

TAKE-HOME NOTES:**Respect for confidentiality – good psychiatric practice**

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Summary of good practice in confidentiality**Ethical and legal principles**

Psychiatrists should respect the following three key principles of medical confidentiality.

- Individuals have a fundamental right to the privacy and confidentiality of their health information.
- Individuals have a right to control access to and disclosure of their own health information by giving, withholding or withdrawing consent.
- For any non-consensual disclosure of confidential information, psychiatrists must take into account the necessity, proportionality and attendant risks of the disclosure.

Consent

Patients, or where appropriate their legal representatives, must be informed of what information sharing is necessary for the patient's individual healthcare. Provided they are informed in this way, explicit consent is not necessary; implied consent is sufficient.

All other uses of patient information require the express consent of the patient or their legal representative.

Keeping patients informed

Psychiatrists must ensure that patients and/or their legal representatives are informed in a manner appropriate for the patient's communication needs:

of what kinds of information are being recorded and retained;

of the purposes for which the information is being recorded and retained;

of what protections are in place to ensure non-disclosure of their information;

of what kinds of information sharing will usually occur;

of the choices available to them about how their information may be used and disclosed;

about their rights to access and where necessary to correct the information held about them within healthcare records;

about the information required to be provided to them by the Data Protection Act (1998) in the UK or the Data Protection Act (1988) in Ireland.

Information sharing between users and carers

The potential benefits of information sharing with their informal carer should be discussed with the patient and/or their legal representative. However, the fact that such information sharing may be beneficial does not diminish the duty of confidentiality owed to the patient by the psychiatrist.

The psychiatrist should be cognisant of the information needs of informal carers about persons with severe mental illness.

Multidisciplinary teams and interagency working

The healthcare team may include temporary members for particular functions and psychiatrists must not disclose information to temporary members unless they are under a sufficient obligation of confidentiality for that level of disclosure.

Multidisciplinary teams should agree strategies for any disclosure of confidential information beyond the team.

Healthcare professionals may have different criteria and thresholds for the disclosure of confidential information, for example in relation to public safety. It is essential for each healthcare professional to familiarise him or herself with such differences and moderate disclosures accordingly.

Where it is planned to involve staff from other agencies, this should first be discussed with the patient and/or their legal representative. The purpose of involving the other agency should be clarified along with the purpose of the contemplated information sharing.

Where a patient or their legal representative refuses to consent to the involvement of other agencies, their refusal should be respected unless there are overriding interests (see below).

Where other agencies request information about patients, psychiatrists should first seek the consent of the patient or their legal representative about such sharing, including the content of information to be disclosed.

Situations with dual obligations

Psychiatrists should avoid situations with dual responsibilities and obligations to the same patient wherever possible.

Where a psychiatrist has dual responsibilities it is important that they explain at the start of any consultation or assessment to the patient and/or their legal representative on whose behalf they are seeing the patient and the purpose of the consultation or assessment. It should also be made clear to the patient and/or their legal representative that the information given will not be treated as confidential.

Patients who are vulnerable because of impaired capacity

Where a patient is incompetent, disclosure can be justified to protect the best interests of that patient. Whether disclosure is justified in the individual case depends on a careful weighing of the patient's interests in having the confidentiality of his/her information maintained and the interests that are at risk without disclosure.

Reflection

(1.11) If the carer of a patient was frustrated at being refused information, how would you explain the importance of patient confidentiality to them? What grounds would you give as reasons for maintaining confidentiality?

(2.3) Which form of consent do you think should be obtained from the patient for sharing their information in each of the following circumstances, **express** or **implied**? a) information-sharing with a researcher; b) information-sharing with a relative; c) information-sharing with another member of their primary care team for their healthcare; d) information-sharing with someone from another agency.

(2.8) What other things should patients be informed about?

(3.8) Write down each of the following next to the level in which you think they probably belong: A social worker, your spouse or partner, another psychiatrist, the patient's priest, a trainee psychiatrist, a housing advice worker, a hospital manager, a police officer, the parent of a child, a neighbour of the patient, the 'nearest relative' of the patient, the patient's solicitor, a cleaner in the hospital, a probation officer. You should take people on level 1 as having the greatest access to confidential patient information and correspondingly the strongest confidentiality obligation.

(3.10) What do you think are the legitimate means by which someone can move up the levels of confidentiality?

(4.7) For each of the three patients A, B and C, which of the following considerations do you think are relevant? 1. the capacity of the patient. 2. the patient's best interests. 3. what the patient thinks. 4. what their relatives think. 5. the patient's rights. Patient A: This patient lacks capacity to a large extent due to a learning disability. Patient B: You have no reason to believe that this patient lacks capacity, but she is clearly vulnerable because of a lack of confidence and anxiety in the clinical situation. Patient C: This patient clearly does not lack capacity in general, but is possibly lacking the capacity for this decision.

(5.10) This patient may pose a threat to children. Think about whether or not you would disclose this confidential information in order to protect people from potential harm. Would you disclose the information to: a) the police b) local schools c) child protection services d) local newspapers e) hospital staff with children?

Tables and figures

[\(3.7\) Visualising relationships of confidentiality](#)

References

College guidance

Royal College of Psychiatrists (2004) Carers and confidentiality in mental health: issues involved in information sharing. [\[PDF\]](#)

Royal College of Psychiatrists (2004) CR125: Good Psychiatric Practice. [\[report summary\]](#)

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Royal College of Psychiatrists (2001) CR101: Vulnerable patients, vulnerable doctors: good practice in our clinical relationships. [\[booklet synopsis\]](#)

General guidance

British Medical Association (2009) Confidentiality and disclosure of health information: Confidentiality toolkit. [\[website\]](#)

Department of Health (2005) Confidentiality: Code of Practice for Health and Social Care in Wales.

EuroSOCAP (2006) European Standards on Confidentiality and Privacy in Healthcare. [\[PPT\]](#)

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NHS Scotland (2003) Code of Practice on Protecting Patient Confidentiality. [\[PDF\]](#)

Data protection

Data Protection Act 1998 Compliance advice: Subject access to health records (2001).

Privacy in Research Ethics and Law (PRIVIREAL) Data Protection Act 1998 in Ireland. [\[website\]](#)

UK Information Commissioner's Office. [\[website\]](#)

UK Information Commissioner's Office (2010) Data Protection Act 1998 Legal Guidance. [\[website\]](#)

Use and Disclosure of Health Data: Guidance on the Application of the Data Protection Act 1998 (May 2002).

Legal cases

Court of Appeal: Palmer v Tees Health Authority 1999 TNLR 488

AG v Guardian (2) 1998 3 ALL ER 545

Further reading (legal Acts, orders and regulations)

Department of Health: Mental Health Act 1983. [[website](#)]

European Commission (1997) M.S. v. Sweden. [[website](#)]

General Medical Council (2009) Guidance on good practice: Confidentiality. [[website](#)]

Office of Public Sector Information (OPSI) Adults with Incapacity (Scotland) Act 2000. [[website](#)]

Office of Public Sector Information (OPSI) Data Protection Act 1998. [[website](#)]

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Office of Public Sector Information (OPSI) Mental Health (Patients in the Community) Act 1995. [[website](#)]

Office of Public Sector Information (OPSI) Prevention of Terrorism (Temporary Provisions) Act 1989. [[website](#)]

Office of Public Sector Information (OPSI) Road Traffic Act 1988. [[website](#)]

Office of Public Sector Information (OPSI) The Abortion Regulations 1991. [[website](#)]

Office of Public Sector Information (OPSI) The Public Health (Infectious Diseases) Regulations 1988. [[website](#)]

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