

Privacy and confidentiality essentials



Privacy and confidentiality are important considerations when dealing with patient information. These terms are often used interchangeably and can be misunderstood. In practice, it can be confusing to work out what you can and cannot say to a patient's family or how and when it's acceptable to share their information.

Note: This content is a brief summary of the key issues on this topic. Further insights and information can be found on the Avant Learning Centre or by seeking medico-legal advice.

Distinction between confidentiality and privacy

Confidentiality is the duty owed by a practitioner to the patient regarding the information obtained from and about the patient.

Privacy is the statutory regime that governs how a patient's personal information should be collected and managed and the circumstances in which it can be used and disclosed.

Basic principles

You have an obligation to keep patient information private and confidential unless:

- it is appropriate to share the information within the healthcare team and is directly related to the patient's care; or
- the patient has given you authority (consent) to release the information or you are required by law to release information (see below).

You may speak about a patient to their family or others where necessary in an emergency. Or there may be compassionate grounds that allow you to share a patient's information even if the patient is unable to give their specific consent.

Patient's authority (consent)

If someone requests the patient's records or information about the patient, you must have the patient's authority to release it. Authority can be verbal or written and if verbal, you must document the consent carefully in the patient's record. Be clear about the scope of the patient's consent, particularly any limits on what information they are happy to share or who the information can be shared with.

The authority should also be reasonably current (as a guide, within 12 months). If unsure, contact the patient directly to clarify and document this conversation.

Patient's family

You may receive a request for information about a patient, such as a phone call from the patient's family or friend asking for an update on the patient's condition. Legally, you cannot share information about the patient's care without their permission. It is good practice to establish who the patient (or their substitute decision maker) is happy for you to talk to early on in their care and make this clear in their record.

As long as a patient is competent, no other person, even if they are the patient's partner or spouse, is entitled to access information without the patient's authority.

Information about children

Parents do not automatically have the right to access their child's health information as their child matures. Once a child is mature enough to make decisions about their healthcare, this includes being able to decide who has access to their health information. When this occurs will depend on the situation and is a matter for your clinical judgement, and considerations including the child's age, level of understanding and maturity, and the information they want to keep confidential. Before the child has a sufficient level of competence, both parents have the right to access health information about their child, unless a court order is in place preventing a parent from accessing their child's information. For more information see [Avant - Children and consent](#).

Your access to medical records

You are generally entitled to access the clinical records for any patient whose care you are directly involved with, unless the patient expressly refuses access. Your employment within a hospital or practice does not give you permission to access any other medical record available to you. Access to electronic medical records, is easily tracked. We have seen many instances of staff being sanctioned for inappropriate access to records.

Clinical images

Taking a clinical image is commonplace within medical care as it assists with communication and diagnosis. This is a complex area and guidance continues to develop, so always check with your hospital or organisation. A key tip is to always obtain consent for each use – so get the patient's consent to take an image for clinical purposes and get further consent if you want to store that image for teaching or to use in a presentation. Care needs to be taken with all images, even if deidentified. See Avant's factsheet [Avant-Clinical photography - a snapshot of the issues](#) and flowcharts for further guidance: [Avant - Using a personal device for communicating at work](#) and [Avant - Flowchart: Taking a clinical image](#).

Requests for information about a deceased patient

Even after the death of the patient, your obligation of confidentiality remains. The executor of the will or the administrator of the estate are lawfully entitled to access medical information of a deceased person. Beyond this, family members may be allowed to access the deceased's information, for example on compassionate grounds. For more information see [Avant - Medical records of deceased patients](#).

Limited exceptions

Exceptions or situations where you are permitted to release information without patient consent include but are not limited to:

- Where there is a serious threat to the life, health or safety of an individual or to public health or safety
- Where you have good reason to suspect unlawful activity or misconduct of a serious nature
- Where you are disclosing information on compassionate grounds to a responsible person or guardian and the patient is incapable of giving consent
- Where release of the information is required by law, for example, in response to a subpoena to produce medical records (this does not include a request from police or solicitors without a warrant or subpoena) or a mandatory notification requirement (child abuse or notifiable diseases).

Privacy laws are complicated, and may differ depending on the state or territory you are in. Seek advice if you are in doubt about whether you can release your patient's information to a third party.

Checklist

- Has the patient given you permission to share the information?
- Are you required by law to release the information?
- If the situation involves a child, is the child sufficiently mature to make decisions about their healthcare?

Want more?

Visit the Avant Learning Centre – avant.org.au/avant-learning-centre, for resources including webinars, eLearning courses, case studies, articles and checklists.

