

GOC draft guidance on disclosing confidential information about patients – including where patients may not be fit to drive

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About this guidance and how it applies to you

1. This guidance 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, this guidance should be read alongside the Standards for Optical Students. Both will be referred to as the 'Standards' in this document for ease of reading.
2. We have produced this guidance to help our registrants in situations where they need to consider the professional requirement to maintain confidentiality alongside the need to ensure public protection. Registrants have told us that this can be complex and confusing. Our research has shown us that particularly in relation to where a patient may not be fit to drive, registrants are not clear about what they should do in response¹ and therefore this document primarily focuses on such situations. It does not create new requirements or give legal advice.
3. The standard of confidentiality expected of registrants is set out in Standard 14 of the *Standards of Practice* (Standard 13 of *Standards for Optical Students*).

This states the following:

14. Maintain confidentiality and respect your patients' privacy

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| <p>14.1 Keep confidential all information about patients in compliance with the law, including information which is handwritten, digital, visual, audio or retained in your memory.</p> <p>14.2 Ensure that all staff you employ or are responsible for, are aware of their obligations in relation to maintaining confidentiality.</p> <p>14.3 Maintain confidentiality when communicating publicly, including speaking to or writing in the media, or writing online including on social media.</p> <p>14.4 Co-operate with formal inquiries and investigations and provide all relevant information that is requested in line with your obligations to patient confidentiality.</p> | <p>14.5 Provide an appropriate level of privacy for your patients during consultation to ensure that the process of information gathering, examination and treatment remains confidential. Different patients will require different levels of privacy and their preferences must be taken into account.</p> <p>14.6 Only use the patient information you collect for the purposes it was given, or where you are required to share it by law.</p> <p>14.7 Securely store and protect your patient records to prevent loss, theft and inappropriate disclosure, in accordance with data protection law. If you are an employee, then this would be in accordance with your employer's storage policy.</p> <p>14.8 Confidentially dispose of patient records when no longer required in line with data protection requirements.</p> |
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4. The standard relating to public protection is set out in Standard 11 of the *Standards of Practice* (Standard 10 of *Standards for Optical Students*). This states the following:

¹¹ <https://www.optical.org/download.cfm?docid=5DF7A3E0-9D9D-42EE-A5851C2308601A97>

11. Protect and safeguard patients, colleagues and others from harm

- 11.1 You must be aware of and comply with your legal obligations in relation to safeguarding of children, young people and vulnerable adults.
- 11.2 Protect and safeguard children, young people and vulnerable adults from abuse.
You must:
- 11.2.1 Be alert to signs of abuse and denial of rights.
 - 11.2.2 Consider the needs and welfare of your patients.
 - 11.2.3 Report concerns to an appropriate person or organisation.
 - 11.2.4 Act quickly in order to prevent further risk of harm.
 - 11.2.5 Keep adequate notes on what has happened and what actions you took.
- 11.3 Promptly raise concerns about your patients, colleagues, employer or other organisation if patient or public safety might be at risk and encourage others to do the same. Concerns should be raised with your employing, contracting, professional or regulatory organisation as appropriate. This is sometimes referred to as 'whistle-blowing' and certain aspects of this are protected by law.
- 11.4 If you have concerns about your own fitness to practise whether due to issues with health, character, behaviour, judgement or any other matter that may damage the reputation of your profession, stop practising immediately and seek advice.
- 11.5 If patients are at risk because of inadequate premises, equipment, resources, employment policies or systems, put the matter right if that is possible and/or raise a concern.
- 11.6 Ensure that any contracts or agreements that you enter into do not restrict you from raising concerns about patient safety including restricting what you are able to say when raising the concern.
- 11.7 Ensure that when reporting concerns, you take account of your obligations to maintain confidentiality as outlined in standard 14.

5. 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. You should use your professional judgement to consider the professional requirement to maintain confidentiality alongside the need to ensure public protection.
6. You should use your professional judgement to apply the guidance that follows to your own practice and the variety of settings in which you might work.
7. If you have any questions about this guidance or how to apply it, you should consider seeking further advice which, depending on the nature of your question, may involve contacting appropriate professional colleagues, your employer, your professional indemnity insurance provider, your professional or representative body, the GOC or obtain independent legal advice. Student optometrists and student dispensing opticians should also seek advice from their tutor, supervisor or training provider.

Section 1: Disclosing confidential information about patients, with or without consent

8. As a healthcare professional, you may find yourself in situations where patients disclose sensitive information to you, or where you are privy to sensitive information about your patients. In most cases, you must keep this information confidential unless the patient provides you with explicit consent to disclose it.
9. You may rely on implied consent to share confidential information with those who are providing (or supporting the provision of) direct care to the patient, provided that:
 - a. The person accessing or receiving the information is providing or supporting the patient's care;
 - b. Information is readily available to patients explaining how their information will be used (for example, in leaflets, posters, on websites or face to face), and they have the right to object;
 - c. The patient has not objected; and
 - d. Anyone to whom confidential information is disclosed understands that it is given to them in confidence, which they must respect.
10. More information about consent generally, and implied consent can be found at page 13 the [GOC's consent guidance](#).

Disclosing information with consent

11. Where you are not able to rely on implied consent, you should always try to get your patient's consent to disclose sensitive information about them, unless obtaining consent would defeat the purpose of the disclosure (for example, where there would be a risk of harm to others; where detection of a serious crime would be obstructed); or the patient is not able to give consent as a result of disability, illness or injury. A patient's ability to give consent is referred to as their 'capacity' to consent. For more information on capacity, see our [consent guidance](#).
12. Where your patient provides you with explicit consent to disclose sensitive information about them, you must ensure that they know what they are consenting to (see Standards 2 and 3 of the Standards of Practice, and our [consent guidance](#)) and that they are clear what information is going to be disclosed, why it is being disclosed and to which person or authority. Where you are seeking to rely on implied consent (see paragraph 10 above), patients should not be surprised to learn how their information is used; if the information would be used in ways that patients would not reasonably expect, you should seek explicit consent for this from the patient.

13. It is important to remember that patients with the capacity to consent have the right to make their own decisions and to refuse consent, even where you or others may consider the decision to be ill-advised. If a patient makes a decision contrary to clinical advice, you should document this in the patient records so that it is clear to all involved in that patient's care.

Disclosing information without consent

14. If a patient does not provide you with explicit consent to disclose sensitive information about them, and if you cannot rely on implied consent, there may still be circumstances in which you may pass the information on to an appropriate authority, such as where it is in the public interest, or where there is a legal requirement for you to do so.
15. In some circumstances, therefore, disclosure without consent may be appropriate. If this is the case, there are certain things you need to consider and we discuss these in detail within this guidance. Decisions on whether to disclose information need to be made on a case-by-case basis and only after considering all relevant information available to you at the time.
16. A number of specific situations that you may face in practice are covered in more detail within this guidance, including: 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.

Keeping a record of disclosure

17. Whether you disclose information with or without patient consent, you should keep a record of it and document what information you disclose and to which person/body you disclose it. You should also document any attempts to seek consent to disclose information or, if it is not appropriate to seek consent, the reasons why it is not appropriate.

Data protection

18. All disclosures must be compliant with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018. For further information, contact the [Information Commissioner's Office \(ICO\)](#).

Section 2: Vision and safe driving – what to do if a patient’s vision means they may not be fit to drive

19. You may encounter situations where you consider a patient’s vision means they may not be fit to drive.
20. Below, we set out the requirements of the governing bodies of drivers and driving in the UK, the ways in which you should communicate with a patient when advising them they may not be fit to drive, and when you should disclose this information to someone other than the patient.

Driver and Vehicle Licensing Agency (DVLA) and Driver Vehicle Agency (DVA)

21. The DVLA in England, Scotland and Wales and the DVA in Northern Ireland are the government agencies that register and issue licences to drivers in the UK. As part of their role in registering and licensing drivers, they are legally responsible for deciding if a person is medically fit to drive and retain their licence.
22. The DVLA issue guidance for healthcare professionals summarising the national medical guidelines on fitness to drive: *Assessing fitness to drive – a guide for medical professionals*. In the guidance, chapter six (visual disorders) outlines the legal eyesight requirements that all licensed drivers must meet.
23. The medical standards in the guidance are applicable to the whole of the UK, including Northern Ireland.

Drivers’ responsibilities

24. Licensed drivers have a legal responsibility to notify the DVLA/DVA of any medical condition they have that may affect safe driving.

Your responsibilities

25. In cases where a patient who drives and is unfit to do so either will not or cannot notify the DVLA/DVA, you should notify the DVLA/DVA yourself if you are concerned about road safety, in relation to both the patient and the wider public.
26. In making the determination of whether a patient is fit to drive, you should be aware of, and make reference to, the DVLA’s guidance [*Assessing fitness to drive - a guide for medical professionals*](#), particularly chapter six (visual disorders) which outlines the legal sight requirements that all licensed drivers must meet.

27. You should be aware that there are higher standards in place for bus and lorry drivers than for car drivers and motorcyclists.
28. If you are unsure whether a patient meets the required standards you should consider seeking the advice of a professional colleague or your employer, or seeking the advice of the DVLA/DVA's medical advisors.

What should I do if I think a patient is not fit to drive?

29. If, in your professional judgement, you think that a patient may not be fit to drive you should explain this clearly to the patient and your reasons for this. With the patient's consent, you should also consider discussing your concerns with their family and/or carer if appropriate (e.g. if they attend appointments with the patient, or if they live with the patient).
30. You should advise the patient to stop driving immediately.
31. You should advise the patient that they have a legal responsibility to notify the DVLA/DVA of any condition which may affect their fitness to drive and provide them with further information on how to contact the DVLA/DVA.
32. You should advise the patient that you have a duty to notify the DVLA/DVA yourself if, in your professional judgement, a patient either will not or cannot do so, and there is a concern for the safety of the patient and the wider public. For more information on the steps you should take in such situations, see the section below on 'disclosing to the DVLA without consent'.
33. You should also notify the patient's GP if possible.
34. You should put any advice in writing and keep a clear record of your actions including any correspondence, for example, with the patient, other healthcare professionals and other external agencies. For further information, see Standard 8 of the *Standards of Practice*.

Disclosing to the DVLA without consent

35. If, in your professional judgement, a patient either will not or cannot notify the DVLA/DVA themselves, you should consider notifying the DVLA/DVA if there is a concern for the safety of the patient and wider public.

36. In disclosing information to the DVLA/DVA you should:

- a. If you have not already done so, inform the patient that you intend to notify the DVLA/DVA and you have a duty to cooperate fully with the DVLA/DVA and provide all relevant information as requested;
- b. Notify the DVLA/DVA using the contact details set out below and provide all relevant information that is requested;
- c. Notify the patient's GP; and
- d. Keep a clear record of your actions and any advice given. For more information, please refer to Standard 8 of the *Standards of Practice* (Standard 7 in the *Standards for Optical Students*).

Communicating effectively with patients

37. You should communicate clearly and effectively with your patients and give them information in a way that they can understand. Informing a patient that they may have to stop driving can be a sensitive and difficult subject to raise and you should communicate this with empathy and compassion.

38. For more information on communicating effectively with patients, please refer to Standards 2 and 4 of the *Standards of Practice*.

Contact details:

DVLA (England, Scotland & Wales)

medadviser@dvla.gsi.gov.uk

01792 782337 (10:30am-1pm, Mon-Fri)

01792 761104 (fax)

The Medical Adviser Drivers Group

DVLA

Swansea

SA99 1DA

DVA (Northern Ireland)

dva@infrastructure-ni.gov.uk

0300 200 7861 (9am-5pm, Mon-Fri)

Drivers Medical Section, DVA

Castlerock Road

Waterside

Coleraine

BT51 3TB

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Section 3: Other disclosures in the public interest

39. There may be other circumstances where there is a risk of serious harm to individuals or the wider public and, accordingly, you need to make the decision as to whether there is a public interest in disclosing information that outweighs your duty of confidentiality. Examples include (but are not limited to):
- evidence of suspected abuse;
 - evidence of terrorism and other serious crimes; and
 - evidence of serious communicable or transmissible diseases.
40. This list is not exhaustive and there may be other circumstances where you need to balance your duties of public protection and patient confidentiality. In all such circumstances, you should follow the same thought process set out below.
41. When considering when to disclose information in such circumstances, you should weigh your duty to protect the public with the benefit of keeping your patient's information confidential. You may wish to consider:
- a. Is there potential for harm to others if information is not disclosed?
 - b. Would sharing anonymised information be sufficient to avoid harm?
 - c. To whom does the information relate, and is it sensitive to more than one patient?; and
 - d. What are the potential effects on the patient of accessing future treatment and/or engaging with healthcare services?
42. If you decide to disclose information in the public interest, you should consider advising your patient of your intentions. This may not always be appropriate, however (i.e. if advising the patient would defeat the purpose of the disclosure), and if you believe this to be the case, you should document the reasons why.
43. If you are unsure about your decision in any way, you should seek further advice from a colleague, professional body, indemnity insurer or independent legal adviser, taking care to maintain confidentiality so far as possible

Exception: Female genital mutilation

44. In England, there is a mandatory legal duty for all regulated healthcare professionals to report to the police where:

- a. A child or young person (under the age of 18) has told you that they have had female genital mutilation (FGM); or
- b. You have observed a physical sign appearing to show your patient (under the age of 18) has had FGM.

45. If you encounter such a situation as set out above, you must call 101 as soon as possible to report it to the police and consult the [Department of Health advice](#) on this subject.

46. Whilst the scope of practice of optometrists and dispensing opticians means that it is less likely that you will encounter such situations, patients may still confide in you as a healthcare professional and you need to be aware of the reporting requirements in these circumstances.

Section 4: Complying with external investigations

47. There are a very small number of circumstances where you may encounter requests for information from authorities that have the power to request this from you as part of their role. These include::
- a. The police and other statutory enforcement authorities such as HMRC
 - b. The NHS Counter-Fraud Authority
 - c. The court or a judge/coroner of the court
48. When asked for information about your patients by an authority in relation to an investigation, you should ask authorities to provide you with details about their power to request information (i.e. under which statute they are asking for the information), what specific information they require and why they want it. You should ask for them to provide this in writing.
49. Once you have received these details from the relevant authority, you may then disclose information to fulfil their request.
50. Such authorities do not have an automatic right to all information you hold about your patients and you should only ever disclose the minimum amount possible to fulfil the request. If you feel a request for information is too broad, or you are unsure about the legitimacy of the request, ask the requesting authority for more information and/or seek further advice from a colleague, professional body, indemnity insurer or independent legal adviser.
51. If there is a court order or warrant in place, you may be legally compelled to release certain information. If this is the case, you should seek legal advice or advice from your professional indemnity insurer.