

# Data Protection for Pharmacies



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Data protection law attempts to ensure that an individual's right to privacy is respected, particularly regarding the use and sharing of his/her personal information. The Data Protection Commissioner has a wide range of powers under the Data Protection Acts 1988 to 2003 (the Acts). The Acts provide for penalties, which on summary conviction amount to a fine not exceeding €3,000 or on conviction on indictment a fine not exceeding €100,000. A court may also order that some or all information connected with offences under the Acts be erased, fortified or destroyed. The Acts do not in any way preclude an action at common law such as defamation, negligence or breach of privacy.

## Data Protection Obligations

A pharmacy will usually hold personal data in relation to its employees, customers/patients and contacts. The Acts requires that data controllers should:

- Obtain and process information fairly;
- Keep data only for one or more specified and lawful purposes;
- Process data only in ways compatible with the purposes for which it was given;
- Keep data safe and secure;
- Keep data accurate and up-to-date;
- Ensure that data is adequate, relevant and not excessive;

- Retain data no longer than is necessary for the specified purposes or purposes; and
- Give a copy of his/her personal data to any individual, on request.

Customers'/patients' medical prescriptions fall within the definition of "sensitive personal data" and the processing of same is subject to additional safeguards under the Acts. As a general rule, the explicit consent of the patient should be used as the guiding principle when processing personal health information. Consent should be informed and meaningful but does not necessarily have to be in writing.

The key obligations for the pharmacy are to ensure that the patient information is used only for the purpose for which it is given (or for another directly related purpose), that it is held securely and is not disclosed to any other person except where the patient concerned has explicitly consented to the proposed use or disclosure or that use or disclosure is required or authorised by law.

## Access Requests

Customers/patients have a right under the Acts to make an access request to his/her pharmacy. Under section 4 of the Acts, data subjects have a right to obtain a copy of any information relating to them kept on computer or in a structured manual filing system. All customers need to do is write to the pharmacy concerned and make the request. Customers may be asked to pay a fee, but this cannot exceed €6.35. Once a customer has made a

request, and paid any appropriate fee, he/she must be given the information within 40 days. If a customer believes that information kept about him/her is inaccurate, he/she has the right to have that information corrected or rectified.

The right of access to medical data is restricted where the health and mental well-being of the individual might be affected by obtaining access to the data. The Data Protection (Access Modification) (Health) Regulations, 1989 (S.I. No. 82 of 1989) provide that health data relating to an individual should not be made available to the individual, in response to an access request, if that would be likely to cause serious harm to the physical or mental health of the data subject.

## Practical issues for Pharmacies

### 1. *Can a pharmacist disclose information to the patient's GP?*

Under the Acts a pharmacist has a duty to ensure that personal data shall not be further processed in a manner incompatible with the purpose or those purposes for which the data was originally given.

The term "processed" is broadly defined and includes disclosing personal data to a third party, including the patient's GP. It is unlikely to be a breach of the Acts for a pharmacist to discuss a

patient's prescription with the patient's prescribing GP, if the pharmacist has a genuine concern and believes it is necessary in the interests of the health of the patient. However, it is advisable and prudent to contact the patient first and ask for consent to contact his/her GP to discuss a particular patient health matter. It is also useful to have some form of information leaflet explaining that the pharmacist may consult with the patient's GP to discuss any matters relevant to the prescription.

### 2. *Can a pharmacist disclose the address of a patient to an environmental officer who is investigating illegal dumping?*

The typical situation arises where the local authority is investigating illegal dumping and during the course of its investigation it finds an empty medicines bottle which has a person's name on it together with a pharmacy address. The investigator then contacts the pharmacy and asks the pharmacy to give out the address of the person whose name is on the container. In these circumstances, provided that the relevant investigator shows appropriate identification and confirms that he is investigating an offence, the pharmacist is allowed under the Acts to disclose the address of the data subject.

### 3. *Can a pharmacist disclose patient information to the Gardaí who are investigating a crime?*

The same general issues apply as in the above question. The Acts would allow a pharmacist to disclose a patient's address and details of medication prescribed on the basis that the disclosure would assist the Gardaí in investigating, detecting or preventing offences.

### 4. *Can a pharmacist disclose personal data of a patient on request from the patient's lawyers?*

This is in order, provided the lawyers have provided the pharmacist with a written consent form signed by the patient duly authorising the pharmacist to disclose the information.

*This article has been written by Dermot Casserly, a partner in Beauchamps Solicitors. He advises primarily on issues arising out of the employment relationship including employee related data protection issues. This article is merely intended to highlight issues and is not to be regarded as legal advice on any particular matter. Specialist advice should be sought in all circumstances. If you would like to discuss any of the issues raised do not hesitate to contact Dermot at Beauchamps Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2. Tel: 01-4180600 or email to [securemail@beauchamps.ie](mailto:securemail@beauchamps.ie)*