

Recording gender in medical records

When should a transsexual person's medical records be amended to reflect their acquired gender? (that is, the gender in which the person wishes to be recognised, which is not the gender that they were recognised in at birth).

Under the Gender Recognition Act 2004 ('GRA'), a transsexual person who is at least 18 years old can apply for legal recognition of their acquired gender through issue of a Gender Recognition Certificate (GRC). Once a person is granted a GRC, they will from that date – but not retrospectively – be entitled to be recognised as being of their acquired gender as opposed to the gender that was registered on their birth record.

However, GMC, NHS and BMA guidance states that requests to amend medical records should be granted, regardless of whether or not a Gender Recognition Certificate or updated birth certificate has been obtained. This reflects the spirit of the GRA which requires, amongst other things, that a person has lived in their acquired gender for the preceding two years in order to be eligible to apply for a GRC (note different rules apply to a person who wishes to apply for a GRC on the basis of having changed gender under the laws of a non-UK country).

Please see relevant extracts of the guidance below.

GMC, *Ethical Guidance: Trans healthcare* (<https://www.gmc-uk.org/ethical-guidance/ethical-hub/trans-healthcare#confidentiality-and-equality>):

“Medical records: changing name, title, sex, NHS number

Name and title Both electronic and paper medical records should clearly indicate your patient's preferred name and title.

Sex A patient's request to change the sex indicated on their medical records should be respected; they do not have to have been granted a Gender Recognition Certificate or have acquired an updated birth certificate for this to be changed.

NHS number If your patient is to be issued with a new NHS number which has no reference to their sex at birth, you should explain to them that they will not automatically be contacted regarding current or future screening programmes associated with their sex at birth, and discuss the implications of this. Decisions about screening should be made with patients in

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Department of Health, *Gender dysphoria services: a guide for General Practitioners and other healthcare staff*(attached):

"The GP is also responsible for making appropriate changes to patient record systems to reflect the patient's desired future gender role and to ensure that such changes facilitate screening for physiologically appropriate risks. For Male-to-Female patients, this includes a theoretical risk of breast and prostate cancer, but not cervical cancer. For Female-to-Male patients, the GP should arrange for a suitably dignified gynaecological examination according to the patient's genital physiology. All such arrangements should take into consideration the need to ensure that patients' gender histories are not disclosed (directly or indirectly) to third parties, in part because such disclosure can represent a criminal offence. Diligently kept and universally consistent records should minimise the risk of disclosure, but also of inadvertently addressing or referring to the patient inappropriately. The best general rule is to discuss matters in advance with the individual patient and obtain their informed consent for each process."

BMA guidance: Focus-on-gender-incongruence-in-primary-care

"Changing medical records and disclosures of information

The Gender Recognition Act 2004 provides safeguards for the privacy of individuals with gender incongruence and restricts the disclosure of certain information. The Act makes it an offence to disclose 'protected information' (i.e. a person's gender history after that person has changed gender under the Act) when that information is acquired in an official capacity.

This means that the 'protected information' can only be disclosed when:

it is to another health professional; and

it is for a medical purpose; and

there is a reasonable belief that the patient has consented to the disclosure.

PDS NHAIS guidance states that patients who are undergoing the transition process are also entitled to the same special protection against disclosure of their gender history.

Sometimes GPs are asked by patients with gender incongruence to change their name and gender on the practice medical record, and patients do have this right to change their personal details direct with the practice. Patients also have the right to change the name and gender on their official NHS registration documents without obtaining a Gender Recognition Certificate.

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The PDS NHAIS guidance sets out in more detail all the steps involved in changing the patient's name and gender on the patient record."

GP practices should note the following:

It is a criminal offence for a person who has, in an official capacity (including, for example, a doctor), acquired information relating to a person who has made an application under the GRA, to disclose the information to any other person without the person's consent (or in other limited circumstances) (GRA).

It is unlawful to discriminate against a person on the grounds of gender reassignment, which is a protected characteristic (Equality Act 2010)

Please also find an online article on Pulse which is written by MPS helpful.

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