Drugs - Concealed Illicit Drugs - Legal Guideline

Reference no.:CG-LEGAL/2017/001

1. Introduction

This guidance addresses the legal and ethical issues arising where a patient self-presents and reports having swallowed/ingested a quantity of drugs for concealment. It addresses the balance between involving the police and maintaining patient confidentiality; what to do with the drugs once removed from the patient (if removal is clinically indicated); references to other applicable guidance/standards; and details of who to contact for further advice.

This guidance does not cover:

- Clinical management of the patient. See **Drugs – Concealed illicit Drugs – Full Clinical Guideline**.[1]
- What to do where a patient presents already accompanied by police. In such a case, clinicians must refer to the Best Practice Guideline produced by the Royal College of Emergency Medicine, "Caring for adult patients suspected of having concealed illicit drugs", June 2014, available online.[2]
- Situations where illicit drugs are otherwise "concealed" on a patient's person externally eg a foil wrap concealed in underwear. See Medicines Code Section 16.18[3] for further guidance.

2. Aim and Purpose

The guidance is produced following experience of differing opinions among clinicians as to whether or not police must be informed when a patient presents concerned that an ingested parcel of drugs may be leaking or split, and whether a breach of patient confidentiality to inform the police of the patient's identity is required or justified. Experience demonstrates that:

- Such situations may unfold swiftly.
- The patient may give a partial or inaccurate account of their situation, for example regarding the quantity of drugs ingested or the type of wrapping used.
- The patient may give different or evolving accounts over time.
- The patient may be concerned that they cannot obtain medical treatment without risking the police being contacted.

Although no two cases will be the same, addressing the balance between involving the police and maintaining patient confidentiality will require consideration in each such case.

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[1] Drugs – Concealed illicit Drugs – Full Clinical Guideline.

[2] At https://secure.rcem.ac.uk/CEM/document?id=7774

[3] Available here: http://flo/depts/division-of-integrated-care/pharmacy-therapies-business-unit/pharmacy-medicines/mmg-med-code/

3. Guidelines

What to do when a patient self-presents reporting having swallowed drugs

If a patient self-presents to hospital in this scenario, clinicians' immediate concern should be to establish and deliver the appropriate clinical management, conservative or otherwise. Clinicians should not allow legal/ethical issues around police involvement to delay any necessary clinical care.

Clinicians should encourage the patient to give an accurate account of the details necessary to establish and provide appropriate clinical care.

Always consider here whether the adult or child may have potentially been used to traffic drugs, considering caring responsibilities and any referrals required for Adult Social Care and Children's Social Care – refer to Safeguarding Pages FLO

If the patient presents under the age of 18 years, please refer to the flowchart in Appendix 1 of the Derby City Hospital Emergency Departments protocol when a child/young person presents under the influence of alcohol and/or drugs (including New Psychoactive Substances). Within this document it states that in all situations the overriding consideration as to whether to share information should be the safety and welfare of the child. If a practitioner/professional is concerned that the young person may potentially be at risk of future harm then relevant information should be shared with appropriate agencies to enable a single multiagency risk assessment. The information shared the reasons for it and with whom it was shared should be recorded. As a standard of good practice to link with community services, the Public Health Nurse will be copied into the GP letter when the patient is discharged from the department or ward. If the patient absconds from the department the police should be contacted as well as the parents or guardian.

Always use an independent interpreter

Capacity

If the patient has mental capacity, they should be treated as any other patient: the medical situation and available treatment options, including any risks, should be explained to them so that the patient can make an informed decision.

If the clinician has reason to believe the patient may lack the relevant mental capacity, a capacity assessment should be performed, as for any other patient. If lacking capacity, the patient should be treated in their best interests.

If the situation is immediately life-threatening and it has not been possible to establish capacity, action should be taken to maintain life, as for any other patient.

If the drugs are removed, what should the clinician do with the drugs?

In the event that the drugs have been removed from the patient, or are otherwise passed naturally, the clinician will not be able to give them back to the patient. To do so would constitute the commission of a criminal offence. The drugs should be immediately locked in a controlled drugs cabinet and a record made in the CD register. The drugs should be recorded as "unidentified drugs package" (see Medicines Code Section 16.18[4]).

The police should be promptly informed that the hospital has removed from a patient a quantity of suspected drugs, and should be asked to come and dispose of it. When collected by the Police, the CD Register should be completed to document who the package was given to (name, rank, badge number) and when the package was handed over. Unless a decision has been taken that breach of confidentiality is justified (see below), the patient should not be identified. Hospital staff will need to be aware that, once the item is in their possession, the police might choose to have it forensically examined, and that such examination could potentially lead to identification of the patient (for example, through a DNA match or if the wrapping of the item contains any material capable of identifying the patient).

If the Police do not collect the package or advise that they do not need to collect it, the drugs should be returned to Pharmacy for destruction, using the mechanism outlined in the Medicines Code.

[4] Available here: http://flo/depts/division-of-integrated-care/pharmacy-therapies-business-unit/pharmacy-medicines/mmg-med-code/

To what extent should the clinician breach confidentiality and share information about the patient with the police?

Confidentiality is a key tenet of the clinician/patient relationship. Information a patient tells their clinician in the course of the relationship is treated as confidential, and the trust engendered by the existence of confidentiality is important to the effective working of that relationship. Nevertheless, in certain circumstances a breach of patient confidentiality can be justified. It is not possible to say that disclosure to the police regarding a patient who presents in this scenario will always be justified. Nor is it possible to say it will never be justified. The matter *must* be considered on a case-by-case basis.

In some circumstances a clinician can be *required* to disclose confidential information, such as when a court order is obtained by a third party requiring disclosure of a patient's private information or medical records.

However, there is no such clear-cut legal or professional *requirement* for disclosure to the police where a patient presents at hospital and reports having swallowed/ingested drugs. Instead, this falls into the category of disclosures that can *potentially* be justified as being in the public interest; see further below. Whether or not it is in fact justified in the public interest is a matter for careful consideration and judgment and a decision should only be reached after consultation with senior colleagues/line managers and the legal department.

Clinicians should understand that

- Confidentiality is both a legal obligation and a professional/ethical obligation.
- Certain disclosures made in the public interest will provide a defence in law to any claim for breach of confidentiality.
- Relevant professional/ethical guidance such as GMC guidance must be considered and followed. If relevant standards have been adhered to, clinicians should not face any adverse professional repercussions following a breach of confidentiality.

How to decide if disclosure is justified in the public interest

In some situations, the law permits (but does not require) a clinician to disclose confidential information to third parties such as the police. Disclosure can be made on the grounds that there is an overriding public interest in disclosure. It requires

- Careful consideration in advance of the competing factors for and against disclosure.
- Observation of the guidance referred to herein.
- Documentation in the notes of the justification for disclosure without patient consent.

There are some defined situations for which GMC guidance expressly states that a breach of confidentiality is justified in the public interest: for example, where failure to disclose may expose others to a risk of death or "serious harm". The guidance refers to domestic violence, someone prepared to use weapons, and sex offenders.[5] Specific GMC guidance exists on reporting knife and gunshot wounds, obliging clinicians to inform the police when a patient arrives with such a wound, though it requires case-by-case consideration of whether the patient's name and personal details should be disclosed.[6]

The GMC guidance on confidentiality also expressly refers to the possibility of a disclosure being justified in the public interest when such a disclosure would be likely to **assist in the prevention, detection or prosecution of "serious crime**". In this context, while the guidance appears to place particular weight on the risk of crimes against the person, it does not limit the definition of "*serious crime*" to crimes against the person[7] and it is therefore possible that "*serious crime*" could include offences around the import and supply of illegal drugs.

The GMC guidance adopts the definitions of "*serious crime*" given in the NHS Code of Practice on Confidentiality, as shown in the table below, though these are not exhaustive.

Crimes listed in the NHS Code of Practice on Confidentiality (2003) as being "serious crime"	**Crimes listed in the NHS Code of Practice on Confidentiality (2003) as not usually serious enough to warrant disclosure without patient consent**
Murder	Theft
Manslaughter	Fraud
Rape	
Child abuse	
Serious harm to the security of the state	
Serious harm to public order	
Crimes that involve substantial financial gain or loss	Damage to property where loss or damage is less substantial

[5] See GMC Confidentiality Guidance (Disclosures to protect others) paragraphs 53-56, at http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_53_56_disclosures_to_protect_others.asp

[6] See GMC Confidentiality Guidance (reporting knife and gunshot wounds), at http://www.gmc-uk.org/guidance/ethical_guidance/28437.asp and in particular paragraphs 9 and 17

[7] See paragraph 54 of the GMC Confidentiality Guidance (Disclosures to protect others), at http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_53_56_disclosures_to_protect_others.asp, and paragraph 13 of the GMC Confidentiality Guidance (reporting knife and gunshot wounds), at http://www.gmc-uk.org/guidance/ethical_guidance/28437.asp

Whether the patient's actions fall into the category of crimes that involve substantial financial gain or loss is likely to depend on:

- the quantity of drugs ingested
- the type of drugs, and
- the purpose for which they were swallowed.

This information may or may not become known to clinicians during the course of treating the patient. Clinicians should bear in mind that it is not part of their role to elicit information from the patient other than that which is required for the assessment and delivery of appropriate clinical care.

The patient may ask about the possibility of police involvement. If so, clinicians should not give the patient a blanket reassurance that the police will not be informed unless it is absolutely clear that this is so. If the patient is asking, and if it has been decided that the public interest test for disclosing patient information to the police is not met (see below), the clinician should explain to the patient that they do not intend to report it to the police but that if the police attend to dispose of the drugs there is a possibility that the police could try to ascertain the patient's identity by obtaining a court order. See also the note above regarding the possibility of identification through forensic examination of the illicit material.

The public interest balancing exercise

If it is thought likely that the patient's actions amount to "serious crime", that will not by itself be sufficient to make a disclosure in the public interest. The clinician(s) must first balance the public interest in the prevention and detection of serious crime against the patient's and the public's interest in maintaining confidentiality. These are interests that compete against the public interest in the prevention and detection of crime.

The patient has their own obvious private interest in maintaining confidentiality. But there is also a wider *public* interest in patient confidentiality being maintained: it is of benefit to society that people are encouraged to seek medical advice and treatment, which they are more likely to do if they are secure in the knowledge that confidentiality will be maintained. Specifically, a clinician may consider that it is in the public interest for those who have deliberately swallowed illicit drugs to feel able to present themselves to hospital for treatment confident in their ability to give an honest and confidential account of what they have done in order that they might receive appropriate treatment, regardless of the fact that they have committed a crime. GMC guidance confirms that there is a clear public good in having a confidential medical service and that confidentiality is central to trust between clinicians and patients. This must be balanced against the factors that point toward disclosure in any given case.

In this scenario, information can only be shared with the police if it is clear that the public good that would be achieved by the disclosure outweighs both the obligation of confidentiality to the particular patient and the broader public interest in the provision of a confidential service.[8]

Before reaching a decision, clinicians must read and consider the NHS Code of Practice 2003 Supplementary Guidance on Public Interest Disclosures (published November 2010), referenced at the end of this guidance note.

Consulting with others and documenting the decision

Clinicians should not take this decision alone. Discussion should take place with senior colleagues/line managers and the Trust's Legal Department should be notified as early as possible.

The Trust's Caldicott Guardian (namely, the Executive Medical Director) should also be notified and involved in the decision.

If the issue arises out of hours, the Senior Executive on Call should be notified (via switchboard).

Decisions taken regarding disclosure and/or whether to inform the patient, and their reasoning, should be carefully and contemporaneously documented in the records.

A decision that disclosure is not justified in the public interest

If having followed this guidance clinicians decide that disclosure is not justified in the public interest, it may be necessary to take a firm stance against pressure from the police. This may arise if the clinician/hospital take a different view as to the appropriate balance between the public interest in the detection of serious crime, and the interest in maintaining confidentiality. In the event that the police do not agree with the clinician/hospital's decision, it is open to the police to try and obtain a court order permitting disclosure of the patient's information.

[8] NHS England Confidentiality Policy (2003) paragraph 30

A decision that disclosure is justified in the public interest

If having followed this guidance clinicians decide that disclosure is justified in the public interest, the police should be notified of the minimum necessary information. This may be no more than the patient's identity and the fact they are believed to have ingested a quantity of an illicit drug for the purposes of concealment.

In deciding whether or not to inform the patient of the decision to breach confidentiality, the starting point is that patients should normally be informed in advance of such a decision and the reasons for it. However, clinicians should:

- Consider whether telling the patient would put them, or others, at risk of harm.
- Consider whether telling the patient would undermine or prejudice the purpose of the disclosure (such as by causing the patient to abscond, and any harms which may result from that).
- Document the reasons for disclosure and any decision not to tell the patient in the notes.[9]

[9] See further the GMC guidance on Confidentiality at paragraphs 19 (Disclosures required by law), at http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_17_23_disclosures_required_by_law.asp and at 38-39 (Disclosures in the public interest), at http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_36_39_the_public_interest.asp.

4. References (including any links to NICE Guidance etc.)

Clinicians and others involved in decisions under this guidance must consider and take into account the following references. The Trust's Legal Department should be contacted as early as possible.

1. GMC Confidentiality guidance at http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp

2. Confidentiality: NHS Code of Practice 2003, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200146/Confidentiality_-_NHS_Code_of_Practice.pdf

3. Confidentiality: NHS Code of Practice 2003, Supplementary Guidance: Public Interest Disclosures (published November 2010), available at https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice-supplementary-guidance-public-interest-disclosures

4. Royal College of Emergency Medicine Best Practice Guideline, "Caring for adult patients suspected of having concealed illicit drugs" http://www.rcem.ac.uk/Shop-Floor/Clinical%20Guidelines/College%20Guidelines

5. General Pharmaceutical Council Guidance on patient confidentiality (April 2012) http://www.pharmacyregulation.org/sites/default/files/Guidance%20on%20Confidentiality_April%202012.pdf

6. Nursing and Midwifery Council Code (March 2015) https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf

7. NHS England Confidentiality Policy, published June 2014, available at https://www.england.nhs.uk/wp-content/uploads/2013/06/conf-policy-1.pdf

8. Access to Health Records Guidance, August 2014, paragraph 4.1.6, available at https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjSs5XA9JnKAhUEVhoKHXoiCv8QFgggMAA&url=http%3A%2F%2Fbma.org.uk%2F-%2Fmedia%2Ffiles%2Fpdfs%2Fpractical%2520advice%2520at%2520work%2Fethics%2Faccesstohealthrecords_aug2014.pdf&usg=AFQjCNGonOF5A9ddTF6ZCvcezwRgSaIfPw&sig2=bBvzg6n5_ugkEs-26CUErQ

Contact details:

Legal department:

Please contact the Head of Legal Services on 01332 785 419 (or via switchboard out of hours)

Information governance:

Please contact Anne Woodhouse, Head of Information Governance, on 01332 788 645

Caldicott Guardian:

Please contact the Executive Medical Director on 01332 785 077 (or the Senior Executive on call via switchboard out of hours)

5. Documentation Controls

Development of Guideline:	Nicola Evans, Head of Legal Services
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