

# OSCE revision fact sheet: Privacy obligations – sharing information

To help you prepare for your objective structured clinical examination (OSCE), Avant's medico-legal experts have created this revision fact sheet on privacy and confidentiality issues.

**In this fact sheet we outline the basic principles about when you can release patients' information to third parties.**

## Basic principles

You have an obligation to keep your patients' information confidential unless:

- ▶ it is appropriate to share the information within the healthcare team and is directly related to the patient's care
- ▶ the patient has given you authority (consent) to release the information or you are required by law to release information (see below).

## Patient's authority

Authority can be verbal or written (if verbal, you must document the consent carefully in the patient's record).

Clearly indicate what information they are consenting to release.

The authority should also be reasonably current (as a guide, within 12 months).

If unsure, contact the patient directly to clarify.

## Requests for information from family members

As long as a patient is competent, no other person, even if they are the patient's partner or spouse, is entitled to access information without the patient's authority.

## Information about children

Parents cease to have a right to access their child's health information when their child is of sufficient maturity to make decisions about their healthcare, including exercising their rights to privacy of and access to their health information. This depends on the situation and requires you to rely on your own judgment, taking into account the child's age, level of understanding and maturity, and the issue which they wish to remain confidential.

Before the child has a sufficient level of competence, both parents have the right to access health information about their child. This is unless a court order is in place preventing a parent from accessing their child's information.

## Requests for information about a deceased patient

Even after the death of the patient, the obligation to protect their privacy remains. The executor of the will or the administrator of the estate, are the only people lawfully entitled to access medical information of a deceased person. Beyond this, family members may be allowed to access the deceased's information on compassionate grounds.

## Limited exceptions

Exceptions or situations where you are permitted to release information without patient consent include but are not limited to:

- ▶ Where there is a serious threat to the life, health or safety of an individual or to public health or safety
- ▶ Where you have good reason to suspect unlawful activity or misconduct of a serious nature
- ▶ Where a patient is incapable of giving consent, you may disclose information to a responsible person or guardian for compassionate reasons
- ▶ Where release of the information is required by law, for example, in response to a subpoena to produce medical records (this does not include a request from police or solicitors without a warrant or subpoena) or a mandatory notification requirement (child abuse or notifiable diseases).

Privacy laws are complicated, and may differ depending on the state or territory you are in. Seek advice if you are in doubt about whether you can release your patient's information to a third party.

### Checklist

- ✓ Has the patient given you permission to share the information?
- ✓ Are you required by law to release the information?
- ✓ If the situation involves a child, is the child sufficiently mature to make decisions about their healthcare?

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### Want more?

Read our fact sheet: [avant.org.au/Resources/Public/20150903-factsheet-privacy-essentials](http://avant.org.au/Resources/Public/20150903-factsheet-privacy-essentials)

For more advice, call Avant's Medico-legal Advisory Service on **1800 128 268**.

Visit the Avant Learning Centre [avant.org.au/avant-learning-centre](http://avant.org.au/avant-learning-centre) for resources including webinars, eLearning courses, case studies, articles and checklists.

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