

“Chain of Evidence” SMVN Position Statement

25 June 2024

NOTE

This guideline is not intended to be construed or to serve as a standard of care. Standards of care are determined based on all clinical data available for an individual case and are subject to change as scientific knowledge and technology advance and patterns of care evolve. Adherence to guideline recommendations will not ensure a successful outcome in every case, nor should they be construed as including all proper methods of care or excluding other acceptable methods of care aimed at the same results. The ultimate judgement must be made by the appropriate healthcare professional(s) responsible for clinical decisions regarding a particular clinical procedure or treatment plan. This judgement should only be arrived at following discussion of the options with the patient, covering the diagnostic and treatment choices available. It is advised, however, that significant departures from the national guideline or any local guidelines derived from it should be fully documented in the patient's case notes at the time the relevant decision is taken.

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A. SITUATION

Guidance for handling medico-legal samples and preserving the chain of evidence was last published by the Royal College of Pathologists (RCPATH) and the Institute of Biomedical Science (IBMS) in 2017 (RCPATH document number G047) however, the guidance has since been “archived” and has not been updated, despite a review date in 2021.¹ The document is considered by many, within the SMVN, to be unclear.

Guidance on the related topic of “the release of specimens and data to the police and other law enforcement agencies” was also been published jointly by the RCPATH and IBMS (document number G040), in 2006. Although their review date was in 2007, they have not been updated since but do still appear on the IBMS website and are not marked as archived.²

These topics have been discussed and this current position statement has been agreed by the SMVN.

B. BACKGROUND

A “chain of evidence” is important wherever there is a possibility that the result of analysis of a sample will be a requirement for a criminal prosecution. The chain of evidence (sometimes called ‘chain of custody’ or ‘continuity’) is a legal concept, which requires that the origin and history of any exhibit to be presented as evidence in a court of law must be clearly demonstrated to have followed an unbroken chain from its source to the Court.

In all medico-legal cases involving pathology samples (all specialities) it is essential, as far as possible, that there should be an unbroken “chain of evidence” accounting for the safe-keeping and treatment of each sample, from the moment of its creation or appropriation, through all tests, to trial. In Scotland, all persons handling the sample must sign and date the police production label attached to the sample.

The RCPATH and IBMS published guidance on the topic in 2017 (now archived), covering the subject in detail, including: samples requiring this procedure, receipt of samples, supervision of sample processing, reporting procedures, archiving of chain-of-evidence samples and related documentation, and the legal status of electronic data and audit trails.¹

The guidance states that, sometimes laboratories may receive or process samples for which there is already a broken chain of evidence. It is also known that courts have accepted laboratory data as evidence despite a broken chain. The College advises that laboratories should seek to maintain a chain of evidence from receipt to post-analytical disposal of the sample and dispatch of results (when samples are collected as part of a forensic investigation) or from becoming aware of the forensic importance of a sample to disposal and dispatch. If the Court then wishes to assess the admissibility of such evidence, the role of the laboratory will be less vulnerable to adversarial scrutiny.

In 2006, the RCPATH and IBMS also published guidance on the release of specimens and data to the police and other law enforcement agencies.²

C. ASSESSMENT

Discussion at an SMVN Scientific Group meeting highlighted that there was some variation in practice with respect to chain of evidence within NHS Scotland Microbiology / Virology laboratories. Consequently, a brief poll of such practice, which falls under two headings, was undertaken by the SMVN.

1. Samples accompanied by chain of evidence form

All NHS Scotland Microbiology / Virology laboratories treat samples that are accompanied by a chain of evidence form instigated by the requester in a way that complies with the rules of evidence that may be used in a court of law. This includes samples that are brought to the laboratory by the police doctors who have taken them, police officers or other law enforcement agents. This includes recording all movements of a specimen in a verifiable manner demonstrating when the sample was handled, where it was moved from and to, and by whom. Each movement must be evidenced by a signature as well as a record of the time and date.

2. Samples NOT accompanied by chain of evidence form

Discrepancies were found regarding the handling of samples received in the laboratory which are not accompanied by a chain of evidence form. 50% of laboratories would initiate a form based on clinical details supplied and 50% would not.

The Royal College of Pathologists guidelines state that it is not for laboratory staff or pathologists to decide whether or not evidence is admissible, neither is it for laboratory staff or pathologists to decide whether or not a crime has occurred. The primary function of laboratories is a diagnostic one and the principal duty of care is to the patient.

The guidelines do however, acknowledge that laboratory results of forensic importance sometimes arise unexpectedly. For example, the culture of sexually transmitted microorganisms (e.g. *Neisseria gonorrhoeae*) from children below the age of consent or the presence of spermatozoa on urine analysis from a female under the age of consent may be evidence of sexual assault or abuse, which would require formal investigation. However, because the samples may have been taken as part of a routine diagnostic process, there would be no formal chain of evidence and the result might be inadmissible in Court. In such circumstances, for repeatable samples, a fresh sample may be taken and a chain of evidence established from that point.

NHS Scotland Microbiology / Virology laboratories agreed that a chain of evidence form should not be initiated by the laboratory.

3. Release of specimens and data to the police and other law enforcement agencies

The IBMS / RCPATH guidelines give advice to pathologists and laboratory staff on the release of patient samples to the police or other law-enforcement agencies.² They should be used as a basis for the writing of local policies.

Laboratory samples and data, such as results, are sometimes required as part of a criminal investigation or a coroner's enquiry into a death (e.g. for toxicology analyses or DNA studies). In Scotland, both functions are under the jurisdiction of the

Procurator Fiscal. It is essential to the administration of justice that, if such materials are to be handed over, it is in accordance with the appropriate laws.

Much of the content of RCPATH / IBMS guidelines² relates to the Police and Criminal Evidence Act (PACE) 1984 which applies to England and Wales but not to Scotland. Laboratory samples and data, such as results, are sometimes required as part of a criminal investigation or a coroner's enquiry into a death - It is essential to the administration of justice that, if such materials are to be handed over, it is in accordance with the appropriate laws. In England and Wales, samples and information (including request forms and laboratory reports) collected from a patient in the course of their care are excluded material and cannot, in general, be seized without the consent of the patient or the order of a judge. The situation pertaining to samples and other material derived from post-mortem examination is less clear as there is little or no case law in this area.

A summary of the situation in Scotland is as follows:

Applications to search or seize are embedded in the common law. Access to medical data, records and samples require the procurator fiscal to serve a Notice of Appearance or the appropriate person so that they can be legally represented at any hearing. The question of urgency may circumvent the rule depending on the circumstances at the time.

D. SMVN RECOMMENDATIONS

- a. If a sample is received by a laboratory with a chain of evidence form, the laboratory must continue to complete that form in accordance in a manner that complies with the rules of evidence that may be used in a court of law.
- b. If a sample is received by a laboratory without a chain of evidence form, the laboratory must not initiate a form. A fresh sample may be taken and a chain of evidence established from that point.
- c. Local laboratories should have protocols addressing the release of specimens and data to the police and other law enforcement agencies, in accordance with the appropriate laws.

E. REFERENCES

1. Guidance for handling medico-legal samples and preserving the chain of evidence (2017). Published by the Royal College of Pathologists and the Institute of Biomedical Science (RCPath document number G047). Now “archived”.

<https://www.rcpath.org/discover-pathology/news/new-guidance.html>

<https://www.rcpath.org/static/b6a8cd1f-9ec8-498d-b78ac5472164c4d7/b709aa1c-2a7a-4813-8737b4498f9ac3f4/G047-ChainOfEvidence-Mar17.pdf>

Last accessed 25 June 2024

2. The release of specimens and data to the police and other law enforcement agencies (2006). Published by the Royal College of Pathologists and the Institute of Biomedical Science (document number G040).

<https://www.ibms.org/resources/documents/the-release-of-specimens-and-data-to-the-police-and-other-law/>

Last accessed 25 June 2024