

## Writing a report and breaching confidentiality legally

Sections 44 and 45 of the *Care Act 2014* clarify the legal requirement to provide information to a Safeguarding Adult Board if requested to do so. In summary if an adult has died and the cause of death is suspected to be from abuse or neglect you would be obliged to provide the information requested. Equally if the adult is still alive and has suffered serious harm as a result of abuse or neglect, information needs to be supplied if a request is made to the practitioner. In Wales this is covered by S 137 of the *Social Services and Well-being Act 2014*. If in doubt your Caldicott Guardian maybe able to give advice. Your defence organisation will also be able to offer advice.

Under certain legal circumstances confidential information may need to be divulged without the consent of the patient. If this is the case make sure any information given is only relevant to the questions asked and also does not include any third party information (for example health information of family members). If possible and practicable the patient should be informed.

The following is a list of when you may disclose information without consent, although it is not exhaustive it includes areas that may have a safeguarding element:

- **Medical Act 1983:** doctor's health records can be disclosed to the GMC as part of a fitness to practice process.
- **Coroner's Investigations:** when people have died as a result of abuse or neglect it is mandatory to provide information to the Coroner.
- **Disclosures in the Public Interest:** this may occur in the course of a safeguarding case. This means that by not disclosing the information other vulnerable people may be put at risk harm. An example would be abuse in a care home by a care worker, the resident may not wish to take this further, but by not

making a safeguarding alert other residents maybe put at risk as a result. In these cases you should explain to the patient why you need to disclose the information before actually doing so.

- **Disclosure to protect the patient or others from harm:** This would include disclosures about violent behaviour and particularly relates to domestic violence. For example this may be disclosing to police that a patient had an illegal firearm and was mentally ill. Only disclose health information that relates to the patient having increased risk of using the firearm to harm someone.
- **Reporting gunshot or knife wounds:** the GMC requires practitioners to report gunshot wounds or non accidental knife wounds to the police.
- **Patient's lacking capacity to consent to disclosure of information:** any medical information about patients who lack the capacity to consent to this disclosure must be done in their best interests, (see *The Mental Capacity Act 2005* (MCA) in England and the Wales' section of the *Royal College of General Practitioners (RCGP) Safeguarding Adults at Risk of Harm Toolkit*). This is unless they have a **lasting power of attorney for health and welfare** in which case they make a decision about the disclosure of information on the patient's behalf.