

## 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 30.1 of the Irish Medical Council (IMC) *Guide to Professional Conduct and Ethics, 9<sup>th</sup> Edition 2024* (available on the IMC website) provides that a doctor's duty to maintain patient confidentiality continues after the patient's death:

*Your professional duty of confidentiality remains even after a patient's death. If it is unclear whether the patient consented to the disclosure of information after their death, you should consider how the disclosure might benefit or cause distress to the deceased's family or persons close to them. You should also consider the effect of disclosure on the reputation of the deceased and the purpose of the disclosure.*

### 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?

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, other than another healthcare professional, 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).

It should also be noted that the IMC Ethical Guide states at paragraph 46.6:

“After the death of a patient, you should be available to speak with the bereaved family if that is what they wish. You should, as far as possible, explain the circumstances of the patient’s death to the family in an open and sensitive way unless the patient previously expressed an objection to such information being given.”

## Consent to release

If, having regard to the above considerations, a decision to disclose the requested information/clinical records of a private deceased patient is made, it is important to satisfy yourself that you have appropriate written consent to release your deceased patient’s clinical information to a third party.

In the first instance, we advise that you clarify whether the requester is the Executor/Legal Personal Representative of the deceased patient’s estate, if this is not stated on the face of the request/enclosed consent. 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 consent of the Executor/LPR prior to disclosing any information relating to the deceased. A copy of that consent should then be retained on the deceased patient’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 deceased patients 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.

HSE guidance regarding the use of the Freedom of Information Acts recommends that applications for sensitive health records e.g. psychiatric records, and in circumstances where the records requested relate to a child or deceased person, should be made under the FOI Acts. HSE guidance adds that the application must be in writing and simply refer to the Freedom of Information Acts.

Where a GP, therefore, receives a request to release information/records relating to a deceased GMS patient and the request specifically refers to FOI legislation, we advise that such requests be directed to the HSE FOI department 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. 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, having regard to the HSE guidance on applications for sensitive health records referred to above.

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.

## Death Notification Form

The Civil Registration Act 2004 states that when a death occurs in the State, it must be registered within three months. It is the duty of a relative of the deceased who has knowledge of the required particulars in relation to the death, and if there is no such relative, a qualified informant (set out below) can register the person's death.

GPs are often asked to sign a death notification form by family members of a deceased patient. A GP can sign the form if they are satisfied with the medical cause of death, have attended the patient within 28 days of their death, and the death was not sudden, violent, or unexplained and therefore requires a Coroner's investigation. The GP completes Part 1 of the form, which includes the Medical Certificate of the Cause of Death. This form is given to a relative or civil partner of the deceased, or if there are none, to another qualified informant, who must register the death within 3 months of the death occurring.

A qualified informant is:

- (a) a relative, civil partner, cohabitant, next of kin, personal representative or religious superior of the deceased who has knowledge of the required particulars
- (b) a person present at the death
- (c) any other person who has knowledge of the required particulars
- (d) if the death occurred in a building used as a dwelling or a part of a building so used, any person who was in the building or part at the time of the death
- (e) if the death occurred in a hospital or other institution or in a building or a part of a building occupied by any other organisation or enterprise, the chief officer of the institution, organisation or enterprise (by whatever name called) or a person authorised by the chief officer to perform his or her functions
- (f) a person who found the body of the person concerned
- (g) a person who took charge of that body
- (h) the person who procured the disposal of that body
- (i) any other person who has knowledge of the death

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.**

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