

# Guidance on NHS code of practice on confidentiality

This guidance on the NHS code of practice on confidentiality and its relation to community pharmacy in England and Wales has been produced in the Royal Pharmaceutical Society's **Practice and Quality Improvement Directorate**

## 1. Introduction

The new contractual framework for community pharmacy states that: "Contractors and employees need to comply with legal obligations on data protection and confidentiality. This includes the Data Protection Act 1998, Human Rights Act 1998 and common law of confidentiality. Contractors and employees must conform to the NHS code of practice on confidentiality and contractors must have systems and policies in place to support this, including ensuring staff are appropriately trained".

Patient information is generally held under legal and ethical obligations of confidentiality. The Society's Code of Ethics details the professional standards that pharmacists are expected to adhere to in order to respect and protect the patient's confidentiality. Information provided in confidence should not be used or disclosed in a form that might identify a patient without his or her consent. A number of important exceptions are discussed later in this guidance.

Patients entrust the NHS, and those working within it, to gather sensitive information relating to their health and other matters as part of their seeking treatment. They do so in confidence and they have the legitimate expectation that staff will respect this trust. It is essential, if the legal requirements are to be met and the trust of patients is to be retained that the NHS provides, and is seen to provide, a confidential service.

## 2. The NHS code on confidentiality

This document was published in 2003 and followed an extensive public consultation by the Department of Health involving patients, carers and citizens; the NHS; other health care providers; professional bodies and regulators.

This document is a guide to required practice for those who work within or under contract to NHS organisations and is concerned with issues surrounding confidentiality and patients' consent to the use of their health records. This includes pharmacists and all pharmacy staff.

The NHS is committed to the delivery of a first class confidential service. This means ensuring that all patient information is processed fairly, lawfully and that the process is as transparent as possible so that the public:

- Understand the reasons for processing personal information
- Consent to the disclosure and use of their personal information when appropriate
- Gain trust in the way the NHS handles information
- Understand their rights to access information held about them

## 3. Common law of confidentiality

This is not included in an Act of Parliament but built up from case law where practice has been

established by individual judgements. The key principle is that information confided should not be used or disclosed further, except as originally understood by the confider, or with their subsequent permission. While judgements have established that confidentiality can be breached "in the public interest", these have centred on case-by-case consideration of exceptional circumstances. The exceptions where information can be disclosed are outlined in the Data Protection Act (available at: [www.opsi.gov.uk/acts/acts1998/19980029.htm](http://www.opsi.gov.uk/acts/acts1998/19980029.htm)). Confidentiality can also be overridden or set aside by legislation.

## 4. Patient identifiable information

**4.1 What is it?** Patient identifiable information includes information on: the patient's name, address, full postal code, date of birth; pictures, photographs, videotapes, audiotapes or other images of patients; NHS number and local patient identifiable codes; and anything else that may be used to identify a patient directly or indirectly (eg, rare diseases, drug treatments or statistical analyses which have very small numbers within a small population which may allow individuals to be identified).

For pharmacies, most patient identifiable information is held within the patient medication record but also includes prescriptions, receipts, owing slips, spare or discarded dispensing labels, CD registers and private prescription book i.e. anything that brings together the patient's identity with information about their medication or medical condition. As community pharmacists increasingly take on a more clinical role and undertake new services, eg, medication reviews, any paper based patient identifiable information within the pharmacy must be stored securely such as in a locked filing cabinet with restricted access to the keys.

**4.2 Confidentiality of information** Patient information is generally held under legal and ethical obligations of confidentiality. Information that can identify individual patients and is provided in confidence should not be used or disclosed for purposes other than health care without the individual's explicit consent, some other legal basis, or where there is a robust public interest or legal justification to do so. There are exceptions to this rule and these will be covered, where relevant, in this guidance. The Code of Ethics also details circumstances where information can be disclosed without consent.

### 4.3 Disclosing and using information

The disclosure and use of confidential patient information needs to be both lawful and ethical. Patients should be made aware of information disclosures that must take place in

order to provide them with high quality care. There is a specific legal obligation to inform patients, in general terms, who sees information about them and for what purposes (see Paragraph 5)

**4.4 Patient consent** Patients generally have the right to object to the use and disclosure of confidential information that identifies them and they need to be made aware of this right. Sometimes, if patients choose to stop information being disclosed to other health professionals involved in their care, eg, information about supply of emergency hormonal contraception by a pharmacist via a patient group direction to their GP, it might mean that the care that can be provided by the GP is limited because of a lack of knowledge. Patients must be informed if their decisions about disclosure have implications for the provision of treatment.

Patients should be informed of the use and disclosure of their information associated with their health care, the choices they have in limiting how this information may be used or shared and the implications of the choices they make. If this information has been provided to patients then explicit consent is not normally required for information disclosures needed to provide health care for that patient.

Where the purpose of disclosure is not directly concerned with the health care of a patient it would be wrong to assume consent. Additional efforts to gain consent should be undertaken or alternative approaches that do not rely on patient identifiable information should be developed.

There are situations where consent cannot be obtained for the use or disclosure of patient identifiable information, yet the public good of this outweighs issues of privacy. Section 60 of the Health and Social Care Act 2001 (under revision) currently provides an interim power to ensure that patient identifiable information, needed to support a range of important work such as clinical audit, research, etc, can be used without the consent of patients.

### 4.5 Clinical audit and medical research

Patients do understand that some information about them must be shared in order to provide them with care and treatment, and clinical audit, conducted locally within organisations is also essential if the quality of care is to be sustained and improved. Efforts must be made to provide information, check understanding, reconcile concerns and honour objections. Where this is done there is no need to seek explicit patient consent each time information is shared. Any other organisational forms of audit such as across organisations and nationally, will require explicit consent.

Prior approval may be required from the relevant primary care organisation's ethics

committee before proceeding with audits that cross organisations and/or are research based.

#### 4.6 Disposal of confidential information

Confidential information, such as patient information, needs to be disposed of in a suitable manner. Patient identifiable information needs to be rendered irretrievable, ie, so that it can no longer be identified. This means that it could be shredded or torn. Even spare dispensing labels should be disposed of in this manner.

### 5. Information provided to patients

Patients must be made aware that information they give may be recorded and shared to provide them with care and may be used to support clinical audit and other work to monitor the quality of care provided in the locality. To inform patients properly, pharmacists and their staff must undertake the following actions:

- Check, where practicable, that information leaflets on patient confidentiality and disclosure of information have been read and understood. (Such leaflets should be available in all pharmacies, potentially as part of the practice leaflet.)
- Make clear to patients when information is recorded or health records accessed. (This will become more relevant as pharmacists engage with NHS Connecting for Health and gain access to electronic care records. It can be done generically rather than each time information is recorded or accessed.)
- Make clear to patients when they are or will be disclosing information with others, eg, referral to another health professional.
- Check that patients are aware of the choices available to them in respect of how their information may be disclosed and used.
- Check that patients have no concerns or queries about how their information is disclosed and used.
- Answer any queries personally or direct the patient either to others who can answer them or to other sources of information.
- Respect the rights of patients and facilitate them in exercising their right to have access to their health records.

### 6. Anonymised information

Once information is anonymised it is no longer confidential. Anonymised information is information that does not identify an individual directly and which cannot reasonably be used to determine identity. Anonymisation requires the removal of name, address, full postcode and any other detail or combination of details that might support identification such as NHS number, date of birth, etc.

Pseudonymised information is like anonymised information in that, in the possession of the holder, it cannot reasonably be used to identify an individual. However, it differs in that the original provider of the information may retain a means of identifying individuals. This will often be achieved by attaching codes or other unique references to information so that data will only be identifiable to those who have access to the key or index.

## 7. Breaches of confidentiality

**7.1 Child protection and vulnerable adults** Please refer to the Society's guidance (*PJ*, 6 August, p155, or [www.rpsgb.org.uk/pdfs/childprotectguid.pdf](http://www.rpsgb.org.uk/pdfs/childprotectguid.pdf))

**7.2 Data Protection Act** This Act outlines situations where confidential information can be disclosed. The situations which may be of relevance to pharmacists include:

- To prevent injury or damage to the health of the patient or third party
- To safeguard national security
- To prevent and/or detect crime
- Where there is a statutory requirement to disclose information, eg, to enforcement authorities

The pharmacist would need to use their professional judgement and consider the potential outcomes for all parties involved before disclosure of confidential information.

## 8. Contracts and responsibilities

**8.1 Contractual obligations** The framework for the pharmacy contract states that: "Employee contracts must include a duty of confidence as a specific requirement linked to disciplinary procedures". This refers to patient data as well as commercially sensitive data.

A duty of confidence arises when one person discloses information to another, eg, a patient to a pharmacist in circumstances where it is reasonable to expect that the information will be held in confidence. The duty of confidentiality arises out of the common law of confidentiality (see Paragraph 3), professional obligations (the Code of Ethics) and also staff employment contracts. Breach of confidence, inappropriate use of health records or abuse of computer systems may lead to disciplinary measures, brings into question professional registration and could possibly result in legal proceedings. All pharmacy staff need to be aware of the requirements and standards of behaviour that apply. This includes locums and students.

Training should be made available to all staff who are likely to acquire, hear or record patient information.

**8.2 Responsibilities** All pharmacists and their staff must:

- Respect the patient's right to expect confidentiality in their dealings with the NHS, including community pharmacy
- Record patient information accurately and consistently
- Keep patient information private including not gossiping and taking care when discussing cases in public places (such as the pharmacy)
- Keep patient information physically and electronically secure
- Only disclose information with appropriate care and in line with legal and professional guidance

- Inform patients effectively about sharing of individualised information
- Ensure patient choice is respected

## 9. Things you need to consider

- Display and hand out leaflets about confidentiality to patients, potentially as part of the practice leaflet.
- Ensure staff have read this document and are aware of their duties and acknowledge their understanding of this undertaking.
- Include this document in the induction pack for all new staff, including locums.
- Incorporate principles in standard operating procedures where appropriate.
- Be aware of the need to apply to respective ethics committee before proceeding with audit and research and development (not always applicable).
- Implications of the Freedom of Information Act. (This is generally poorly understood and may give rise to the inadvertent disclosure of patient information.)
- Regularly change the password for access to electronic files.
- Use password protected screen savers and log-on procedures to protect computer workstations, particularly those sited in areas accessible to the public.
- Faxing of patient identifiable information conflicts with the NHS code of practice on confidentiality and yet routinely happens.
- Only share information with others — such as other health care professionals involved in the patient's care — if consent has been obtained. (This could be blanket consent, ie, when the patient agrees that any relevant information about their health care is passed on to other professionals if it will inform and help treatment decisions, or consent on an individual situation basis.)

### Additional useful information

1. Royal Pharmaceutical Society Fact Sheet 12: Confidentiality, the Data Protection Act 1998 and disclosure of information. Available at: [www.rpsgb.org.uk/pdfs/factsheet12.pdf](http://www.rpsgb.org.uk/pdfs/factsheet12.pdf)
2. NHS Code of practice on confidentiality. Available at: [www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf](http://www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf)
3. Data Protection Act 1998. Available at: [www.hmso.gov.uk/acts/acts1998/19980029.htm](http://www.hmso.gov.uk/acts/acts1998/19980029.htm)
4. Human Rights Act 1998. Available at: [www.hmso.gov.uk/acts/acts1998/19980042.htm](http://www.hmso.gov.uk/acts/acts1998/19980042.htm)
5. Public Records Act 1958. Available at: [www.nationalarchives.gov.uk/policy/act/act.htm](http://www.nationalarchives.gov.uk/policy/act/act.htm)
6. Access to Health Records Act 1990. Available at: [www.hmso.gov.uk/acts/acts1990/Ukpga\\_19900023\\_en\\_1.htm](http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900023_en_1.htm)
7. Information on consent (includes guidance for patients and FAQs by health care professionals). Available at: [www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent/ConsentGeneralInformation/fs/en](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent/ConsentGeneralInformation/fs/en) and [www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent/ConsentFAQs/fs/en?CONTENT\\_ID=4039322&chk=oDHcDp](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Consent/ConsentFAQs/fs/en?CONTENT_ID=4039322&chk=oDHcDp)
8. The Caldicott Committee: Report on the Review of patient-identifiable information, December 1997. Available at: [www.dh.gov.uk/assetRoot/04/06/84/04/04068404.pdf](http://www.dh.gov.uk/assetRoot/04/06/84/04/04068404.pdf)
9. Administrative law. Available at: [www.crimereduction.gov.uk/infosharing22-4.htm](http://www.crimereduction.gov.uk/infosharing22-4.htm)
10. Patient Information Advisory Group. Available at: [www.advisorybodies.doh.gov.uk/piag/About.htm](http://www.advisorybodies.doh.gov.uk/piag/About.htm)
11. RPSGB Guidance on Child Protection. [www.rpsgb.org.uk/pdfs/childprotectguid.pdf](http://www.rpsgb.org.uk/pdfs/childprotectguid.pdf)