

# STRAND MEDICAL

## Access To Health Records Policy

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### Associated Policies:

1. SAR and AMR Processing Policy v1.0

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## **1. General Data Protection Regulations**

The General Data Protection Regulation (GDPR) is an EU Regulation which is directly applicable in the UK from 25 May 2018. The GDPR should be read alongside the forthcoming UK Data Protection Act 2018 (DPA 2018). The GRPR and the DPA 2018 replace the Data Protection Act 1998.

This policy sets out a range of circumstances in which health professionals may receive, and respond to, requests for access to health records.

## **2. Definition of the Health Records**

The health record is defined as being information relating to the physical or mental health of an individual who can be identified from that information and which has been made by, or on behalf of, a health professional, in connection with the care of that individual.

The information is most commonly recorded in electronic form, however, some records are in a manual form or a mixture of both. "Information" covers expressions of opinions about individuals as well as facts. Health records may include notes made during consultations, correspondence between health professionals such as referral and discharge letters, results of tests and their interpretation, X-ray, USS, and other results. They may also include reports written by third parties such as insurance companies.

## **3. Definition of the Health Professional**

The Health Professional is defined in the Act as one of the following:

- Registered Medical Practitioner
- Registered Optician
- Registered Midwife
- Registered Health Visitor
- Registered Dietician
- Registered Orthoptist
- Registered Physiotherapist
- Child Psychotherapist
- Registered Dentist
- Registered Nurse
- Scientist employed by the Health Service as head of department
- Art or Music Therapist employed by a Health Service body
- Registered Pharmaceutical Chemist
- Registered Chiropodist
- Registered Occupational Therapist
- Speech and Language Therapist
- Clinical Psychologist

#### **4. Definition of Holder**

The Holder is defined as being:

- a. The patient's General Practitioner, or where the patient has no General Practitioner, NHS West Sussex.

OR

- b. The health service body by which, or on whose behalf, the record is held;

OR

- c. In any other case the Health Professional by whom or on whose behalf the record is held.

#### **5. Obligations under the Regulations**

Obligations under the GDPR are placed on the holder of the record, in this case, Strand Medical.

#### **6. Application to Access**

It is anticipated that in most cases patients will verbally request access to health records in the course of treatment, and the health professional responsible for that episode of treatment may wish to hand the record to the patient for inspection or go through it with him/her. Such a request will not constitute an application under the GDPR.

If the health professional is not prepared to allow this informal access, the patient may press his/her right of access under the General Data Protection Regulations.

Applications to access records must be made in writing by one of the following:

- The patient;
- A person authorised in writing to apply on behalf of the patient;
- In England and Wales the person having parental responsibility for the patient (a child);
- Any person appointed by the court, to manage the affairs of a patient who is deemed to be incapable;
- Where the patient has died, the patient's personal representative and any persons who may have a claim arising out of the patient's death
- Application for Detailed or Full access to medical records can also be submitted via patients' SystemOnline account

Note:

Where an adult with a learning disability is being cared for by a parent or relative who has not been appointed by the courts, the carer will not be able to exercise any right of access under the Act. Health Professionals should consider the extent to which informal voluntary access should be given.

## **7. Whole or Partial Restriction of Access**

Cases where access may be wholly excluded:

- a) Access shall not be given unless the holder of the record is satisfied that the patient is capable of understanding the nature of the application.
- b) Where the applicant is a child who, in the view of the health professional is capable of understanding what the application is about, the child may prevent a person having parental responsibility from having access to the record. Where, in the view of the health professional, the child patient is not capable of understanding the nature of the application, the holder is entitled to deny access if it were not felt to be in the patient's best interests.
- c) Where the patient has died and the record includes a note made at the patient's request, that he/she did not wish access to be given to his personal representative, or to any person having a claim arising from the patient's death.

Cases where access may be partially excluded:

- a) Where in the opinion of the holder of the record, the information may cause serious harm to the physical or mental health of the patient, or other individual.
- b) Where access would lead to the disclosure of the identity of a third party (someone involved by chance or incidentally) who has not consented to disclosure of the information.
- c) Where the record was made before the commencement of the Act, but access could be given to the records made before that date if it was thought necessary, in order to make sense of subsequent records.
- d) Where an application is on behalf of a child in England and Wales, or a pupil in Scotland, or where a patient is incapable of managing his own affairs, or where a patient has died, access may be refused to that part of information provided by the patient, in the expectation that it would not be disclosed to the applicant, or where the information obtained as a result of examination or investigation, to which the patient consented, in the expectation that the information would not be disclosed.
- e) Where a patient has died, access shall not be given to any part of the record which, in the opinion of the holder, would disclose information which is not relevant to any claim which may arise out of the patient's death.

Note:

These are the only circumstances in which access may be limited or excluded. The fact that a record has not been prepared in anticipation that it might be made available to the patient is no reason for denying access under the Act.

## **8. Response Time and Charges**

Each application must be examined to confirm its validity. If the application does not contain sufficient information to identify the record or to confirm the right of the applicant to request access, a request for further details must be issued within 14 days.

Once the request has been received and verified, the individual must be provided with a copy of their data without undue delay, and at least within 28 days (or one month as per the GDPR) from the date of the request. This limit can be extended to two months for complex or numerous requests where the data controller needs more time to collate and supply the data. Individuals should be informed about this within 28 days and provided an explanation of why the extension is necessary.

**9. Inaccuracies**

An applicant can apply for inaccuracies in the record to be corrected. The health professional should either make the necessary correction or make a note in the relevant part of the record of the matters alleged to be inaccurate. The applicant must be provided, free of charge, with a copy of the correction or the note. Although the Act is not specific in the way in which a correction should be made, care must be taken not to simply obliterate information which may have significance for the future care and treatment of the patient, or for litigation purposes. Consideration should be given to whether it is appropriate to note also any associated records.

**10. Complaints**

Applicants should be advised that the Act provides a right of action in the Courts if the holder of the record has failed to comply with the Act.

The applicant does not have to use Strand Medical's complaints process although complainants should be advised how to contact the Complaints Manager.

## **PROCEDURE FOR GENERAL DATA PROTECTION REGULATIONS**

### **ACCESS TO HEALTH RECORDS**

All requests relating to the GDPR / Access to Health Records Act should be passed immediately to the nominated officer, the Practice Business Manager, for action.

1. All requests for access should be acknowledged, (Appendix 1) in timely manner. Any monies received (where payable) should be sent to the Payments where a receipt will be issued and returned to the applicant. Cheques should be made payable to Strand Medical.
2. Where requests relate to deceased patients, the details of the applicant should be checked in the case notes and on the relevant clinical system to confirm they are the next of kin.
3. The response time for giving access is 30 working days.
4. The appropriate health professional should then be contacted to advise on whether:
  - a) Access should be allowed or limited to prevent the disclosure of seriously harmful information, or where a third party may be identified.
  - b) In connection with an application for access to a child's record, the child is capable of understanding the nature and purpose of the application.
  - c) Access would be in the best interests or wishes of the patient.
  - d) The applicant should be allowed to inspect the record itself or shown an extract. If an extract is to be shown this must be prepared by the health professional. Where the record may contain terminology not understood by the patient, an explanation of those terms must be provided.
  - e) It is necessary for the health professional to be present when the record or extract is inspected to provide any counselling and explanation, or if this can be supervised by a lay administrator. The lay administrator must not however comment or advise on the record but should the applicant raise enquiries, an appointment with the health professional should be offered.
  - f) Where the health professional is to be present an explanation of the extract must be given to the applicant who can apply for inaccuracies in the record to be corrected. The health professional should either make the necessary correction or make a note in the part of the record of the details alleged to be inaccurate. Copies of the amendment should be distributed to the relevant parties and a copy provided to the applicant free of charge.
5. All care must be taken not to obliterate information which may be used for the future care of the patient or for litigation purposes. Consideration should be given to whether it is appropriate to note any associated records.
6. On receipt of the authorisation from the clinician, the following action should be taken:
  - a) The relevant documents should be copied and checked for quality and accuracy.
  - b) Place documents in folder ensuring that a patient identification label is affixed to the front cover.
  - c) The number of copies produced should be counted and the cost recorded on the progress sheet together with details of the information provided.
  - d) Where someone, who is not a patient e.g. a Solicitor has requested access, a letter (Appendix 2) should be sent to them informing them of the costs.
  - e) A copy of the letter should then be sent to the patient.

- f) Where applicable, once payment has been received / request processed the copies should be sent by recorded delivery together with the relevant letter and the details noted accordingly.



## **Appendices**

All appendices below to be printed on Strand Medical headed paper.

Appendix 1 - Acknowledgement of Request

Date

Dear <Title> <Surname>,

Subject: **Access to Health Records**

Thank you for your application form dated..... requesting information under the GDPR 2018.

Your application is now being processed and we will be contacting you again in due course.

Yours faithfully,

*Strand Medical*

Appendix 2 - Template letter to solicitors

Date

Dear Sir/Madam

Your reference number: XXXXXXXXXXXXXXXXXXXX

Thank you for your recent request for copies of the above patient's medical records together with a copy of the patient's consent.

Following the new GDPR (General Data Protection Regulations), as we are classed as custodians of the patient records, our procedure for providing copies to third parties is to supply our patients with copies of all their records for them to review and forward on as appropriate.

We are in the process of copying the records for the above named; however, please note that the Lloyd George records are kept off site. We will request the Lloyd George records to come back to us for photocopying and these will be collated with the computer records for the patient to collect and forward to you. We will contact the patient when the records are ready for collection.

Please note: we are aware of the 30 day response timescale. As we have made the notes available to the patient for collection please contact them should you experience any delays.

Thank you.

Yours faithfully,

*Strand Medical*

### Appendix 3 – Template letter re SAR request

Dear Sir/Madam,

Your reference: XXXXXXXXXXXXXXXXXXXX

Thank you for your Subject Access Request (SAR) on behalf of the above named. I note the signed consent of the patient for you to make this request.

I am writing to clarify the purpose of this SAR and whether the information you are requesting should be more properly requested under the Access to Medical Reports Act (AMRA) 1988, for which a recommended process is available as agreed with the Association of British Insurers (ABI) as below:-

<https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/2017/health/requesting-and-obtaining-medical-information-electronically.pdf>

I would be grateful if you could confirm whether your request for a SAR is appropriate, noting that as a GDPR compliant Data Controller the practice should only process requests for the release of personal data that are proportionate and relevant, and not excessive, in relation to the purpose for which this information is required.

If it would be more appropriate to receive an AMRA request, we look forward to doing so.

Yours faithfully,

*Strand Medical*

Appendix 4 – Letter to patient re collection of medical record copy

Date

Dear <Title> <Surname>,

We are writing to you as on XX/XX/XX (solicitor) requested copies of your medical records under the Data Protection Act.

Due to the changes imposed by the new General Data Protection Regulations of 25th May 2018, we are the custodians of your records and therefore our practice policy is to provide you with copies of your full medical records so that you can sense check them and forward the appropriate details to your solicitor.

Your records are now ready for collection from the surgery reception (please collect them between 10:00 & 16:00 as these tend to be the quieter times). Due to GDPR's stipulation that a response must be made within 30 days of the original request, please ensure you forward a copy to the solicitor before XX/XX/XX.

Please note your records will remain available for collection for 30 days from the date of this letter.

Yours sincerely,

*Strand Medical*

### **INFORMATION FOR APPLICANTS**

People who can apply include the patient about whom the record has been compiled, or someone acting on behalf of the patient (for example, by written authorisation, exercising parental rights, court appointment, personal representatives, someone with a claim arising from the death of a patient).

Patients have a right to have their personal health information kept confidential, and record holders are obliged to be satisfied that an applicant is the patient, or is otherwise entitled to access that patient's record.

Applications for access should be made to:

Strand Medical  
1B The Causeway  
Goring-by-Sea  
West Sussex  
BN12 6FA

The Regulations gives right of access, but Strand Medical can withhold any information which might cause serious harm to physical or mental health, or identify a third party. Strand Medical does not have to disclose the fact that information has been withheld.

You can ask for corrections to be made to the records and you are entitled to a copy of the correction free of charge, or if the record is not corrected a copy of the note recording Strand Medical's comments on the request.