

Assessing the quality of regulators' guidance.

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Outline

A bit of recent history about guidelines

Analytical framework for assessment of guidelines on confidentiality

A few results

And some suggestions

A bit of recent history...

We propose that the statute should require the regulators to produce guidance for professional conduct and practice. In our view, this should be a duty and not a power because the issuing of such guidance is an essential part of the regulatory role, and it would not be acceptable for a regulator to decide not to issue any form of guidance in relation to the standards it is responsible for enforcing.

Law Commissions consultation 2012, p115

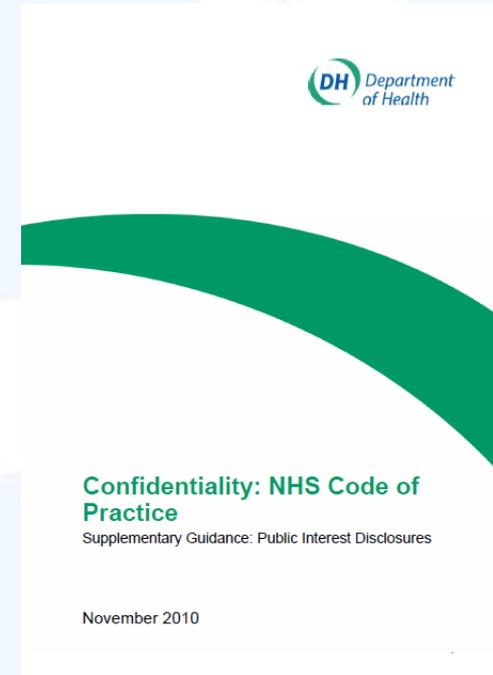
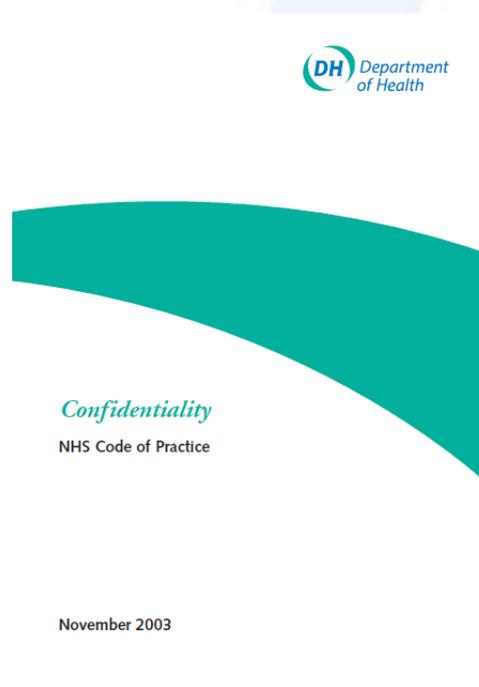
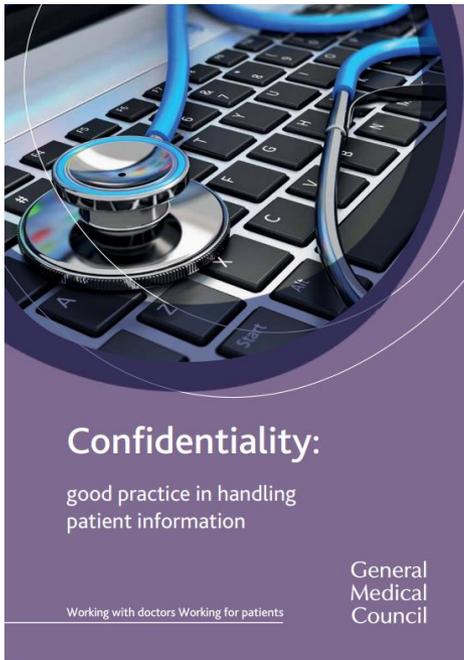
However, we think that the current approach generally works well because the regulatory bodies provide detailed advice which is tailored to particular situations, rather than being high level and therefore difficult to apply in practice...

and that the regulatory bodies should have powers to give guidance on these standards as they see fit

Government response to law Commission report (2015, p.51)

Assessing accuracy of regulators' guidance

benchmarks



Analytical framework

Additional Guidance Document
Reference to DoH
Seek advice
Public Interest explained?
Required disclosure mentioned?
Beneficiary of the disclosure?
Level of risk to be avoided?
Serious crime explained
Safeguarding explained?
Female Genital Mutilation

Nine statutory regulators

Issue	GMC	NMC	HCPC	General Chiropractic Council	General Dental Council	General Optical Council	General Pharm Council	General Osteopathic Council	Social Work England
Additional Guidance Document	Yes	No	Yes	Yes	Partial	Yes	Yes	No	Partial
Reference to DoH	Yes	No	No	Yes	No	No	Yes	No	No
Seek advice	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No
Public Interest explained?	Yes	Partial	Yes	Yes	Partial	Yes	Yes	Partial	Partial
Required disclosure mentioned?	Yes	No	Partial	Partial	Partial	Yes	Partial	Yes	Partial
Beneficiary of the disclosure?	Yes	Error	Error	Partial	Error	Yes	Error	Error	Error
Level of risk to be avoided?	Yes	No	Yes	Partial	Yes	Partial	Yes	Yes	No
Serious crime explained	Yes	No	Partial	No	Yes	Yes	Yes	Partial	No
Safeguarding explained?	Yes	Partial	Part	No	Yes	Partial	Yes	Yes	Partial
Female Genital Mutilation	Partial	Yes	No	Yes	Yes	Yes	Yes	Yes	No

(excluding Pharmaceutical Society of Northern Ireland)

ABC v St George's Healthcare NHST

The guidance I am considering takes a conservative approach and generally sets a **high bar** for the disclosure of confidential information without the patient's consent. The 2004 and 2009 GMC Guidelines provided for disclosure if necessary to prevent death or "serious harm"
para.192

The standard of care will be measured by reference to the professional guidelines. The guidelines do not mandate a particular outcome. Further, they take a conservative position.
Non-disclosure is the default position and the bar for breaching confidentiality is relatively high para.196

You should, however, **usually** abide by the patient's refusal to consent to disclosure, even if their decision leaves them (but no one else) at risk of death or serious harm (GMC, p. 32)



Confidentiality:

good practice in handling
patient information

You should, however, usually abide by the patient's refusal to consent to disclosure, even if their decision leaves them (but no one else) at risk of death or serious harm (GMC, p. 32)

However, an individual's best interests are not sufficient to justify disclosure of confidential information where he/she has the capacity to decide for him/herself. There has to be an additional public interest justification, which may or may not be in the patient's best interests.

Just a quibble? (1)

‘you must share necessary information with other health and care professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality.’

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Agencies? Individuals?

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‘you must share necessary information with other health and care professionals and agencies only when the interests of **patient safety and public protection** override the need for confidentiality.’

Patient safety AND public protection

Just a quibble? (2)

‘You must only disclose confidential information if:

- you have permission;
- the law allows this;
- **it is in the service user’s best interests;** or
- it is in the public interest, such as if it is necessary to protect public safety or prevent harm to other people.

Just a quibble? (2)

‘You must only disclose confidential information if:

- you have permission;
- the law allows this;
- it is in the service user’s best interests; or
- it is in the public interest, such as if it is necessary to protect public safety or prevent harm to other people.

This might be in circumstances where disclosing the information is necessary to prevent a **serious crime or serious harm to other people.**

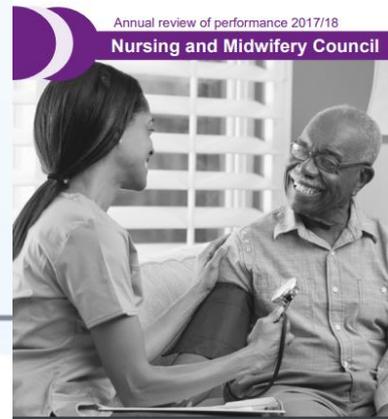
Just a quibble? (3)

In exceptional circumstances, you may be justified in releasing confidential patient information without their consent if doing so is in the best interests of the public **or the patient**. This could happen if a patient puts their own safety or that of others at serious risk, or if information about a patient could be important in preventing or detecting a serious crime.

A role for the PSA – quality assurance?

Standard 2: Additional guidance helps registrants apply the regulator's standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care

The NMC publishes online guidance supplementary to the Code on issues including conflicts of interest, responding to unexpected incidents or emergencies and, enabling professionalism in everyday practice. Some of the guidance is supported by case studies to help users understand its practical application. We are satisfied that this Standard is met.



A role for the PSA – quality assurance?

New standards

Standard seven: The regulator provides guidance to help registrants apply the standards and ensures this guidance is up to date, addresses emerging areas of risk, and prioritises patient and service user centred care and safety

A role for the PSA – guideline writing?

3. A renewed focus on core functions

We propose that the set of core functions carried out by regulators should be:

- To maintain a shared, public register of appropriately qualified health and care practitioners
- To award and renew licences to practise in specific occupations
- To set common standards that all registrants must meet
- To investigate allegations that registrants do not meet the standards and take action.

Regulation rethought – PSA (2016)

Conclusion

Regulator's guidelines are inconsistent, varying in amount and quality

Common guidelines should augment common standards

Other guidelines could / should be quality assured.

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