

Dear Colleague

PROVISION OF MEDICAL RECORDS BY NHS TO COURTS

This letter is to advise Board Chief Executives, Health Records Managers, Caldicott Guardians, and Data Protection Managers of changes to the procedures regarding the provision of medical records of patients for use in criminal proceedings. It needs to be forwarded to GP practices and primary care.

1. It has been agreed that the National Health Service (NHS) will no longer routinely provide the Crown with the original medical records of patients who are still alive for use in criminal proceedings. Instead, suitably authenticated copy medical records will be provided in the first instance in all cases unless the patient is deceased. However the Crown will reserve the right to request the original records in certain circumstances.

2. The Scottish Executive Data Protection and Confidentiality Unit have made representations to COPFS (Crown Office Procurator Fiscal Service) advising that the NHS have experienced problems when supplying original medical records to the Crown. The difficulty centres on the continuing need for medical personnel to retain access to original records for ongoing clinical purposes.

3. It is not unusual for medical records to be retained by the Crown for up to 3 years. NHS staff regularly experience difficulties, following the return of those records on conclusion of proceedings, when they attempt to reconcile them with other records for that patient. This can occur as a result of an additional active medical file having been opened to cover the period when the original records were with the Crown. As a consequence, there can be gaps in the clinical information available to medical personnel in both sets of records. Obviously, this can have serious consequences in the assessment of the appropriate treatment for that patient.

Revised Arrangements

4. Routinely, the NHS will now provide suitably authenticated copy medical records in all cases where patient is still alive.

CEL 11 (2007)

8 November 2007

Addresses

For action

Chief Executives
Health Records Managers
Caldicott Guardians
Data Protection Managers

For information

Enquiries to:

Dr Fiona Bisset
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 2362

Fax: 0131-244 5063

<mailto:fiona.bisset@scotland.gsi.gov.uk>

<http://www.scotland.gov.uk>

5. The Crown has reserved the right to request the originals where, for example, the writing is difficult to read, there are concerns that the records are not complete or because of the particular significance which may attach to the use of different coloured inks. Local liaison is encouraged to resolve such issues, which may be of critical importance in terms of disclosure obligations, preparation for trial and evidence to be led at the trial.

6. As there is no ongoing clinical need for the NHS to retain the original medical records in cases which have resulted in a fatality, the original records will continue to be provided to the Crown.

Authentication

7. The NHS is responsible for ensuring suitably authenticated copies in terms of section 279, Schedule 8 of the Criminal Procedure (Scotland) Act 1995. Sample form attached.

8. It is good practice to produce photocopies on distinctive photocopy paper eg with a watermark stating 'Legal access request' so that any photocopies are readily recognisable.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Gray', with a stylized flourish at the end.

PAUL GRAY

«NAME/PRACTICE»

CERTIFICATE OF AUTHENTICATION

Procurator Fiscal Case Reference No.

I, ¹ «Name», «Title», «Name of Practice», «Address» being the authorised representative of ² «NHS Board», etc (address) which is in possession and control of the originals of the copy documents listed and described below to which this certificate is attached hereby certify that they are true copies of the originals which are in the possession and control of ³ «NHS Board», etc of which I am the authorised representative.

Date: (Signed)

⁴ e.g. Legal Services Manager

- ¹ Insert name, address and title of office held.
- ² Insert name and address of person or body in possession and control of documents.
- ³ Insert name of person or body as at note 2 above.
- ⁴ Insert authorised capacity in which certificate signed.

LIST AND DESCRIBE DOCUMENTS

Medical Records Casenotes relating to :

Name

Address

Unit No.

- (i) admission record
- (ii) triage report
- (iii) preoperative check
- (iv) etc, etc