

## Ownership and Transfer of Patient Records

The issue of ownership and transfer of medical records between healthcare professionals may arise in practice for various reasons. For example:

- When a GP retires;
- Where a GP leaves the practice;
- Following a partnership dissolution; and/or,
- Where a member of the partnership wishes to set up a new practice.

This factsheet is aimed at providing you with some practical advice when such situations arise.

Paragraph 33.4 of the Medical Council *Guide to Professional Conduct and Ethics for Registered Medical Practitioners*, 8<sup>th</sup> Edition 2019, provides that “You must comply with data protection and other legislation relating to storage, disposal, and access to records. You should understand the eight rules of data protection.” ( use of the term “must” imposes an absolute duty and “should” describes best practice).

The Data Protection Commission has issued helpful guidance on the principles of data protection, available on the Commission’s website, <https://www.dataprotection.ie/>

The Irish College of General Practitioners has issued helpful guidance entitled, *Processing of Patient Personal Data: A Guideline for General Practitioners*, which also offers advice on complying with data protection principles.

While most GP practices hold fully electronic records, it is important to be aware that any paper records must also be dealt with appropriately and in accordance with data protection legislation in respect of storage, disposal and access.

## Retirement

Preparation is key to the smooth management of transfer and storage of medical records on retirement.

Paragraph 37.1 of the Medical Council’s Guide provides:

*“If you are planning to retire or to reduce your patient list, you should make arrangements for the transfer of your patients to another doctor. You should let your patients know before these arrangements take effect. With the patient’s consent, all relevant medical records should be sent to the doctor taking over the care of the patient. If you are responsible for medical records, you must make sure the records are transferred securely or disposed of appropriately.”*

Where private patients are concerned, the GP should notify them of their impending retirement and on receipt of appropriate explicit consent from the patient, arrange for the secure transfer of their records to their new GP. Time for this notification and transfer period of records should be factored into any proposed retirement plans.

The GMS contract stipulates that the GP gives three months’ notice in writing of the intention to retire from practice. It is essential to inform the primary care manager of the local primary care unit of the date of retirement. If the GMS/HSE have undertaken to appoint a GP successor to the retiring GP’s GMS list, or disperse the GMS list, they will inform GMS patients. Once the GMS list of the retiring GP has been reallocated, the retiring GP should arrange for the transfer of GMS patient records without delay. The incoming GP has a contract with the GMS and is entitled to the records of all patients on the GMS lists.

It is also advisable for the retiring GP to inform the hospital manager of the hospitals to which patients have been referred, and other bodies such as Cervical Check, immunisation services, mother and child scheme etc. of the date of their retirement.

If a retiring GP holds any paper records relating to patients that are still attending, it is important that those paper records are scanned to the patient's current electronic file before transferring to their new GP, or alternatively, a copy of the paper file is also transferred to the new GP. It is vital that the new GP receives a complete copy of the patient's records.

If a retiring GP holds records (including archived paper records) for patients who no longer attend or who are deceased, it may be appropriate to securely destroy those records in accordance with data protection principles and record retention periods. For further information on record retention periods, please see the table listed below and our factsheet on *Storage and Retention of Medical Records*, available on our website.

If the retiring GP will remain in possession of patient records that are not being transferred and do not yet satisfy the retention periods for disposal, those records should be archived and/or securely stored in accordance with data protection principles, until such time as they can be securely destroyed.

It is advisable for a retiring GP to retain copies of patient records. If a copy is not retained, a GP may find themselves in a position where they will be reliant on the record-keeping practices of a third party, over which they have no control, to defend themselves against a legal claim or complaint that might arise in the future, after retirement. If upon retirement, however, a GP is unable to securely retain or archive a copy of their original records, they should ensure that they retain a right of access to the original patient records, should it be required. This may involve entering into an agreement with the patient's new GP and this should be contemplated in advance of transferring patient records.

When there is a takeover of a practice, it is important that clear terms are agreed as to who is responsible for the secure transfer, storage and, if appropriate, disposal of patient records. Will this fall to the retiring GP, for example, or will the new GP agree to take on some of the responsibilities? If the new GP does not seek clarification on these details, they may be deemed to have assumed responsibility for the entirety of records remaining in the practice, this could include all duties and obligations in relation to those records and the associated costs; therefore, prior agreement is strongly advised.

## Disagreements between Colleagues

The Medical Council's Guide states that "*Where disagreements arise, you should try to resolve them through further discussion, showing respect for colleagues' or patients' opinions.*"

At Medisec, we recognise that disputes do arise between colleagues and GP partnership arrangements sometimes breakdown and this can be a really challenging and stressful time for all concerned. It is vital that during such challenging periods, patients remain the key focus and; at all times, ensuring patient safety is not compromised as a result of such colleague disagreements/ disputes.

The dissolution of a GP partnership involves many complex issues and we recommend all parties seek independent legal advice in such circumstances.

Where private patients chose to leave the practice to attend an exiting GP at their new practice, records should be transferred on receipt of express consent from the patient, as discussed above. It is vital that no patient information is transferred from the practice in the absence of patient consent and this should be discussed and made clear to the exiting GP, prior to their departure.

Where, for example, an exiting partner takes their GMS list to another practice, the exiting partner has a contract with the GMS and is entitled to the records of all patients on their GMS lists and records should be transferred, as discussed above.

To ensure continuity of patient care and a seamless integration of clinical information to the new GP's IT system, records should be transferred securely, in a timely fashion and in a convenient form e.g electronically where possible.

## Security of Transfer

GPs should be mindful of security when transferring patient records by electronic means and it is important to ensure that there are appropriate levels of encryption in place. GPs should consult their IT provider to ensure that proper safeguards are in place so that clinical system information remains as secure as possible. Personal health information should not be transmitted by GPs to hospitals and other health providers by e-mail unless it is encrypted or a secure electronic pathway, such as Healthmail, has been established between the GP and the secondary health provider. It is important to be aware that web-based email providers are unlikely to provide adequate security and again GPs should consult their IT provider to ensure safeguards are in place.

When sending copies of medical records by post, it is important to confirm the address of the new GP and ensure the envelope is securely sealed and marked as *'Private and Confidential, Addressee Only'*. We suggest sending the records by registered post or courier service.

On some occasions, patients may ask to collect a copy of their own medical records to give to their new GP; for example, where the patient may be moving abroad. The GP should bear in mind that the Medical Council Guide provides *"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."*

With such requests, the GP must review the medical records and carefully consider the obligation to remove all references to third parties and also consider whether there is anything in the records that is likely to cause serious harm to the patient's physical or mental health. For further guidance in respect of access requests made by patients, please see our factsheet on *Patient requests for Medical Records*, available on our website.

## When to Dispose

In compliance with the Data Protection Acts, *"Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed"*.

The retention periods for medical records are taken from the HSE 'Record retention periods (2013) and also detailed in ICGP *Processing of Patient Personal Data: A Guideline for General Practitioners v2.3*. These periods are also in line with the recommendations of Medical Indemnity Agencies and the Health Information and Quality Authority (HIQA).

Please see the table listed below and our factsheet on *Storage and Retention of Medical Records*, available on our website for further information.

Type of Patient Record	Retention Period
Adult/General	8 years after last contact.
Deceased patients	8 years after date of death.
Children and young people	Retain until the patient's 25 <sup>th</sup> birthday or 26 <sup>th</sup> if young person was 17 at the conclusion of treatment, or eight years after death. If the illness or death had potential relevance to adult conditions or genetic implications, specific advice should be sought as to whether to retain the records for a longer period.
Maternity (all obstetric and midwifery records, including those of episodes of maternity care that end in stillbirth or where the child later dies)	25 years after the birth of the last child.

Mentally disordered persons (within the meaning of the Mental Health Acts 1945 to 2001)	20 years after the date of last contact between the patient and the doctor, or eight years after the death of the patient if sooner.
Patients included in clinical trials	20 years.
Suicide - notes of patients having committed suicide	10 years.
Cause of Death Certificate Counterfoils	2 years.
Records/documents related to any litigation	National Hospital Office recommends that the records are reviewed 10 years after the file is closed. Note however, if the litigation related to a child, this should not be used to lessen the retention period set out above.

## Duties on Disposal

Confidentiality obligations must be adhered to when disposing of medical records and they must be disposed of securely. Depending on the format of the record, this can mean physical destruction by shredding or incinerating, or in the case of electronic data, by permanently deleting the records from the hard drive and other storage devices. Whatever format the disposal takes, GPs must ensure that records are completely, irreversibly, and confidentially destroyed.

Particular care should be taken with regard to electronic devices that may be passed on for further use, to ensure that information is not recoverable by any means and this may require expert IT advice. External contractors employed to carry out such disposal must be subject to strict contractual confidentiality clauses and must be asked to certify that the data has been fully disposed of, appropriately and securely.

According to the HSE guidance, a register of records destroyed should be maintained as proof that the record no longer exists. This information can be used to explain the position to a patient who seeks their records, after they have been destroyed at the expiration of the retention period.

The register should show:

- name of the file
- former location of the file
- date of destruction
- who gave the authority to destroy the records.

For healthcare records, the register of records destroyed should also include:

- healthcare record number
- surname
- first name
- address
- date of birth

If you have any queries in relation to the ownership or storage of medical records, please do not hesitate to contact a member of the Medisec advisory team for further advice.

**“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”.**