

Police reports and disclosure of health information to police

On occasion, doctors need to interact with the police. Usually this is to provide a police report, but there can be other reasons for this, for example where police request information about a patient, or alternatively information is gained in the course of a doctor's medical duties which it is considered should be reported to the police (or other authorities). The video version provides a brief overview of what needs to be considered in each circumstance.

Police reports

A common situation where a doctor may be required to provide a police report is where, for example, a person has been assaulted and then sought treatment for his or her injuries. The police may request that the doctor provide a report on the treatment provided, and possibly ask the doctor to give evidence as a witness in court.

If you are contacted to provide a police report, you should notify your indemnifier so that someone from the legal team can assist you with the process. It is also good practice to ask the police to confirm the request to provide a report, in writing.

The first thing to be mindful of is that a police report requires the disclosure of private health information. Where reasonably practicable, you should seek the patient's written consent to the release of his or her confidential health information. However, where it is either undesirable or impracticable to obtain consent, the Health Information Privacy Code does allow the practitioner to disclose such information for the purpose of court proceedings which have commenced or are in reasonable contemplation.

In terms of how a report is drafted, there are a few points to be aware of:

1. Ask the prosecutor or police for a template of the evidence they would like you to give.
2. Your report needs to be confined to the facts, that is to say the patient's presentation, what you observed, what was revealed on examination, the results of any tests or imaging, your diagnosis, and management plan.
3. It is important that your narrative aligns with your contemporaneous clinical notes. There is the potential that any inconsistency between your report and the notes will be exploited in cross-examination.
4. To the extent that you express an opinion in your report, it must be an opinion which is within your clinical expertise. And, if necessary, it may need to be appropriately qualified (for example, if it were a provisional diagnosis only).
5. If you do not know something, do not speculate, or make it up.
6. Your report should be objective and impartial. Minimise the use of adjectives, except to the extent their use is clinically indicated. Remember that you are not an advocate for one side or the other.
7. Lastly, as a police report is likely to be used in the context of a legal proceeding it is helpful to bear in mind that the people reading the report will be laypersons – that is, police officers, lawyers, the judiciary, and jurors. In other words, please translate medical lingo into something that we can all understand!

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Other situations of disclosure to police

Three of the most common examples are:

1. Risk of harm to self or others
2. Risk of harm to or neglect to a child or young person
3. Search warrant or production order

Risk of harm to self or others

The most common situation where you may need to consider disclosure of health information to the police (or other authorities such as a community mental health service), is where your patient manifests a risk of harm to self or to others. Again, the issue of confidentiality should be at the front of your mind, however almost invariably it will be undesirable and impracticable to obtain consent from the patient for release of the information. The HIPC does expressly permit disclosure "to prevent or lessen a serious threat to the life or health of the patient or another individual". In addition, health professionals also have a discretion to disclose information to a police officer (amongst other officials), under s 22C of the Health Act 1956, if the information is required for the purpose of exercising or performing the police officer's powers, duties, or functions.

Risk of harm to or neglect to a child or young person

If you believe that a child or young person has been or is likely to be harmed, ill-treated, abused, neglected, or deprived you may report the matter to a social worker or

police under s 15 of the Children, Young Persons and Their Families Act 1989. While it is not mandatory to report, the Privacy Commissioner has expressed the view that disclosure in such circumstances is vital, stating that there is little that is more serious than the need to protect a child. It should be noted that health professionals are protected under s 16 of this Act from any civil, criminal or disciplinary proceedings if they disclose information to the appropriate authority in good faith.

Search warrant or production order

One exception which requires disclosure is where police have obtained a search warrant or production order for information about a patient under the Search and Surveillance Act 2012. (A search warrant allows police to search a health provider's premises, and a production order requires the receiver to release the information requested within it). Health professionals are obliged to comply with warrants or orders and a refusal to do so is an offence under the Act. However, if you are presented with a warrant or production order, you can be reassured that it will have been approved and issued by the court. In other words, it is safe to hand over the requested information.

The issue of disclosure of health information without patient consent is a bit of a minefield. It is important that if you are considering such disclosure, you first contact your indemnifier for medico-legal advice.

NZMII are here to help!

Contact us if you have any questions about your medical indemnity cover:

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