrelated conditions or comments made by them to their doctor which they consider private.

For further information on providing reports to insurance companies please see our factsheet *Private Medical Attendant (PMA) Reports* on our website.

### **Garda requests**

In general, a patient's consent is required to release confidential medical information to the Gardaí. There are, however, certain limited circumstances where the public interest in disclosing information outweighs the patient's interest in preserving confidentiality, or the disclosure is required by law (see further information below and in our factsheet *Garda Request for Medical Records* available on our website). On occasion, the Gardaí act on behalf of a coroner requesting information or a report and all such requests should be received in writing.

### **Requests from patients' family members**

Family members sometimes become involved in a patient's care and require copies of records for various reasons. This information cannot be provided without the patient's consent.

Adult children of elderly patients will often request this information. Consideration as to the best interests of the patient and their capacity are factors to be considered before the release of such records. Many doctors will ask an elderly patient if they are happy for them to discuss their care with their adult children and if consent is received this should be recorded in their records including reference to which of the family members have permission.

Parents of teenage children may also wish to see their children's medical records / have access to their information. Section 4(a) of the ICGP Guidance document, *Processing of Patient Personal Data: A Guideline for General Practitioners (2019)* states that while parents and / or legal guardians can make an access request on behalf of a child, 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.

It would be important before releasing any information in such a case that the doctor be satisfied that the person was genuinely acting on behalf of, and in the best interests of, the child whose data was being requested. Revealing 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.

Family members of deceased patients often request information or records. Please see our factsheet on *Request for a Deceased Patient's Medical Records* for further information.

If in any doubt please contact us for advice before releasing records to a family member without consent.

### **Disclosure in the absence of consent**

As an initial step doctors should always seek the consent of the patient when their information is being sought by a third party. If a patient refuses, the doctor must consider the reason for refusal and document the fact of refusal. The doctor must then ask themselves whether there is a valid reason to release the records in circumstances without the patient's consent and they include:

- When ordered by a judge in a court of law, or by a tribunal or body established by an Act of the Oireachtas (e.g. Coroner's court, Medical Council);
- Legislative exceptions such as notifiable diseases;
- Children First guidelines where children may be at risk of neglect or harm;
- Incapacitated patients and where their best interest requires;
- Where the patient or the public is at risk of serious harm to health or death.

We strongly recommend contacting MediseC in such circumstances and, if required, we will obtain written legal advice to protect your professional interests. If the advice is that an exceptional circumstance prevails, you must record the factors for disclosing information without the patient's consent in their chart.

## Patient lacking capacity to consent

If the patient lacks capacity to give consent and is unlikely to regain capacity, before disclosing information to a third party, doctors should consider whether anyone has authority to make decisions on the patient's behalf i.e. an "attorney" appointed under an Enduring Power of Attorney or a "Committee" if the patient is a Ward of Court. If so, the signed consent of the attorney or the Committee should be sought. For further information, please see our factsheet on *Enduring Powers of Attorney and Wardship* (available on our website).

Any disclosure of information relating to a patient who does not have capacity to consent should only be made after careful consideration that it is in the patient's best interests. Please see our factsheets on *Confidentiality* and *Assessing Capacity for Medical Treatment* (available on our website).

## Sharing information within the healthcare team

Doctors will normally obtain a patient's consent to share relevant medical records with the other health professionals to ensure the safe delivery of care to their patients. It is possible for a patient to refuse to consent to the sharing of this information. This refusal and the basis for same should be recorded on the patient's file.

Paragraph 30.3 of the Medical Council *Guide to Professional Conduct and Ethics* (available on the Medical Council website) deals with disclosing information to other healthcare providers and states the following:

*Most people understand and accept that information must be shared within the healthcare team and support staff to provide safe and effective care. If disclosure of a patient's information is necessary as part of their care and treatment, you should disclose the information to an appropriate person and make sure they understand that the information is confidential. You should explain to the patient that information is being shared for their benefit and with whom the information is being shared. If the patient objects to the transfer of information that you consider necessary for the provision of safe care, you should explain that you cannot refer them or arrange their treatment without disclosing that information.*

## In summary

- Obtain the patient's consent in writing to the release of any records to a third party.
- Ensure that the patient is fully aware of the nature and extent of the disclosure sought, and gives informed consent to the release.
- Review the parameters of the request for records carefully – for example, does the third party require a full copy of the patient's records, or does the request relate to a recent injury or recent treatment. If the request is specific to an event, incident, allegation or date range, the records released should be limited accordingly.
- All records should be reviewed by a doctor prior to release and should not be passed on as an administrative task. Please see our factsheet on *Patient Requests for Medical Records* for issues to consider when reviewing records before release.

Please refer to the following related factsheets available on our website:

- *Confidentiality*
- *Patient Requests for Medical Records*
- *FAQs re access to medical records*
- *GDPR Data Subject Access Requests*
- *Request for a Deceased Patient's Medical Records*
- *Garda Requests for Medical Records*

- *Private Medical Attendant (PMA) reports*
- *Storage and Retention of Medical Records*

Please do not hesitate to contact Medisec with any queries on third party requests for patient information or records.

“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”.