Health
Professions
Council of Zambia

GUIDELINES FOR GOOD PRACTICE IN THE HEALTH CARE PROFESSION

Maintaining Patient

CONFIDENTIALITY

"Promoting Quality Healthcare and Safeguarding
the Public is our Prime Concern"

1st Edition, March 2016

TABLE OF CONTENTS

1.0 INTRODUCTION

Health Practitioners have always had a duty to keep their patients' confidences. In essence, the practitioners' duty to maintain confidentiality means that he/she may not disclose any health care information revealed by a patient or discovered by a practitioner in connection with the treatment of a patient. In general, the Code of Ethics states that the information disclosed to a physician during the course of the patient-physician relationship is confidential to the utmost degree.

The underpinning principle purpose of a practititioners ethical duty to maintain patient confidentiality is to allow the patient to feel free to make a full and complete disclosure of information to the practitioners with the knowledge that the practitioner will protect the confidential nature of the information disclosed. Full disclosure by a patient enables the practitioner to diagnose conditions skillfully and to treat the patient competently. In return for the patient's honesty, the practitioner generally should not reveal confidential communications or information without the patient's express consent unless required to disclose the information by law.

2.0 DEFINITION OF TERMS

Confidentiality is the right of an individual patient to have personal identifiable medical information secured and only accessible to the health practitioner attending to the patient.

"***Anonymised data"*** means data from which the patient cannot be identified by the recipient of the information. The name, address, and full postal code must be removed, together with any other information which, in conjunction with other data held by or disclosed to the recipient, could identify the patient. Patient reference numbers or other unique numbers may be included only if recipients of the data do not have access to the 'key' to trace the identity of the patient using that number.

"Consent" means consent for the provision of a specified health service given by a person with legal capacity. A person of 18 years and above may consent to medical and surgical treatment .

"Express consent" means consent which is expressed orally or in writing (except where patients cannot write or speak, other forms of communication may be sufficient).

"Patients" refers to any person seeking or receiving care at any health facility within Zambia.

"Personal information" means identifiable information about patient that is generated at the health facility which health practitioners learn in their professional duty .

"Public interest" mean the interests of the community as a whole, or individuals or a group within the community.

3.0 Patient Confidentiality

Maintaining patient confidentiality is an ethical professional duty. Even without applying ethical standards, courts generally allow a course of action for a breach of confidentiality against a treating physician who divulges confidential medical information without proper authorization from the patient.

Despite these ethical and legal obligations, access to confidential patient information has become more prevalent. Electronic health information systems allow increased access and transmission to health data. Practitioners in integrated delivery systems or networks now have access to the confidential information of all the patients within their system or network. Confidential information also is disseminated through clinical repositories and shared databases such example is the use of Smartcare in the management of people living with HIV. Sharing this information allows patients to be treated more efficiently and safely. The challenge for practitioners is to utilize this technology, while honoring and respecting patient confidentiality.

4.0 PATIENTS'S RIGHT TO CONFIDENTIALITY

Being registered under the Health Professions Act, gives health care practitioners certain rights and privileges. In return, they have the duty to meet the standards of competence, care and conduct set by the Health Professions Council of Zambia as well as their Professional Associations.

Health practitioners have access to information about patients that is private and sensitive. The National Health Care Standards (NHCS) provides that this information not be given to others, unless the patient consents or the health practitioner justifies the disclosure. Health facility supervisors are responsible for ensuring that clerks, receptionists and other staff respect patient confidentiality in the performance of their duties. Guidance on when disclosures may be justified are provided in this booklet.

When a health practitioner is satisfied that information should be released, he or she should act promptly to disclose all relevant information. Especially if it is done to protect the best interests of the patient, or to safeguard the well-being of others.

These guidelines on confidentiality are the result of extensive consultations and detailed clarification on rights and limitations of confidentiality. They place new responsibilities on health care practitioners regarding the obtaining of consent and keeping patients informed about the disclosure of information concerning them. These guidelines set out a framework for respecting patients' rights, while ensuring that information needed to maintain and improve health care for individual patients and society is disclosed to those who need it for such purposes.

The additional duties on health practitioners to obtain consent and to anonymised data are consistent with the provisions of the National Health Care Standards. These guidelines ensure privacy-friendly relationships between patients and practitioners and should assist health practitioners to comply with their ethical and legal obligations.

In the case of a deceased patient with the written consent of the next of kin suffices. Disclosures in the public interest would include but not be limited to situations where the patient or other persons would be prone to harm as a result of risk due to non-disclosure.

5.0 RETAINING CONFIDENTIALITY

Patients have a right to expect that information about them will be held in confidence by health care practitioners. Confidentiality is central to trust between practitioners and patients. Without assurances about confidentiality, patients may be reluctant to give practitioners the information they need in order to provide good care.

Where health practitioners are asked to provide information about patients, they should :

Seek the consent of patients to disclosure of information wherever possible, whether or not the patients can be identified from the disclosure; Comprehensive information must be made available to patients with regard to the potential for a breach of confidentiality

Where unidentifiable data will serve the purpose of keeping disclosures to the minimum extent. Health practitioners must always be prepared to justify their decisions in accordance with these guidelines.

6.0 THE RIGHTS OF PATIENTS TO INFORMATION

Patients have a right to information about the health care services available to them, presented in a way that is easy to follow and use. The NHCS provides that health care providers inform patients of the following:

- The patient's health status except in circumstances where there is substantial evidence that the disclosure of the patient's health status would be contrary to the best interests of the patients;

- The range of diagnostic procedures and treatment options generally available to the patients;
- The benefits, risks costs and consequences generally associated with each option and
- The patient's right to refuse health services and explain the implications, risks and obligations of such refusal.

Patients also have a right to information about any condition or disease from which they are suffering. Such information should be presented in a manner easy to follow and use, and should include information about the diagnosis, prognosis, treatment options, outcomes of treatment, common and serious side-effects of treatment, the likely time- frames of treatment, and the expected costs, where relevant.

Health practitioners should always give patients basic information about the treatment they propose to provide, but should respect the wishes of any patient who asks not to be given detailed information. Without such information, patients cannot make proper choices as partners in the health care process.

7.0 Confidentiality when disclosing information to others providing health care.

Health practitioners should make sure that patients are aware that personal information about them will be shared within the health care team - and patients must be told the reasons for this. It is particularly important to check that patients understand what will be disclosed if it is necessary to share personal information with anyone employed by another organization or agency providing health or social care. Practitioners cannot treat patients safely, nor provide continuity of care, without having relevant information about the patient's condition and medical history.

In some circumstances where patients have consented to treatment, express consent (orally or in writing) is not usually needed before relevant personal information is shared to enable the treatment to be provided. For example, express consent is not needed before a general practitioner discloses relevant personal information to a medical secretary so that she can type a referral letter. In such circumstances, when the practitioner informs the patient that he or she is referring the patient to somebody else, the patient is assumed to have given implied consent to such disclosure being made to the secretary.

The health practitioner must make sure that any recipient to whom personal information about patients is disclosed, understands that it is given to them in confidence, which they must respect. Anyone receiving personal information in order to provide care is bound by the legal duty of confidentiality - whether or not they have contractual or professional obligations to protect confidentiality.

Circumstances may arise where a patient cannot be informed about the sharing of information, for example because of a medical emergency. In these cases the health care practitioner should disclose the relevant information promptly to those providing the patients' care, and explain the situation to the patient after the emergency has passed.

8.0 Disclosure of information other than for treatment of individual patients.

Information about patients is requested for a wide variety of purposes including education, research, monitoring and epidemiology, public health surveillance, clinical audit, administration and planning, insurance and employment. Health care practitioners have a duty to protect the privacy of patients and respect their autonomy. When asked to provide information health care practitioners should adhere to the principles of confidentiality.

The paragraphs below deal with obtaining consent for disclosure of information and what to do where consent is unobtainable, or where it is impracticable to seek consent for disclosure of information.

Seeking consent of patients to disclosure is part of good communication practice between health care practitioners and patients and is an essential part of respect for the autonomy and privacy of patients. The following principles should be applied:

Obtaining consent where the disclosures will have personal consequences for patients.

Health care practitioners must obtain express consent where patients may be personally affected by the disclosure, for example when disclosing personal information to a patient's employer or to a medical scheme for a working place.

When seeking express consent, health practitioners must make sure that patients are given enough information on which to base their decision, the reasons for the disclosure and the likely consequences of the disclosure.

Health practitioners should also explain how much information will be disclosed and to whom it will be given.

If the patient withholds consent the health practitioner should first attempt to persuade the patient to consent.

If the patient continues to refuse consent, or consent cannot be obtained, the consequences of disclosure and non-disclosure should be explained to the patient. Disclosures may be made only where they can be justified in the public interest.

Obtaining consent where the disclosure is made for research, educational, training, efficient administration of health services or clinical audit purposes.

If identifiable data is to be used, this can only be done with informed consent of the patient.

Use of identifiable patient data is permitted for purposes of the efficient administration of health services and for clinical audit, with the provision that only information relevant to the purpose of disclosure is revealed, and disclosure is only made to personnel with a direct interest in that information.

Where health practitioners have control of personal information about patients, they must not allow anyone access to that information for study, approved research or medical audit unless the person obtaining access has been properly trained and authorised by a health establishment, a health care provider or comparable body and is subject to a duty of confidentiality in their employment or because of their registration with a statutory regulatory body.

9. Confidentiality in the public interest

Confidentiality cannot be ignored even In cases where health practitioners have considered all the available means of obtaining consent, but are satisfied that it is not practicable to do so, or that patients are not competent to give consent, or exceptionally, in cases where patients withhold consent.Personal information may be disclosed in the public interest where the benefits to an individual or to society of the disclosure outweigh the public and the patient's interest in keeping the information confidential, (e.g. endangered third parties such as the spouse or partner of a patient who is HIV positive, who after counseling refuses to disclosure his or her status to such spouse or partner; or reporting a notifiable disease).

10. Disclosure which benefits patients indirectly

Health Professions Council of Zambia and other Government regulatory bodies that monitor the public health or the safety of medicines or devices, as well as registries of notifiable conditions, rely on information from patients' records for their effectiveness in safeguarding public health. For example, the effectiveness of the system of notifiable conditions depends on information provided by clinicians. Health practitioners must co-operate by providing relevant information wherever possible. The notification of some communicable diseases is required by law and in other cases health care practitioners should provide information in anonymised form, when such would be sufficient.

Confidentiality should be practiced in all situations and even where personal information is needed, health practitioners should seek express consent before disclosing information, whenever that is practicable. For example, where patients are receiving treatment there will usually be an opportunity for a health practitioner to discuss disclosure of information with them.

Personal information may sometimes be sought about patients with whom health practitioners are not in regular contact. Practitioners should therefore, make sure that patients are given information about the possible value of their data in protecting public health in the longer-term, at the initial consultation or at another suitable occasion when they attend a health facility. It should be clear that they may object to disclosures at any point. The health practitioner must record any objections so that patients' wishes can be respected. In such cases, the practitioner may pass on anonymised information if asked to do so.

Where patients have not expressed an objection, health practitioners should assess the likely benefit of the disclosure to the public and commitment to confidentiality of the organisation requesting the information. If there is little or no evident public benefit, they should not disclose information without the express consent of the patient.

Where it is not practicable to seek the consent of patients for disclosure of personal information for these purposes, or where patients are not competent to give consent, health practitioners must consider whether the disclosures would be justified in the public interest, by weighing the benefits to public health of the disclosure against the possible detriment to the patient.

The automatic transfer of personal information to a registry, whether by electronic or other means, before informing the patient , is unacceptable, informational should be saved in the most exceptional circumstances. These would be where a court has already decided that there is such an overwhelming public interest in the disclosure of information to a registry that rights of patients to confidentiality are overridden; or where health practitioners are willing and able to justify the disclosure, potentially before a court or to the HPCZ, on the same grounds.

11. What is a breach of confidentiality?

A breach of confidentiality is a disclosure to a third party, without patient consent or court order, of private information that the physician has learned within the patient-physician relationship. Disclosure can be oral or written, by telephone or fax, or electronically, for example, via e-mail or health information networks. The medium is irrelevant, although special security requirements may apply to the electronic transfer of information. Confidentiality should be exercised at all levels to protect the patients information to disclosure.

12. Patient consent to release confidential or privileged information

The general rule regarding release of a patient's medical record is that information contained in a patient's medical record may be released to third parties only if the patient has consented to such disclosure. The patient's express authorization is required before the medical records can be released to the third parties: once the patient has given consent to release the record, the disclosure requirement may be mandatory for the holder of the medical record or merely permissive.

13. Who can consent to the release?

Who may grant permission to release medical record information is likewise governed by state law. Generally, the authority to release medical information is granted to: (1) the patient, if a competent adult or emancipated minor; (2) a legal guardian or parent if the patient is incompetent or a minor child; and (3) the administrator if patient is deceased. The patient's right to authorize release of medical records is codified in many ways. These ways all state that medical records are confidential and cannot be disclosed, except in specifically provided circumstances. However, the extent of the patient's right to confidentiality varies from country to country. Some countries allow the health professionals or provider to determine patient's right of access/confidentiality.

What has to be in the release?

Typical elements of a valid general release include:

1. Patient's name and identifying information;
2. Address of the health care professional or institution directed to release the information;
3. Description of the information to be released;
4. Identity of the party to be furnished the information;
5. Language authorizing release of information;
6. Signature of patient or authorized individual; and
7. Time period for which release remains valid.

Safeguarding patient confidences also is subject to certain exceptions that are ethically and legally justified because of overriding social considerations. If there is a reasonable probability that a patient will inflict serious bodily harm on another person, for example, the health practitioner should take precautions to protect the intended victim and notify law enforcement authorities Thus, the physician's

14. General management of confidentiality

Health facility supervisors should set up office procedures to prevent the release of medical records without a copy of the patient's release. The system could be as simple as attaching an office form to any request for medical records. The form would have a checklist indicating date of receipt of the request, date of receipt of the copy of the patient's release form, and date that the medical records were authorized to be sent to the requester.

15. Why protecting patient confidentiality is still important

Physicians should inform patients of the limits of confidentiality protections and allow the patients to decide whether treatment outweighs the risk of the disclosure of sensitive information. A patient expects to have his or her privacy respected by the physician and should not be disappointed. If a record must be released, the patient should sign an appropriate release authorizing the disclosure of information in the medical record. General releases will not suffice for records containing sensitive material.

Health Practitioners should become familiar with laws and regulations involving the duty to maintain confidentiality. Any breach in confidentiality even one that seems minor can result in mistrust and, possibly, a lawsuit and/or disciplinary action.

16. Protecting information

The National Health Care Standards requires that health practitoners and health care facilities are responsible for personal information about their patients and must make sure that such information is effectively protected against improper disclosure at all times. For example, this means that employees such as clerks and receptionists must also be trained to respect the confidentiality of patients when dealing with personal information.

Health practitioners should not discuss information about patients where they can be overheard or leave patients' records where they are vulnerable to disclosure, either on paper or electronically, where they can be seen by other patients, unauthorized health care personnel or the public. Health practitioners should endeavor to ensure that their consultations with patients are private.

Protecting information can also be achieved by doing the following:

- Making sure that any personal information about patients that you hold or control is effectively protected at all times against improper disclosure.
- Not share identifiable information about patients where you can be overheard, for example, in a public place or in an internet chat forum. You should not share passwords or leave patients' records, either on paper or on screen, unattended or where they can be seen by other patients, unauthorized healthcare staff, or the public.
- Familiarize with and follow policies and procedures designed to protect patients' privacy where you work and when using computer systems provided for your use. This includes policies on the use of laptops and portable media storage devices. You must not abuse your access privileges and must limit your access to information you have a legitimate reason to view.
- If you are responsible for the management of patient records or other patient information, you should make sure that they are held securely and that any staff you manage are trained and understand their responsibilities.
- You should make use of professional expertise when selecting and developing systems to record, access and send electronic data.
- You should make sure that administrative information, such as names and addresses, can be accessed separately from clinical information so that sensitive information is not displayed automatically.

17. Confidentiality when disclosing information with consent

Seeking a patient's consent to disclosure of information shows respect, and is part of good communication between doctors and patients. Circumstances in which patients may give implied consent to disclosure Sharing information within the healthcare team.or with others providing care

Most patients understand and accept that information must be shared within the healthcare team in order to provide their care. You should make sure information is readily available to patients explaining that, unless they object, personal information about them will be shared within the healthcare team, including administrative and other staff.

This information can be provided in leaflets, posters, on websites, and face to face and should be tailored to patients' identified needs as far as practicable. Posters might be of little assistance to patients with sight impairment or who do not read English, for example. In reviewing the information provided to patients, you should consider whether patients would be surprised to learn about how their personal information is being used and disclosed.

You must respect the wishes of any patient who objects to particular personal information being shared within the healthcare team or with others providing care, unless disclosure would be justified in the public interest. If a patient objects to a disclosure that you consider essential to the provision of safe care, you should explain that you cannot refer them or otherwise arrange for their treatment without also disclosing that information.

You must make sure that anyone you disclose personal information to understands that you are giving it to them in confidence, which they must respect. All staff members receiving personal information in order to provide or support care are bound by a legal duty of confidence, whether or not they have contractual or professional obligations to protect confidentiality

Circumstances may arise in which a patient cannot be informed about the disclosure of information, for example, in a medical emergency. In such a case you should pass relevant information promptly to those providing the patient's care. If and when the patient is capable of understanding, you should inform them how their personal information was disclosed if it was in a way they would not reasonably expect.

If a patient does object, you should explain why the information is needed and how this may benefit their own, and others' care. If it is not possible to provide safe care without disclosing information for audit, you should explain this to the patient and the options open to them.

If you are asked to provide information to third parties, such as a patient's insurer or employer or a government department or an agency assessing a claimant's entitlement to benefits, either following an examination or from existing records, you should:

(a) be satisfied that the patient has sufficient information about the scope, purpose and likely consequences of the examination and disclosure, and the fact that relevant information cannot be concealed or withheld.

(b) obtain or have seen written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf; you may accept an assurance from an officer of a government department or agency or a registered health professional acting on their behalf that the patient or a person properly authorised to act on their behalf has consented.

(c) only disclose factual information you can substantiate, presented in an unbiased manner, relevant to the request; so you should not usually disclose the whole record, although it may be relevant to some benefits paid by government departments and to other assessments of patients' entitlement to pensions or other health-related benefits

(d) offer to show your patient, or give them a copy of any report you write about them for employment or insurance purposes before it is sent, unless:

    (i) they have already indicated they do not wish to see it.

    (ii) disclosure would be likely to cause serious harm to the patient or anyone else.

    (iii) disclosure would be likely to reveal information about another person who does not consent.

If a patient refuses consent, or if it is not practicable to get their consent, information can still be disclosed if it is required by law or can be justified in the public interest . If the purpose is covered by a regulations, disclosures can also be made without a patient's consent, but not if the patient has objected.

18. Disclosures of information in the public interest

There is a clear public good in having a confidential medical service. The fact that people are encouraged to seek advice and treatment, including for communicable diseases, benefits society as a whole as well as the individual. Confidential medical care is recognized in law as being in the public interest. However, there can also be a public interest in disclosing information: to protect individuals or society from risks of serious harm, such as serious communicable diseases or serious crime; or to enable medical research, education or other secondary uses of information that will benefit society over time

Personal information may, therefore, be disclosed in the public interest, without patients' consent, and in exceptional cases where patients have withheld consent, if the benefits to an individual or to society of the disclosure outweigh both the public and the patient's interest in keeping the information confidential. You must weigh the harms that are likely to arise from non-disclosure of information against the possible harm, both to the patient and to the overall trust between doctors and patients, arising from the release of that information.

Before considering whether a disclosure of personal information would be justified in the public interest, you must be satisfied that identifiable information is necessary for the purpose, or that it is not reasonably practicable to anonymise or code it. In such cases, you should still seek the patient's consent unless it is not practicable to do so.

If the patient is not competent to give consent, in which case you should consult the patient's lawyer, guardian or the patient's relatives, friends or carers should do.

You should inform the patient that a disclosure will be made in the public interest, even if you have not sought consent, unless to do so is impracticable, would put you or others at risk of serious harm, or would prejudice the purpose of the disclosure.

You must document in the patient's record your reasons for disclosing information without consent and any steps you have taken to seek the patient's consent, to inform them about the disclosure, or your reasons to do so.

19. Confidentiality in Research and other secondary uses of information

Research, epidemiology, public health surveillance, health service planning, and education and training are among the important secondary uses made of patient information. Each of these uses can serve important public interests.

For many secondary uses, it will be sufficient and practicable to disclose only anonymised or coded information. When identifiable information is needed, or it is not practicable to remove identifiable information, it will often be perfectly practicable to get patients' express consent. You may disclose identifiable information without consent if it is required by law or if it can be justified in the public interest and it is either:

(a) necessary to use identifiable information, or
(b) not practicable to anonymise or code the information and, in either case, not practicable to seek consent .

In considering whether it is practicable to seek consent you must take account of:

(a) the age of records and the likely traceability of patients
(b) the number of records, and
(c) the possibility of introducing bias because of a low response rate or because particular groups of patients refuse, or do not respond to, requests to use their information.

When considering whether the public interest in disclosures for secondary uses outweighs patients' and the public interest in keeping the information confidential, you must consider the following:

(a) the nature of the information to be disclosed
(b) what use will be made of the information
(c) how many people will have access to the information
(d) the confidentiality and security arrangements in place to protect the information from further disclosure
(e) the potential for distress or harm to patients
(f) whether the use of identifiable information would benefit patients or the public sufficiently to outweigh patients' right to privacy.

You should only disclose identifiable information for research if that research is approved by a Research Ethics Committee. You should alert Research Ethics Committees to disclosures of identifiable information without consent when applying for approval for research projects.

20. Disclosures of information to protect the patient

It may be appropriate to encourage patients to consent to disclosures you consider necessary for their protection, and to warn them of the risks of refusing to consent; but you should usually abide by a competent adult patient's refusal to consent to disclosure, even if their decision leaves them, but nobody else, at risk of serious harm.

You should do your best to provide patients with the information and support they need to make decisions in their own interests, for example, by arranging contact with agencies that support victims of domestic violence.

Disclosure without consent may be justified if it is not practicable to seek a patient's consent. And guidance on disclosures to protect a patient who lacks capacity to consent.

Disclosure of personal information about a patient without consent may be justified in the public interest if failure to disclose may expose others to a risk of death or serious harm. You should still seek the patient's consent to disclosure if practicable and consider any reasons given for refusal.

Such a situation might arise, for example, when a disclosure would be likely to assist in the prevention, detection or prosecution of serious crime, especially crimes against the person. When victims of violence refuse police assistance, disclosure may still be justified if others remain at risk, for example, from someone who is prepared to use weapons, or from domestic violence when children or others may be at risk.

If a patient's refusal to consent to disclosure leaves others exposed to a risk so serious that it outweighs the patient's and the public interest in maintaining confidentiality, or if it is not practicable or safe to seek the patient's consent, you should disclose information promptly to an appropriate person or authority. You should inform the patient before disclosing the information, if practicable and safe, even if you intend to disclose without their consent.

21. Disclosures of information about patients who lack capacity to consent

When making decisions about whether to disclose information about a patient who lacks capacity, you must:

(a) make the care of the patient your first concern

(b) respect the patient's dignity and privacy, and

(c) support and encourage the patient to be involved, as far as they want and are able, in decisions about disclosure of their personal information.

You must also consider whether the patient's lack of capacity is permanent or temporary and,if temporary, whether the decision to disclose could reasonably wait until they regain capacity, any evidence of the patient's previously expressed preferences and the views of anyone the patient asks you to consult, or who has legal authority to make a decision on their behalf, or has been appointed to.

(d) the views of people close to the patient on the patient's preferences, feelings, beliefs and values, and whether they consider the proposed disclosure to be in the patient's best interests, and

(e) what you and the rest of the healthcare team know about the patient's wishes, feelings, beliefs and values.

If a patient who lacks capacity asks you not to disclose personal information about their condition or treatment, you should try to persuade them to allow an appropriate person to be involved in the consultation. If they refuse, and you are convinced that it is essential in their best interests, you .may disclose relevant information to an appropriate person or authority.

In such a case you should tell the patient before disclosing the information and, if appropriate, seek and carefully consider the views of an advocate or carer. You should document in the patient's record your discussions and the reasons for deciding to disclose the information.

You may need to share personal information with a patient's relatives, friends or carers to enable you to assess the patient's best interests. But that does not mean they have a general right of access to the patient's records or to have irrelevant information about, for example, the patient's past healthcare. You should also share relevant personal information with anyone who is authorised to make decisions on behalf of, or who is appointed to support and represent, a mentally incapacitated patient.

22. Disclosures of information when a patient may be a victim of neglect or abuse

If you believe that a patient may be a victim of neglect or physical, sexual or emotional abuse, and that they lack capacity to consent to disclosure, you must give information promptly to an appropriate responsible person or authority, if you believe that the disclosure is in the patient's best interests or necessary to protect others from a risk of serious harm. If, for any reason, you believe that disclosure of information is not in the best interests of a neglected or abused patient, you should discuss the issues with an experienced colleague. If you decide not to disclose information, you should document in the patient's record your discussions and the reasons for deciding not to disclose. You should be prepared to justify your decision.

23. Confidentiality on Sharing information with a patient's partner, carers, relatives or friends

You should establish with the patient what information they want you to share, who with, and in what circumstances. This will be particularly important if the patient has fluctuating or diminished capacity or is likely to lose capacity, even temporarily. Early discussions of this nature can help to avoid disclosures that patients would object to. They can also help to avoid misunderstandings with, or causing offence to, anyone the patient would want information to be shared with.

If a patient lacks capacity, you should share relevant information in accordance with the advice in the guide lines. Unless they indicate otherwise, it is reasonable to assume that patients would want those closest to them to be kept informed of their general condition and prognosis.

If anyone close to the patient wants to discuss their concerns about the patient's health, you should make it clear to them that, while it is not a breach of confidentiality to listen to their concerns, you cannot guarantee that you will not tell the patient about the conversation. You might need to share with a patient information you have received from others, for example, if it has influenced your assessment and treatment of the patient.You should not refuse to listen to a patient's partner, cares or others on the basis of confidentiality. Their views or the information they provide might be helpful in your care of the patient. You will, though, need to consider whether your patient would consider you listening to the concerns of others about your patient's health or care to be a breach of trust, particularly if they have asked you not to listen to particular people.

24. Confidentiality on Genetic and other shared information

Genetic and some other information about your patient might at the same time also be information about others the patient shares genetic or other links with. The diagnosis of an illness in the patient might, for example, point to the certainty or likelihood of the same illness in a blood relative.

Most patients will readily share information about their own health with their children and other relatives, particularly if they are advised that it might help those relatives to:

(a) get prophylaxis or other preventative treatments or interventions
(b) make use of increased surveillance or other investigations, or
(c) prepare for potential health problems.

However, a patient might refuse to consent to the disclosure of information that would benefit others, for example, where family relationships have broken down, or if their natural children have been adopted. In these circumstances, disclosure might still be justified in the public interest, if a patient refuses consent to disclosure, you will need to balance your duty to make the care of your patient your first concern against your duty to help protect the other person from serious harm. If practicable, you should not disclose the patient's identity in contacting and advising others of the risks they face.

25. Confidentiality in publication of case-histories and photographs:

Health care practitioners must obtain express consent from patients before publishing personal information about them in media to which the public has access, for example in journals or text books, whether or not the practitioners believe the patients can be identified. Express consent must, therefore, be sought to the publication of, for example case-histories about or photographs of patients. Where health care practitioners wish to publish information about a patient who has died, they should take into account the guidelines in this booklet before deciding whether or not to do so.

wherever possible. The notification of some communicable diseases is required by law and in other cases health care practitioners should provide information in anonymised form, when that would be sufficient.

Where personal information is needed, health care practitioners should seek express consent before disclosing information, whenever that is practicable. For example, where patients are receiving treatment there will usually be an opportunity for a health care practitioner to discuss disclosure of information with them.

Personal information may sometimes be sought about patients with whom health care practitioners are not in regular contact. Practitioners should therefore make sure that patients are given information about the possible value of their data in protecting public health in the longer-term, at the initial consultation or at another suitable occasion when they attend a health establishment.. It should be clear that they may object to disclosures at any point. The health care practitioner must record any objections so that patients' wishes can be respected. In such cases, the practitioner may pass on anonymised information if asked to do so.

Where patients have not expressed an objection, health care practitioners should assess the likely benefit of the disclosure to the public and commitment to confidentiality of the organization requesting the information. If there is little or no evident public benefit, they should not disclose information without the express consent of the patient.

26. Confidentiality in administration and financial audit:

Health care practitioners should record financial or other administrative data separately from clinical information and provide it in anonymised form wherever possible.

Decisions about the disclosure of clinical records for administrative or financial audit purposes, for example where medical scheme staff seek access to patients' records as part of the arrangements for medical benefit payments, are unlikely to breach the ethical rules of the HPCZ, provided that, before allowing access to patients' records, they follow the guidelines as set out in this booklet.. Only the relevant part of the record should be made available for scrutiny.

Wherever possible. The notification of some communicable diseases is required by law and in other cases health care practitioners should provide information in anonymised form, when that would be sufficient.

Where personal information is needed, health care practitioners should seek express consent before disclosing information, whenever that is practicable. For example, where patients are receiving treatment there will usually be an opportunity for a health care practitioner to discuss disclosure of information with them.

Personal information may sometimes be sought about patients with whom health care practitioners are not in regular contact. Practitioners should therefore make sure that patients are given information about the possible value of their data in protecting public health in the longer-term, at the initial consultation or at another suitable occasion when they attend a health establishment.. It should be clear that they may object to disclosures at any point. The health care practitioner must record any objections so that patients' wishes can be respected. In such cases, the practitioner may pass on anonymised information if asked to do so.

Where patients have not expressed an objection, health care practitioners should assess the likely benefit of the disclosure to the public and commitment to confidentiality of the organization requesting the information. If there is little or no evident public benefit, they should not disclose information without the express consent of the patient.

Where it is not practicable to seek the consent of patients for disclosure of personal information for these purposes, or where patients are not competent to give consent, health care practitioners must consider whether the disclosures would be justified in the public interest, by weighing the benefits to public health of the disclosure against the possible detriment to the patient.

The automatic transfer of personal information to a registry, whether by electronic or other means, before informing the patient that information will be passed on, is unacceptable, save in the most exceptional circumstances. These would be where a court has already decided that there is such an overwhelming public interest in the disclosure of information to a registry that rights of patients to confidentiality are overridden; or where health care practitioners are willing and able to justify the disclosure, potentially before a court or to the HPCZ, on the same grounds.

27. Disclosure where Health Practitioners have dual responsibilities

Situations arise where health care practitioners have contractual obligations to third parties, such as companies or organizations, as well as obligations to patients. Such situations occur, for example when practitioners:

- Provide occupational health services or medical care for employees of a company or organization
- Are employed by an organization such as an insurance company
- Work for an agency assessing claims for benefits
- Provide medical care to patients and are subsequently asked to provide medical reports or information for third parties about them
- Work as district medical officers or forensic pathologists
- Work in the armed forces or work in correctional services.

If health practitioners are asked to write a report about or examine a patient, or to disclose information about a patient from existing records for a third party to whom the practitioners have contractual obligations, they must:

Be satisfied that the patient has been told at the earliest opportunity about the purpose of the examination or disclosure; the extent of the information to be disclosed; and the fact that relevant information cannot be concealed or withheld. Health care practitioners should show the form to the patient before they complete it to ensure that the patient understands the scope of the information requested.

Disclosure of personal information without consent may be justified where failure to do so may expose the patient or others to risk or death or serious harm. Where third parties are exposed to a risk so serious that it outweighs the patient's right to confidentiality, health care practitioners should seek consent to disclosure where practicable. If it is not practicable, they should disclose information promptly to an appropriate person or authority. They should generally inform the patient before disclosing the information.

Such circumstances may arise, for example:

A colleague who is placing patients at risk as a result of illness or some other medical condition (e.g. an impaired colleague): If health care practitioners are in doubt about whether such disclosure is justified they should consult an experienced colleague, or seek advice from a professional organization. The safety of patients must come first at all times;

A patient who continues to drive, against medical advice, when unfit to do so: In such circumstances health care practitioners should consider disclosing the relevant information to the patient's next-of-kin or the traffic authorities or police. Where such a patient is employed as a professional driver the employer should be informed.

A disclosure that may assist in the prevention or detection of a serious crime: In this context serious crimes, means crimes that will put someone at risk of death or serious harm, and will usually be crimes against the person, such as abuse of children.

28. Confidentiality in Children and other patients who may lack competence to give consent.

Problems may arise if health care practitioners consider that a patient is incapable of giving consent to treatment or disclosure because of immaturity, illness or mental incapacity. If such patients ask them not to disclose information to a third party, the health care practitioners should try to persuade them to allow an appropriate person to be involved in the consultation. If patients refuse to give consent and health care practitioners are convinced that it is essential, in the patients' medical interests, they may disclose relevant

29. Disclosure after patient's death

Health practitioners still have an obligation to keep personal information confidential after a patient dies. The extent to which confidential information may be disclosed after a patient's death will depend upon the circumstances. These include the nature of the information, whether that information is already public knowledge or can be anonymised, and the intended use to which the information will be put. Health care practitioners should also consider whether the disclosure of information may cause distress to, or be of benefit to, the patient's partner or family.

There are a number of circumstances in which health care practitioners may be asked to disclose, or wish to use, information about patients who have died:

- To assist in connection with an inquest. In these circumstances, practitioners are required to provide the relevant information.
- On death certificates. The law requires health care practitioners to complete death certificates honestly and fully Particular difficulties may arise when there is a conflict of interest between parties affected by the patient's death. For example, if an insurance company seeks information in order to decide whether to make a payment under a life assurance policy, health care practitioners should only release information with consent from the next-of-kin , if the deceased had consented to such release before his or her death or as directed by the courts.

30. Disclosure in connection with judicial or other statutory proceedings

Health care practitioners may be required to disclose information to satisfy a specific statutory requirement, such as notification of a notifiable disease or suspected child or elder abuse.

Health care practitioners must also disclose information if ordered to do so by a judge or presiding officer of a court. They should object to the judge or the presiding officer if attempts are made to compel them to disclose what appear to them to be irrelevant matters, for example matters relating to relatives or partners of the patient, who are not parties to the proceedings.

Health care practitioners should not disclose personal information to a third party such as a lawyer, police officer or officer of a court without the patient's express consent.

Health care practitioners may disclose personal information in response to an official request from a statutory regulatory body for any of the health care professions, where that body determines that this is necessary in the interests of justice and for the safety of other patients. Wherever practicable they should discuss this with the patient. There may be exceptional cases where, even though the patient objects, disclosure is justified.

In all cases, should health care practitioners decide to disclose confidential information they must be prepared to explain and justify their decisions.

31. Confidentiality in Electronic processing of information

Health care practitioners must be satisfied that there are appropriate arrangements for the security of personal information when it is stored, sent or received by fax, computer, e- mail or other electronic means.

If necessary, health care practitioners should take appropriate authoritative professional advice on how to keep information secure before connecting to a network. They should record the fact that they have taken such advice.

Health care practitioners must make sure that their own fax machine and computer terminals are in secure areas. If they send data by fax, they should satisfy themselves, as far as is practicable, that the data cannot be intercepted or seen by anyone other than the intended recipient.

When deciding whether and in what form to transmit personal information, health care practitioners should note that information sent by e-mail through the internet may be intercepted.

32. Consent to the use of Chaperones during Consultation, Examination and Diagnostic Procedures

All medical consultations, examinations and investigations are potentially distressing. Patients can find examinations, investigations or photography involving the breasts, genitalia or rectum particularly intrusive (these examinations are collectively referred to as “intimate examinations”). Also consultations involving dimmed lights, the need for patients to undress or for intensive periods of being touched may make a patient feel vulnerable. The feeling of vulnerability and intensive examination may make some patients feel harassed.

Therefore, it is encouraged that practitioners conducting distressing or intensive examinations ensure the availability of a chaperon for the comfort of the patient and the protection of the practitioner in case of accusations or complaints.

For most patients respect, explanation, consent and privacy take precedence over the need for a chaperone. The presence of a third party does not negate the need for adequate explanation and courtesy and cannot provide full assurance that the procedure or examination is conducted appropriately.

CONCLUSION

The Council obligates all health practitioners to ethically and professionally observe the rules on patient confidentiality, so as to improve mutual trust between the patient and provider.

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Health
Professions
Council of Zambia

Published by:
Health Professions Council of Zambia,
P.O Box 32554,
Dental Training School Premises, Wamulwa Road,
Thornpark, Lusaka.
Tel: (260-1) 236241,
Fax: (260-1) 239317
Email: hpcz@iconnect.zm
Website: www.hpcz.org