

Disclosing Confidential Information about Patients: Draft Guidance for GOC Registrants

RoSPA's Response to General Optical Council's Consultation

Date: May 2019



Response to General Optical Council's Consultation, Disclosing Confidential Information About Patients: Draft Guidance for GOC Registrants

Introduction

Some registrants of the General Optical Council (GOC) have requested more clarity about when to disclose confidential information in the public interest, as they can find it complex and confusing. Research has shown that in relation to where a patient may not be fit to drive, registrants are not clear about what they should do in response.

The General Optical Council have therefore developed draft guidance on disclosing confidential information. The guidance aims to help GOC registrants to decide when they might need to override patient confidentiality in the public interest, for example by telling the DVLA (and potentially other persons and agencies) if a patient is not fit to drive due to inadequate eyesight. The GOC are now inviting comments from stakeholders and registrants on their views of the draft guidance and its potential impact.

This is the response of the Royal Society for the Prevention of Accidents (RoSPA) to General Optical Council's consultation paper, 'Disclosing Confidential Information about Patients, Draft Guidance for GOC Registrants'. It has been produced following consultation with RoSPA's National Road Safety Committee.

RoSPA have no objection to this response being reproduced or attributed.



Response to General Optical Council's Consultation, Disclosing Confidential Information About Patients: Draft Guidance for GOC Registrants

About you

What is your name?

Rebecca Needham.

Are you responding on behalf of an organisation?

Yes.

On behalf of which organisation are you responding?

The Royal Society for the Prevention of Accidents (RoSPA).

Which category best describes your organisation?

Charity/ not-for-profit organisation.



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Using the guidance

Question 16

Is the guidance presented in a way that is clear, accessible and easy to use?

RoSPA response

RoSPA believes that the guidance is presented in a way that is clear, accessible and easy to use. The document is relatively short and the language used within it is clear. It is also set out in clear sections, so that the registrant can easily refer to a single section of the guidance as and when needed.

Question 17

Is there anything missing, incorrect or unclear in the guidance?

RoSPA response

RoSPA do not believe that there is anything that is missing, incorrect or unclear in the guidance.

Question 18

Does the new supplementary guidance make clear what the GOC expects of its registrants?

RoSPA response

RoSPA believe that the document is clear, and that it makes clear the way in which the guidance should be used. It states that it should be read alongside the Standards of Practice for Optometrists and Dispensing Opticians, which all optometrists and dispensing opticians must apply to their practice. For student optometrists and student dispensing opticians, the document states that it must be read alongside the Standards for Optical Students.

The guidance also makes clear that the requirement to maintain confidentiality is not absolute and can be overridden in cases where there may be a risk of harm to the public. This means that registrants are expected to use their judgement to consider their professional requirement to maintain confidentiality alongside the need to ensure public protection. Registrants should use their professional judgement to apply the guidance that follows to their own practice and the variety of settings in which they might work. It also sets out who to contact for further advice if the registrant has any questions about the guidance or how to apply it in practice.



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Various scenarios are outlined within the guidance, including disclosing information with consent from the patient, or in some cases, without the consent of the patient. The guidance clearly outlines that in most cases, sensitive information must be kept confidential, unless the patient provides the healthcare professionals with explicit consent to disclose it. They may rely on implied consent to share this information with those who are providing or supporting the provision of direct care to the patient under a number of conditions.

Registrants are also expected to try and get their patient's consent to disclose sensitive information about them, unless obtaining consent would defeat the purpose of disclosure. In an instance where the patient may be unfit to drive, it is unlikely that obtaining consent would defeat the purpose of disclosure, this is more likely to be applied in cases such as when a serious crime has been committed. The other instance in which it is not appropriate to obtain consent is if the patient is unable to give consent as a result of disability, illness or injury and does not have capacity to consent.

It is clear that if a patient does provide consent, the healthcare professional must make it clear what information is being disclosed, why it is being disclosed and to which person or authority. As a rule of thumb, if you are seeking implied consent, patients should not be surprised to learn how their information is being used. If it is being used in a way that a patient would not reasonably expect, the professional should seek explicit consent from the patient.

Even if a patient does not provide the healthcare professional with explicit consent to disclose information on them, there may still be circumstances where they will need to pass the information on to the appropriate authority, such as where it is in the public interest, or where there is a legal requirement to do so. If disclosure without consent is necessary, there are a number of things to consider, such as keeping a record of disclosure. RoSPA believe that the guidance makes clear what the General Optical Council expects of its registrants and guides registrants to the appropriate agency to contact if they have any questions about the way in which the guidance should be used, or for support with particular cases.

Question 19

Will the guidance help registrants to understand when and how to apply their professional judgement to override patient confidentiality and consent, i.e. when there is a duty to protect the public from risk of harm?

RoSPA response

RoSPA believes that this guidance is clear and should help registrants to understand when and how to apply their professional judgement to override patient confidentiality and consent.

The guidance states that even if a patient does not provide the healthcare professional with explicit consent to disclose information on them, there may still be circumstances where the registrant will need to pass the information on to the appropriate authority, such as where it is in the public interest, or where there is a legal requirement to do so.



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The guidance also outlines a number of specific situations that healthcare professionals may face in practice, such as passing on information in relation to a patient's fitness to drive, other areas where it may be in the public interest to disclose information without consent and making a disclosure to comply with external investigations.

It also makes reference to the DVLA issue guidance for healthcare professionals summarising the national medical guidelines on fitness to drive, which could also be helpful to registrants.

The guidance outlines the process of what a healthcare professional should do if they need to disclose information to other individuals or agencies, such as the DVLA, without the patient's consent. The guidance explains that the registrant must keep a record of this, including the information disclosed and who it was disclosed to. Any attempts to seek consent from the patient must also be documented. If it was not appropriate to seek consent, the reasons why it was not appropriate should be recorded too.

Question 20

Is the supplementary guidance sufficiently flexible to accommodate any differences in practice within the optical sector (for example, differences in the nations of the UK or in how optical care is provided)?

RoSPA response

RoSPA is not in a position to comment.

Question 21

Are there any specific issues or barriers which might prevent registrants from using the guidance?

RoSPA response

RoSPA are not aware of any barriers that would prevent registrants from using their professional judgement and disclosing sensitive information about patients to appropriate agencies and persons if they are concerned for the safety of their patient and the wider public.

Question 22

Would any further supporting activities be beneficial to registrants in implementing the guidance?



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RoSPA response

As RoSPA believe that the guidance is clear, and signposts registrants to the appropriate individuals and organisations for further information on using the guidance in practice, we have no suggestions of any beneficial supporting activities.

Disclosing information to the DVLA/DVA

Question 23

Will the guidance give registrants more confidence to report directly to the DVLA/DVA, where appropriate?

RoSPA response

RoSPA hope that this guidance will give registrants more confidence to report directly to the DVLA/DVA when appropriate.

Healthcare professionals may encounter situations where a patient's vision means they may not be fit to drive. The guidance sets out the requirements of the governing bodies and driving in the UK, the ways in which the registrant should communicate with a patient advising them that they may not be fit to drive, and when they should disclose this information to someone other than the patient.

Licensed drivers have a legal responsibility to notify the DVLA/DVA of any medical condition they have that may affect safe driving. However, in cases where a patient who drives and is unfit to do so either will not or cannot notify the appropriate body, the healthcare professional has a responsibility to notify the DVLA/DVA themselves if they are concerned about road safety, both in relation to both the patient and the wider public.

This aligns with the DVLA/DVA¹ advice that doctors and other healthcare professionals should:

- advise the individual on the impact of their medical condition for safe driving ability
- advise the individual on their legal requirement to notify the DVLA of any relevant condition
- treat, manage and monitor the individual's condition with ongoing consideration of their fitness to drive
- notify the DVLA when fitness to drive requires notification but an individual cannot or will not notify the DVLA themselves.

¹ DVLA (2019) 'Assessing fitness to drive: a guide for medical professionals'

<https://www.gov.uk/government/publications/assessing-fitness-to-drive-a-guide-for-medical-professionals>



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The guidance states that if in a healthcare professional's judgement, they think a patient may not be fit to drive, they should explain it to the driver and the reasons for this and discuss this with the person's family/carer if appropriate. They should advise the patient to stop driving immediately and explain to them how to notify the DVLA/DVA of any condition that may affect their fitness to drive. The healthcare professional must also make clear their duty to notify the DVLA/DVA as a medical professional if a patient will not or cannot notify the appropriate body themselves if there is a concern for the safety of the patient and wider public.

The guidance states that when disclosing information to the DVA/DVLA, the healthcare professional should inform the patient that they intend to notify the DVLA/DVA and have a duty to cooperate and provide all relevant information as requested. The healthcare professional must then notify the DVLA/DVA and the patient's GP. The healthcare professional must also keep a clear record of their actions and any advice given to the patient. Professionals are referred to their standards of practice for more information.

This guidance clearly outlines what is expected of healthcare professionals in relation to patients who may no longer be fit to drive. RoSPA hopes that this clear guidance will give registrants the confidence to report directly to the DVLA/DVA when appropriate.



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Sharing information with other healthcare professionals

Question 24

Will the guidance give registrants more confidence to share information about patients with other healthcare professionals, such as GPs?

RoSPA response

RoSPA is not in a position to comment.



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Impact

Question 25

Overall, do you expect that the guidance will be beneficial to, or have a positive impact on protection of patients and the public?

RoSPA response

In 2017, "uncorrected, defective eyesight" was a contributory factor in road accidents in which in 2 people were killed, 51 were seriously injured and 200 were injured in total.

RoSPA agree that if the guidance is used appropriately, it will be beneficial to and have a positive impact on the protection of patients and the public.

Question 26

Overall, do you expect the guidance will be beneficial to, or have a positive impact on individual GOC registrants (optometrists and dispensing opticians)?

RoSPA response

RoSPA hope that providing this clearer guidance will give GOC registrants the confidence to disclose confidential information about their patients in situations where they may need to do so. The guidance sets out the procedures that they should follow both when disclosing information with or without the patient's consent.

Question 27

Are there any aspects of the guidance that could have an adverse or negative impact on any group of patients, the public, GOC registrants or others?

RoSPA response

RoSPA do not believe that the guidance itself would have an adverse or negative impact on any group of patients, the public, general optical registrants or others. However, there is always a concern that patients will lose some of their trust for medical professionals if they believe that their information will be disclosed. This may mean that some patients choose to delay an eyesight test, or not to have one at all.



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The GMC guidelines 2017 state that Trust is an essential part of the doctor-patient relationship and confidentiality is central to this. Patients may avoid seeking medical help, or may under-report symptoms, if they think that their personal information will be disclosed by doctors without consent, or without the chance to have some control over the timing or amount of information shared. This must be balanced with the responsibility of healthcare professionals, who owe a duty of confidentiality to their patients, but also have a wider duty to protect and promote the health of patients and the public².

Question 28

Are there any aspects of the guidance that could discriminate against stakeholders with specific characteristics? Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.

RoSPA response

RoSPA do not believe that any aspects of the guidance could discriminate against stakeholders with specific characteristics.

² General Medical Council (2017) 'Patients' fitness to drive and reporting concerns to the DVLA or DVA'

<https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva/patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva>



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Other comments

Question 29

Are there any other comments you wish to make in relation to the supplementary guidance?

RoSPA response

RoSPA have no further comments.

Question 30

Is there anything further that we could do to promote the issue of vision and safe driving?

RoSPA response

RoSPA believe that the appropriate agencies must continue to make the public aware of the eyesight standards that individuals must meet to be considered fit to continue to drive. That is, in good daylight, a driver **must** be able to read a vehicle number plate from a distance of 20 metres (or from a distance of 20.5 metres for old style number plates).

Registrants must also continue to make patients aware of the requirement to wear glasses or contact lenses, if needed, at all times when they are driving. They could also make patients aware that the police have the power to require a driver to undertake an eyesight test.

It is also vital that there is public awareness of the importance of eye tests. RoSPA believe that the best way to make sure that an individual meets the minimum eyesight standard for driving is to have an eyesight test at an opticians every two years, or more often if the optician advises. It is vital that members of the public are aware that they are entitled to a free eye test if they are aged 60 years or over, or have been diagnosed with diabetes or glaucoma or have been advised by an ophthalmologist that they are at risk of glaucoma. If they are 40 years or over, and have a mother, father, brother, sister, son or daughter who has been diagnosed with glaucoma, they are also entitled to a free NHS sight test. Members of the public should be made aware that they can also receive free eye tests if they receive certain social security benefits.



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RoSPA have no further comments to make on the consultation process, other than to thank General Optical Council for the opportunity to comment on their proposals. We have no objection to our response being reproduced or attributed.

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