

## **SCGH ED policy around breaches of patient confidentiality:**

Patient confidentiality is a central tenet of good clinical care. Patients are vulnerable with a power and knowledge imbalance in our environment. They must be able to trust that they are in a supportive environment and their information will be protected in all reasonable circumstances. Patient confidentiality and privacy is governed by laws (privacy/ health acts), DoH operational directives and codes of ethics.

Any deliberate breach in confidentiality is a serious matter, which should always be a matter of serious contemplation and only entered into upon discussion with the most senior staff available (including by phone if on call) at the time.

If inadvertent breaches of confidentiality occur these should be reported immediately, to the ED duty consultant/ senior nurse and the circumstances clearly documented.

There are only a few circumstances where deliberately breaching patient confidentiality is ethical, reasonable and legal:

- a) The patient (if competent- see below for incompetent) has agreed with full knowledge, to allow their information to be passed on. This should be clearly documented in the notes, dated/timed and signed by the doctor. If particularly sensitive/ problematic then it should also be signed by the patient.
- b) If there is a court order/ subpoena or legislative requirement (e.g. notifiable diseases, drunk driving etc.) for notes/ part of the notes or other patient information. There is rarely an emergent time frame attached to these circumstances and collation and dispatch of this information should always be discussed with, supervised by and agreed to by a consultant.
- c) In the case of incompetent patients (either temporary or permanent) if there is a clinical urgency to discuss patient information with relatives, friends, other agencies etc. to better delineate the clinical picture, then this is reasonable as it is in the best interest of the patient. In general information should be limited to those nearest to the patient, limited to what is clinically necessary and to that required to provide good clinical care.
- d) Where breaching confidentiality is considered overwhelmingly in the public interest or in the interest of another individual(s) who are in imminent danger. The law is very grey on what is considered to be in the public interest and each case will be judged on its merits. Normally the rule is would a reasonable person consider that the public interest is best served by the breach. Potential examples are given below (but are clearly not limited to):
  - i) A lorry driver, clearly having a heart attack leaves saying he must finish his deliveries- do you tell them you are calling the police/ DVA?
  - ii) A paranoid schizophrenic has a letter detailing specific plans to kill a named person because of their involvement in spying on the patient?
  - iii) A known domestic abuser apprehended by police for assaulting their wife/ children was brought in for assessment for mental health issues. They have been cleared psychiatrically but have expressed ongoing direct threats to the wife/ children- do we call police and family
  - iv) A patient has a concealed gun in their possession when being assessed for drug induced behavioural disturbance- should the police be called?

The potential public/ individual harms are evident in all these cases but the decision to breach their confidentiality should never be determined by anyone below consultant level who may well also involve hospital medicolegal/administration.

IT is expected that in all these sorts of cases you will:

- a) Call/ involve your team or duty consultant (including calling if they are on-call)
- b) Clearly document the circumstances and issues in the notes, date and time them
- c) Collate all available information, and keep that information secure and confidential and limit spread of that information

Please be assured that you are not expected and we do not want you to have to make these difficult calls by yourself and we expect as consultants to to be rung and involved in these most difficult of circumstances.

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