

Confidentiality – disclosures without consent

MPS



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Advice correct as of February 2015

There may be circumstances in which you are under a legal obligation to disclose information about a patient, or where you consider it justifiable in the public interest to do so even if you do not have their consent. The SMC states: “Confidentiality is not absolute. It may be over-ridden by legislation, court orders or when the public interest demands disclosure of such information.” This factsheet sets out the basic information to enable you to obtain the appropriate consent from children and young people, and from those with diminished capacity.

Disclosure required by law

Under certain circumstances, the disclosure of medical information is required by law.

An example is national disease registries, which operate under a strict framework to safeguard medical confidentiality. The National Registry of Diseases Act 2007 collects information on reportable diseases that have been diagnosed and treated in Singapore.

The Infectious Diseases Act provides for the notification of specified infectious diseases and empowers the Director of Medical Services to order medical examination and treatment of any person who is suspected to be, or is, a carrier of an infectious disease. The Director can also order postmortems of anyone suspected of being a case, carrier or contact of infectious diseases.

You should inform the patient of the disclosure and reason for it. You may be ordered by a court to provide information without a patient’s consent – if so, you should comply.

Disclosures in the public interest

In some cases, it is not possible to obtain the patient’s consent, such as when the patient is not contactable. Alternatively, the patient may have expressly refused their consent. If you believe that disclosure is necessary in the public interest, it may be justified to disclose the information, even without the patient’s consent.

Such circumstances usually arise where there is a risk of death or serious harm to the patient or others. If possible, you should seek the patient’s consent and/or inform them of the disclosure before doing so, unless this would be prejudicial to the purpose of the intended disclosure. A competent adult’s wishes should generally be respected if they refuse to allow disclosure and no-one else will suffer. Disclosure without consent may

also be justified in circumstances in which the disclosure may help in the prevention, detection or prosecution of a serious crime. A doctor must be prepared to justify his decision to disclose information without the patient’s consent if called upon to do so. Any such disclosure should be limited to the information necessary to achieve the required objective.

Those unable to provide consent to disclosure

The Mental Capacity Act 2008 applies where decisions have to be made on behalf of persons lacking capacity. A Lasting Power of Attorney (LPA) can

empower a nominated person to make decisions regarding a patient’s personal welfare. Where there is no LPA or court deputy, decisions about disclosures concerning patients unable to consent, should be made in the patient’s best interests. This may include seeking the views of the family. The court can also make decisions on behalf of a person who lacks capacity in matters concerning their personal welfare.

Disclosures to the SMC – investigation of a doctor’s fitness to practise

Where a doctor has grounds to believe that another doctor may be putting patients at risk, they must inform the SMC. In addition, the SMC states: “A doctor who treats another doctor for a condition that renders him unfit to practise has a special responsibility to alert the SMC.”

Under the Medical Registration Act (MRA) 1997, the SMC has the power to require disclosure of any documentation (including medical records) that may assist with their investigation.

If you have any concerns about disclosing information, you should contact MPS.

Further information

- Singapore Medical Council, *Ethical Code and Ethical Guidelines* – www.smc.gov.sg

For medicolegal advice please call us on:

800 616 7055

or email us at: querydoc@mps.org.uk

www.medicalprotection.org

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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