

CONFIDENTIALITY

UK



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1.0 INTRODUCTION

One of the fundamental principles of dental ethics is that all information which passes between a dentist and patient in the course of a professional relationship is secret. This may seem quite a straightforward principle to adopt, however, it can sometimes bring members of the dental team into conflict with others such as police, solicitors, the HMRC and other dental practitioners, for example, who may request access to such confidential information.

It is a dentist's duty to observe the rules of professional secrecy by refraining from disclosing voluntarily, to any third party, any information which has been learned directly or indirectly during the course of his/her professional relationship with the patient. This obligation extends to all members of staff and it is, therefore, wise to include a clause in contracts of employment to reinforce this point.

1.1 THE GENERAL DENTAL COUNCIL

The General Dental Council sets out its Standards guidance on confidentiality in its booklet *Principles of Patient Confidentiality* (GDC May 2006).

The Guidance describes the following four issues:

- the Duty of Confidentiality;
- releasing information with the patient's consent;
- preventing information being released accidentally; and
- releasing information in the 'public interest'.

A breach of a patient's confidentiality, contrary to the GDC's *Standards for Dental Professionals* guidance could result in a dentist and/or a DCP's fitness to practise being found impaired, leaving them vulnerable to action being taken on their registration.

Further information about Confidentiality is available from the GDC here [gdc-uk.org/Dentalprofessionals/Standards/Documents/PatientConfidentiality\[1\].pdf](https://www.gdc-uk.org/Dentalprofessionals/Standards/Documents/PatientConfidentiality[1].pdf).

2.0 CAN CONFIDENTIALITY EVER BE BREACHED?

There are exceptions to the rule of confidentiality and there are situations where such a breach can be justified. A decision to breach a patient's confidentiality should never be taken lightly and practitioners are advised to seek the advice of our dentolegal advisers if in doubt about the circumstances.

2.1 CONSENT

The rule of thumb in confidentiality is that the secrets belong to the patient, not the dentist. It is therefore permissible for a practitioner to disclose information to a third party if the patient's consent has been obtained.

There are a number of common situations where patients give consent to disclosure. One such example is an approach from an insurance company with whom the patient has made a claim. The insurance company may approach the dentist for information to assist the company in dealing with the patient's claim. Included with such a request will often be a signed authority from the patient, consenting to the release of such information, however, if a dentist is in any doubt about the patient's consent then the simplest way of establishing the validity of the request is to contact the patient for confirmation, seeking written consent for release of the records requested.

Many practitioners receive a request for release of dental records from solicitors acting on behalf of patients who may be contemplating making a claim of negligence against the practitioner or indeed another practitioner. Dentists receiving such a request should immediately contact Dental Protection and should certainly not release such information without a signed authority from the patient. It is important to appreciate that patients do, of course, have a right of access to their own dental records under the Access to Health Records Act 1990 and the Data Protection Act 1984. Further information on disclosure of dental records is available in our information pack on clinical records.

In the past and in the interests of the effective transfer of information between practices, original radiographs and copies of records were passed back and forth often at the request of a receptionist. Any request for records made by a professional colleague in another practice must be supported by a written authority from the patient. It is easy to ask a patient who wishes their records to be passed to a new practice, to write to their former practice inviting that practice to forward copies of the records either to the patient themselves or directly to the new practice.

It follows that where a referral is made to a colleague, specialist or hospital department, involving the release of the confidential medical and dental history (including the contact details of the patient), then consent for that referral must be obtained from the patient or their legal guardian in the case of a child.

2.2 PUBLISHING

Occasionally members of the dental team will be involved in the publication of professional newsletters or the creation of a practice website or they may have other documents in their waiting room such as a book containing letters of gratitude from patients and photographs of them before and after their treatment. It is necessary to seek the consent of any patient before including such information in a public document or website, as this information could make it easy to identify the patient.

Whilst "Mrs Bloggs" might want to tell you just how wonderful her new dentures are she may not wish the rest of the patients in the town to know! Similarly, if you are writing a booklet or something similar which includes a picture of a patient then you should ensure that you have the consent of the patient to their picture being included. If you are submitting a paper or an article to a professional journal, you will be expected to produce copies of a written consent from the patient authorising you to use, for example clinical photographs and radiographs where the identity of the patient is discernable. The commercial dental press may not always check that a signed consent exists, however it is the author and not the publisher who has the professional duty to maintain patient confidentiality.

2.3 STATUTORY DUTY

Statutory obligations create an exception or modification to the obligation of confidentiality in specific circumstances. Fortunately there are few situations where a dentist is statutorily bound to disclose information about a patient - unlike our medical counterparts who are bound to disclose certain information in a wide variety of situations. However, section 172 of the 1988 Road Traffic Act obliges a dentist to give information which may lead to the identification of a driver involved in an accident.

A further example of a statutory obligation is the obligation of a dentist to provide dental records on request to an officer of the either the Primary Care Trust, Health Board, Local Health Board or the Dental Practice Board within 14 days of a request under the terms of the *National Health Service (General Dental Services) Contracts Regulations 2005* in England and Wales, and the equivalent Regulations in Scotland and Northern Ireland.

Even though these might be considered exceptional circumstances it is worth remembering the advice contained in the GDC booklet *Principles of Confidentiality* that would normally apply.

If it is necessary to release patient information:

- get the patient's consent to do so wherever possible – ideally in writing;
 - make sure that you only release the minimum information necessary for the purpose; and
 - be prepared to justify your decisions and any action you take.
- In this way you can insure that you keep the amount of information supplied to the minimum needed to comply with any statutory duty

2.4 INFORMATION TO RELATIVES

Children

A dentist may disclose information about a child to a parent as long as the parent is the legal guardian. This is not a problem when the family is living as a unit, but problems can arise when a child's parents are not living together. It is not uncommon for an estranged parent to seek information from a dentist to assist them in criticising the other parent. One such situation which occurs commonly is where a young child develops a high caries rate. The estranged parent on occasion may try to use the existence of a high caries rate as proof that the other parent is unfit and can seek the dental records to help them in this respect. A dentist has no right, of course, to release such information unless proper authority is obtained and any practitioner that is placed in such a dilemma should seek the advice of Dental Protection.

The incapacitated patient

On occasion a patient, perhaps gravely ill, may be brought for dental treatment by a relative, nursing home matron etc. In such circumstances it may be totally reasonable to discuss the patient's treatment especially if the accompanying person is involved in their care. The *Mental Capacity Act (England and Wales)* and the *Mental Health (Care and Treatment) (Scotland) Act 2003* and the *Adults with Incapacity (Scotland) Act 2000* encourage the healthcare team to involve family and carers in decisions about treatment where a patient either lacks capacity or has partial capacity to give consent for treatment. Staff, however, should be wary of providing information on the telephone where they may be overheard by a third party or when they cannot be confident of the identity of the person they are speaking to.

Problems can arise, for example, where a practitioner is pursuing a debt and has a member of their staff telephone the patient's home seeking payment. It is not unusual in such situations for the debtor to turn into an aggrieved party and suggest that their confidentiality has been breached by the practice informing someone else in the household about their outstanding debt. Care should be taken in such situations possibly by reverting to the use of recorded delivery post marked "Strictly Private & Confidential" to ensure that the appropriate person receives the request for payment. Similarly, dentists and their staff should be careful about discussing treatment with other members of the patient's family without the consent of the patient.

Partners

Some clinicians invite husbands/wives/civil partners or other related couples who arrive together to come into the surgery together. This should only be done with the consent of the patient concerned, who may not wish their oral health to be discussed in front of their partner.

2.5 HER MAJESTY'S REVENUE AND CUSTOMS (HMRC)

When carrying out an in-depth investigation of a practitioner's business and financial affairs, it is common for the HMRC to request patients' record cards, copies of the patient listings from NHS schedules, receipt books etc in order to confirm the accuracy of the information submitted in that practitioner's tax return.

The Revenue Commissioners may make an application under *Section 19A of the Taxes Management Act 1970*. HMRC take the view that by issuing an order under this act the practitioner is obliged to hand over records relevant to a tax investigation and cite a Special Commissioners Case in *Guyer v Walton*. Dental Protection has taken counsel's opinion on the matter and counsel is of the view that, if sight of the records is reasonably required in order to confirm the accuracy of tax returns, then there is unlikely to be a basis in law for continuing to refuse disclosure. HMRC must satisfy any practitioner that:

- a request has been made because the Revenue believes fees earned and received have been omitted from the Tax Return i.e. they have identified weaknesses in the books and records that may have lead to an understatement of fees;
- they have established (at a meeting if necessary) that the patient records are prime income records of the practice and the way in which they are used by the business; and
- the patient record cards are the most effective way of working out the true amount of liability. In other words, such documents should only be the subject of a note, issued formally by HMRC if there is no other effective way in which they can be satisfied the return is not incorrect or incomplete.

Dental Protection's advice on the issue of potential breach of confidentiality is:

- Advice should be taken on each and every instance where such records are sought.
- Where records are sought HMRC should be asked to issue a formal notice under *Section 19A of the Taxes Management Act 1970*. The notice should also include a reference to the *Data Protection Act 1998*.
- Notwithstanding the above, Dental Protection advises members that as a matter of good practice, all financial records should be kept separately from clinical details. If financial records are held within the same clinical notes, then they should be on a separate sheet that contains no clinical details whatsoever.
- Computerised records are generally structured in such a way as to achieve an effective separation between clinical, personal and financial records.

If records are to be disclosed then the minimum records necessary for the purpose of satisfying the Order issued by HMRC should be disclosed. Where possible this should be in the presence of the practitioner and clinical details should be concealed in an appropriate manner.

2.6 SCHOOLS AND EMPLOYERS

Where children are absent from school, or employees from their place of work, claiming as an explanation a visit to the dentist, there may from time to time be a request for the dentist or staff to confirm to a third party whether or not a certain patient has attended the practice at a given time and / or on a given day. The patient's consent should always be obtained – preferably in writing – before disclosing any such information.

2.7 IDENTIFICATION OF MISSING OR DECEASED PERSONS

Practitioners sometimes receive a request for records or other information either from HM Coroner, the relatives or the police in connection with the identification of a deceased person. A breach of confidentiality in such situations can often be justified in order to minimise the distress caused to relatives at such an unfortunate time. In general, the Coroner asks for records in order to confirm the identity of a body where it is not possible for the relatives to confirm the identity. Therefore a request from the Coroner should be treated sympathetically and efficiently. The Coroner's representative will be able to produce information confirming his or her possible identity.

The position is less straightforward where a person has been reported as missing. Whilst the person is thought to be alive, no one may give consent for their records to be released, even in anticipation that a body will be found imminently. However, there may be circumstances where the fact that a patient was known to be at the practice premises at a particular time would be of great assistance to the police in establishing the chronology of the patient's movements. If there is any doubt about how to approach a request from the Police or relatives in a missing person case, please contact Dental Protection in order to discuss the specific circumstances of the case before agreeing to breach the missing person's confidentiality.

2.8 RESEARCH

It is ethical to disclose information for the purposes of a bonafide research project which has been approved by a recognised ethics committee. Practitioners receiving a request for such information should assure themselves as to the validity of the research project and, if necessary, should withhold the release of confidential information until such time as they have established the validity of the research project.

2.9 PUBLIC INTEREST

This is a contentious exception to the rule, but it is possible that a dentist could learn information of a serious nature about a patient. The dentist, whilst having a duty of confidentiality to the patient, also has a duty to society and this may, in certain circumstances, outweigh one's duty to the patient.

The GDC's guidance says that you may decide to release information, "where a patient puts their health and safety at serious risk, or if you think that you have confidential information which would help prevent or detect a serious crime." One such situation arose when a practitioner was contacted by the police following a report of attempted child abduction in the doorway leading to his waiting room. The police requested details of all the patients who had visited the practice that morning and the practitioner acceded to their request on the basis that the serious nature of the incident merited the breach in confidentiality.

At the other end of the scale, the police might request a dentist to confirm a patient's attendance at a given date or time, perhaps to corroborate an alibi given by the patient in connection with the investigation of a crime. In such cases the police officer should be asked to obtain the patient's written consent to the disclosure of this information, making it clear that you have no wish to impede the police enquiries, but have an obligation to respect the patient's confidentiality. Alternatively, the police may seek an order from the courts, compelling the practitioner to release information. In these circumstances the court would weigh up the individual patient's right to privacy against the interests of the public and reach a view which will be accepted by the GDC should the patient later complain about a breach of confidentiality.

Dentists facing such dilemmas should contact Dental Protection to discuss the matter fully with a dento-legal adviser. However, in the final analysis, the individual practitioner alone must resolve the dilemma and act according to a combination of what is believed to be in the patient's best interests and the dictates of the practitioner's ethical conscience.

2.10 COURT ORDER

While confidential information is not privileged from disclosure in the United Kingdom, a request from a lawyer or court official is, in itself, not sufficient to allow the disclosure of information.

The Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1989 Section S18 and more commonly in England the Police and Criminal Evidence Act 1984 (PACE) allow a judge to make an order obliging the practitioner to release the information. Failure to comply with a court order would place the practitioner in contempt of court.

It is not unusual for the police to call, unexpectedly, at a practice seeking information to assist them in their investigations of a crime. Staff should be warned to be careful not to release information without first ensuring that they have proper authority to do so. Often the crime is of a minor nature and in such circumstances it may be difficult to argue that public interest outweighed the duty of confidentiality to the patient. In addition, the police should be aware of the relevant sections of the Police and Criminal Evidence Act 1984 in England and should be advised that they need to go through the appropriate channels in order to obtain confidential information.

2.11 COLLEAGUES

Dentists can, of course, share information with colleagues who are directly involved in the patient's treatment. There will be occasions, however, where a patient's medical practitioner might decline to release information to a dentist which, in his or her view, is confidential. While this can be frustrating, the doctor is acting in what he believes to be the proper ethical manner and the dentist may need to stress the reason for the enquiry, making it clear how and why the disclosure of the information is in the patient's best interest.

Whilst it might be appropriate for concerns regarding possible child abuse, for example, to be discussed between doctors, dentists and social workers responsible for a child's care and welfare, different considerations might be said to apply where the matter at risk is suspected anorexia in a teenager who presents with dental erosion. A dentist who has the patient's best interests in mind may be extremely annoyed and frustrated if a medical general practitioner will not disclose sensitive personal information held in confidence between him/her and the patient.

As a matter of courtesy, a dental practitioner might suggest to a patient, that s/he would like to discuss some aspect of the medical history, for example, with the patient's doctor or hospital consultant. A note of this discussion (and agreement) should be made in the patient's records. If, however, the patient makes it clear that s/he does not want the dentist to approach the medical general practitioner or hospital, then the patient's wishes should be respected and again this fact should be noted within the records.

3.0 OTHER CONSIDERATIONS

3.1 PRIVACY

The physical arrangements of a dental working environment should be such as to prevent the unintended sharing of sensitive personal information with third parties.

Many orthodontic practices are designed with more than one dental chair in close proximity and/or in clear sight or hearing of other patients and third parties.

Overheard conversations which refer to a patient, and computer screens that are visible to any party who has no right or reason to have access to the information they display, are examples that have caused problems in the past.

3.2 MAILING HOUSES

Practices may wish to send a practice newsletter or other information to patients of the practice. But problems have arisen where a patient's current address has thereby been disclosed to a former partner after their relationship has ended less than amicably.

3.3 REMINDER CARDS

Any information showing a patient's name and address, and the date and time of an appointment, should be sent in a sealed envelope to preserve the confidentiality of this information.

3.4 DISPOSAL OF RECORDS

Great care needs to be taken in the disposal of old paper records. Under no circumstances should they ever be disposed of as normal waste, and secure shredding and incineration is the only safe way to destroy old records that are no longer required.

3.5 USE OF IMAGES

The advent of intra-oral cameras and digital photography has greatly simplified the process of including photographs in the clinical records. It is important to understand, however, that any such images are an integral part of the patient's records even if they were taken for other purposes (such as lecturing, research, etc.). Consequently, the normal principles of confidentiality still apply.

It is popularly believed that some kind of 'masking' of the patient's face or features will be sufficient to establish confidentiality if, as a result, it would be difficult or impossible to establish the patient's identity. This may make it less likely that an objection will be raised, but it does not change the underlying ethical principle that no one has the right to use that image of the patient for any purpose without their consent.

4.0 SUMMARY

- Confidentiality is a fundamental part of our professional ethics and every dental registrant has a duty to observe the guidance issued by the GDC.
- The patient's secrets can only be divulged with the patient's consent except in exceptional circumstances as outlined above.
- The decision to breach confidentiality must never be taken lightly, nor should it ever be made by a member of staff. A dentist is responsible in this respect for all the acts and omissions of staff members and great care should be taken to ensure that all members of staff are aware of the importance of confidentiality.
- When a decision is taken to breach a patient's confidentiality then there must be sound reasons for doing so. In this way the practitioner can help to protect himself / herself against action which might be taken as a result of the breach.
- It is wise when facing such a decision to seek advice and in particular the advice of Dental Protection. Our dentolegal advisers are always pleased to be able to offer advice and to discuss the particular circumstances of each individual case.

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