

JOINT GUIDANCE ON USE OF IT EQUIPMENT AND ACCESS TO PATIENT DATA

FROM:

- THE DEPARTMENT OF HEALTH
- THE GENERAL MEDICAL COUNCIL
- THE OFFICE OF THE INFORMATION COMMISSIONER

Professional and Legal Standards

Patients who provide information to the NHS for the purpose of receiving NHS care and treatment do so with the legitimate expectation that staff will respect their privacy and act appropriately. It is essential, if legal and professional requirements are to be met, and the trust of patients is to be retained, that the NHS provides and is seen to provide, a confidential service.

No IT system can be immune to inappropriate use by individuals who have been authorised to use the system and to access data. It is important therefore that all those who are provided with such authorisation by virtue of their role in delivering or supporting the delivery of care, understand and meet the standards of behaviour that are required by law and professional codes. In the case of the new NHS IM&T systems, authorised individuals will have signed a statement to indicate their understanding and agreement to adhere to these standards.

Professional Standards

The General Medical Council provide a clear statement of the duties of registered doctors that includes requirements for doctors to:

- Respect patients dignity and privacy
- Be honest and trustworthy
- Respect and protect confidential information
- Avoid abusing their position as a doctor

Similar professional obligations are imposed on other registered health professionals by their regulatory bodies. The Department of Health provides broad guidance for all NHS staff, agreed with the GMC, BMA and Information Commissioner in its publication *Confidentiality: NHS Code of Practice*. The Department has also published a Care Records Guarantee, underwritten by the Secretary of State for Health which clearly sets out the standards that are expected from those who work in or under contract to the NHS.

Legal Standards

There are three areas of law that are most relevant to the processing of patient information. These are:

The Human Rights Act 1998

Article 8 of the Human Rights Act establishes a right to 'respect for private and family life'. Anyone who processes patient information must do so for necessary and legitimate purposes or be in breach of the Act.

The Data Protection Act 1998

The Data Protection Act regulates how data about identifiable individuals may be processed. It contains eight principles and a number of other relevant sections, the most significant of which in this context are:

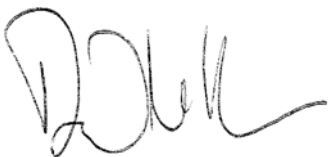
- The 1st Principle which requires data processing to be fair to the individual concerned and lawful in terms of wider UK law.
- The 7th Principle which requires those responsible for personal data to protect it against unauthorised or unlawful processing. It also requires that security measures must be commensurate with the nature of the data and the harm that may be suffered from a breach of security. Steps must also be taken to ensure that staff with access to the data are reliable.
- Section 55 which makes it a criminal offence to obtain or disclose personal data unlawfully.

The Common Law of Confidentiality

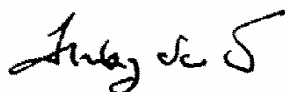
Although not codified in an Act of Parliament, common law is built up from case law where practice has been established by individual judgements. The key principle is that information confided for the purpose of receiving care and treatment should not be processed for other purposes except in circumstances where the law permits or requires it. The great majority of health professionals take their responsibility for safeguarding clinical patient information extremely seriously and appreciate the obligations of confidentiality that apply. However although non-clinical patient contact details are, in most cases, not held under legal obligations of confidentiality, this is not the case for all patients so it is Department of Health policy to treat demographic data held within the Personal Demographic Service as if it were.

Conclusion

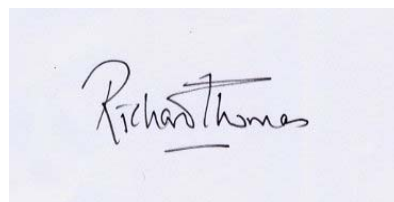
The General Medical Council, Information Commissioner and the Department of Health have agreed this joint statement to ensure that all those who have access to patient information in the course of their work are clear about what is expected of them. The Department of Health has strongly supported the Information Commissioner's call for stronger penalties to apply where individuals obtain information unlawfully, and the law is to be changed to provide the possibility of a custodial sentence for those found guilty.



David Nicholson CBE
NHS Chief Executive



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Richard Thomas
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