

Confidentiality & Consent

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Legislation & Guidance: Until October 2009

- Access to Medical Reports Act 1988
- Data Protection Act 1998
- The Human Rights Act 1998
- Disability Discrimination Act 1995
- Guidance on ethics for Occupational Physicians FOM 2006
- The Occupational Physician: BMA 2009
- Access to Medical Reports: Guidance from the BMA Medical Ethics Department 2009.
- Good Occupational Medical Practise: FOM Draft: May 2008
- Guidance for Occupational Physicians on Compliance with the Access to Medical Reports Act: May 2008 (Working Group)
- Occupational Health Law: 4th Edition Dianne Kloss 2005
- Common Law

and others!!

Debate in Interpreting Legislation/ Guidance

- Focused on the following:-
 - the definition of the word 'PATIENT
 - the statement:-

“a medical practitioner who is, or has been, responsible for the CLINICAL CARE of the patient.

October 2009: GMC Publications

Confidentiality:

Confidentiality: Supplementary Guidance

Made clear:-

Guidance applies to:-

- providing information to 3rd parties including employers;
- either following an examination or from existing records.

PATIENT: Refers to employees, clients, athletes and any one else whose personal information you hold or have access to whether or not you care for them in a traditional therapeutic relationship

WORDING: Paragraph 34 use of SHOULD not must:-

- 'you must' is used for an overriding duty or principle;
- 'you should' is used when we are providing an explanation of how you will meet the overriding duty;
- 'you should' is also used where the duty of principle will not apply in all situations or circumstances, or where there are factors outside your control that affect whether or how you can comply with the guidance.

The Guidance (34) States That In These Cases You SHOULD:-

- a) be satisfied that the patient has sufficient information about the scope, purpose and likely consequences of the examination and a disclosure, and the fact that relevant information cannot be concealed or withheld;
- b) obtain or have seen written consent to the disclosure from the patient;
- c) only disclose factual information you can substantiate presented in an unbiased manner, relevant to the request; you should not normally disclose the whole health record etc;
- d) offer to show your patient or give them a copy of any report you write about them for employment or insurance purposes before it is sent;

UNLESS:-

- I. they indicate they do not wish to see it;
- II. disclosure is likely to cause serious harm to the patient or anyone else;
- III. disclosure would be likely to reveal information about another person who does not consent.

35 If Patient REFUSES Consent or if it is not Practicable to get Consent

Information can still be disclosed:-

- a) If required by law (including regulatory bodies e.g. NMC, GMC);
- b) If it can be justified in the public interest.

NB: This is a précis.

SUBSEQUENTLY: GMC Meeting:-

Faculty Occupational Medicine; Society
Occupational Medicine; Representatives of
the Private providers.

OUTCOME:-

- Joint Statement to all Members
- FOM Published FAQ
- FOM Revised Text Articles 3.37-3.40 of Guidance on Ethics for Occupational Physicians 6th Edition: May 2006

Questions & Answers

- 17: Issue of nurses providing the report.
- 12: Must every individual be given a copy of the report before sending to the employer.
- 8: Does consent have to be in writing;
- 11: Do I need to remind people that they can withdraw consent; and
- 18: How long should I allow if they indicate they wish to see the report.

Etc., etc.