



Guidance on Confidentiality

This guidance must be read in conjunction with The Code (2016) prepared by the General Chiropractic Council (GCC), which sets out standards for conduct, performance and ethics for chiropractors to ensure the competent and safe practice of chiropractic.

This guidance is not intended to cover every situation that you may face. However, it does set out broad principles to enable you to think through and act professionally, ensuring patient interest and public protection at all times.

To note: The GCC will review this guidance as necessary and update it as appropriate, and reapply the principles of the Code to any critical changes or new situations that may emerge.

Standards within the Code with reference to confidentiality:

H1:

Keep information about patients confidential and avoid improper disclosure of their personal information

Other Standards in The Code that reinforce and link to the above:

- H Maintain and protect patient information
- H2 Only disclose personal information without patient consent if required by law.
- B4 Strictly maintain patient confidentiality when communicating publicly or privately, including in any form of social media or when speaking to or writing in the media.

Patient confidentiality means that patients, including ex patients, have the right that information about them is kept private. Confidentiality is central to trust between chiropractors and patients. Without assurances about confidentiality, patients may be reluctant to seek treatment and/or to provide you with the information you need in order for you to provide good care. It is your responsibility to maintain and protect the personal patient information you obtain directly or indirectly in the course of your work.

Data protection law

You must abide by data protection law requirements. The Data Protection Act 1998 (the Act) sets out the requirements for handling personal and sensitive personal data as follows:

- (i) under the Act, every organisation that processes personal information must notify the Information Commissioner's Office (ICO) that they do so and have a registered data controller;
- (ii) personal data is data that identifies living individuals. Sensitive personal data is information about racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, membership of a trade union, physical or mental health or condition, sexual life, and the commission or alleged commission of any offence and any related proceedings;
- (iii) processing data includes obtaining, recording, storing, using, disclosing information as well as alteration and destruction; and
- (iv) the Act applies to all forms of media, including paper and images.

Management of records

You must maintain patient records and store them safely and in good condition for eight years from the date of the patient's last visit to you or, if the patient is a child, until his or her 25th birthday, or 26th birthday if the patient was 17 at the conclusion of treatment.

Patient records include such information as:

- (i) the patient's personal data;
- (ii) the case history of the patient;
- (iii) the patient's consent to assessment and care;
- (iv) the assessment and reassessment of the patient's health and health needs (including the outcomes of further investigations);
- (v) the diagnosis or rationale for care (or both);
- (vi) the initial and reviewed plans of care for the patient;
- (vii) the care provided to the patient (including any advice given face to face or over the phone);
- (viii) any referrals;
- (ix) clinical images; and
- (x) copies of correspondence.

The requirement of eight years is in line with the requirements that cover general NHS hospital records and other forms of health records. The purpose of this requirement is to make sure that the patient can have access to their recent health records and to provide protection for you if any complaints are made.

You must make sure that plans are in place to ensure the safe keeping of patient records in the event of your retirement or death (which might include entering into a contract with an organisation or other healthcare professional to hold this responsibility).

If the responsibility is yours, you must:

- (i) Make provision in your will for the safe storage of patients' records. These can then be released to a patient or their legal representative on production of the written authority of the patient; and
- (ii) in the closing of your practice, you must publicise the arrangements that you have made to keep the records safe so that patients know how to obtain their records if they want to.

Protecting confidential information

You must effectively protect personal information against improper disclosure. You must not disclose information about a patient, including the identity of the patient, either during or after the lifetime of the patient, without the consent of the patient or the patient's legal representative.

You must make sure that any personal information about patients that you hold or control is effectively protected at all times against improper disclosure.

It is expected that:

- (i) neither you nor any members of your staff or colleagues will release or discuss personal or care related information about a patient with anyone, including their spouse, partner or other family members unless you have the patient's valid consent to do so (see our guidance note on Consent);
- (ii) patient records are handled in a way that prevents them being seen by others;
- (iii) paper-based record systems are secure and cannot be accessed inappropriately whether you are on or off the premises;
- (iv) electronic recording systems are safe from access from outside the practice, the security and integrity of data is maintained and the system is safely backed-up at regular intervals; and
- (v) records are disposed of securely and in a manner that maintains patient confidentiality.

The Data Protection Act 1998 requires that:

- (i) if you employ a bookkeeper or an accountant, they must be able to see the financial information on payments separately from patients' clinical

- records. If members of internal staff are employed to do these jobs, you must still keep both types of information separate;
- (ii) if you want to pursue a patient for overdue payments, you must give only the minimum information to outside bodies (for example, for legal action or for debt collection); and
 - (iii) if you plan to sell or otherwise transfer ownership of your business, every effort must be made to ensure patients are aware that the business is changing hands or for sale (for example through practical activities such as an advertisement in the local paper).

Social Media

Patient confidentiality is not restricted to the workplace or a physical environment. The standards expected of chiropractors do not change just because they are interacting with others through media communications or means of virtual communications. It is incumbent on you and so you are obligated to maintain confidentiality throughout social media usage and communications to the same degree as you are in the physical workplace.

You must ensure patient confidentiality is upheld in all social networking, social media, emails and smartphone applications, including but not limited to:

- (i) text messages;
- (ii) messaging apps (e.g. Whatsapp, Skype, Facebook); and
- (iii) emails

You must also protect your own privacy and confidentiality. Chiropractors should be aware of the limitations of privacy online. You should regularly review the privacy settings for every social media account you have, and adopt conservative privacy settings where these are available. (See our guidance note on Social Media).

Consent to disclose confidential information

Appropriate information sharing and data collection is essential to the efficient provision of safe, effective care both for individual patients and for the general public. There are times where it may become appropriate to disclose information to another healthcare profession or disclose information for clinical audit or research purposes. Prior to disclosure of any patient information you must seek and record patient consent.

You must:

- (i) ensure that patients know about any disclosures necessary for their care or for evaluating and auditing care so they can object to such disclosures if they wish to;
- (ii) obtain and record a patient's express consent before providing personal information about them to others;

- (iii) ensure any member of staff working with or for you, understands that they are also bound by a duty of confidence, whether or not they have professional or contractual obligations to protect confidentiality; and
- (iv) disclose only the information you need to. It is good practice to anonymise data if this can still serve the purpose of the person asking for the information. This means removing all identifiable information about the patient including, for example, their name, address, date of birth, images or anything else that might serve to identify them.

Disclosure of confidential information without consent

If disclosure is required by law (statutory disclosure), or by a person or authority having a legal power to make such a demand, then you are legally bound to comply.

There are exceptions to the general rule of confidentiality where disclosure can be made to a third party. These are:

- (i) if you believe it to be in the patient's best interests to disclose information to another health professional or relevant agency;
- (ii) if you believe that disclosure to someone other than another health professional is essential for the sake of the patient's health and wellbeing (for example, if the patient is at risk of death or serious harm); or
- (iii) if having sought appropriate advice you are advised that disclosure should be made in the public interest (for example, because the patient might cause harm to others).

The disclosure of confidential information in the public interest is only permissible where there are exceptional circumstances that justify overruling the right of the individual to confidentiality because this has to be balanced against the greater societal interest. Decisions about the public interest are complex and must take account of the potential harm that disclosure may cause and the interest of society in the continued provision of confidential health services (for more information see, Department of Health, 2010, *Confidentiality: NHS Code of Practice Supplementary Guidance: Public Interest Disclosures*, DH, London).

If you make the decision to disclose confidential information, you must, in each case:

- (i) inform the patient beforehand as far as this is reasonably practical;
- (ii) make clear to the patient what information is to be disclosed, the reason for the disclosure and the likely consequence of the disclosure;
- (iii) disclose only the information that is relevant;
- (iv) make sure that the person you give the information to holds it on the same terms as those to which you are subject; and

- (v) record in writing the reasons for the disclosure, to whom it was made, the information disclosed and the justification for the disclosure.

In certain circumstances you will not be able to tell the patient before the disclosure takes place. Such as when, for example, the likelihood of a violent response is significant, or informing a potential suspect in a criminal investigation might allow them to evade custody, destroy evidence or disrupt an investigation.

If the patient is not told before the disclosure takes place, you should record in writing the reasons why it was not reasonably practical to do so. That record should be written as soon as possible to be contemporaneous and kept thereafter in a safe and secure place.

Additional Information:

- *Relevant legislation and important information*, GCC April 2015, www.gcc-uk.org/UserFiles/Docs/Legislation%20Relevant-Reference-Links-April15.pdf
- Data Protection Act 1998, www.legislation.gov.uk/ukpga/1998/29/pdfs/ukpga_19980029_en.pdf
- *Records Management NHS Code of Practice Part 2 (2nd Edition)*, Department of Health 2009, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200139/Records_Management_-_NHS_Code_of_Practice_Part_2_second_edition.pdf

Other healthcare regulators guidance regarding confidentiality:

- *Confidentiality*, GMC 2009, www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp
- Raising and acting on concerns about patient safety, GMC 2012 www.gmc-uk.org/guidance/ethical_guidance/raising_concerns.asp
- *Confidentiality – guidance for registrants*, HCPC 2012, www.hpc-uk.org/assets/documents/100023f1guidanceonconfidentialityfinal.pdf
- *Confidentiality: NHS Code of Practice*, Department of Health, November 2003, www.gov.uk/government/publications/confidentiality-nhs-code-of-practice

- *Confidentiality: NHS Code of Practice Supplementary Guidance: Public Interest Disclosures*, Department of Health, November 2010, Chiropractors have a professional and ethical responsibility to ensure the safety and wellbeing of their patients.
- www.gov.uk/government/publications/confidentiality-nhs-code-of-practice-supplementary-guidance-public-interest-disclosures
- *Guidance on patient Confidentiality*, GPC 2012, www.pharmacyregulation.org/sites/default/files/Guidance%20on%20Confidentiality%20April%202012.pdf
- *Principles of Patient Confidentiality*, GDC 2005, [https://www.gdc-uk.org/Dentalprofessionals/Standards/Documents/PatientConfidentiality\[1\].pdf](https://www.gdc-uk.org/Dentalprofessionals/Standards/Documents/PatientConfidentiality[1].pdf)