



FODO Response to the General Optical Council's consultation on Disclosing confidential information about patients (including where patients may not be fit to drive): draft guidance for GOC registrants
June 2019

1. What is your name?

Sue Silvester

2. What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Sue.Silvester@fodo.com

3. Are you responding on behalf of an organisation?

(Required) ☒ Yes ☐ No

Organisation details

5. On behalf of which organisation are you responding?

Federation of (Ophthalmic and Dispensing) Opticians - FODO

6. Which of the following categories best describes your organisation?

Required)

Optical defence/representative organisation

16. Is the guidance presented in a way that is clear, accessible and easy to use?

☐ Yes ☒ No

Please explain your answer, with reference to the guidance where possible.

The draft guidance is presented in a clear and accessible way and certainly moves the sector forward. However, in our view, it does not yet address the complexity and confusion which registrants report in making disclosure decisions about patients' vision to the DVLA/DVA. If the guidance were simplified and made more concise/accessible, it could guide registrants more effectively through these difficult decisions.

In our view, the General Medical Council (GMC) guidance *Confidentiality: patients' fitness to drive and reporting concerns to the DVLA or DVA* is a good model of accessible and concise guidance in this difficult area.

For instance, the GMC guidance make crystal clear that

- "Doctors have a duty of confidentiality to their patients, **but they also have a wider duty to protect and promote the health of patients and the public**" (our emphasis)

- “If it is not practicable or appropriate to seek consent, and in exceptional cases where a patient has refused consent, **disclosing personal information may be justified in the public interest if failure to do so may expose others to risk of death or serious harm**” (our emphasis)
- “The benefits to an individual or to society of the disclosure must outweigh both the patients and the public interest in keeping the information confidential
- “If you do not manage to persuade the patient to stop driving or you discover that they are continuing to drive against your advice, you should consider whether the patient’s refusal to stop driving leaves others exposed to a risk of harm or death. If you believe that it does, **you should contact the DVLA/DVA promptly and disclose** any relevant medical information, in confidence, to the medical adviser” (our emphasis)¹

This provides a clear guidance framework for decision-making and proportionate and appropriate professional action and does so in 3 pages. It is also not a million miles away from the College of Optometrists guidance “If you consider that the public interest outweighs the duty of confidentiality, for example a patientwho continues to drive after being told [sic] not to, you should notify the relevant authority”.

The GOC draft guidance on the other hand is less clear and advises that “If, in your professional judgement, a patient either will or cannot notify the DVLA/DVA themselves, you **should consider notifying the DVLA/DVA** if there is a concern for the safety of the patient and wider public” (our emphasis), and takes 11 pages to do so.

It would be helpful if the GOC guidance were more closely aligned with the GMC guidance.

It is aligned in presenting general principles, then DVLA/DVA requirements. However, it then adds in other disclosures which operate under different rules (39-46). The result is that nuances between the various kinds of disclosure are lost and the advice about notifying the DVLA/DVA is less clear. We would therefore suggest focusing solely on driving in this supplementary guidance.

This is why in our view, although the draft guidance is helpful and does move the sector in the right direction, the final guidance could be more focussed and hence easier to apply. We set out our feedback on how this might be achieved in our responses to the questions below.

17. Is anything missing, incorrect or unclear in the guidance?

☒ Yes ☐ No

Please explain your answer, with reference to the guidance where possible.

Following on from our response to question 16 we have the following feedback:

1. Paragraphs 1 and 2 could be switched around to make the guidance clearer to read.

¹ General Medical Council, 25 April 2017, Confidentiality: patients’ fitness to drive and reporting concerns to the DVLA or DVA <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva/patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva#paragraph-2>

2. Paragraph 2 (currently paragraph 1), 3 and 4 could then be simplified and merged. This would help:

a) address the following omissions:

- the draft guidance overlooks business registrants and the Business Standards – e.g. standard 2.4.5 in the Business Standards (2019) is clearly applicable here
- the draft guidance refers to a Standard number – e.g. in paragraphs 3, 4, 34 and other sections – without controlling for differences in how sections in the various Standards are numbered

b) create more concise/focussed guidance;

We would propose that paragraphs 2 (currently para 1) to 4 are merged to say:

“GOC registrants should read this guidance alongside applicable GOC standards:

- *Optometrists and Dispensing Opticians: Standards of Practice for Optometrists and Dispensing Opticians (2016), in particular standards 11 and 14*
- *Students: Standards for Optical Students (2016), in particular standards 10 and 14*
- *Business registrants: Standards for optical businesses (2019), in particular standard 2,4,5”*

3. As the Information Commissioner’s Office (ICO) makes clear “patient consent to share healthcare records is not the same as GDPR consent” and “in the healthcare sector, patient data is held under a duty of confidence. Healthcare providers generally operate on the basis of implied consent to use patient data for the purposes of direct care, without breaching confidentiality.”² This implied consent applies to all registered healthcare professionals/agencies but not to non-health care professionals and agencies.

For this reason it might be helpful to review:

- paragraph 8 – to make clearer that communication between health professionals about a patient’s direct care generally operates on the basis of implied consent, whereas communication between other individuals or agencies usually relies on explicit consent
- paragraph 9 (a) - to make clearer that explicit consent is often required from an adult patient in order to share health care data – in any format – with anybody other than a health care professional involved in direct care.
- paragraph 9 (b) - in this context, is unnecessary and confusing; we would recommend removing it.

² ICO, FAQs for small health sector bodies

<https://ico.org.uk/for-organisations/in-your-sector/health/health-gdpr-faqs/> accessed 3 June 2019

- paragraph 9 (c) - which says when “the patient has not objected”. This is not explicit consent.

4. Paragraph 11 states that, “Where you are not able to rely on implied consent, you should **always try** to get your patient’s consent to disclose information about them ...” (our emphasis) whereas the equivalent GMC guidance states: “that if a registered health professional has already decided to disclose information in the public interest then they “**should not** ask for consent” (our emphasis). Instead they should “tell the patient about [their] intention to disclose personal information, unless it is unsafe or unpractical to do so. If the patient objects to the disclosure” then registrants “should consider any reasons for objecting.”³

The GMC two-stage process makes more legal and professional sense to us. It may well not be ethical to ask for consent if there is no intention of complying with the patient’s wishes. It is far better in our view to explain the intention to disclose and consider any objections the patient puts forward before doing so.

We would therefore recommend that paragraph 11 be changed to reflect this. Paragraphs 14-16 should also be updated to reflect any changes to paragraph 11.

5. Paragraphs 22 and 26 are repetitive and it might be possible reduce duplication here.
6. Paragraph 25, we would recommend separating out the scenarios when a patient “will not” or “cannot” notify the DVLA/DVA as these are different scenarios in practice. For example:
 - a GOC registrant, given their scope of practice, will determine whether somebody is unfit to drive based on their visual function. If a patient is unfit to drive on this basis the registrant should inform the patient to notify the DVLA/DVA and explain they will also let the GP know the sight test results and advice given. In the vast majority of cases patients will accept this advice/process.
 - where a patient “cannot” notify the DVLA/DVA about their visual impairment this is likely to be because of another medical condition, impairment or disability. In this case the registrant should inform the patient not to drive because of their vision function and inform the patient’s GP who will be the key contact for the patient’s overall health and so best placed to make a single and comprehensive disclosure to the DVLA/DVA as required.

This leaves the rare cases where a patient who is able to inform the DVLA/DVA either refuses to do so or is likely to ignore the advice and continue to drive. These are the cases which cause health professionals the most challenges and where this GOC guidance will be particularly helpful.

³ General Medical Council, 25 April 2017, para 1(67), Confidentiality: patients’ fitness to drive and reporting concerns to the DVLA or DVA <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva/patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva#paragraph-2>

7. Paragraph 27 could in our view be improved by including the advice given in the equivalent GMC guidance:

*"The principles in this guidance also apply to drivers and pilots of other kinds of regulated transport, including rail, water and air, although such individuals are likely to undergo medical assessment as part of the relevant licensing or certificating process. If you are concerned that a patient who holds a private or commercial pilot licence may be medically unfit to fly an aircraft, you can contact the UK Civil Aviation Authority's medical department on 01293 573 700 or at medicalweb@caa.co.uk for confidential advice. For advice about a seafarer, you can contact the Maritime and Coastguard Agency health and safety branch for advice at seafarers.h&s@mcga.gov.uk. If you are concerned that a train driver's medical condition or treatment may make them unfit to drive a train, the advice from the Office of Rail and Road (ORR) is to make contact with their employer's HR department in the first instance. The ORR can provide contact details for train operators in Great Britain if you know the name of the employer. You can contact the ORR by email at rsd.admin@orr.gsi.gov.uk."*⁴Paragraph 35. Please see our feedback on paragraph 25 above.

8. Paragraph 36(a), we suggest changing "If you have not already done so, inform the patient that you intend to notify the DVLA/DVA..." to "First inform the patient that you intend to notify the DVLA/DVA...". This is important because the GOC registrant, like the GMC registrant, should explain their intention and, then if the patient objects consider their reason for objection before deciding whether or not to disclose.

18. Does the new supplementary guidance make clear what the GOC expects of its registrants?

☐ Yes ☒ No ☐ Not sure

Please explain your answer, with reference to the guidance where possible.

As we have explained the guidance is helpful but could be improved. With the proposed changes that we set out in our responses above we believe that this supplementary guidance would make the GOC's expectations clearer.

19. Will the guidance help registrants to understand when and how to apply their professional judgement to override patient confidentiality and consent, i.e. when there is a duty to protect the public from risk of harm?

☐ Yes ☒ No

Please explain your answer, with reference to the guidance where possible.

Please see our responses to questions 16 to 18 above.

⁴ General Medical Council, 25 April 2017, Endnote 3, Confidentiality: patients' fitness to drive and reporting concerns to the DVLA or DVA <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva/patients-fitness-to-drive-and-reporting-concerns-to-the-dvla-or-dva#paragraph-2>

20. Is the supplementary guidance sufficiently flexible to accommodate any differences in practice within the optical sector (for example, differences in the nations of the UK or in how optical care is provided)?

☒ Yes ☐ No ☐ Not sure

Please explain your answer, with reference to the guidance where possible.

Yes with the changes suggested above, it would remain sufficiently flexible to accommodate any difference in practice across the UK.

21. Are there any specific issues or barriers which might prevent registrants from using the guidance?

☐ Yes ☒ No

Please explain your answer, with reference to the guidance where possible.

Please see our feedback to questions 16 to 20.

22. Would any further supporting activities be beneficial to registrants in implementing the guidance?

☒ Yes ☐ No ☐ Not sure

Yes, clinical scenarios covering complex cases could help cement the key principles.
Please also see our feedback to questions 16 to 21.

Please explain your answer, with reference to the guidance where possible.

23. Will the guidance give registrants more confidence to report directly to the DVLA/DVA, where appropriate?

☐ Yes ☒ No

Please explain your answer, with reference to the guidance where possible.

With some changes, the answer would be yes. Please see our feedback to questions 16 to 20.

24. Will the guidance give registrants more confidence to share information about patients with other healthcare professionals, such as GPs?

☐ Yes ☒ No

Please explain your answer, with reference to the guidance where possible.

With some changes, the answer would be yes. Please see our feedback to question 17 where we reference ICO guidance.

25. Overall, do you expect that the guidance will be beneficial to, or have a positive impact on protection of patients and the public?

☐ Yes ☐ No ☒ Not sure

Please explain your answer, with reference to the guidance where possible.

With some changes, the answer would be yes. Please see our feedback to questions 16 to 20 and 24.

26. Overall, do you expect the guidance will be beneficial to, or have a positive impact on individual GOC registrants (optometrists and dispensing opticians)?

☐ Yes ☒ No ☐ Not sure

Please explain your answer, with reference to the guidance where possible.

With some changes, the answer would be yes. Please see our feedback to questions 16 to 20 and 24.

27. Are there any aspects of the guidance that could have an adverse or negative impact on any group of patients, the public, GOC registrants or others?

☒ Yes ☐ No

Please explain your answer, with reference to the guidance where possible.

The guidance is not as clear as it could be on differentiating between the sharing of information between health care professionals/agencies directly involved in care, and the sharing of information with non-health care professionals/agencies for wider public safety purposes. This might inadvertently confuse patients, the public or registrants. Our suggested changes in our response to question 17 above are intended to address this.

28. Are there any aspects of the guidance that could discriminate against stakeholders with specific characteristics? Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity, caring responsibilities or any other characteristics.

☐ Yes ☒ No ☐ Not sure

Please explain your answer, with reference to the guidance where possible.

Provided GOC registrants follow DVLA/DVA guidance on assessing visual function, it is unlikely there will be a breach of the Equality Act 2010.

29. Are there any other comments you wish to make in relation to the supplementary guidance?

Some typos and minor drafting suggestions for clarity
Paragraph 15 - spacing is out x 2
Paragraph 34 – suggest replace “other healthcare professionals and other external agencies” with “other healthcare professionals and external agencies”
Paragraph 36 a) – suggest replace “that you intend to notify the DVLA/DVA and you have” with “that you intend to notify the DVLA/DVA and that you have”
Paragraph 36 c) – suggest replace “notify the patient’s GP” with “notify the patient’s GP enclosing a copy of the DVLA/DVA notification or the information provided”
Paragraph 41 – suggest replace “When considering when to disclose” with “When considering whether to disclose”
Paragraph 43 – suggest replace “you should seek advice from a colleague, professional body, indemnity insurer, or independent legal adviser” with “you should seek advice from a colleague, professional indemnity insurer, representative or professional body, or independent legal adviser”

30. Is there anything further that we could do to promote the issue of vision and safe driving?

☒ Yes ☐ No ☐ Not sure

Please explain your answer.

We welcome the GOC’s commitment to addressing the issue of vision and safe driving. Given other GOC priorities, we would not expect the GOC to do much more on promoting this issue in the next two years.

However, it would be helpful if the GOC worked with the DVLA/DVA in future to ensure that all drivers are aware of

- The risks that poor vision can pose, including the importance of peripheral vision
- The importance of regular sight testing to keep themselves, their families and the public safe
- The fact that, if there is a problem with vision, the earlier this is identified and ideally corrected, the longer the individual will be safe to continue driving.

These messages could be widely publicised as public interest notices in GP, pharmacy and community optical practices as well as being included in information inserts in driving licence renewal communications.

It might also be helpful if four simple questions about vision for driving could be included in the theory part of the driving test e.g.

- Types of vision (far, near, side)
- Types of vision correction (glasses, contact lenses, ready readers, self-adjusting spectacles;)
- Which must be and must not be worn when driving
- Legal liabilities of driving without correction.

Finally, the GOC could work with the DVLA/DVA to ensure that the current driving licence test (licence plate test) is brought into line with European Standards and includes a sight test with a registered optometrist or medical practitioner at least on first application for a licence. This could reinforce messages in the driving theory test as well as establishing good habits early on in an individual driver's career which may now last 80+ years.

31. Can we publish your response?

(Required) ☒ Yes

FODO

June 2019