

Data Protection & Patient Confidentiality

Important legislation and guidance:

- GPhC Standards for Pharmacy Professionals
- GPhC Guidance on Patient Confidentiality
- General Data Protection Regulation (GDPR)
- Human Rights Act 1998

Relevant examples in the GPhC Standards for Pharmacy Professionals:

- Obtain consent to provide care and pharmacy services, and respect and safeguard the person's dignity (Standard 1)
- Treat people with respect and safeguard their dignity (Standard 6)
- Understand the importance of managing information responsibly and securely, taking steps to maintain people's privacy and confidentiality (and that everyone in the team understands this), and work in partnership with people when considering whether to share their information, except where this would not be appropriate (Standard 7)

Data Protection:

In May 2018 there were changes in the data protection law, whereby the General Data Protection Regulation (GDPR) replaced the Data Protection Act. The Information Commissioner's Office (ICO) have produced tools and resources for guidance.

The GDPR sets out seven key principles, which are broadly similar to the principles in the Data Protection Act 1998:

- ⇒ Lawfulness, fairness and transparency
- ⇒ Purpose limitation
- ⇒ Data minimisation
- ⇒ Accuracy
- ⇒ Storage limitation
- ⇒ Integrity and confidentiality (security)
- ⇒ Accountability

There are, however, a few key changes in the new GDPR, compared with the previous Data Protection Act. For example, there is no principle for individuals' rights or for international transfers of personal data. They are now dealt with separately in chapter 3 and 5 of the GDPR. There is also a new accountability principle, which requires you to take responsibility for complying with the principles and to ensure you have appropriate processes and records in place to show that you comply.

Patient Confidentiality:

Confidential information includes: electronic and hard copy data; personal details; information about a person's medication (prescribed and non-prescribed); other information about a person's medical history, treatment or care that could identify them, and information that patients or the public share with you that is not strictly medical in nature.

Confidential information does not include: anonymous information; coded information; information that is already legitimately in the public domain.

Standards for disclosing data:

- You should make decisions about disclosing information on a case-by-case basis and fully consider all relevant factors
- Maintaining confidentiality is an important duty, but there are circumstances when it may be appropriate to disclose confidential patient information.
These are:
 - when you have the patient's consent, or
 - when the law says you must, or
 - when it is in the public interest to do so
- If a patient with capacity refuses to give consent for information to be shared you must respect their decision, but inform the patient of the potential implications on their care or treatment
- You must not disclose information against the patient's wishes (or without consent), unless the law says you must disclose the information or it is in the public interest to make such a disclosure
- Make sure that, if you disclose confidential information, the people receiving the information know that it is confidential and is to be treated as such
- Make appropriate records to show:
 - who the request came from
 - whether you obtained the patient's consent or your reasons for not doing so
 - whether consent was given or refused, and
 - what you disclosed
- Be prepared to justify your decisions and any actions you take

Disclosure of data can be justified where the disclosure is required by any rule of *law* or by the order of a court or where it is necessary for the purpose of legal proceedings, for the purpose of obtaining legal advice or for establishing, exercising or defending legal rights.

Examples include when disclosure is directed by:

- a coroner, procurator fiscal, judge, the police or another enforcement, prosecuting or regulatory authority makes the request
- a healthcare regulator, such as GPhC or the GMC makes the request
- an NHS counter-fraud investigation officer makes the request

These individuals and organisations do not have an automatic right to access all confidential patient information. You must be satisfied they have a legitimate reason for requesting.

You may disclose confidential information when you consider it to be in the *public interest* to do so, for example if the information is required to prevent:

- a serious crime
- serious harm to a patient or third party, or
- serious risk to public health

You must consider the possible harm that may be caused by not disclosing the information against the potential consequences of disclosing the information. This includes considering how disclosing

the information may affect the care of the patient and the trust that they have in pharmacy professionals.

Requests for confidential information for whatever reason should be in writing and response to the requests will be at the pharmacist's discretion. It is recommended patients are not charged, but a pharmacist may ask for payment to process such requests (*see also: the Caldicott Review; "Information: To share or not to share? Government Response to the Caldicott Review" document; and the GDPR*).

If you are not sure about what you should do in a specific situation, you should always ask for advice from your employer, your professional indemnity insurance provider, your professional body or other pharmacy organisation, or get independent legal advice.



The Information Commissioner's Office (ICO) Guide to Data Protection can be accessed via:

<https://ico.org.uk/for-organisations/guide-to-data-protection/>

Information for Organisations dealing with Health, available on the ICO website:

<https://ico.org.uk/for-organisations/health/>

The principles of GDPR can be found at:

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>

PSNC on GDPR:

<https://psnc.org.uk/contract-it/pharmacy-it/information-governance/the-general-data-protection-regulation-gdpr/>