

## **Rules of thumb: guidelines for dealing with medical data**

The Royal Dutch Medical Association (KNMG), a federation of medical practitioners' professional associations, places a strong focus on issues surrounding the management and exchange of patient data. The KNMG Guidelines for dealing with medical data address the legal rules that govern the exchange, storage and destruction of medical data, as well as the KNMG's interpretation of, and additions to, these rules.

A number of key aspects of the Guidelines are discussed below: medical records and retention periods, patients' rights in relation to their medical records and the professional duty of confidentiality. For the full text, please refer to the Dutch-language version of these Guidelines ([link](#)).

### **1. Records and retention period (see also section 1 of the Guidelines)**

Under the Medical Treatment Contracts Act (*Wet op de geneeskundige behandelingsovereenkomst*, hereinafter referred to as the Wgbo), care providers (including physicians) are obliged to keep records of a patient's treatment.

Physicians must include in these records all information and documents relating to the treatment and supervision of the patient, in so far as necessary in order to meet their duty of proper care. Properly maintained records play an important role in ensuring the quality and continuity of patient care. The purpose of the records is to provide the patient with proper care. The physician, but also individuals such as a deputy, successor or junior doctor, must be able to understand the patient's medical background and situation from the records. The medical records will also be used for other purposes such as to justify and verify the physician's medical actions, for instance in connection with legal proceedings, quality reviews, quality control and scientific research.

#### *Scope of the records*

Medical treatment records will generally contain the following: (I) substantive information regarding medical procedures, (II) information that plays a role in maintaining continuity of care, (III) information that is also relevant for a patient in the case of subsequent treatment or an examination, and (IV) the patient's written declarations of intent.

#### *Medical records retention periods*

The Wgbo stipulates that medical data featured in medical records must be retained for a period of fifteen years. Physicians may retain data for longer if they deem this necessary in order to comply with their duty of proper care. Deviation from this period must also take place if stipulated by a specific law. For example, the Medical Examinations Act (*Wet op de Medische Keuringen*) stipulates that the results of medical examinations shall only be retained for as long as necessary in connection with the purpose of the examination. This will often be considerably less than fifteen years. The retention period may also be deviated from [www.knmg.nl](http://www.knmg.nl)

at the patient's request. Anonymised data may be retained for as long as deemed necessary.

## **2. Patient rights in relation to medical records (see also section 2 of the Guidelines)**

Patients have a number of rights under various laws in the Netherlands.

### *Access and copies*

Patients have the right to access and obtain copies of their medical records. This is a fundamental right that cannot be denied without good reason. The physician may charge a standard fee for providing a copy.

Access to or copies of all or part of a patient's medical records will not be provided if doing so would breach the privacy of a third party and if this party's interests are more compelling or must take precedence. In this case, the physician must state the reasons for his or her decision.

### *Addition of a statement*

The physician must add to the medical records a statement from the patient (for example the patient's own views) regarding the documents featured in those records. The physician must do this even if he or she does not agree with the statement.

The patient has the right to correct factual inaccuracies in the records, such as incorrect address details or incorrect information regarding previous examinations and treatments.

### *Right to deletion and destruction of data*

Patients are entitled to have data from their medical records deleted or destroyed, including relevant data.

The right to destruction ceases to apply in the following three cases:

- A. If another law stipulates a different retention period in which the data cannot be destroyed;
- B. It is in the material interest of someone other than the patient to retain the data; and
- C. Destroying the data would constitute a breach of the duty of proper care.

## **3. The professional duty of confidentiality and the right to privacy (see also section 2.4 of the Guidelines)**

The professional duty of confidentiality serves both the collective interests of society at large and the individual interests of the patient. Professional confidentiality consists of two elements: a **duty** of confidentiality and a **right** of non-disclosure.

### *Duty of confidentiality*

Physicians have a legal duty to maintain the confidentiality of all information about a patient of which they become aware in the performance of their professional duties. This duty must

be interpreted broadly. For example, the mere fact that a patient is being treated by a physician also falls under the duty of confidentiality. Wilful breach of confidentiality is a punishable offence. The duty of confidentiality is not a right of the physician, but rather a right of the patient; the patient has a right to confidentiality and the physician has a duty to maintain it.

#### *Right of non-disclosure*

The right of non-disclosure entitles the physician to refuse to reveal information even before a court, if doing so would constitute a breach of confidentiality.

**General exceptions to the professional duty of confidentiality** There are a number of exceptions to the basic rule that no information may be provided to third parties. Those exceptions lead to a right, and in some cases an obligation, to speak on the part of the physician.

#### *Patient consent*

The physician may pass the data on to third parties with the patient's consent. The patient can only grant such consent if he or she has been informed in advance of the purpose and the content of the provision of data and its possible consequences. Consent may be granted both verbally and in writing. Note that the patient's consent does not oblige the physician to speak.

#### *Implied consent*

In some cases the patient's consent may be implied. This can occur in two situations:

I. The patient is aware of the provision of information. For example, it is common practice to include medical information about the patient when making a referral to a medical specialist. By agreeing to the referral, the patient implicitly consents to the passing on of information to this medical specialist. Information will not be provided only if the patient objects to this exchange of data.

II. The patient is not or no longer able to grant consent for the provision of data. In certain cases, the physician may then assume this consent based on past instructions or behaviour. It is often possible to pass on certain information to a spouse or relative of the patient based on implied consent.

#### *Statutory provision*

If a statutory provision imposes a duty on the physician to pass on certain information to a third party, the physician must comply with this duty. Examples are the compulsory reporting of an infectious disease under the Public Health Act (*Wet publieke gezondheid*) and the euthanasia reporting procedure.

There are also statutory regulations that allow physicians the scope to reach their own decision regarding the breaching of professional confidentiality. For instance, a physician may pass on information to the Youth Care Office (*Bureau Jeugdzorg*) without consent if this is necessary to stop child abuse or to investigate a reasonable suspicion of child abuse.

#### *Directly involved care providers, deputies and representatives*

The physician has no duty of confidentiality with respect to other care providers who are directly involved, nor to persons deputising for the physician and representatives of the patient. The patient may however actively object to the provision of information to other care providers involved and persons deputising for the physician.

#### *Conflicting obligations*

Physicians may sometimes feel that they need to breach their duty of confidentiality in order to avoid serious harm to another person. This may concern harm to the patient, but also to any other person. If a physician wishes to breach his or her duty of confidentiality as a result of these conflicting obligations, the following conditions must, in principle, be met:

- Every effort has been made to first obtain the patient's consent.
- Maintaining the duty of confidentiality would place the physician in a moral dilemma.
- There is no other way to resolve the problem.
- Not breaching the duty of confidentiality would cause severe harm to another person.
- It is almost certain that breaching confidentiality would prevent or limit such harm.

The breach of confidentiality must be limited to the greatest possible extent: only directly relevant information may be provided. If possible, physicians must inform the patient that they have passed information on to a third party.

#### *Compelling interests*

The court has accepted “compelling interests” as grounds for breaching confidentiality. The difference with conflicting obligations is that in the case of compelling interests, the criterion of preventing serious harm is not a requirement. According to the Dutch Supreme Court, grounds to breach confidentiality may exist if there is sufficient specific evidence that another, compelling interest could be harmed.

## **4. Specific situations (see also section 3 of the Guidelines)**

#### *Provision of data at the request of third parties*

Banks, insurance companies and other parties regularly ask treating physicians to provide medical information about a patient. The following basic principles apply to such requests:

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- The applicant must state the purpose for which they are requesting the data and (where applicable) list the data they already have in their possession.
- The applicant must ask the treating physician targeted questions regarding the data they wish to obtain. The patient must grant explicit, specific consent before data can be passed on. To this end, the patient must be aware of the purpose for requesting the data, the content of the information and the possible consequences of providing the data.

### *Medical certificates*

Treating physicians are advised against issuing medical certificates for their own patients. A medical certificate contains a value judgement about the patient and his or her health situation based on medical data. The treatment relationship between the physician and the patient must remain free of conflicts of interest, which could play a role in this situation. A value judgement that serves a purpose other than the patient's treatment or supervision must be based on the objective and expert opinion of, and issued by, an independent physician who is an expert in the relevant field.

A diagnosis is not generally classed as a value judgement, however a prognosis generally is. A prognosis substantiated by medical facts that serves a treatment objective is not generally classed as a value judgement either. A treating physician may, with the patient's consent, pass on factual medical information.