

## Guidance on Ethics: Duty of Care and Confidentiality

**Duty of care** is both a legal concept and a professional one. For example, to be successfully sued in negligence, the first thing that must be established is that a duty of care exists: it must then be shown that there was a breach of that duty that led to reasonably foreseeable harm. The duty of care is established by explicitly accepting it or by demonstrating, by subsequent actions, that you have taken on this duty. Working in hospitals and in General Practice, you will almost always (you should assume ALWAYS) have a duty of care to the patient. In practice, you owe a duty of care to any and all patients you become involved with professionally and you will be held accountable, should that duty be breached.

You also have both a legal and a professional **duty of confidence**. Confidential information must remain confidential. Confidential information is hard to define and the law says that it is "information that is not in the public domain and has the necessary quality of confidence about it". In practice, any information that emerges during professional interactions is confidential information and it should not be disclosed without justification. In English law, disclosure of confidential information may be done:

- With (valid) consent;
- If ordered to do so by a court;
- In the public interest (which is not the same as for the interest of the public).

In France, for example, the duty of confidence is absolute and it may only be breached as a defence by the accused in a criminal prosecution.

Breach of the duty of confidence is sometimes a subject of litigation but, much more often, it arises as a breach of a professional obligation or a requirement by an employer. However, you should be aware that the [Data Protection Act 1998](#) sets down specific requirements about how personal data shall be treated: breaches of the requirements of this Act can result in criminal sanctions on the offender.

The brief guideline below is to assist you in maintaining your duty of confidence and in meeting the requirements of the Data Protection Act 1998. The items are mainly 'common sense' good practice and procedures, which are a close adaptation of a range of professional guidance notes and standards set by NHS Trusts.

### **Obtaining Information**

Information about a person can be obtained by spoken word, (face to face, telephone etc), observation, written notes, audiotape, photographs or videotape. When obtaining information:

- Meet in a private room where only the relevant people are present;
- Involve the person (subject/interviewee) as much as possible;
- Do not judge any person's presence as irrelevant because you think the person cannot understand.

### **Making a record of information**

- Ask the persons present to agree to your making written notes of the

information; (explain that you need an accurate record).

- Whenever personally recording information, you should make notes during the event/interview. Do not rely on memory to write them later.
- Check your interpretation of the information with others who were present.
- Record only **facts** as facts; identify **opinions** as e.g. "In my opinion, the information shows....."
- All recorded information should be dated and accompanied by your full signature. As signatures are often hard to read, you should also set down your name (and status as a medical student) in non-joined letters.

### **Maintaining Confidentiality**

Information should be used only for the purpose for which it was given, and should not be shared with other people, or used for other purposes, except with the valid consent of the person who is the subject of the information. For the purpose of your own notes:

- **Do not identify the patient** or refer to him/her in such a way that he/she could be identified by another person. In any oral or written report, refer to the patient only by initials, first name or pseudonym.
- **Do not include photographs or other recorded material of the patient without their consent.**
- Keep all information about the person in a secure locked cabinet or drawer or on an encrypted, secure hard disc. Avoid transporting sensitive information on USB sticks unless absolutely necessary and always ensure that USB sticks are encrypted and that sensitive information is removed after use.
- When discussing your work with others, do not discuss patients, other than in professional interactions, and never gossip about patients.

### **Information Security**

- Personal Data is governed by the Data Protection Act 1998 and there are strict rules governing its use which you must be aware of. The University has produced [A Brief Guide to Data Protection](#) to assist you in interpreting this legislation.
- Each Trust will have specific rules and procedures which you must adhere to regarding the use of patient data. Patient identifiable data must NEVER be kept on laptops, PCs, or portable storage (such as USB drives) unless the device or the file has been encrypted. [Information on encryption](#)
- Patient identifiable data must NEVER be emailed unless it is contained in an encrypted file attachment
- Files must be deleted in accordance with the arrangements agreed with the data subjects or the ethics approval procedure for projects.
- Papers containing patient identifiable data must be kept secure in locked storage until they are no longer required when they must be shredded or incinerated.
- If personal data is lost, stolen or disclosed to unauthorised persons you must inform your supervisor immediately.

### **Guidance on Ethics: Duty of Care when Working with Children**

All organisations that work to serve children and young people, from the largest national bodies to very small voluntary groups, share a duty of care for the children and young people under the age of 18 years with whom they work.

The University of Manchester has a Child Protection policy and guidance document that you should read. This document can be found [here](#).

The key principles of this policy are:

- Anyone under the age of 18 years should be considered as a child. (Every Child Matters –Working together to safeguard children 2006)
- All children have the right to protection from abuse;
- All allegations of abuse will be taken seriously and responded to swiftly and appropriately;
- To ensure that University of Manchester staff and students are provided protection and are aware of best practice so that children in their care can be protected and that they do not place themselves in an unnecessarily vulnerable position.

The University of Manchester is committed to safeguarding and promoting the welfare and safety of children. We will:

- Adhere to University procedures to recruit staff and select students
- Carry out appropriate Criminal Records Bureau checks as necessary.
- Ensure that staff and students are aware of The University of Manchester Child Protection Policy and related procedures, and that appropriate staff and students are trained on a regular basis.
- Provide information to all interested parties regarding The University of Manchester child protection policies and procedures for working with children.
- Provide information to teachers, group leaders, service providers and any other interested parties on The University of Manchester's expectations regarding child protection responsibilities when visiting the University and when our staff and students are involved in activities on premises external to the University.
- Work closely with other organisations to safeguard children.
- Have procedures for dealing with allegations of abuse against University staff members and students.

Each placement provider will have specific rules and procedures which you must adhere to regarding duty of care for children and young people under the age of 18 years. Please ensure that you are familiar with these.

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