

DISCLOSURE WITHOUT CONSENT

Case Study:

A social worker has made contact with a GP, in relation to his patients, Mr and Mrs X.

The social worker reports that Mr X recently violently assaulted his wife's 12-year-old brother who lives with them. The Gardaí were informed, but Mrs X did not want to proceed with a prosecution.

Following the communication from the social worker, the GP is visited by Mrs X, who wants to have a pregnancy test. The test is positive. The GP asks her how things are going and she discloses that she is sometimes afraid of her husband's violent temper. Mrs X also tells the GP that she doesn't feel the baby would be in danger and she doesn't want any interference from agencies.

The GP has a dilemma. Now that Mrs X is pregnant, **should he inform Tusla of the situation**, due to the **potential risk** to their unborn child?

NOTE: This case study does not form part of the Guide to Ethics and Professionalism for Registered Medical Practitioners, nor does it constitute clinical or legal advice. It is intended as a helpful illustration of a potential scenario.

What guidance does the Medical Council provide to doctors that could help the GP in this situation?

If we consult the [Ethical Guide](#), we can find guidance that the GP should follow. With regard to **confidentiality**, the [Guide to Professional Conduct and Ethics for Registered Medical Practitioners](#) (8th edition), states:

- 29.1 Confidentiality is central to the trust between you and your patients and a core element of the doctor/patient relationship. **However, sharing information, in appropriate circumstances, is also important, both for patient care and for the safety of the patient and others.**

With regard to the **protection and welfare of children**, the Guide states:

- 26.1 You must be aware of and comply with the national guidelines and legislation for the protection of children, which state that **the welfare of the child is of paramount importance.**
- 26.2 If you believe or have reasonable grounds for suspecting that a child is being harmed, has been harmed, or is **at risk of harm through sexual, physical, emotional abuse or neglect, you must report this to the appropriate authorities and / or the relevant agency without delay.** You should inform the child's parents or guardians of your intention to report your concerns taking into account that this may endanger you or the patient. Giving relevant information to appropriate authorities or statutory body for the protection of a child is a justifiable breach of confidentiality, provided that you follow the guidance in **paragraph 31.2.**

(bold has been added for emphasis)

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Should the GP disclose to Mr and Mrs X that he intends to contact Tusla?

With regard to **disclosure without consent**, the [Guide to Professional Conduct and Ethics for Registered Medical Practitioners](#) states:

- 31.1 When you disclose information as required by law or in the public interest, you should inform patients of the disclosure, **unless this would cause them serious harm, or would undermine the purpose of the disclosure.**
- 31.3 Disclosure in the public interest may be made to protect the patient, other identifiable people, or the community more widely. Before making a disclosure in the public interest, you must satisfy yourself that the possible harm the disclosure **may cause the patient is outweighed by the benefits that are likely to arise for the patient or for others.** You should disclose the information to an appropriate person or authority, and include only the information needed to meet the purpose.

What could the GP do in this situation?

As the child's welfare is of paramount importance, the GP is compelled to inform [Tusla](#) of his concerns and that Mrs X is now pregnant with her second child.

In normal circumstances if a GP is to make a disclosure he/she should inform the parents in advance. However in this scenario the GP may decide not to inform Mrs X that he has taken this action for a number of reasons. He doesn't want to alarm her, nor does he want her to warn her husband. He might react violently towards his wife.

The GP should inform [Tusla](#) whether or not he intends telling his patient that he has contacted them, giving the reasons for his decision.

The GP is legally protected when making his disclosure. **The provision of information to the statutory agencies for the protection of a child is not a breach of confidentiality or data protection.** Please see the link below to the *National Guidance for the Protection and Welfare of Children*:

<http://www.dcy.gov.ie/documents/Publications/ChildrenFirst.pdf>

Further resources:

TUSLA Child and Family Agency www.tusla.ie

ICGP Guide to Data Protection Legislation for Irish General Practice:

https://www.icgp-education.ie/confidentiality/ICGP_Data_Privacy_Doc.pdf

Department of Children and Youth Affairs: www.dcy.gov.ie

Acknowledgement

*The Medical Council is grateful to [Medisec Ireland](#) for contributing the above case study. **Medisec Ireland advises that, in situations like the one outlined above, they would also recommend to their members that it is essential to advise those attending any subsequent case conference that the information is being disclosed without the consent of the patient, that you have breached doctor-patient confidentiality and that you are taking this unusual step as you believe it is necessary to protect the patient and others.** The Medical Council is also grateful to the [Office of the Data Protection Commissioner](#) for their assistance in drafting advice for this vignette.*