

MEDICAL EXAMINERS PROGRAMME

Data Sharing Statement

The medical examiner office at our trust has been commissioned by NHS England and NHS Improvement to provide medical examiners to carry out independent scrutiny of the causes of death for non-coronial deaths of patients previously registered under your care. In order to undertake this duty, we will require access to records relating to relevant patients and their next of kin. This statement describes the information governance arrangements in place to facilitate this.

What information will we require and why?

In order to undertake our duties, we will require access to:

- Medical and clinical records associated with deceased patients, which will be independently reviewed by our medical examiner
- Contact details for relevant patients' next of kin, so our medical examiners and medical examiner officers can contact them to ask if they have questions about the causes of death, and about any concerns they may have regarding the care before death.
- The medical examiner or medical examiner officer will also contact the medical practitioner completing the Medical Certificate of Cause of Death, regarding the proposed causes of death. This interaction can be completed by correspondence (eg email), a verbal discussion is not normally required.

What is our UK GDPR basis for collecting this information?

Medical records associated with deceased patients are outside scope of the UK GDPR. However, next of kin details are within the scope of the UK GDPR. Our Trust is the controller for next of kin's contact details, which we shall process under Article 6.1(e).

Under Article 6(1)(e) of the GDPR, processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority invested in the controller. The information is being processed for the purposes of the medical examiner system, as part of the NHS Patient Safety strategy and within NHS Trust and NHS foundation trust functions for activities carried out in connection with the provision of health services. It is necessary for medical purposes and is undertaken by either a health professional, or a person who, in the circumstances owes a duty of confidentiality to the patient equivalent to that of a health professional. We will be clear with relevant organisations from which the information is requested, the purpose of collecting the information. Only information which is relevant to the medical examiner system will be collected.

How will we set aside the duty of confidence in order to review medical records of deceased patients?

Secretary of State for Health and Social Care decision

NHS England and NHS Improvement, on behalf of NHS Trusts and NHS foundation trusts, submitted an application under Regulation 5 of the Health Service (Control of Patient Information) Regulations 2002 ('section 251 support') to process confidential information without consent.

The Secretary of State for Health and Social Care, having considered the advice from the Confidentiality Advisory Group, supported the application which means that confidential patient information can be shared with medical examiners by health and care organisations for the purpose of the medical examiner programme.

Details of the approved application (ref: 21/CAG/0032) can be found on the Health Research Authority's website <https://www.hra.nhs.uk/planning-and-improving-research/application-summaries/confidentiality-advisory-group-registers/>.

The General Medical Council's (GMC) Confidentiality Guidance advises that doctors should disclose relevant information about a patient who has died where disclosure is authorised under section 251 of the NHS Act 2006.

Paragraph 137 of the General Medical Council (GMC) guidance <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/managing-and-protecting-personal-information#paragraph-137> advises:

137 - Circumstances in which you should usually disclose relevant information about a patient who has died include:

- the disclosure is permitted or has been approved under a statutory process that sets aside the common law duty of confidentiality, unless you know the patient has objected*

Paragraph 103 to 105 of the GMC guidance <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/using-and-disclosing-patient-information-for-secondary-purposes#paragraph-103> advises:

103 - In England, Wales and Northern Ireland, statutory arrangements are in place for considering whether disclosing personal information without consent for health and social care purposes would benefit patients or the public sufficiently to outweigh patients' right to privacy. Examples of these purposes include medical research, and the management of health or social care services. There is no comparable statutory framework in Scotland.

104 - Section 251 of the National Health Service Act 2006 (which applies in England and Wales) and the Health and Social Care (Control of Data Processing) Act (Northern Ireland) 2016 allow the common law duty of confidentiality to be set aside for defined purposes where it is not possible to use anonymised information and where seeking consent is not practicable.

105 - You may disclose personal information without consent if the disclosure is permitted or has been approved under regulations made under section 251 of the National Health Service Act 2006 or under the Health and Social Care (Control of Data Processing) Act (Northern Ireland) 2016. If you know that a patient has

objected to information being disclosed for purposes other than direct care, you should not usually disclose the information unless it is required under the regulations.

How will we secure your information?

We have provided a copy of our organisational assurance checklist with this statement, which should provide you with confidence in our ability to process your data in a secure, lawful and transparent manner.