

## **Eastville Medical Practice Access to Medical Records Policy**

### **Patient access to information**

Patients have the right to access their own medical records and, in certain circumstances, those of others. Access could either be through the arrangement of a viewing of the records at the Practice or through the provision by the Practice of a copy of the original records. Such a request is known as a Subject Access Request, and it is a provision of the Data Protection Act. Provided that the appropriate fee has been paid and a written application is made by one of the individuals referred to below, the Practice is obliged to comply with a request for access subject to certain exceptions (see below). However, the Practice also has a duty to maintain the confidentiality of patient information and to satisfy itself that the applicant is entitled to have access before releasing information.

A patient can also request that their records be disclosed to any third party, providing written evidence of their consent to this (either directly or through the third party in question).

### **Providing information**

When a valid and complete request has been made, records should be disclosed within 40 calendar days. The applicant has no obligation to reveal the reasons for which they are making the request. The Practice has no obligation to comply with the request if the fee is not received. The fee charged for the provision of a copy of records can be between £10 (maximum allowed for a copy of records held solely on the computer) and £50, but a viewing of records must be free of charge. During a viewing of the record a member of practice staff must sit in with the patient.

An explanation of any unclear or unintelligible terms should be included if requested. Records will not be amended between the placement of a request and provision of the information, unless such amendments would have been made anyway. Any amendments made must be indicated as such.

Upon viewing or receiving a copy of their medical records, should a patient feel that some of the information contained within is false or inaccurate they will have the right to request that this information be edited or removed. The Practice is not obliged to comply with this request, but the patient's views must be recorded in the records.

### **Access by a third party**

#### **Children**

Children of 16 or over must be asked their consent to disclose their medical records to a third party, including their parents. If they are under 16 and considered Gillick competent, they must also be asked for consent. If they are

under 16 and not considered Gillick competent then those with parental responsibility for them may access their records and it is they who must give consent for these records to be disclosed to another party. For further information on consent, Gillick competence and the definition of what constitutes 'parental responsibility', see the Consent Protocol.

### **Patient representatives**

A patient can give written authorisation for a person (for example a solicitor or relative) to make an application on their behalf. The Practice may withhold access if it is of the view that the patient authorising the access has not understood the meaning of the authorisation.

### **Court representatives**

A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application, or give consent to third party access. The Mental Capacity Act contains powers to nominate such individuals to make health and welfare decisions on behalf of incapacitated adults. Access may be denied where the GP is of the opinion that the patient underwent relevant examinations or investigations in the expectation that the information would not be disclosed to the applicant.

### **Access to a deceased patient's medical records**

Where the patient has died, the patient's personal representative or any person who may have a claim arising out of the patient's death may make an application. Access shall not be given (even to the personal representative) to any part of the record which, in the GP's opinion, would disclose information which is not relevant to any claim which may arise out of the patient's death. The effect of this is that those requesting a deceased person's records should be asked to confirm the nature of the claim which they say they may have arising out of the person's death.

### **Taken from GMC guidance on good practice:**

1. Your duty of confidentiality continues after a patient has died. Whether and what personal information may be disclosed after a patient's death will depend on the circumstances. If the patient had asked for information to remain confidential, you should usually respect their wishes. If you are unaware of any instructions from the patient, when you are considering requests for information you should take into account:
  - a. whether the disclosure of information is likely to cause distress to, or be of benefit to, the patient's partner or family
  - b. whether the disclosure will also disclose information about the patient's family or anyone else
  - c. whether the information is already public knowledge or can be anonymised or coded, and
  - d. the purpose of the disclosure.

For further detail, see the GMC website

### **Releasing information to the police**

In all cases the Practice can release confidential information if the patient has given his/her consent (preferably in writing) and understands the consequences of making that decision. There is, however, no legal obligation to disclose information to the police unless there is a court order or warrant or this is required under statute. However, information can be released if it is deemed to be in the vital interests of the patient, a third party or the wider public. Only information which is strictly relevant to a specific police investigation should be considered for release.

### **Grounds for refusing disclosure of records**

GPs should refuse to disclose all or part of the health record if they are of the view that:

- Disclosure would be likely to cause serious harm to the physical or mental health of the patient or any other person. If disclosure is refused on this basis, it must be fully documented. This exemption does not apply to information the subject is already aware of.
- The records refer to another individual who can be identified from that information (apart from a health professional). This is unless that other individual's consent is obtained or the records can be anonymised.
- A request has been made by a third party which would normally be accepted, but in this circumstance it is likely that the patient disclosed the information to the GP in the understanding that the third party in question would not have access to it (e.g. a child who does not wish their parents to know certain information, or someone who currently does not have the capacity to consent but who divulged certain information whilst competent and in confidence that it would not be shared).

The decision to accept or refuse a request must be taken by the most recent clinician to deal with the patient in connection to the information being requested.

### **Further guidance**

*BMA Ethics: Access to Health Records (August 2014)*

*ICO Subject Access: Code of Practice (February 2014)*

*GMC: Confidentiality: Good practice in handling patient information (2017)*