



<b>POL</b>	<b>Patient Confidentiality</b>				
<b>All staff and Directors</b>		Effective Date	Jan 2024	Compiled by	Anneline van Dyk
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## POLICY ON PATIENT CONFIDENTIALITY

### 1. SCOPE

The scope of this working procedure serves a guide to the process to be followed and requirements to be met by all employees of the hospital in maintain patient confidentiality. This policy applies to all Crestcare Hospital.

### 2. PURPOSE

- To ensure that any and all disclosure of confidential information concerning a user, is in accordance with Section 14(2) of the Act, and no information shall be disclosed unless:
  - the user consents to that disclosure in writing;
  - a court order or any law requires that disclosure;
  - non-disclosure of the information represents a serious threat to public health.

### 3. DEFINITIONS

### 4. METHODOLOGY AND PROCEDURES

- **Privacy and Confidentiality of Medical and Personal Information**
  - Section 14(1) of the National Health Act, 2003 [Act No. 61 of 2003] states that “all information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment, is confidential.
  - Any and all disclosure of confidential information concerning a user, shall be in accordance with Section 14(2) of the Act, and no information shall be disclosed unless:
    - the user consents to that disclosure in writing;
    - a court order or any law requires that disclosure;
    - non-disclosure of the information represents a serious threat to public health.
  - A health worker, employee, healthcare professional or agent of the hospital that has access to the health records of a user may disclose such personal information to any other person, healthcare provider or health establishment as is necessary for any legitimate purpose within the ordinary scope and practise of his or her duties where such access or disclosure is in the interests of the user. This includes, but is not limited to, disclosure internally between health professionals, pharmacists and nursing staff.
  - A health worker, employee, healthcare professional or agent of the hospital that has access to the health records of a user may disclose such personal information to any managed care organisation as authorised in terms of the Medical Schemes Act, 1998. In particular, subject to the provisions of the act and the concurrent regulations, a medical scheme is entitled to access any treatment record held by a health establishment as well as other information pertaining to a diagnosis, treatment and health status of a user (who is a beneficiary) in terms of a contract entered into in terms of Regulation 15(A) of the General Regulations of the Medical Schemes Act, provided that such information shall be treated as confidential and shall not be disclosed to any other person without the written authorisation of the user.
  - A health worker, employee, healthcare professional or agent of the hospital that has access to the health records of a user may disclose such personal information to any medical scheme administrator,

in accordance with a contract between the scheme and the administrator, and subject to the conditions prescribed in this policy document.

- A healthcare provider may examine a user's health records for the purposes of:
  - Treatment with the authorisation of the user;
  - Study, teaching or research, with the authorisation of the user, hospital manager and the relevant ethics committee.
  - If the study, teaching or research referred to in 5.6(b) reflects or contains no information as to the identity of the user concerned, then it is not necessary to obtain the authorisations required in that subsection.
- A healthcare provider shall disclose medical information when required to do so in terms of any law, including, but not limited to, the Child Care Act.
- **Violation of Privacy and Confidentiality**
  - It shall be a violation of this policy, as well as national law, for any person to;
    - Fail to perform or follow any duty or restriction imposed in terms of this policy or any law of the republic.
    - Falsify any record by adding to or deleting or changing any information contained in that record.
    - Create, change or destroy a record without authority to do so.
    - Fail to create or change a record when properly required to do so
    - Provide false information with the intent that it be included in a record.
    - Without authority copy any part of a record.
    - Without authority connect the personal identification elements of a user's record with any element of that record that concerns the user's condition, treatment or history.
    - Gain unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another.
    - Without authority, connect any part of a computer or other electronic system on which records are kept to:
      - any other computer or other electronic system; or
      - any terminal or other installation connected to or forming part of any other computer or other electronic system.
    - Without authority, modify or impair the operation of:
      - any part of the operating system of a computer or other electronic system on which a user's records are kept.
      - any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which the user's records are kept.
  - It shall be a violation for any member of staff to disclose any medical and/or personal information pertaining to a user telephonically, to any person other than the user, without the user's written authorisation.
  - No member of staff shall send any medical record, or part thereof, as a facsimile to any general fax number, including any fax number where the user works, without the user's written authorisation. Users who provide such authorisation shall also indemnify the hospital, its staff and any person there connected from any disclosure of medical information to any person other than the user himself or herself.
  - No member of staff shall leave a medical record or part thereof unattended or without exercising reasonable control over such record or part thereof. Records kept on wards shall at all times be subject to reasonable control, and under no circumstances will visitors, people other than the user, or any person not involved in the treatment of that user, be permitted access to such records.

- **User Authorisation and Informed Consent**
  - A health worker, employee, healthcare professional or agent of the hospital that has access to the health records of a user may not disclose any personal or medical information pertaining to a user to any third party, without the written authorisation of that user. Such requests are to be dealt with in terms of the promotion of Access to Information Act, 2000.
  - Written authorisation shall be interpreted as a written contract between the user and the hospital, clearly establishing the conditions under which information may be disclosed, and to whom such disclosure may be made. At all times the user is to be made aware of the purpose of such disclosure, and he or she is to fully understand the nature under which disclosures may occur.
  - Written authorisation must be obtained from all adult users, including all users who at the time of their admission are 16 years old, or older. Where such users are incapable, for whatever reason, of completing such a contract, then the hospital shall obtain written authorisation from a person recognised as having authority to provide such on behalf of the user. The persons recognised in law shall be a spouse or partner, a parent, a grandparent, an adult child or brother or sister of the user (in that specific order).
  - For the purposes of this policy a user shall refer to a competent healthcare user (as defined in the National Health Act), including, in the case of minors, any person recognised in law as having the authority to act on the minor's behalf.
- **The User's Right to Access His or Her Information**
  - The general rule in law is that the user has the right to access his or her medical and/or personal information, and the hospital shall authorise such access, provided it is in accordance with the relevant law.
  - In terms of the National Health Act, 2003, a user's right to access his or her own medical information may be restricted by the hospital in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of that user.
- **Requests for Access to Medical Information by Third Parties (Including Law Enforcement Officials).**
  - The general rule is that any third party requesting access to information relating to a user shall not be authorised, unless written authorisation has been granted by the user.
  - Any and all requests made by a third party shall be reported to the user, and his or her written authorisation obtained before any disclosure shall be authorised. Upon such notification, the user shall be informed of his or her rights to privacy and confidentiality.
  - Legal representatives that request information relating to a user, may only do so if authorised by the user. Hospitals must ensure that such requests are made on behalf of the user, and that the legal representative is acting on his or her behalf. The hospital shall request, for the purposes of its records, copies of such authorisation before any medical information is disclosed.
  - Any order of court or subpoena shall be afforded immediate action by the hospital, or by any member of staff mentioned in such order or subpoena, and under no circumstances shall these be ignored or refused. Should you be concerned about any disclosure aspects, then your concern shall be raised as a point of order (in limine) before any evidence is lead.
  - No health-related information, including personal information, pertaining to a user should be disclosed to a law enforcement official or any other person acting in an official capacity of investigating any alleged or suspected offence, in the absence of the required legal process, such as a warrant requesting that information specifically, or any order of court. Only that information provided in such warrant or court order shall be supplied, and no additional information shall be disclosed.
  - Any request for access to medical information by an employer of the user shall not be authorised unless written permission has been obtained by the user. For the purposes of this clause, the provisions of Section 7 shall apply.

- **Debt Collection and Legal Proceedings for the Recovery of Amounts Owed by the User**
  - Medical information provided to a legal representative or debt collection agency, acting on behalf of the hospital, should not include medical records. Instead, only the quantum and cause of action should be disclosed. The nature and extent of the treatment, including any diagnostic information, would only be raised should there be a dispute to which this information is pertinent, and then only if raised by the user himself or herself.
- **11. Contractors, Repairs and Maintenance at Hospitals**
  - From time to time it may be necessary for the hospital to employ the services of independent contractors, for the purposes of repairs and maintenance in the facility. These individuals are often granted access into restricted areas of the hospital, and may have access to medical information pertaining to users. (Examples include user files, computer data, electronic records, notices and user information on white boards)
  - Before any such access is granted, or any contract signed between the hospital and an independent contractor, the hospital shall insist on a confidentiality agreement with that individual, so that, in the event that such a person, having access to private and confidential information relating to any user, he or she shall not disclose such under any circumstances.
  - Any person entering the hospital to do any form of repair and/or maintenance, shall be subject to a confidentiality agreement, and under no circumstances is that person to disclose any information outside of a contractual relationship with the hospital.

## 5. RESPONSIBILITY AND AUTHORITY

- All health workers, employees, healthcare professionals or agents of the hospital

## 6. REFERENCES

- Section 14(1) of the National Health Act, 2003 [Act No. 61 of 2003]
- Hospital Association of South Africa's recommended policies: Privacy and Confidentiality Protocol Including Control Over Computer Systems and Records, Employee Obligations, Access To The Hospital and Confidentiality Agreements. 14/03/2006

## 7. APPENDICES

None