



General
Medical
Council

Confidentiality:

a short survey for doctors and
other healthcare professionals
on our draft guidance

Working with doctors Working for patients

About this consultation

We are consulting on revised guidance for all doctors on confidentiality

Confidentiality is central to the trust between doctors and patients. Patients have a right to expect that information about their health will be kept in confidence by their doctors. But confidentiality is not absolute, and doctors need to strike a balance between protecting confidential patient information and sharing information appropriately.

Our current guidance *Confidentiality* was published in 2009.* Over the past year, we have been reviewing it to make sure that it is clear, helpful, relevant to doctors' needs and compatible with the law throughout the UK.† We have also reviewed seven explanatory statements that give more detailed advice on how to apply the principles in the confidentiality guidance to situations that doctors often encounter, or find hard to deal with.

Our guidance is intended mainly for doctors, but it may also help patients, the public and other health and social care staff to understand what they can expect from doctors.

Have your say

This short version of the consultation document is mainly aimed at **individual doctors and other healthcare professionals**.

It asks **11** questions about how patients' confidential medical information may be used. You do not have to answer all of the questions.

You do not have to read the draft guidance to answer these questions but, if you would like to, you will find it on our guidance review pages at www.gmc-uk.org/confidentialityreview. You can also access the detailed consultation document on the same pages.

Consultation on explanatory statements

We are separately consulting on explanatory guidance, which gives more detailed guidance on specific confidentiality issues such as reporting concerns about patients who may not be fit to drive, disclosing information about serious communicable diseases, and how the principles of confidentiality apply to children and young people.

* You can find all of our guidance at www.gmc-uk.org/guidance.

† You can find information about how we have developed the draft guidance on our guidance review pages at www.gmc-uk.org/confidentialityreview.

You can read the explanatory statements and respond to the questions online on our consultation website: <https://gmc.e-consultation.net>. You can also download the consultation document from our guidance review pages at www.gmc-uk.org/confidentialityreview. Please contact us at the details below if you would like a printed copy.

How do I take part?

This consultation runs from **25 November 2015** to **10 February 2016**. We welcome responses from anyone who has a view about the draft guidance.

The simplest way to answer the questions is on our consultation website: <https://gmc.e-consultation.net>. You can also answer the questions using the text boxes in this document and send your completed response by:

- email to confidentiality@gmc-uk.org
- post to Standards and Ethics team, General Medical Council, Regents Place, 350 Euston Road, London NW1 3JN.

Please contact us using the details above if you would like a printed copy.

How your responses will help

Your responses will help us to ensure that the guidance we give to doctors is clear, realistic and gives the right advice.

Our remit is UK wide, so our guidance needs to take into account the different healthcare and legal systems of Scotland, Northern Ireland, England and Wales. We welcome feedback on any areas where the guidance could be improved in this respect.

We have carefully considered the aims of the public sector equality duty in developing the guidance. The *Equality Act 2010* identifies nine characteristics that are protected by the legislation.* Responses to this consultation will help us to understand how the principles in the guidance will affect doctors, patients and the public from across the protected characteristics. We therefore welcome your comments on whether any areas from the guidance could be strengthened from an equality perspective.

We may also use your response to help us develop case studies and other materials to illustrate how the guidance applies in practice.

We hope to publish the final version of the guidance in 2016.

* Age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The structure of the guidance

We have tried to make the guidance easier to follow and apply by re-structuring it according to the purposes for which doctors might need to disclose confidential patient information.

We have identified three kinds of purpose:

- **direct care purposes** that contribute to an individual patient’s diagnosis, care and treatment
- **indirect care purposes** that contribute to the overall delivery of health and social care but which fall outside the scope of direct care (for example health service management, research, education and training)
- **non-care purposes** that are not connected to the delivery of health or social care but which serve wider purposes (for example, public protection, the administration of justice, financial audit or insurance or benefit claims).

1 Do you agree that we should structure the guidance around the three purposes: direct care, indirect care, and non-care purposes?

Yes

No

Not sure

Comments

Clear guidance is required concerning the scope and limits of justice. We would be keen to know if this is describing criminal justice or does it extend to the ethical concept of justice. It would be helpful to have clarity about the sharing of information with social care and the independent sector, particularly for direct care purposes, in recognition of integrated working and new models of service provision.

Sharing information for direct care

Most patients understand and expect that information will be shared within the healthcare team in order to provide their care. This is usually done on the basis of the patient's consent.

Consent is usually asked for. But we think that there are circumstances in which a doctor can reasonably assume that a patient would want relevant information about them to be shared for their direct care without being directly asked. In the guidance we call this 'implied consent'.

The guidance lists the conditions that we think should be met in order for a doctor to rely on a patient's implied consent. These are that:

- the person accessing or receiving the information is providing or supporting the patient's direct care
- information is made readily available to patients – in leaflets, on posters, on websites, at consultations – explaining how their information will be used, and that they have the right to object
- the patient has not objected
- anyone to whom the patient's personal information is disclosed understands that it is given in confidence, which they must respect.

2 Do you agree that doctors can rely on implied consent when all of these conditions are met?

Yes

No

Not sure

Comments

Information should be provided in a wide range of formats including easy read and languages relevant to the local patient cohort .
Considerations related to mental capacity assessment should encompass legislation in the relevant UK country.
Guidance should be included on issues relating to safeguarding
<https://www.rcn.org.uk/clinical-topics/safeguarding> may be helpful for doctors employing practice nurses

Sharing information with, and receiving information from, family and friends of the patient

The guidance highlights the significant role that those close to a patient can play in supporting and caring for them, and the importance of acknowledging that role. It reminds doctors that they:

- must be considerate, sensitive and responsive in giving a patient's friends and family information and support, while respecting the patient's wishes (where they are known or can be found out)
- should not refuse to listen to the concerns of family or friends on grounds of confidentiality, although they should take care not to disclose confidential information unintentionally during such conversations. Doctors should also consider whether the patient would think it would be a breach of trust for them to listen to the views or concerns of others
- must respect the patient's wishes about what information is disclosed to family and friends if the patient is able to make their own decisions, unless the disclosure can be justified in the public interest (for example, because failure to share the information would leave someone at risk of death or serious harm)
- must act in the best interests of patients who do not have capacity to decide for themselves.

3 Do you think that this advice strikes the right balance between being sensitive and responsive to those close to a patient, while respecting the patient's right to confidentiality?

Yes No Not sure

Comments

Guidance to colleagues should include, in addition to issues of formal capacity , when frailty or other needs require sensitive inclusion of significant others.

Patients who may be at risk of serious harm who refuse permission for information to be shared

It is a general principle in all our guidance that adults who have capacity are entitled to make decisions in their own best interests, even if those decisions leave them (but nobody else) at risk of serious harm. Doctors should do their best to provide such patients with the information and support they need to make decisions in their own interests.

However, in the revised guidance we suggest that there may be a public interest justification – in exceptional cases – for disclosing information about an adult who has capacity without their consent, even when nobody else is at risk of serious harm.

For example, we say this might be justified if it is necessary to prevent self-harm by somebody who is detained by the state, for example in prison.

4 Do you agree that there may be circumstances in which there is a public interest justification for disclosing information about an adult who has capacity without their consent, even when nobody else is at risk of serious harm?

Yes No Not sure

5 What do you think would be the consequences of us changing our advice in this way?

Comments

There are such circumstances that justify this disclosure and in the case of people with suicidal ideation we have worked on a joint statement re disclosure that the GMC endorsed. Guidance may be needed in regard to legislation around both domestic violence, female genital mutilation (FGM) and the Prevent agenda. A link to our FGM guidance is below
<https://www.rcn.org.uk/clinical-topics/female-genital-mutilation>

Sharing patient information for indirect care purposes

There are many important uses of patient information that contribute to the overall delivery of healthcare but not to the direct care of individual patients. For example the health and social care system would be unable to plan services, conduct research or be publicly accountable for the services it provides without information about patients.

In the guidance we call these 'indirect care purposes'.

We advise doctors that, wherever possible, if they are disclosing information for indirect care purposes they should use either anonymised or de-identified information (we define these terms in the glossary of the revised guidance).

Where patient identifiable information is needed, we advise doctors that they should:

- get the patient's consent where practicable
- be satisfied that there is another legal basis for disclosing identifiable information if consent cannot be obtained.

In all cases doctors should be satisfied that information is available to patients about how their information may be used.

6 Do you think this is the right advice about disclosing information for indirect care purposes?

Yes No Not sure

Comments

This function should also sit within the national research ethics framework.

Disclosing information for insurance, employment and similar purposes

In the draft guidance we say that doctors should offer to show patients reports they write about them for employment or insurance or similar purposes before sending to the person or organisation who asked for the report, unless:

- the patient has already indicated that they do not wish to see it
- disclosure would be likely to cause serious harm to the patient or anyone else
- disclosure would be likely to reveal information about another person who does not consent.

The purpose of this advice is to make sure that patients have the opportunity to correct errors of fact before they are seen by the person or organisation that asked for the report. It is also to make sure that there are no surprises for patients about what doctors tell employers and others about them.

Some doctors have however expressed concern that this advice gives patients the opportunity to withdraw consent to disclose a report if they disagree with its contents. They have told us that this can cause significant difficulties for the people or organisations asking for the report – such as employers or pension fund administrators – as they cannot access information about the patient’s health that they need to make an informed decision.

7 Do you agree that all doctors should offer to show reports to patients before they are sent to the person or organisation who has commissioned the report, unless one of the conditions set out in the guidance applies?

Yes No Not sure

Comments

In the event that patients are declining to share their information with commercial third parties , it should be beholden on the company to explain the consequences to the individual patient ; the clinician should not be excepted to mediate in such circumstances.

Knowledge of information governance and compliance with data protection legislation

In the revised guidance we advise doctors that they must:

- develop and maintain an understanding of information governance that is appropriate to their role
- be familiar with, and follow, the confidentiality, data protection and record management policies and procedures where they work and know where to get advice on these issues
- understand and meet their obligations under the *Data Protection Act 1998* (where they are data controllers under the terms of the Act)
- process patient information fairly and be open with patients about how their information will be used, accessed and disclosed.

These duties are implicit in our current guidance but, in our discussions before the consultation, respondents told us it would be helpful to make them explicit.

8 Do you agree with the inclusion of these duties on information governance and compliance with data protection legislation?

Yes No Not sure

Comments

Records management

We have introduced new requirements for doctors who have responsibilities for managing or recruiting staff, to make sure that:

- staff are suitably trained
- employment contracts contain appropriate obligations in relation to confidentiality and data protection.

9 Do you agree with the inclusion of these duties for doctors who have responsibilities for managing or recruiting staff?

Yes

No

Not sure

Comments

Support needs to be given to employed staff on using training in practice. There needs to be feedback mechanisms such as clinical supervision for contextualising learning and sharing good practice.

<https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/policies-and-briefings/uk-wide/policies/2008/0908.pdf>



General comments

10 Is there anything else you would like us to consider when deciding what advice we should give to doctors about confidentiality?

Comments

Advice in the areas that remain difficult ie capacity could be underpinned not only by clear principles and guidance but by exemplars

11 To help illustrate how the guidance might work in practice, we will develop case studies that feature specific challenges faced by doctors and patients.

Are there any issues or situations that you think it might be useful to have a case study on?

Yes

No

Not sure

Please give details below

Issues where there may be fluctuating capacity but the decision made has serious potential consequences for others.

Thank you for taking the time to give us your comments.

Please tell anyone you think might be interested in responding to this consultation.

The final section asks for some information about you to help us to analyse the responses.

About you

Finally, we'd appreciate it if you could give some information about yourself to help us analyse the consultation responses.

Your details

Name
Job title (if responding as an organisation)
Organisation (if responding as an organisation)
Address
Email
Contact telephone (optional)

Would you like to be contacted about our future consultations?

Yes No

If you would like to know about our upcoming consultations, please let us know which of the areas of our work interest you:

Education Standards and ethics Fitness to practise
 Registration Licensing and revalidation

Data protection

The information you supply will be stored and processed by the GMC in accordance with the *Data Protection Act 1998* and will be used to analyse the consultation responses, check the analysis is fair and accurate, and help us to consult more effectively in the future. Any reports published using this information will not contain any personally identifiable information. We may provide anonymised responses to the consultation to third parties for quality assurance or approved research projects on request.

The information you provide in your response may be subject to disclosure under the *Freedom of Information Act 2000* which allows public access to information held by the GMC. This does not necessarily mean that your response will be made available to the public as there are exemptions relating to information provided in confidence and information to which the *Data Protection Act 1998* applies. Please tick if you want us to treat your response as confidential.

Responding as an individual

Are you responding as an individual?

- Yes No

If yes, please complete the following questions. **If not, please complete the 'responding as an organisation' section on page 18.**

Which of the following categories best describes you?

- Doctor Medical educator (teaching, delivering or administering)
 Medical student Member of the public
 Other healthcare professional
 Other (please give details) _____

Doctors

For the purposes of analysis, it would be helpful for us to know a bit more about the doctors who respond to the consultation. If you are responding as an individual doctor, could you please tick the box below that most closely reflects your role?

- General practitioner Consultant
 Other hospital doctor Doctor in training
 Medical director Other medical manager
 Staff and associate grade (SAS) doctor
 Sessional or locum doctor Medical student
 Other (please give details) _____

What is your current practice setting? (Please tick all that apply)

- NHS Independent or voluntary Other

What is your country of residence?

- England Northern Ireland Scotland Wales
 Other – European Economic Area
 Other – rest of the world (please say where) _____

To help make sure our consultations reflect the views of the diverse UK population, we aim to monitor the types of responses we receive to each consultation and over a series of consultations. Although we will use this information in the analysis of the consultation response, it will not be linked to your response in the reporting process.

What is your age?

- 0–18 19–24 25–34 35–44
 45–54 55–64 65 or over

What is your gender?

- Female Male

Do you have a disability, long-term illness or health condition?

- Yes No Prefer not to say

The *Equality Act 2010* defines a person as disabled if they have a physical or mental impairment, which has a substantial and long-term (ie has lasted or is expected to last at least 12 months) and adverse effect on the person’s ability to carry out normal day-to-day activities.

Which of the following options best describes your sexual orientation?

- Bisexual Gay man Gay woman/lesbian
 Heterosexual/straight Prefer not to say
 Other (please give details) _____

What is your ethnic group? (Please tick one)

Asian or Asian British

- Bangladeshi Chinese Indian Pakistani
- Any other Asian background (please specify) _____

Black, African, Caribbean, black British

- African Caribbean
- Any other black, African or Caribbean background (please specify) _____

Mixed or multiple ethnic groups

- White and Asian White and black African White and black Caribbean
- Any other mixed or multiple ethnic background (please specify) _____

Other ethnic group

- Arab
- Any other ethnic group (please specify) _____

White

- British, English, Northern Irish, Scottish or Welsh
- Irish Gypsy or Irish traveller
- Any other white background (please specify) _____

Responding as an organisation

Are you responding on behalf of an organisation?

Yes No

If yes, please complete the following questions. **If not, please complete the 'responding as an individual' section on page 15.**

Which of the following categories best describes your organisation?

- | | |
|---|---|
| <input type="checkbox"/> Body representing doctors | <input type="checkbox"/> Body representing patients or the public |
| <input type="checkbox"/> Government department | <input type="checkbox"/> Independent healthcare provider |
| <input type="checkbox"/> Medical school (undergraduate) | <input type="checkbox"/> Postgraduate medical institution |
| <input type="checkbox"/> NHS or HSC organisation | <input type="checkbox"/> Regulatory body |
| <input checked="" type="checkbox"/> Other (please give details) <u>Royal College of Nursing</u> | |

In which country is your organisation based?

- | | | |
|---|----------------------------------|---|
| <input checked="" type="checkbox"/> UK wide | <input type="checkbox"/> England | <input type="checkbox"/> Northern Ireland |
| <input type="checkbox"/> Scotland | <input type="checkbox"/> Wales | |
| <input type="checkbox"/> Other – European Economic Area | | |
| <input type="checkbox"/> Other – rest of the world (please say where) _____ | | |

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Standards and Ethics Section, General Medical Council, 350 Euston Road, London NW1 3JN.

Textphone: **please dial the prefix 18001** then
0161 923 6602 to use the Text Relay service

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Published November 2015

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GMC/CSSD15/1115

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