

# **Professional Standards and Guidance for Patient Confidentiality**

## ***Contents***

### **Status of this document**

### **About this document**

### **1 Protection of Service User Information**

- 1.1 Ethical obligations to protect patient privacy

### **2 Duty of confidentiality**

### **3 Keeping information confidential**

- 3.1 Preventing information being released accidentally
- 3.2 Disposal of patient identifiable information
- 3.3. Computer records
- 3.4 Notification to the Information Commissioner's Office
- 3.5 Pharmacy staff
- 3.6 Standard Operating Procedures

### **4 Disclosure of Information**

- 4.1 Obtaining patient consent
- 4.2 Releasing the minimum amount of information necessary
- 4.3 Deceased patients

### **5 Releasing information without consent**

- 5.1 Deciding to release information without consent
- 5.2 Exceptional circumstances (including those permitted by law)
- 5.3 Maintaining records

### **6 Northern Ireland Code of Practice on Confidentiality and Disclosure of Information**

## **Status of this document**

This guidance is addressed to pharmacists but may also help patients and the public understand the nature and level of confidentiality that may be expected of their pharmacist.

Principle 8.6 of the Code of Ethics states that a pharmacist must comply with legal requirements, mandatory professional standards and accepted best practice guidance.

This document contains:

- mandatory professional standards (indicated by the word 'must' and 'have to') for all registered pharmacists; and
- guidance on good practice (indicated by the word 'should', 'might', 'may', 'would', 'will' and 'could') which should be followed in all normal circumstances.

Serious or persistent failure to follow this guidance will put a pharmacist's registration at risk. The pharmacist must, therefore, be prepared to explain and justify his<sup>1</sup> actions.

If a complaint is made against a pharmacist the Society's fitness to practise committee will take account of the requirements of the Code of Ethics and underpinning documents, including this one. The pharmacist will be expected to justify any decision to act outside its terms.

## **About this document**

The Code of Ethics sets out the eight mandatory principles of ethical practice that a pharmacist must follow. It provides a framework for professional decision-making and it is the pharmacist's responsibility to apply the principles to daily work situations, using his professional judgement. The guidance is not meant to be exhaustive, nor can it be.

The Code of Ethics says that a pharmacist must 'Show respect for others'. In meeting this principle a pharmacist is expected to:

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<sup>1</sup>'his' – masculine pronoun is understood to refer to male/female gender.

- respect and protect the dignity and privacy of others. Take all reasonable steps to prevent accidental disclosure or unauthorised access to confidential information and ensure that he does not disclose confidential information without consent, apart from where permitted to do so by the law or in exceptional circumstances;
- use information obtained in the course of professional practice only for the purposes for which it was given, or where otherwise lawful.

This document expands on the principles of the Code of Ethics to explain the pharmacist's professional responsibilities when protecting patient privacy and the confidentiality of patient information.

A pharmacist has both a professional and legal duty to protect the privacy and confidentiality of patient information. This forms part of the general obligation to provide a service which is respectful of and actively promotes the human rights and dignity of patients.

This document does not give detailed guidance on legal requirements. The pharmacist must adhere to relevant legislative requirements set out in the Data Protection Act 1998, Human Rights Law 1998 and the common law of confidentiality<sup>2</sup> and with any Health Service or employment policies that may apply to his work.

This guidance takes account of, and is consistent with current law in Northern Ireland.

All pharmacists should endeavour to keep themselves informed of any developments which may be relevant to their practice. Occasionally it may be necessary to ask for a professional legal opinion.

## **1 Protection of Service User Information**

The general duty to maintain confidentiality and respect privacy is recognised by professional ethical codes which apply to health and social care staff including pharmacists and their staff and they abide by the Data Protection Act 1998. (See section 3.4).

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<sup>2</sup> The common law is the law that develops over time through the decisions of judges in particular cases. It is not included in an Act of Parliament.

## 1.1 Ethical obligations to protect patient privacy

The Health and Social Care Draft Code of Practice on Protecting the Confidentiality of Service User Information clearly states that, “*The nature of the **obligation to protect confidentiality** can be expressed in terms of three core **ethical principles which underpin the law**:*

- *individuals have a **fundamental right to the privacy and confidentiality** of information related to their health and social care;*
- *individuals have a right to **control access to and disclosure of their own health and social care information** by giving, withholding or withdrawing consent;*
- *for **any disclosure** of confidential information health and social care staff should have a regard to its **necessity, proportionality and any risks attached** to it.*

“*The **relationship between pharmacy staff and the service user** should be one of ‘**trust**’. Therefore within the relationship between a pharmacist or pharmacy staff and the patient, there exists a **tacit understanding** on the part of the patient **that private information will not be further used or disclosed without the awareness and consent of the patient**.*

“*Just as the patient has a right to self-determination in various other health and social care matters, it is in general the service-user’s decision as to who should have access to personal health and social care information and how it may be used.*

“*One reason for respecting confidences in health and social care is that doing so enables patients to disclose the sensitive information that staff need to provide treatment or care. **Without an assurance that confidentiality will be maintained, service-users might be less willing to disclose information**, resulting in obstacles to their effective care and negative effects for their health, for public health and for health and social care practice.*

“***None of the arguments** stated above **lead to the conclusion that the ethical duty of confidentiality is absolute**. The confidentiality requirement exists within a wider social context in which members of staff have other duties, which may conflict with their duty of confidentiality. **In particular, they may have other ethical duties to disclose confidential information, without consent, if serious dangers are***

***present for third parties or for the patient and where they judge that the disclosure of that information is likely to reduce or eliminate danger. In assessing such risks and whether they outweigh the duty of confidentiality both the probability of the harm and its magnitude need to be considered. The ethical duty to disclose to prevent harm is greater when the combined weight of both the probability and the seriousness of harm to a third party or the patient are high<sup>3</sup>.***

## **2 Duty of confidentiality**

### **Standards**

A patient has the right to expect that information obtained about him/her is kept confidential and is used only for the purposes for which it was given. This duty of confidentiality applies to all information obtained about a patient during the course of professional practice and extends to all members of the pharmacy team. Maintaining a patient's confidentiality is fundamental to the partnership between the pharmacist and the patient. A patient may be reluctant to seek advice from a pharmacist if he/she has concerns about the handling of confidential information.

Confidential information includes:

- personal details (including information that is not directly relevant to a patient's medical history);
- information about a patient's medication (both prescribed and non-prescribed); and
- other information about a patient's medical history, treatment or care.

## **3 Keeping information confidential**

### **3.1 Preventing information being released accidentally**

#### **Standards**

Accidental disclosure of information constitutes a breach of confidentiality. A pharmacist must take all reasonable steps to prevent accidental disclosure of, or unauthorised access to, confidential information. Robust procedures must be in place to protect the confidentiality of information the pharmacist receives, stores, sends or destroys. Patient identifiable information includes:

- the patient's name;

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<sup>3</sup> HSC, "Draft Code of Practice on Protecting the Confidentiality of Service User Information" 11 May 2007, Version 7.1, Page 7-8.

- postal address including postal code;
- date of birth;
- Health and Care number or local patient identifiable codes;
- video footage; and
- anything else that can identify a patient either directly or indirectly such as rare diseases, drug treatments etc.

All records, registers, prescriptions and other sources of confidential information must be stored securely and be kept out of sight of patients, members of the public and any other person who should not have access to them. Security measures must be appropriate to the location where the confidential information is being stored.

The pharmacist must also take all reasonable steps to ensure appropriate levels of privacy for patient consultations so that confidential information is not overheard by others.

### **3.2. Disposal of patient identifiable information**

#### **Standards**

Good records management and good professional practices are the essential basis of respect for the privacy of patient's information. In order to safeguard a patient's confidentiality, sources of patient-identifiable information must be disposed of in a way that prevents the information being accessible to unauthorised persons. This disposing should be done at a time consistent with an organisation's disposal schedule.

#### **Good Practice Guidance**

**Disposing of patient identifiable information may involve cross-shredding, incineration, placing it in confidential waste or deleting the information with an indelible marker.**

### **3.3 Computer records**

#### **Standards**

A patient has the right to expect that any computer record about him/her is held securely and is appropriately protected. The pharmacist must be satisfied that any system used is capable of restricting access. Suitable passwords, Personal Identification Number (PIN) or other restricted access systems must be in place. Any

information stored about a person must be pertinent, accurate and up-to-date. Computers must be situated so that data cannot be seen intentionally, or by accident, by those who are not authorised to have access to it. Care must be taken in disposing of old computers to ensure that any confidential information/data is securely destroyed as far as possible.

### **Good Practice Guidance**

- **PIN numbers or passwords should not be shared and should be changed at regular intervals and on specific occasions (for example, if a member of staff terminates employment at the pharmacy).**
- **The level of access that various members of the pharmacy team have to a patient's records should be appropriate to their duties. For example, a member of staff who is responsible for ordering stock for the shop front will not need access to Patient Medication Records (PMRs) in the dispensary.**

### **3.4 Notification to the Information Commissioner's Office<sup>4</sup>**

#### **Standards**

The processing of personal data, including the pharmacy PMR system, must be notified to the Information Commissioner's<sup>5</sup> Office and records must be kept in accordance with relevant legislation. Unnecessary access to patient specific data must be prevented whether data is held electronically or in hard copy format (ref. Data Protection Act 1998).

### **3.5 Pharmacy staff**

#### **Standards**

The pharmacist must ensure that all members of the pharmacy team are aware of, and demonstrate an understanding of, their duty to respect a person's right to confidentiality.

### **Good Practice Guidance**

- **Members of staff, where necessary, should understand that they have a duty to treat any information they receive in the course of their employment as confidential and failure to do so may result in disciplinary action.**

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<sup>4</sup> Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF. Enquiry/information line: 01625 545 745; [www.ico.gov.uk](http://www.ico.gov.uk).

<sup>5</sup> The Information Commissioner oversees adherence to the Data Protection Act 1998 and is also responsible for enforcing the Freedom of Information Act.

**Employee contracts should include a confidentiality clause which should be signed by each member of staff. One copy should be retained on the personnel file and one copy retained by the member of staff.**

### **3.6 Standard Operating Procedures**

#### **Standards**

The way in which confidential information is handled must be taken into account when developing and reviewing standard operating procedures. Procedures must cover:

- who has access to confidential information and in what circumstances;
- how confidential information will be processed, used, stored and destroyed;
- disclosure of information; and
- maintenance of appropriate records of request for disclosure and details of the information disclosed.

### **4 Disclosure of information**

#### **4.1 Obtaining patient consent**

##### **Standards**

Information about a patient must not be disclosed without his/her consent other than in exceptional circumstances, or where required or permitted to by law, or by order of a Court. (See section 5 of this document).

Where a patient allows the pharmacist to share information about him/her the pharmacist must make sure that the patient understands and does not object to:

- the information being released;
- the reason for the release;
- the categories of people and organisations to which the information will be released to; and
- how that information will be used.

A patient will generally expect that information the pharmacist obtains in the course of his professional practice may be shared with other healthcare professionals or others who have a duty of confidentiality. **A patient must be informed of the nature and extent of the information to be shared and the need.** Provided a patient is informed in this way, express consent is not necessary. The consent of the patient to

the disclosure of information necessary for his/her care may be inferred from his/her acceptance of that care.

There may be occasions when a patient refuses to consent to particular information being shared with others providing care for him/her, for example, their general practitioner. Other than in exceptional circumstances the pharmacist must respect the patient's decision (see section 5.2 of this document). The patient must be made aware of the possible implications of not consenting to disclosure and his/her refusal to give consent must be documented.

Further information on obtaining consent can be found in the Society's document 'Professional standards and guidance for patient consent.'  
[www.patientconsentguidance.com](http://www.patientconsentguidance.com).

## **4.2 Releasing the minimum amount of information necessary**

### **Standards**

When disclosing patient information, the pharmacist must release only the minimum amount of information necessary for the purpose. The pharmacist must use his professional judgement to consider the information needed to be disclosed, taking into account who is requesting the information and why.

If it is not necessary for the patient to be identified, the pharmacist must make sure that the information released by him does not inadvertently facilitate identification.

### **Good Practice Guidance**

- **Where appropriate, consideration should be given to the use of anonymised or encrypted data. [Note: anonymised/encrypted information is not considered to be confidential and its storage is not restricted in the same way as confidential information].**
- **In the case of an Integrated Medicines Management (IMM) pharmacist who phones a community pharmacy requesting a patient's drug information, the community pharmacist who accepts the call, must be satisfied that the individual he is speaking to, is known to him before disclosing confidential patient information (see section 5.2.2 and 5.3).**

### **4.3 Deceased patients**

#### **Standards**

The confidential nature of a patient's information and the ethical obligation on pharmacy staff to respect that confidentiality remain after the death of a patient. As in life, the duty to maintain confidentiality of patient information after death is not absolute, but is subject to ethical and legal limitations. Even though the patient can no longer be harmed directly there is still a public interest in the maintenance of his/her privacy after death.

A competent patient can give or withhold consent to disclosure of information before his/her death and such wishes should be respected as they would in other circumstances. In particular, where a patient has made an explicit request before his/her death that confidential information should not be disclosed, then the patient's request should normally be upheld.

The 'Access to Health Records (Northern Ireland) Order 1993' governs access to the health records of deceased patients.

### **5 Releasing information without consent**

#### **5.1 Deciding to release information without consent**

##### **Standards**

Confidential information must only be disclosed without consent **in exceptional circumstances or when permitted or required by law**, for example, where disclosure is by an order of the court, or where the public interest overrides the need to keep information confidential. Examples of circumstances where information may be disclosed without consent are detailed in section 5.2 of this document. Before releasing information without consent the pharmacist must, where practical or appropriate, endeavour to persuade the patient either to release information him/herself, or give permission to release it. If the pharmacist decides to reveal confidential information without obtaining consent he must be prepared to justify his decision and any action taken as a consequence of that decision.

#### **5.2 Exceptional circumstances (including those permitted by law)**

Information can be disclosed without patient consent only in the following circumstances:

5.2.1 Where the patient's parent, guardian or carer has consented to the disclosure and the patient is deemed by law to be, or appears to be, incapable of consenting.

The Society's document *Professional standards and guidance for patient consent* provides information on determining a patient's capacity to provide consent.

5.2.2 Where disclosure of the information is to a person or body with a statutory right to require disclosure.

### **Standards**

Where the pharmacist is required to disclose information he does not have to obtain consent prior to disclosure. He must ensure that he releases the information only to an authorised person who is requesting disclosure in the performance of their statutory duties.

### **Good Practice Guidance**

- **All reasonable efforts should be made to tell the patient that information will be released, why it is being released and to whom it is being released.**

5.2.3 Where disclosure is directed by H.M Coroner, a judge or other presiding officer of a court, Public Prosecution Service in Northern Ireland, Crown Prosecution Office in England and Wales or Procurator Fiscal in Scotland.

### **Standards**

A court may order the pharmacist to release patient information without consent. If so, he must release only the minimum information needed to follow the order. In certain situations, his refusal to disclose information could result in him being found in contempt of court.

### **Good Practice Guidance**

- **The pharmacist should seek further legal or specialist advice in these situations.**

5.2.4 To a police officer or Health Service fraud investigation officer who provides in writing confirmation that disclosure is necessary to assist in the prevention, detection or prosecution of serious crime.

## Standards

There may be occasions where obtaining patient consent prior to disclosure will be inappropriate, for example, the pharmacist may receive a request for information believed to be necessary in the prevention or investigation of serious crime, in a situation where attempting to obtain consent may allow time for destruction of evidence. The request to disclose such information must be made in writing, with a clear statement of the purpose for which the information is required.

### Good Practice Guidance

- **When faced with requests from the Police or a Health Service fraud investigation officer the pharmacist should consider whether there are any alternative sources for the information being requested that would not cause a breach of trust between him and the patient. The pharmacist should also discuss the matter with the person making the request and be satisfied that without disclosure, the investigation would be delayed or prejudiced.**

5.2.5 Where necessary to prevent serious injury or damage to the health of a patient, a third party or to public health.

### Good Practice Guidance

- **The pharmacist should discuss with the patient the implications of continuing to undertake the activity that may cause serious injury or damage.**

5.2.6 Where disclosure is necessary for the protection of children or vulnerable adults. Refer to guidance documents on 'Child Protection' and 'The Protection of Vulnerable Adults'.

## Standards

Where abuse or neglect of a person is suspected, that person's well-being is of utmost importance and ensuring this must be the pharmacist's prime concern.

### Good Practice Guidance

- The pharmacist should attempt to encourage the person to consent to disclosure; should he/she refuse the pharmacist will need to use his professional judgement to determine the best course of action.
- The pharmacist should consider speaking with other healthcare professionals who are also involved in the patient's care, for example, his general practitioner. The Society has produced guidance 'The Protection of Vulnerable Individuals'.

Comment [m1]: Pending

The pharmacist should consult the Information Commissioner's Office where he has queries about the appropriateness of disclosure in any of the above circumstances.

### EXEMPTIONS

There are certain circumstances where disclosure can take place without patient consent:

- where the patient's parent, guardian or carer has consented to the disclosure and the patient is deemed by law to be, or appears to be, incapable of consenting;
- where disclosure of the information is to a person or body with a statutory right to require disclosure;
- where disclosure is directed by a coroner, judge or other presiding officer of the court, Public Prosecution Service in Northern Ireland, Crown Prosecution Office in England and Wales and Procurator Fiscal in Scotland;
- to a police officer or Health Service Fraud Investigation Officer who provides in writing confirmation that disclosure is necessary to assist in the prevention, detection or prosecution of serious crime;
- where necessary to prevent serious injury or damage to the health of the patient, a third party or to public health; and
- where disclosure is necessary for the protection of children or vulnerable adults.

### 5.3 Maintaining records

#### Standard

When the pharmacist makes a decision to disclose information without consent, he must keep an accurate record of:

- the identity/role of the person making the request;
- the reasons for releasing the information without patient consent;
- the extent to which he attempted to obtain patient consent, if at all;

- reasons for not seeking consent;
- reasons given by the patient for refusing consent;
- what information was disclosed.

If a patient refuses to provide consent in one situation the pharmacist must not assume that he/she will refuse to provide consent for disclosure in the future, in either matching or differing circumstances.

## **6. Northern Ireland Code of Practice on Confidentiality and Disclosure of Information**

### **Standards**

In May 2007, the Department of Health, Social Services and Public Safety (DHSSPS) published a draft Code of Practice on Confidentiality and Disclosure of Information. The aim of this Code is to support all staff who provide health and social care services in making good decisions about the protection, use and disclosure of patient information. The Code of Practice on Confidentiality and Disclosure of Information can be viewed at: <http://www.dhsspsni.gov.uk/confidentiality-consultation-cop.pdf>

This, and other relevant standards or guidance on patient confidentiality, must be adhered to unless the pharmacist has good reason not to do so.

### **Guidance that supports this document**

The following documents or guidance bulletins should be considered in conjunction with these standards:

- Code of Ethics for pharmacists;
- Professional standards and guidance for patient consent;
- RPSGB fact sheet nine (formerly fact-sheet twelve): Confidentiality and the Data Protection Act 1998 and disclosure of information;
- Protection of children and vulnerable adults (POCVA).

### **Further reading**

“Guidance on NHS Code of Practice on Confidentiality” 29 October 2005, The Pharmaceutical Journal (Vol. 275) P 557 – 558.

ACCESS to Health Records (Northern Ireland) ORDER 1993.

The NPA Guide to Data Protection and Confidentiality in Community Pharmacy, September 2006.

The Data Protection Act 1998

The Human Rights Act 1998

The Caldicott Principles.

[www.psncommunitypharmacynews/freedomofinformationact2000](http://www.psncommunitypharmacynews/freedomofinformationact2000). July 2007

[www.psncommunitypharmacynews/dataprotectionact1998](http://www.psncommunitypharmacynews/dataprotectionact1998). August 2007

### **Acknowledgements**

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