



## **PRACTICE NOTE – DISCLOSURE OF MEDICAL RECORDS**

### **Introduction**

Article 26 (c) of the Health Professions Order 2001 (the 2001 Order) provides that, after an allegation has been received by the Investigating Committee, it:

*‘shall take such other steps as are reasonably practicable to obtain as much information as possible about the case’.*

In practice, HPC Case Managers routinely seek further information relating to an allegation on behalf of the Investigating Committee and that information may include medical records, particularly in competence cases or cases alleging misconduct in relation to clinical practice.

For example, it may assist the Committee to see the medical records of a patient who claims to have been harmed as a result of a practitioner’s treatment and who has in the meantime been treated by another healthcare professional. In such circumstances, the records will provide documentary evidence of the treatment offered and the rationale behind as well as providing independent documentary evidence of the harm alleged by the patient.

Clearly, it is not necessary to request medical records in every case and the decision to do so will primarily rest with Case Managers. This practice note sets out the procedure which the Council will adopt when obtaining medical records for the purpose of performing its functions under Part V of the 2001 Order.

### **Patient confidentiality**

Patients expect that information which they entrust to health professionals will be held in confidence and not shared with others without the patient’s consent. The obligation to respect patient confidentiality is an essential part of health care practice and helps to ensure that patients provide all of the information they need in order to receive effective care.

As a health regulator, HPC regards patient confidentiality as important and therefore, wherever possible, will seek to obtain health records on the basis of informed consent from the patient concerned.

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2005-10-12	a	F2P	COR	FTP Patient Records Practice Note	Draft DD: None	Confidential RD: None

However, there may be situations where consent cannot be obtained but access to health records is necessary for HPC to discharge its functions. In those circumstances HPC may compel the disclosure of those records.

The duty of confidence is not a statutory duty but is derived from the common law and is based upon the mutual obligations created when one person discloses information to another in circumstances where it is reasonable to expect that the information will be held in confidence. A person may disclose information without the patient's consent where they are compelled to do so in response to a demand made by a court or by other authorities exercising specific statutory powers, including HPC.

### **Compelling Disclosure**

Under Article 25(1) of the 2001 Order HPC Case Managers may, for the purpose of assisting a Practice Committee to perform its fitness to practise functions, require any person (other than the registrant concerned ) to supply information or produce any document which appears relevant to the discharge of the functions of that Committee. The information and documents concerned include medical records.

Under the Data Protection Act 1998 health records are defined as a specific category of sensitive personal data and health professionals and others who are responsible for health records often assume that the Act prevents them from disclosing information about patients to HPC. That is not the case.

As HPC has statutory powers to require the production of information, the processing of sensitive personal data by HPC or any person who is responding to a requirement made by HPC will be lawful because section 35(1) of the DPA (disclosures required by law) provides that personal data are exempt from the non-disclosure provisions of the DPA where the disclosure is required by or under any enactment, in this case the 2001 Order.

Occasionally organisations recognise HPC's right to the records but wrongly assume that, under the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000, a fee of up to £50 is payable for those records by HPC. As requests for records are made under Article 25(1) of the 2001 Order and are thus exempt from the Data Protection Act 1998 no fees are payable by HPC under that Act.

### **Procedure**

Where it is determined that patient records do need to be obtained in order to assist a Practice Committee in its consideration of a case, the procedure to be is as follows:

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- So far as possible disclosure should be on the basis of informed consent and, therefore unless there are good reasons for not doing so, the consent of the patient should be sought. A consent form should be sent to the patient and the Case Manager should explain why consent is being sought. As the procedural rules of the Investigating Committee provide that the Committee may only take account of material upon which the registrant has had an opportunity to comment, the fact that the records will be seen by the registrant should be made clear to the patient.
- If consent is provided then the Case Manager should write to the person holding the relevant records, enclosing a copy of the consent form, and request a copy of the records. So far as possible the request should be limited to the notes which relate to the matters referred to in the allegation.
- If consent is not given, the Case Manager should write to the person holding the relevant records and request a copy of the records, explaining that the request is being made under the HPC's statutory powers and that consent is not required for the records to be disclosed. Again, so far as possible the request should be limited to the notes which relate to the matters referred to in the allegation.
- Irrespective of whether a request is made with or without the consent of the patient, it is made under the relevant statutory power, Article 25(1) of the 2001 Order 2001, and therefore no fees are not payable under the Data Protection Act 1998. Nonetheless, where it is appropriate to do so, the Case Manager should indicate that HPC will pay any reasonable photocopying costs.

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