



The Pharmacy  
Guild of Australia



Pharmaceutical  
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## Privacy and pharmacy

*Scenarios*

These scenarios cover some particular examples that typically arise in the practice of pharmacy and do not claim to be a full explanation of the Australian Privacy Principles (APP). The Office of the Australian Information Commissioner (OAIC) website should be consulted where further comprehensive information is required, see [www.oaic.gov.au](http://www.oaic.gov.au)



## The nosy neighbour

*Mrs Brown comes into the pharmacy wanting to lodge a complaint about a breach of privacy. She suggests someone at the pharmacy has disclosed her personal health information to her neighbour when the neighbour was collecting her prescription for her.*

The pharmacist should assure Mrs Brown that it is not the practice of the pharmacy to disclose personal information and that the pharmacy takes its privacy obligations very seriously. The pharmacist assures Mrs Brown that all pharmacy staff are aware of their obligations under the pharmacy's privacy policy. The pharmacist then refers to the policy statement on display in the pharmacy and offers to give her a copy of the policy including the complaint handling procedure.

To ensure all staff fully understand and comply with the pharmacy's privacy policy, schedule ongoing staff training on privacy issues including appointing a staff member who will be responsible for handling privacy complaints and establishing a generic pharmacy email address for lodgement of complaints.

### Key points

- Any consumer has the right to complain.
- A pharmacy must have a complaints procedure.
- A pharmacy must clearly display their privacy policy in the pharmacy and on their website.

### Relevant APPs

- Open and transparent management of personal information (APP 1)
- Notification of the collection of personal information (APP 5)



## A marketing 'no-no'

*You want to promote quality use of medicine services, such as blood pressure testing, directly to eligible consumers who have been identified from information contained in their dispensing history. You would like to mail information to these consumers directly explaining the benefits of this service and invite them to come to the pharmacy.*

Personal consumer information gathered through the dispensing process, such as their medical conditions and medicines they are taking, cannot be used to directly market pharmacy services unless the consumer has given their permission.

If the consumer agrees to receiving information about a pharmacy service, only the minimum amount of information necessary to provide that health service should be collected.

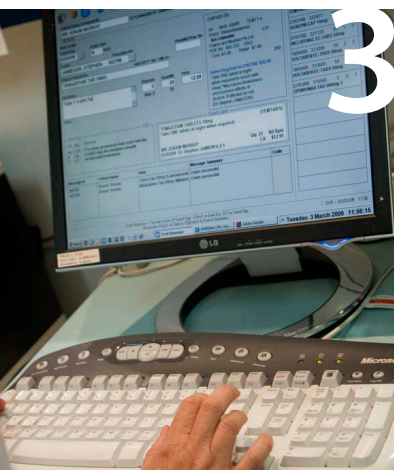
### Key points

- The consumer must have consented to the collection of their information and specifically to the use of their information for direct marketing purposes.
- The consumer must be informed that they have the right not to receive direct marketing communications at the time of obtaining initial consent to collect their information.
- The consumer must be offered the opportunity to opt out in each subsequent piece of direct marketing.
- Pharmacists must provide a simple means by which the individual may request not to receive direct marketing communications from the pharmacy.

### Relevant APPs

- Collection of solicited personal information (APP 3)
- Notification of the collection of personal information (APP 5)
- Use or disclosure of personal information (APP 6)
- Direct marketing (APP 7)

## SCENARIO



### Protecting patient privacy

*The pharmacist has completed a MedsCheck report and is viewing it on the computer screen. He is called away from the computer to speak with a consumer and the report remains visible on the screen.*

All personal health information must be treated as private and confidential. It is the responsibility of the pharmacist to ensure all consumer information is stored appropriately, upholding a consumer's privacy. Ensure that the pharmacy has a privacy procedure which details the management of consumer information and that all staff understand and comply.

#### Key points

- All consumer information is confidential.
- Carefully consider your workplace layout and workflow practices where computer screens or other paperwork may be visible.

#### Relevant APPs

- Open and transparent management of personal information (APP 1)
- Use or disclosure of personal information (APP 6)



### Professional judgement call

*During a MedsCheck interview, a consumer says he is taking a certain complementary medicine but would prefer that the doctor not be told. You believe that it may be beneficial for their doctor to know, as this undisclosed information could put their health at risk.*

Prior to the MedsCheck interview, the interviewing pharmacist has obtained consent from the consumer to collect relevant health information during the interview process. However, to discuss the outcomes of the consumer's MedsCheck with another health provider involved in the consumer's health care (e.g. their doctor), permission must be granted by the consumer.

#### Key points

- The pharmacist must take all possible steps to convince the consumer to allow the pharmacist to tell the doctor about the complementary medicine.
- If the consumer refuses, the pharmacist must fully explain all the risks involved in not telling the doctor about the complementary medicine.
- The pharmacist must carefully note the fact the consumer refused to permit the pharmacist to disclose information to the doctor and what advice was given to the consumer.

#### Relevant APPs

- Notification of the collection of personal information (APP 5)
- Use or disclosure of personal information (APP 6)

## SCENARIO



### Doctor shopping

*A consumer presents a prescription for an opioid analgesic. During the dispensing process, you notice that the consumer has obtained prescriptions for this medicine from a number of different doctors. You suspect this consumer of 'doctor shopping' and wish to discuss the issue with the doctors and other pharmacies in your local area.*

A pharmacist may consider contacting doctors who have written prescriptions for this consumer to ascertain whether, in the circumstances, it is appropriate to dispense a particular prescription. They cannot contact doctors who have not written prescriptions for this consumer and disclose the consumer's personal health information. A pharmacist may discuss issues relating to 'doctor shopping' concerns with doctors and pharmacies in the area in a general way, but not patient-specific details.

#### Key points

- Pharmacists are not able to access the Prescription Shopping Information Service.
- General discussion with local health professionals about QUM issues e.g. drug-use trends is permissible.
- Patient-specific concerns must be discussed only with the prescriber.

#### Relevant APP

- Use or disclosure of personal information (APP 6)



## Can you tell her Mum?

*A parent of a consumer comes into the pharmacy wanting to know health information about their child (e.g. requesting to know what prescriptions the child has had dispensed in the previous six months). The child is 15 years old and is not accompanying the parent.*

The legal rights of consumers under the age of 18 vary in each state and territory in Australia and pharmacists are advised to refer to the relevant legislation.

The Privacy Act does not specify any age after which individuals can make their own privacy decisions. A pharmacist will need to determine on a case-by-case basis whether an individual under the age of 18 has the capacity to consent. If it is not practicable or reasonable for an a pharmacist to assess the capacity of individuals under the age of 18 on a case-by-case basis, the pharmacist may presume that an individual aged 15 or over has capacity to consent, unless there is something to suggest otherwise. An individual aged under 15 is presumed not to have capacity to consent.

A pharmacist must not automatically provide details of a consumer's health information to family members who might request this information. Before disclosing any health information to a **responsible person**, you must be satisfied that disclosure of this information is necessary to provide the consumer with appropriate care or treatment. The information that is disclosed must be limited to only that necessary to fulfil the purpose. You must also be satisfied that providing details is not contrary to the wishes of the consumer.

### Key points

- This scenario applies not only to minors but to all other personal relationships.
- A pharmacist will need to carefully consider whether someone falls within the '**responsible person**' definition before releasing someone else's health information to the person requesting the information.
- A '**responsible person**' under the Privacy Act is:
  - a parent, spouse or de facto of the individual.
  - a child, or sibling, of the individual who is at least 18 years old.
  - a person who has an intimate personal relationship with the individual.
  - a person nominated by the individual to be contacted in case of emergency.
  - a person exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health.
- Privacy law permits the provision of a consumer's health information to someone else who is in an 'intimate personal relationship' with a person. This definition would appear to include circumstances where someone provides some very personal services, such as ensuring a person's wellbeing on a regular basis. However you must be satisfied that there is a close bond between the patient and the person asking for health information before releasing it. Common sense and professional judgement should be exercised in these circumstances.

### Relevant APP

- Use or disclosure of personal information (APP 6)

## SCENARIO



### Is anyone above the law?

*Police officers come into the pharmacy asking for information about a consumer.*

Before disclosing a consumer's personal information, you must establish why the enquiry is being made, how it will affect the consumer's health care and if the information requested is sensitive (e.g. medical conditions, medicines) or not sensitive. Disclosure of a consumer's health information can only occur if:

- the consumer agrees to the disclosure of their personal information
- the information is of a non-sensitive nature and can be obtained from other sources
- a court or tribunal order requires the disclosure of the information
- the pharmacist is convinced the disclosure is genuinely needed for a law enforcement activity.

If you judge that disclosing consumer health information to the police is necessary for the consumer's continuity of care (e.g. police enquiring if the consumer has already received their daily methadone dose or not as the consumer is now in custody, either because the consumer has been arrested or is in protective custody), information can be disclosed. Record this disclosure of information.

#### Key point

- Pharmacists must establish the facts behind the request by the police prior to considering whether or not to disclose personal information.

#### Relevant APP

- Use or disclosure of personal information (APP 6)



### Received in error

*The pharmacy receives a faxed Home Medicines Review referral. It contains personal health information about a consumer who is unknown to the pharmacy.*

The referral contains consumer health information which must be treated according to the pharmacy's privacy policy. The pharmacist should enquire of the sender whether the communication was intended for the pharmacy and the consumer should be notified that the pharmacy has received their Home Medicines Review referral and who has sent the referral.

If the HMR referral was sent in error to the pharmacy, the referral must be destroyed or de-identified as soon as practicable.

#### Key point

- Information received in error must be destroyed or de-identified as soon as practicable.

#### Relevant APPs

- Dealing with unsolicited personal information (APP 4)
- Notification of the collection of personal information (APP 5)

## SCENARIO

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### How far does family go?

*A consumer comes to the pharmacy asking for a copy of their dispensing history.*

A consumer's health information that is held by a pharmacy is owned by the consumer. They must be allowed to access and correct their personal information. If a consumer requests to view and have a copy of their personal information that is held at the pharmacy, the pharmacy must comply with the consumer's wishes. The request must be responded to within a reasonable time period.

A consumer requests a tax invoice for the family's recent pharmacy purchases, which includes the activity of both the consumer and their spouse who have the same Medicare number and are registered as a 'family' for tax/safety net purposes.

The pharmacy should obtain consent from the spouse to provide this personal information to the consumer.

De-identifying the personal information before providing it may not be an option unless the pharmacy can provide the information with the confidence that the information cannot be re-identified by the user (i.e. the wife). For example, if there are gender specific prescription items contained in the information it could be easily re-identified.

#### Key points

- Pharmacists must respond to a request within a reasonable period after the request is made.
- Pharmacists must not charge the individual for making the request, or for correcting personal information.

#### Relevant APPs

- Use or disclosure of personal information (APP 6)
- Access to personal information (APP 12)
- Correction of personal information (APP 13)

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### HMR information request

*An accredited pharmacist requests a consumer's dispensing history prior to conducting a Home Medicines Review and the information is held by the pharmacy.*

The request must be granted within a reasonable time period. The accredited pharmacist is the agent of the consumer. The consumer, by agreeing to a Home Medicines Review, has given their consent for access to their personal information held by the pharmacy.

If access is not granted, the pharmacy must generally provide written reasons for the refusal and provide the consumer with information on the mechanisms to complain about the refusal.

#### Key points

- Pharmacists must respond to a request within a reasonable period after the request is made.
- Pharmacists must not charge the individual for making the request, or for correcting personal information.

#### Relevant APPs

- Use or disclosure of personal information (APP 6)
- Access to personal information (APP 12)
- Correction of personal information (APP 13)



## You really are called Batwoman?

*A consumer enters the pharmacy and wants to purchase emergency contraceptive (EC) medicine. You explain to the consumer that the pharmacy records all EC medicine sales and you give her the EC checklist form to fill in. The name the consumer provides is a pseudonym rather than their real name.*

Consumers have the right not to identify themselves, or use a pseudonym, when engaging with the pharmacy. However, if by remaining anonymous or providing a pseudonym, it is impracticable to meaningfully assist the consumer and there is likelihood that there will be an interruption to their continuity of care, anonymity and pseudonymity does not apply.

### Key point

- Individuals must have the option of not identifying themselves, or of using a pseudonym.

### Relevant APP

- Anonymity and pseudonymity (APP 2)



## To keep or not to keep

*The pharmacy has recently completed recruitment for two pharmacy assistants and is unsure what to do with copies of the unsuccessful job applications.*

If the pharmacy does not want to keep the information, then it must destroy it in a secure manner e.g. shredding. Note: The information should not be placed in a recycling bin.

If the pharmacy wants to keep the information (i.e. for future reference) it should seek consent from the owner of the information by informing them that the pharmacy would like to keep the information for future reference.

If the owner provides consent the information must be kept in a secure manner.

e.g. If the information is held electronically, including scanned documents of hard copy applications, these need to be kept securely with designated restricted password access.

e.g. If the information is kept in hard copy, it must be kept in a secure manner (e.g. lockable filing cabinet) with designated restricted access ensuring only relevant people have access to it.

If the owner of the information does not provide consent, the information must be destroyed in a secure manner.

The pharmacy's database should be 'cleaned' (of unrequired data) every 12 months and this activity should be documented in the pharmacy's relevant privacy policies.

### Key points

- A pharmacist must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified if:
  - a pharmacy holds personal information about an individual; and
  - the pharmacy no longer needs the information for any purpose for which the information may be used or disclosed by the pharmacy; and
  - the information is not contained in a Commonwealth record; and
  - the pharmacy is not required by or under an Australian law, or a court/tribunal order, to retain the information.

### Relevant APPs

- Open and transparent management of personal information (APP 1)
- Notification of the collection of personal information (APP 5)
- Use or disclosure of personal information (APP 6)
- Security of personal information (APP 11)

## SCENARIO



### An awkward clinical conundrum

*A woman comes into the pharmacy with a prescription for isosorbide mononitrate for her husband. Upon dispensing, you notice that the pharmacy records show a recent dispensing of tadalafil, recently prescribed by his urologist. If used concurrently, these medicines have the potential to result in irreversible hypotension and potentially death. It is not known whether the wife is aware of her husband's therapy. Due to the potential for serious medication misadventure, it is not appropriate for you to dispense this medicine and you feel that you need to contact the doctor and alert them to the interaction in order for them to consider alternative therapy.*

Under the privacy legislation, such a disclosure to the doctor without consent of the husband could be justified as it would *lessen a serious threat to the life, health or safety* of the husband. However, it would not be appropriate to discuss this sensitive personal information with the wife at any stage without the husband's consent.

#### Key point

- Disclosure of information without the owner's consent can only be supported where there is a serious threat to life, health or safety; not where it just seems like a good idea.

#### Relevant APP

- Use or disclosure of personal information (APP 6)



### Level of risk

*A pharmaceutical company urgently recalls all stock of a new medicine for cholesterol. There have been several reports of patients with toxic skin necrosis, leading to death in three of the ten patients affected. The company advises all patients to cease taking the medicine immediately and seek an urgent appointment with their doctor for tests. You have a number of patients taking this medicine and you would like to use your dispensary records to contact patients, advising them of this recall and potential adverse effects.*

Under privacy legislation, this use of dispensing data would be appropriate as it constitutes a public health risk and is the most effective way to quickly notify affected patients.

#### Key point

- The level of risk around individual patient safety and public health must be carefully considered by the pharmacist and appropriate action taken, before releasing health information.

#### Relevant APP

- Use or disclosure of personal information (APP 6)



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