

This fact sheet is intended for the *data subject*, i.e. the individual whose personal data is being used.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS :

Do I have the right to access my medical file?

Do I have the right to access the medical file of my (deceased) family member?

Do I have the right to request a correction or supplementation to my file?

Do I have the right to ask for my file to be erased?

Do I have the right to block access to my file?

When does a legal representative have the right to access the medical file of a patient, request the erasure of the file or request a supplementation/correction to the file?

How can patients exercise their rights?

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The titles in italics are also available on [www.cbppweb.nl](http://www.cbppweb.nl).

## Your Rights as a Patient

You may want to receive a copy of your medical file and would like to know what costs your GP can charge you. Or perhaps you would like to know whether your dentist must comply with your request to erase your file. Or maybe you are dissatisfied with your specialist's diagnosis and would like to add your opinion to your medical file.

The relationship between you and your care provider is regulated by law. The Wet op de geneeskundige behandelingsovereenkomst (WGBO) [Medical Treatment Contracts Act] lays down the rights and obligations of care providers and patients. In addition to the WGBO the Wet bescherming persoonsgegevens (WBP) [Dutch Data Protection Act], the Wet bijzondere opnemingen in psychiatrische ziekenhuizen (BOPZ) [Psychiatric Hospitals (Compulsory Admissions) Act] and the Wet op de jeugdzorg [Youth Care Act] also contain stipulations relating to medical data. The fact sheet entitled *Rights of the data subject* [Rechten van de betrokkene] explains which rights are included in the WBP.

### **Right to access and have a copy of your file**

Pursuant to the WGBO you have the right to access to the details in your medical file, such as x-rays, diagnoses and surgical procedure reports. You are not entitled to view the personal case notes of the care provider. Exactly what are considered to be personal case notes is explained in the fact sheet entitled *Handling of your medical data* [Omgang met uw medische gegevens].

Your request to access to your file can only be refused if it infringes the personal privacy of someone other than you. The care provider must be able to demonstrate conclusively that this would be the case. The rule applies that protecting the privacy of the other person must weigh heavier than your interest in accessing your file. This could be, for instance, information the care provider may have obtained from your partner or family member in respect of family relationships, at which time it was agreed that you would not have access to this information.

You are also entitled to a copy of your medical data. A care provider must allow you to access your file, or make a copy, as soon as possible after your request. The care provider is not allowed to charge you for viewing your file. However, he can charge a fee of €23 per page for providing you with a copy, to a maximum of €4.50. This maximum fee, as stipulated in the *Besluit kostenvergoeding rechten betrokkene WBP* [Individual Reimbursement Decree with the WBP], applies equally to the issuance of paper copies and, for instance, copies of x-rays.

In addition to the WGBO the WBP also applies to the perusal of your medical file. Further information about your right to peruse your medical file, as outlined in the WBP, can be found in the fact sheet entitled *Access to your personal data* [Inzage in uw persoonsgegevens].

### **Access to the medical file of a (deceased) family member**

With respect to obtaining access to the medical data of a family member, a distinction must be made between the file of a living and that of a deceased family member.

### Living family member

Only the patient and, where applicable, his legal representative, have the right to access the patient's medical file. A legal representative is a parent or guardian with custody of a minor, or a mentor or guardian appointed by the Court. If a family member is not the legal representative of the patient the care provider is not authorised to give this family member access to the file. This is only possible if the patient has given his permission, if there is a legal exemption in respect of the confidentiality of medical data, or if the care provider is faced with a conflict of responsibilities, for instance in an emergency situation whereby the patient's interest in the confidentiality of the data in the file is deemed to be of secondary importance. It is up to the care provider to assess if one of these aforementioned grounds for exemption applies. He must be able to substantiate why he breached the duty of confidentiality he has to his patient. The most effective way to obtain access to the file of a family member is to have permission from the family member in question. Further information on this aspect is available in the fact sheet entitled *Confidentiality of your medical data* [Geheimhouding van uw medische gegevens].

### Deceased family member

If the patient is deceased it is of course no longer possible to obtain permission. The jurisprudence, doctrines and codes of conduct for physicians show that it is still possible for them to provide (some) information to family members of the deceased if it can be assumed that the deceased would have had no objection or would even have wanted this information to be available to his family members. In many cases the deceased may be assumed to have given permission if his next of kin are able to demonstrate that there are substantial reasons. A substantial reason could be, for example, the family wanting to initiate proceedings against the care provider(s) in question, or needing information about a hereditary condition the deceased suffered from. There is no question of a substantial reason if the family requests access to the file in the context of, for instance, proceedings to contest the deceased's will. Medical professional secrecy can also be breached pursuant to statutory regulations, such as the Wet bestrijding infectieziekten en opsporing ziekteoorzaken [Control of Infectious Diseases and Investigation of Causes of Disease Act]. A care provider can also appeal to a conflict of responsibilities if, for instance, a certain situation presents a serious (mortal) threat to others. The decision whether or not to breach the duty of confidentiality always rests with the care provider.

The aforementioned views have broad support and can be found in the guideline provided by the Koninklijke Nederlandsche Maatschappij ter bevordering der Geneeskunst (KNMG) [Royal Dutch Medical Society]. The KNMG guideline reads as follows: "Access to the medical details of a deceased person can be granted when the physician is of the opinion that, if alive, the person in question would not have objected, or if required by a statutory obligation. The physician is the responsible party in this matter. He cannot be relieved from his duty of confidentiality by surviving relatives" (quoted from: KNMG guidelines in respect of the handling of medical data, Utrecht 1996).

**Table relating to the access to medical files**

<i>Patient file</i>	< 12 years of age	age 12 – 16	> 16 years of age	deceased
<i>Request for access made by</i>				
<b>The patient</b>	<b>Yes</b> - only <u>with permission</u> from the legal representative; - or <u>without the permission</u> of a legal representative if in the interest of proper care provision; - insofar as this does not infringe someone else's privacy.	<b>Yes</b> - insofar as this does not infringe someone else's privacy.	<b>Yes</b> - insofar as this does not infringe someone else's privacy.	N/A
<b>The patient's legal representative</b>	<b>Yes</b> - unless not compatible with the care provided by a diligent care provider; - insofar as this does not infringe someone else's privacy.	<b>No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; - pursuant to a statutory regulation.	<b>No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; - pursuant to a statutory regulation.	<b>Yes</b> - unless not compatible with the care provided by a diligent care provider; - insofar as this does not infringe someone else's privacy.

<i>Patient file</i>	<b>&lt; 12 years of age</b>	<b>age 12 – 16</b>	<b>&gt; 16 years of age</b>	<b>deceased</b>
<i>Request for access made by</i>				
<b>Family member (not in the capacity of a legal representative)</b>	<b>No</b> , unless - with the patient's permission; - pursuant to a statutory regulation.	<b>No</b> , unless - with the patient's permission; - pursuant to a statutory regulation.	<b>No</b> , unless - with the patient's permission; - pursuant to a statutory regulation.	<b>No</b> , unless - the patient's permission can be assumed; - pursuant to a statutory regulation.

*The information in this table is normally sufficient. For specific cases consult the WGBO.*

### **The right to make a correction or addition to the file**

You have the right to correct the details in your medical file. You can do this if the details are factually incorrect, incomplete or irrelevant for the purpose or purposes of the processing. The right to request a correction of your file does not extend to views, opinions or reports of (subjective) observations. The right to make a correction to your file is not intended for the correction of personal details consisting of impressions, opinions and conclusions that you disagree with. This right relates only to 'facts'; details such as your name and date of birth, about which there can generally be no difference of opinion. The right to request correction of your file is laid down in the WBP and not in the WGBO. Comprehensive information about this right can be found in the fact sheet entitled *Correction of your personal data* [Correctie van uw persoonsgegevens]. Pursuant to the WGBO you can, however, ask your care provider to add a statement in relation to the documents included in the file.

### **Table relating to a request for a correction or supplementation to the medical file**

<i>Patient file</i>	<b>&lt; 12 years of age</b>	<b>age 12 – 16</b>	<b>&gt; 16 years of age</b>	<b>deceased</b>
<i>Request for supplementation or correction made by</i>				
<b>The patient</b>	<b>Supplementation: Yes</b> - only <u>with permission</u> from the legal representative; - or <u>without the permission</u> of a legal representative if in the interest of proper care provision.	<b>Supplementation: Yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party; - the patient is not able to reasonably assess his own interests.	<b>Supplementation: Yes</b> , unless - the patient is not able to reasonably assess his own interests.	N/A
<b>The patient's legal representative</b>	<b>Supplementation: Yes</b> - unless not compatible with the care provided by a diligent care provider.	<b>Supplementation: No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; > in this case <b>yes</b> , unless - not compatible with the care provided by a diligent care provider.	<b>Supplementation: No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; > in this case <b>yes</b> , unless - not compatible with the care provided by a diligent care provider.	<b>Supplementation: Yes</b>
<b>Family member (not in the capacity of a legal representative)</b>	<b>Supplementation: No</b> <b>Correction: No</b>	<b>Supplementation: No</b> <b>Correction: No</b>	<b>Supplementation: No</b> <b>Correction: No</b>	<b>Supplementation: No</b> <b>Correction: No</b>

*The information in this table is normally sufficient. For specific cases consult the WGBO and the WBP.*

### **The right to have the file erased**

You have the right to have certain parts of your file or your entire file erased. Your request for the erasure of (part of) your file must be complied with within three months. If a certain part of the medical file has been erased the care provider can make a note that this part was erased at your request. There are two exceptions to your right to have your file erased:

- a statutory regulation or another law that stipulates that data must be kept;
- the data must be kept because of a substantial interest of another party.

### Statutory obligation to keep data

One example is the stipulation in the Besluit Patiëntendossier BOPZ [BOPZ Patient File Decree] to the effect that a request for erasure made by a patient (who was involuntarily admitted) can only be submitted five years after completion of the BOPZ treatment. Another example is the 'list of archive documents to be destroyed that are held by university hospitals', which is based on the Archiefwet [Public Records Act]. This list stipulates that certain documents (discharge letters, surgical procedure reports, etc.) must be kept for 115 years after the (date of) birth of the patient because of the (evidentiary) interests of the government. The government's interest in keeping medical data for an extended period of time would be undermined if such data could be erased at the request of the patient.

### Obligation to keep data because of a substantial interest of another party

As an example, the care provider needs your data for his defence in proceedings you have initiated against him. The care provider can also refuse to erase data if he feels he needs this data for your further treatment or if he feels that the information is relevant to other patients who, for instance, may have the same hereditary condition. If the care provider refuses to erase data he must explain his reasons to you (preferably in writing).

It is not possible to give a 'hard and fast rule' about the way in which a medical file must be erased. The important thing is the general stipulation that the care provider must treat the personal data of others with due care. This responsibility increases as the level of sensitivity of the data increases. In this respect it may be obvious that a rubbish bin is not the correct place to dispose of (part of) a medical file. A more appropriate way to destroy data is with the aid of a paper shredder or through a company that specialises in paper disposal. A practical alternative is for the care provider to hand the file over to you instead of destroying it, so that you become responsible for the destruction of your file.

**Table relating to a request for the erasure of a medical file**

<i>Patient file</i>	<b>&lt; 12 years of age</b>	<b>age 12 – 16</b>	<b>&gt; 16 years of age</b>	<b>deceased</b>
<i>Request for erasure made by</i>				
<b>The patient</b>	<b>Yes</b> - only <u>with permission</u> from the legal representative; - or <u>without the permission</u> of a legal representative if in the interest of proper care provision; - unless pursuant to a statutory regulation or substantial interest of another party .	<b>Yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party; - the patient is not able to reasonably assess his own interests.	<b>Yes</b> , unless - pursuant to a statutory regulation; - substantial interest of another party; - the patient is not able to reasonably assess his own interests.	N/A
<b>The patient's legal representative</b>	<b>Yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party.	<b>No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; > in this case <b>yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party.	<b>No</b> , unless - the party requesting access to the file is the mentor, guardian or authorised representative of the patient; > in this case <b>yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party.	<b>Yes</b> , unless - not compatible with the care provided by a diligent care provider; - pursuant to a statutory regulation; - substantial interest of another party.
<b>Family member (not in the capacity of a legal representative)</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>

*The information in this table is normally sufficient. For specific cases consult the WGBO.*

### **The right to block access to a medical file**

The right to block access to a medical file gives someone the right to insist on being the first person to be notified of the results and conclusions of a medical examination and to decide whether these results can be passed on to third parties. This could be, in this context, the results of a psychological evaluation in the context of a job application. In this case the applicant can decide whether the results of the psychological evaluation are forwarded to his future employer.

Since 1 May 2005 the WGBO has stipulated that the right to block access to a medical file does not apply to (medical check-up) activities in the context of an established employment relationship, insurance pertaining to civil law that is already in place or an educational programme to which the person in question has already been admitted. In addition the WGBO stipulates that, at least until 1 May 2010, the right to block access to a medical file does not yet apply to medical actions that are performed in the context of the implementation of statutory regulations in the area of employment conditions, social security and social insurance, as well as pension schemes and collective employment agreements.

### **The right of a legal representative to access to a file, request the erasure of a file or request a supplementation to or correction in the file**

Legal representatives are persons who have certain rights as representatives of a minor or a person who is legally incompetent, because the person in question is not deemed capable of making such requests himself.

#### Patients under 12 years of age

If the juvenile has not yet attained the age of 12 his legal representatives will, in principle, have the right to access his medical file, request the erasure of his file or request a supplementation to his file. The care provider is not obliged to give a legal representative access to the file or to comply with his request for erasure or supplementation if this means he cannot provide the proper care. The care provider must assess whether this is the case on an individual case basis. The final decision will be dependent on the circumstances of the case. The patient only has the right to access his file, request the erasure of his file or request a supplementation to his file with the consent of his legal representatives. In some cases, if it is deemed to be in the interest of proper care practices, the patient may be given access to his file or his request for erasure or supplementation may be complied with without this consent.

If the care provider gives a legal representative access to the file, or, at his request, erases the file or makes a supplementation to the file, he is not required to notify the patient. The right to request a correction of the file as laid down in the WBP applies only to legal representatives and does not apply to the underage patient himself.

#### Legally competent patients aged 12 and over

All patients aged 12 and over who are legally competent have the right to access their medical file, request the erasure of or a supplementation to their file. The care provider is not authorised to give the parents of the patient, for instance, access to the file unless the patient has given his permission. Other exceptions to the granting of access to legal representatives can be found in the fact sheet entitled *Confidentiality of your medical data* [Geheimhouding van uw medische gegevens]. The right to request a correction of the medical file, as laid down in the WBP, does apply to the legal representatives of patients under 16 years of age, but does not apply to these patients themselves.

#### Legally incompetent patients

Patients who are unable to make a reasonable assessment of their interests are represented by their legal representatives. This also applies to patients subject to a guardianship or mentorship. The legal representatives have the right to access the patient's medical file, request the erasure of the patient's file or request a supplementation to the patient's file, unless this is not compatible with the care provided by a diligent care provider. The right to request correction of the file, as laid down in the WBP, must also be exercised by the legal representatives.

### **If you have questions or complaints**

If you feel that your care provider unjustly denied your request, there are a number of options open to you. First of all you should discuss your case with your care provider. If you are not satisfied with the outcome of this meeting or if you do not wish to discuss the matter with your care provider, you can take a number

of further steps. Every care provider is obliged to establish a complaints commission. In simple and clear cases a complaint can also be handled by a complaints functionary or confidential representative. You can submit complaints about physicians, dentists, obstetricians/midwives, pharmacists, nurses, physiotherapists, clinical psychologists and psychotherapists to a regional Tuchtcollege voor de gezondheidszorg [Disciplinary Board for the Healthcare Sector]. Alternatively, you can submit a complaint to the Officier van Justitie [Public Prosecutor]. For advice and support you can contact the Zorgbelangorganisatie in your region via [www.zorgbelang-nederland.nl](http://www.zorgbelang-nederland.nl) or by telephone on number 0900 2437070. [There are 13 care associations in the Netherlands, each active in its own region. They act on behalf of those who need care in the region, give information and try to achieve the highest quality in care. Zorgbelang Nederland is the sector organization of the regional care associations.] You can also submit your questions or complaints about the handling of your medical data to the Dutch Data Protection Authority (Dutch DPA). Further information about mediation is available in the fact sheet entitled *Mediation by the Dutch DPA in respect of your personal data* [Bemiddeling door het CBP inzake uw gegevens]. Further information about the Dutch DPA's complaints procedure can be found in the fact sheet entitled *Your complaint and the Dutch DPA* [Uw klacht en het CBP].