



**CORPORATE GOVERNANCE
GOVERNANCE POLICY NO: 7
SECTION: PRIVACY AND CONFIDENTIALITY**

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1. INTRODUCTION

NRC acknowledges the rights of patients to privacy and dignity. This includes the right to protection of private information. In compiling this policy the statutory framework contained in the laws of South Africa was given due consideration. See references for further detail. The inherent right to privacy is protected in the Constitution of the Republic of South Africa.

All patient information will be protected from unauthorised access, loss or damage and respected as confidential by all staff members, contractors, volunteers or learners.

2. RISKS

Failing to show due care for patient confidentiality may result in a breach of patient rights and legal consequences.

3. TERMINOLOGY

- 3.1 Patient identifiable information includes patient name, address, full postal code, pictures, photographs, videos, images of patient and anything else that can identify the patient directly or indirectly.
- 3.2 Anonymised information is information which does not identify an individual directly and which cannot reasonably be used to determine identity. It requires removal of name, address, and any other data that can or might support identity.
- 3.3 Pseudonymised information is anonymised information that cannot reasonably be used by the holder to identify an individual. The originator of the information may have a means of identifying the individuals.
- 3.4 Clinical audit is the evaluation of clinical performance against standards or through comparative analysis with the aim to improve services.
- 3.5 Consent means patient has provided explicit and express consent to data being maintained with full understanding of the purpose of why data is held.
- 3.6 Public interest is exceptional circumstances that justify overriding the right of an individual to confidentiality in order to serve a broader national interest such as public welfare and health.

4. GOVERNING PRINCIPLES

Personal information is valuable to NRC. Collection, storage and use of personal information through our daily undertakings form part of normal business activities. In order to treat this information with the highest standard of confidentiality and privacy, it is

important that all employees comply with the requirements of the privacy policy. Key aspects relating to nursing is extracted for ease of reference below.

4.1 Ownership of Information

Any and all information that is processed by NRC, its employees and/or contractors on NRC electronic equipment, in hard copy format and/or soft copy, or on any storage or transmission system is the property of NRC and is deemed to be owned by NRC.

4.2 Consent

No personal information may be disclosed or processed in any way that is incompatible with the consent provided, unless subsequent consent has been obtained in the course of conducting business.

4.3 Notice

Notice should be provided to the customer/patient at time of collection describing the purpose for which personal information is collected, whether or not the supply of personal information is voluntary or mandatory, the consequences of failure to provide the information and how personal information will be used.

4.4 Information security

All reasonable steps must be taken, including physical, administrative and technical safeguards, to protect personal information from loss, misuse, unauthorised access, disclosure, alterations and destruction.

4.5 Awareness and education

NRC will ensure that privacy issues are discussed on an annual basis to ensure staff understand the importance of this pertinent issue and has the means to deal with this in an appropriate manner.

4.6 Incidents

All information privacy related incidents must be reported to NRC for investigation and resolution.

5. CONFIDENTIALITY

A duty of confidence arises when one person discloses information to another in circumstances where it is reasonable to expect that the information will be held in confidence. The duty of care is embodied in the legislative framework of the law and in professional codes of conduct of various health care providers. Patients entrust us with

and allow us to gather sensitive information relating to their health and other matters as part of their seeking treatment. Their expectation to privacy and confidentiality is legitimate. No disclosure of patient identifiable information can be done without the express consent of the individual involved. The only override is where it is in the public's interest to do so.

6. LEGAL FRAMEWORK

- 6.1 The Constitution South Africa Act No 108 of 1996 (s14) deals pertinently with the right to privacy and confidentiality.
- 6.2 The Children's Act No 38 of 2005 (13) states that each child has the right to confidentiality regarding his health status except when maintaining such confidentiality is not in the best interest of the child.
- 6.3 The Choice of Termination of Pregnancy Act No 92 of 1996 (7) provides that the identity of a woman who obtained a termination of pregnancy shall remain confidential at all times.
- 6.4 The Electronic Communications and Transactions Act No 25 of 2002 applies in respect of electronic transactions or data messages and state that data controller should have the express written permission of the data subject for the processing, collecting, collation or disclosure of information of a person.
- 6.5 The Medical Schemes Act No 131 of 1998 (57) deals with the business of a medical scheme and the duties of the Board of Trustees to ensure all reasonable steps are taken to protect the information of members.
- 6.6 The Mental Health Care Act No 17 of 2002 (8) states that a person's human dignity and privacy must be respected.
- 6.7 The National Health Act No 61 of 2003 (14) stipulates that the information is confidential and may not be disclosed if not consented to.
- 6.8 The Nursing Act No 33 of 2005, regulations deal dealing with acts of omission specifies that information obtained concerning a patient in the course of professional activities may not be disclosed without consent.
- 6.9 The Pharmacy Act no 53 of 1974, rules relating to good pharmacy practice deals extensively with disclosure of information obtained in the course of professional activities without express consent will constitute unethical or unprofessional conduct.
- 6.10 The Promotion of Access to Information Act No 2 of 2000 deals with rights of access to information and clearly state that personal information may not be disclosed to third-party unless the party has given permission for disclosure of information.

6.11 The Protection of Personal Information Act No 4 of 2013 provides clear guidance on the protection rights of personal information.

7. PROCESS

The following principles will be adhered to and will be considered.

7.1 It is important to recognise for each process or decision that the following is considered before release of information:

7.1.1 Does it justify the purpose?

7.1.2 Is the minimum patient identifiable detail disclosed?

7.1.3 Access to information is on a strict to know basis only?

7.1.4 Everyone involved with patient information understand their role?

7.1.5 Compliance to the law is a first priority?

7.1.6 If you answer no to any of these questions it is recommended that you reconsider your decision.

7.2 Right to refuse or permit the sharing of information

7.2.1 NRC abides by the Patient Rights Charter that grants a patient full participation in his/her health care management.

7.2.2 To this extent, it is essential that patients indicate on admission whether their information captured on NRC records may be shared with the treating physician and other doctors that patient may be referred to.

7.2.3 The decision made during the admission process will dictate the extent of sharing of information.

7.2.4 Should the data be used for marketing purposes, or any other matter it is recommended that explicit informed consent be obtained in writing.

7.2.5 Providing of lists to clergy may only be done with the explicit written consent of the patient and in line with the reception policy dealing with this topic.

7.2.6 The patient always has the right to refuse his/her name being placed on a list.

7.3 Sharing with Managed Care and Third parties

7.3.1 It is important to note that when there is a medical aid involved, the patient's attention should be drawn to the fact that the medical aid is

entitled to full disclosure of patient's ICD-10 treatment and diagnostic codes.

- 7.3.2 Without this, there may be a dispute regarding payment in which case the patient will be liable for the full amount.
- 7.3.3 This information is shared to facilitate the payment process, and refusal of patient that ICD coding may be disclosed should be dealt with by the reception staff.
- 7.3.4 Where medical aid case workers require more disclosure an indemnity should be provided with the information to state that this request is primarily attended to base on the fact that NRC is accommodating and facilitating payment of medical accounts.

7.4 Need to know basis

- 7.4.1 In defining the data models for NRC with access rights the need to know principal and least share philosophy will be adopted.
- 7.4.2 Data access profiles have to be defined on a need to know basis only. As an example, patient demographic information will be captured and updated at main reception. Changes to logical data profiles have to be ratified and approved by the Information Security Officer and CIO to ensure this requirement is met.

7.5 Privacy within the unit

- 7.5.1 Renal Care Unit records remain the property of the Renal Care Unit as defined in the terms and conditions of the admission document. Records remain active whilst patient is receiving treatment at said Renal Care Unit. On termination of treatment at a Renal Care Unit, the record becomes inactive, and the requirements of the Promotion to Access of Information act are applicable.
- 7.5.2 If a person requires access to their records the required Form C (PAIA), should be completed stating the reason why records are requested. A small administration fee may be charged for copying of records.
- 7.5.3 If a third-party requires information from an individual, permission has to be granted by the individual in the required format prior to providing the information to requestor. All these rules are defined in NRC Corporate Governance Policy No 6 – Access to Information.
- 7.5.4 It is important that the environment within the unit gives due consideration to privacy of patients i.e. tone of voice, closure of curtains, records out of reach of general public during visiting hours, not discussing patients in

corridors or public places. It is important to ensure that if white boards are used to track patient movement, that only the bed number and patient name be displayed. No additional information should be recorded on the boards.

7.6 Filming and video of patients

- 7.6.1 Special attention should be paid to obtain informed consent when filming patients in the Renal Care Unit.
- 7.6.2 The same applies to families wishing to observe and film a procedure. It is important that in cases like these the doctors grant their permission for filming to proceed.
- 7.6.3 The client liaison officer should ensure that photographer is informed of special conditions that may apply, infection control procedures, the right to revoke consent to film could occur at any time and that should the photographer collapse during the procedure that he/she will not receive priority attention.

7.7 NRC Code of Ethics

- 7.7.1 All staff has to abide by the Code of Ethics which stipulates the following regarding access to information.
- 7.7.2 Any information with respect to any product, plan or business transaction of NRC, or personal information regarding employees, including their salaries, must be kept strictly confidential and must not be disclosed or used for improper purposes by any employee unless and until proper authorization for such disclosure has been obtained.
- 7.7.3 In addition, operating areas may implement policies and procedures to prevent improper transmission of material non-public information within NRC. (Refer NRC Corporate Governance Policy No 4 – Code of Ethics).

7.8 Clinical research and trials

- 7.8.1 Where clinical research and trials are undertaken it is essential that patients provide express consent to participate in the research project. Approval for all research needs to follow the research guidelines. (Refer NRC Clinical Governance Research Policy).

7.8.2 Where statistical data is captured and documented for building clinical governance benchmarks, the use of patient specific data should be discouraged and not disclosed.

7.9 Training

7.9.1 As NRC is a training school, patients may from time to time be exposed to a learner in practice. It is important the patient's right to refuse treatment from a student be respected.

8. REFERENCES

- 8.1 The Constitution of the Republic of South Africa No 108 of 1996 as amended.
- 8.2 Confidentiality NHS Code of Practice. November 2003. Department of Health NHS. Obtained from <http://www.connectingforhealth.nhs.uk> on 27 May 2013.
- 8.3 The Patient Rights Charter. Department of Health. Obtained from <http://www.doh.gov.za/docs/legislation/patientsright/chartere.html> on 20 May 2013.
- 8.4 National Health Act No 61 of 2003.
- 8.5 The Children's Act No 38 of 2005.
- 8.6 The Choice of Termination of Pregnancy Act No 92 of 1996.
- 8.7 The Electronic Communications and Transactions Act No 25 of 2002. South Africa.
- 8.8 The Medical Schemes Act No 131 of 1998. South Africa.
- 8.9 The Mental Health Care Act No 17 of 2002. South Africa.
- 8.10 The Nursing Act No 33 of 2005 and its regulations.
- 8.11 The Pharmacy Act no 53 of 1974 and its regulations.
- 8.12 The Promotion of Access to Information Act No 2 of 2000. South Africa.
- 8.13 The Protection of Personal Information Act No 4 of 2013.
- 8.14 Core Standards, Department of Health 2013.
- 8.15 Various NRC Policies including:
 - 8.15.1 NRC Corporate Governance Policy No 4 – Code of Ethics
 - 8.15.2 NRC Corporate Governance Policy No 6 – Access to Information