



ASSOCIATION OF
COMMUNITY HEALTH COUNCILS
FOR ENGLAND & WALES

RECEIVED
17 APR 2001

EM ✓

•legal services•legal services•legal services•legal services•

Elizabeth Manero
Chair
London Health Link
164a Holloway Road
London N7 8DD

12 April 2001

Dear Elizabeth

Re: **Patient Confidentiality and Casualty Watch**

Thank you for your letter of 22 March. I apologise for the delay in responding.

You ask about how patient confidentiality can be secured in the process of collecting and publishing data for the purposes of Casualty Watch exercises. As you will appreciate, this is a question that has arisen before.

The relevant legislation is the Data Protection Act 1998. Ethical issues also need consideration. The Data Protection Act provides that when dealing with sensitive personal data the processing must also be fair and lawful. Lawful refers to the requirements found in common law, being a duty not to disclose without consent or unless there is an overriding public interest in disclosure. What amounts to an overriding interest is arguable, but Casualty Watch is unlikely to fall within it.

The Act also requires data controllers, including those holding personal medical information, to comply with a range of data protection principles. One of these is the requirement that data only be used for the purposes for which it was collected. Patients providing information about themselves on admission to A & E departments only do so for the purpose of obtaining care.

The Data Protection Act provides that at least one condition in Schedule 2 and one in Schedule 3 of the Act as amended/added to by the Data Protection (Processing of Sensitive Personal Data) Order 2000 SI 2000 417 must be met before sensitive identifiable medical information can be disclosed or otherwise processed. Consent of the patient is a condition provided for in both schedules. Others are detailed in the attached extract from an article published by the Law Society's Gazette.

When attempting to secure confidentiality two strategies must be considered.

The first is to disguise information so that individuals cannot be identified from it. This can actually be very difficult. The best quality data from the point of view of the person seeking to preserve anonymity is statistical data, such as average waiting time in a hospital or across the country. However this sort of data does not convey a lot of information and certainly does not provide the interesting picture that the media calls for. An alternative is to strip out personal identifiers. However once again the more information that is stripped, the less interesting the data becomes. Even the use of such limited data, as hospital, age and medical condition, can allow patients to be identified by those close to them, health professionals and the truly determined journalist. To date, patients have not complained about the use of information about them, but some NHS trusts have raised the issue of confidentiality.

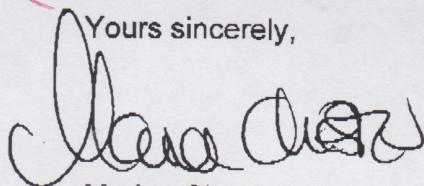
Reasonable

The second strategy is to involve the patient and gain their consent to the use of information about them for the purpose of the exercise. Last year nurses were actively involved in Nationwide Casualty Watch and handed out cards to patients arriving at A&E in the 24 hours prior to the exercise. These cards explained the purpose of Casualty Watch, what information would be used and gave patients the opportunity to consent or object to their inclusion in the exercise. Information about those who objected was not included.

Gaining consent has a number of advantages. The issue of breaching confidentiality does not arise, once consent has been obtained. For the patient the benefit is that they can stipulate whether they wish to be involved in the exercise and to what extent. Some patients may be prepared to agree to give media interviews after the event. Others may be happy for greater information about their stay in A&E to be published or be prepared to sanction family members to comment on their experiences.

To summarise, I advise that the permission of patients should be obtained before using details of their waits in A&E departments.

Yours sincerely,



Marion Chester
Legal Officer

