



Advice Sheet: **Access to medical records – Deceased patients**

Extract from BMA Ethics Guidelines Access to the records of deceased patients.

The Data Protection Act 1998 only covers the records of living patients. If a person has a claim arising from the death of an individual, he or she has a right of access to information in the deceased's records necessary to fulfil that claim. These rights are set out in the Access to Health Records Act 1990 or Access to Health Records (Northern Ireland) Order 1993. The provisions and fees are slightly different from those in the Data Protection Act and are covered in (see below) Access to records of deceased patients

The Data Protection Act 1998 does not cover the records of deceased patients. Statutory rights of access to these are contained within the Access to Health Records Act 1990 and Access to Health Records (Northern Ireland) Order 1993. The provisions are very similar to those of the Data Protection Act 1998, and are summarised below.

9.1 Any person with a claim arising from the death of a patient has a right of access to information covered by the Act and directly relevant to that claim. No information which is not directly relevant to the claim may be released. Thus a personal representative or executor can access information to benefit the deceased's estate, as can an individual who was a dependant of the deceased and who has a claim relating to that dependency which has arisen from the death.

9.2 The Access to Health Records Act 1990 covers manual health records made since 1 November 1991. In Northern Ireland the corresponding legislation, the Access to Health Records (Northern Ireland) Order 1993, covers manual records since 30 May 1994. Access must also be given to information recorded before these dates if this is necessary to make any later part of the records intelligible.

9.3 There are certain exemptions to this right, and information may be withheld if: it identifies a third party without that person's consent unless that person is a health professional who has cared for the patient; in the opinion of the relevant health professional, it is likely to cause serious harm to somebody's physical or mental health; or the patient gave it in the past on the understanding that it would be kept confidential. Similarly no results of examinations or investigations which the patient thought would be confidential at the time they were carried out can be disclosed. No information at all can be revealed if the patient requested non-disclosure

9.4 It follows that doctors should counsel their patients about the possibility of disclosure after death and solicit views about eventual disclosure where it is obvious in the circumstances that there may be some sensitivity. Such discussions should be recorded in

the records.

9.5 After a patient's death the health records may be held by NHS England Area Team or Central Services Agency. These bodies are required to take advice before making a decision about disclosure. This is usually from the patient's last GP or, if several health professionals have contributed to the care of the patient, the doctor who was responsible for the patient's care during the period to which the application refers. If no appropriate doctor who has cared for the patient is available, a suitably qualified and experienced health professional must advise.

9.6 Once the person holding the records is satisfied that the person requesting the information is entitled to it, access must then be given within specified time limits. Where the application concerns access to records any of which were made in the 40 day period immediately preceding the date of application access must be given within 21 days. Where the information concerns information all of which was recorded more than 40 days before the date of application, access must be given within 40 days. If the records are held by a health service body access cannot be given before advice has been obtained (see section 9.5).

9.7 Access can be given by allowing the applicant to inspect the records or extract or by supplying a copy if this is requested.

9.8 The courts may enforce compliance with the legislation if access is not given within the required time limits. The court may also require that the records be made available for its own inspection in order to come to a decision.

9.9 An access fee of up to £10 may be charged for providing access to information where all of the records were made more than 40 days before the date of the application. No access fee may be charged for providing access to information if the records have been amended or added to in the last 40 days.

9.10 Where a copy is supplied, a fee not exceeding the cost of making the copy may be charged. The copy charges should be reasonable as the doctor may have to justify them. If applicable, the cost of posting the records may also be charged.

9.11 There is no statutory right of access to records of deceased patients which fall outwith the time period covered by the legislation (see section 9.2 - go there now). Doctors asked to release such information should bear in mind that their duty of confidentiality extends beyond the patient's death, and should act in accordance with the deceased's wishes where these are known. If access to these records is being granted, the BMA advises that doctors should apply the safeguards and restrictions of the legislation to prevent harm or breach of confidence.

9.12 Doctors may charge a professional fee to cover the costs of giving access to the records of deceased patients not covered by legislation.

Footnote:

Once the notes have been returned to the patient agency it is they who should respond to a legitimate request and should do the copying themselves. However, the notes should first

be checked by a doctor to ensure that there is no third party data that needs to be excluded and to ensure that any information that was revealed on the strict understanding that it would not be disclosed even to the next of kin is excluded. Only the GP, of course, is likely to know this information and may be prepared, but is not obliged, to check the notes on behalf of the Practitioner and Patient Service Agency for an appropriate fee. Alternatively a PPSA or NHS England medical adviser should check the notes. Only notes from November 1st 1991 may be disclosed under the Access to Health Records Act which governs the disclosure of data relating to dead patients.

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