

Beware Demands for Patient Records

Clinical notes and records are confidential health information. While a patient is entitled to access to his or her own records (subject to certain limited exceptions), as a general rule the information cannot be disclosed to a third party without the patient's consent.

Problems may arise when a third party requests access to, or a copy of, the health information of a young or vulnerable patient. Increasingly we are seeing such requests from family members of young patients, and from government agencies.

A recent example was triggered by what appears to have been a standard-form notice to a General Practitioner issued by Oranga Tamariki (the Ministry for Vulnerable Children). The notice requested "all of the medical records/visits that you have" in respect of a patient in the doctor's care, and even went so far as to seek "an update". The patient was a 14-year-old who was the subject of a court order placing the child in the care of Oranga Tamariki. The notice cited provisions of the Oranga Tamariki Act which purportedly authorised the doctor to release the information without the patient's knowledge or consent, and claimed that such disclosure would not breach the provisions of the Privacy Act. It also referred to "the initial stages [of an] investigation", but did not provide details of the nature or subject of the investigation. The general implication of the notice was that the doctor was obliged to provide the information requested, whether or not the patient consented to its release.

Conscious of her duty to protect the confidentiality of the patient's health information, the doctor discussed the request with the patient. The doctor considered that the patient was sufficiently mature to understand both the nature of the request and their right to give or withhold consent to disclosure. The patient consented to the release of all the health information requested, except for information provided to the doctor about abuse the patient claimed to have suffered.

It was at this point that the GP sought legal advice. Was the doctor entitled to withhold the information from Oranga Tamariki?

In fact, as was pointed out to Oranga Tamariki, its reliance on the provisions of the Oranga Tamariki Act cited in the notice was completely misconceived, and the burden remained with Oranga Tamariki to satisfy the doctor that the requested information could properly and lawfully be disclosed. Perhaps the most revealing aspect of this case is that when confronted with this challenge to the notice, the Oranga Tamariki officer retorted, "I can't believe that you are being so difficult. We never have doctors refusing disclosure when presented with these notices".

Oranga Tamariki followed up with an amended request for disclosure, this time under section 22C of the Health Act 1956. That section authorises a medical practitioner to disclose health information to certain persons, including an Oranga Tamariki social worker, if the information is required for the purpose of that person performing any power, duty or function under the Oranga Tamariki Act. But the section does not make disclosure mandatory; the practitioner has discretion about whether to release the information. (Potentially the request for disclosure could also have been

governed by Principle 11 of the Privacy Act, but disclosure under the Principle is also discretionary). As a general rule, the discretion is to be exercised by reference to what the doctor considers to be the patient's best interests.

The practitioner considered that in all circumstances disclosure of the remaining information would be contrary to the interests of her patient. She was reinforced in that assessment by the patient's refusal to consent to the disclosure, and her assessment that the patient was competent to make an informed decision on the issue.

This case study serves as a reminder that when it comes to third party requests for disclosure of patient information, a legal-sounding notice from a government agency may not be all it seems. Consider such requests carefully, and, if in doubt, seek professional advice.