

Third Party Requests for Medical Records

GPs often receive requests from third parties such as solicitors, insurance companies or family members for information relating to a patient or for copies of a patient's medical records. This factsheet sets out the issues that arise and factors to consider when GPs 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. The Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024, (available on the Medical Council website) ("the Guide") states in para 25.4:

You should protect your patients' privacy and you must ensure that patient information in your control is protected against improper disclosure, access or loss.

GPs 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 also see our factsheet on *Confidentiality* available on our website.

Requests for Medical Records

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 a GP releases a copy of the patient's records directly to a patient, or to a third party, e.g., a solicitor or insurance company they consider the issues below and 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 medical 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 also 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, GPs 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 ensure 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 GPs to ensure they have full, valid and informed consent from the patient to disclose any information to an insurance company or solicitor. GPs must be conscious of the extent of the patient's consent to the release of information to such entities and take reasonable 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 specifics of 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*, available 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 Requests 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.

If the Gardaí turn up to your practice and ask for patient identifiable information, it does not necessarily mean they are entitled to receive same without patient consent. You should consider for example whether there is a significant risk of serious harm or death in the first instance to decide whether to breach patient confidentiality, and we recommend speaking with your indemnifier prior to taking any steps in that regard. It is open to the Gardaí to seek a Court Order or Warrant to obtain information or records. If the Gardaí obtain a Court Order for the release of the details, you would be required to release them in accordance with the terms of the Court Order.

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; 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, GPs should always seek the consent of the patient when their information is being sought by a third party. If a patient refuses, the GP must consider the reason for refusal and document the fact of refusal. The GP must then ask themselves whether there is a valid reason to release the records in the absence of patient consent, and they may 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 clearly document in the patient's medical records the factors considered and your decision-making process for disclosing information without the patient's consent.

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 the patient has a decision making arrangement in place under the Assisted Decision Making (Capacity) legislation.

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

GPs will normally obtain a patient's consent to share relevant medical records with 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 27 of the Guide deals with disclosing information to other healthcare providers and indicates that if disclosure of a patient's information to other healthcare providers is necessary as part of a patient's treatment and care, you should explain this to the patient and disclose the information to an appropriate person, making sure they are aware of their duty of confidentiality. If a patient objects to the transfer of the information you deem necessary, you should explain where relevant, that a referral may not be possible without disclosing necessary information.

Identifying the author of an entry in the medical records

When a practice receives a request to release a copy of a patient's medical records, the records are often printed and furnished to the patient or to the requesting third party with the patient's consent, and the identity of the treating GP/ healthcare professional is not always visible on the printout that is released. Depending on the practice software system in operation, an issue can sometimes arise whereby the treating GP or healthcare professional's name does not appear on the individual consultation notes; this means that the GP who consulted with a patient on a particular date is not identifiable on the face of the records that are printed and often released to a solicitor, for example. This can be problematic where the records are requested in the context of the initial investigation of a medical negligence allegation.

Where a solicitor is unable to identify from the medical records which consultations/entries relate to which particular GP/ healthcare professional, this can regrettably result in GPs being named unnecessarily in legal proceedings, as the solicitor will take the approach of naming all GPs working in the practice at the time, as it is unclear who actually treated the patient at the relevant time.

In order to avoid this scenario where GPs are unnecessarily named in legal proceedings, it is important that when the practice receives a request to release records to a solicitor in particular, that those records are printed and the author of each entry/consultation note is clearly visible on the printout. If sending records electronically, ensure that this information is visible on the copy records released.

If you have any difficulty with this process, we strongly encourage you to contact your IT provider for guidance; we have received assurance from the main GP practice software systems providers that this can easily be done.

In summary

- Obtain the patient's consent in writing, prior to releasing 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, ask if the third party requires 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.
- All records released should clearly identify the treating GP/ healthcare professional at each entry/consultation note in the records.

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".