

# MIDNIGHT LAW:

## Police access to critical care patients

For England, Scotland & Wales



### SITUATION

Police officers ask for information on a patient's injuries and want to obtain blood samples from a patient on your unit. The patient has been assaulted and is unable to give their consent.

### STEPS TO CONSIDER

#### [1] Is there an obligation to disclose confidential information?

- When permitted by law, health care professionals should endeavour to support police in their work.
- The police officer should be asked as to the basis upon which they are seeking the information. There are certain instances when disclosure of confidential information to the police is required, including under: (1) Terrorism Act 2000 (2) Road Traffic Act 1988 (England, Wales and Scotland only; Road Traffic (Northern Ireland) Order 1981 (NI)); (3) Female Genital Mutilation Act 2003.
- Confidential information could also be disclosed if there is sufficient public interest, i.e. prevention of serious threats to the public, national security or for prevention or detection of serious crimes (e.g. murder, manslaughter, kidnapping, rape or abuse of children, knife and gun crime) [see GMC guidance in FURTHER READING panel]

#### [2] Is the request an emergency?

- The presence of a police officer does not constitute an emergency. Emergency information disclosure may arise where non-disclosure would place one or more individuals at risk of harm.
- All other requests should be handled in office hours and should be made in writing (using standard police forms e.g. DP7 for non-consented disclosures)

#### [3] What to do next?

- Ensure you are familiar with your local protocols (check hospital intranet)
- If time and circumstances permit, discuss the request with your hospital Information Governance Lead / Caldicott Guardian regarding due process.
- The most senior clinician on duty should speak with the Police Officer and establish their name, rank and Police Force / Station
- Establish legal basis for their request and the information/samples requested.
- If a statutory requirement exists, disclosure may happen but the relevant statute and the name of the requesting Police Officer should be recorded in the notes

#### [4] Gathering Material Evidence

- Police may seize clothes and other property from the victim when they have reason to believe a crime was committed
- Other than a sample for ethanol in the case of a road traffic collision, a doctor is under no obligation to facilitate or provide any other samples or tests without a Court Order

#### GUIDING PRINCIPLES:

- Is there a legal duty to disclose information?
- Is there a sufficiently important reason to disclose information?
- Disclosure in the public interest should be proportionate and relevant
- Critical care staff should not act as surrogate forensic examiners

#### KNOW THE LAW:

General Data Protection Regulation and Data Protection Act 2018

#### FURTHER READING:

*BMA: Guidance – Access to Health Records (Section 6)*

*GMC: Confidentiality: Reporting gunshot and knife wounds*

*The Royal College of Emergency Medicine: Best Practice Guideline – Emergency Department Patients in Police Custody*

August 2019 / Version 1.0

P Szawarski & D Bryden on behalf of the Legal & Ethical Policy Unit