GENERAL MEDICAL COUNCIL GUIDANCE ON CONFIDENTIALITY (2009) AND OCCUPATIONAL PHYSICIANS

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Frequently Asked Questions

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The Faculty of Occupational Medicine (FOM) has published a revision to articles 3.37 – 3.40 of its *Guidance on Ethics for Occupational Physicians (2006)* in the light of amended Guidance on Confidentiality published by the General Medical Council (GMC) in October 2009. The revision can be viewed at http://www.facoccmed.ac.uk/library/docs/m_gmcconf_ethicsrev.pdf.

In order to supplement the revised guidance this series of questions and answers has been produced by the FOM Ethics Committee. This document does not have the status of a Faculty publication but is indicative of some of the enquiries individual committee members have received since October 2009. The answers represent the consensus view of the committee.

This document is intended to be iterative. Faculty members, and others with an interest in the issue, are invited to submit additional questions and to comment on the answers offered by the committee by contacting EthicsEnquiries@facoccmed.ac.uk. The committee will endeavour to update the document regularly.

1 What has changed in the GMC guidance?

The 2009 guidance is more explicit than the previous version in detailing how a doctor should convey the outcome of an assessment. Specifically, it states that doctors should:

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:

- *They have already indicated that they do not wish to see it*
- *Disclosure would be likely to cause serious harm to the patient or anyone else*
- *Disclosure would be likely to reveal information about another person who does not consent*

2 I complied with the previous GMC and Faculty guidance – does that mean I was acting unethically?

No. The ethical principles remain unchanged. Confidentiality is a fundamental duty for all doctors and, except in exceptional circumstances, must not be breached without the consent of the individual concerned. The change relates to the process of ensuring that the duty of confidentiality is discharged rather than any shift in the principles.

3 Why has the GMC made this change?

The GMC secretariat has advised the Faculty and the Society that this is to strengthen the notion of "no surprises" in the relationship between doctors and patients and because of cases reported to them (not specifically involving occupational physicians) where the content

of a medical report deviated significantly from the patient's understanding of what it would say.

4 Did the GMC consult the FOM and the Society of Occupational Medicine before making this change?

The GMC made the draft guidance open to consultation and the Faculty and the Society made a joint response. The GMC guidance as published does not reflect all the reservations made in the joint response.

5 I don't see patients – I just assess individuals for employment or pension purposes – does this guidance apply to me?

Yes, if you are registered with the GMC. The GMC uses the term "patient" for anyone who consults a registered medical practitioner in a professional context. Their supplementary guidance on confidentiality is explicit in stating that the term "patient" also refers to employees, clients, athletes and anyone else whose personal information you hold or have access to, whether or not you care for them in a traditional therapeutic relationship.

6 What if I examine an individual and pass my findings to another occupational physician so that they can prepare a report for the employer?

The output from your assessment constitutes a disclosure of confidential information and will be subject to the GMC guidance.

7 Do I need the consent of the individual to carry out an occupational health assessment?

Yes – this has not changed. The individual should be informed about the purpose and nature of the assessment and give their informed consent to the process and the preparation of any report.

8 Does consent for an occupational health assessment have to be in writing?

It is good practice to obtain written consent where this is practicable. In some circumstances (e.g. telephone consultations) this is likely to be impractical and recording verbal consent in the OH record will suffice.

9 Can I still send a report to an employer if an individual initially consents in writing but then says they have changed their mind?

No – this has not changed. An individual may withdraw consent at any stage in the process and you must respect their wishes unless there is an overriding public interest reason not to.

10 Do I need to get renewed consent at each stage in the assessment process?

No - but individuals should have been given a full picture of the process to which they are consenting at the outset and be made aware that they can withdraw consent at any stage.

11 Do I need to remind people that they can withdraw consent?

No - but the initial explanation needs to have been clear and you should check if you have reason to believe that an individual may wish to withdraw consent.

12 Must I give every individual a copy of their report before sending it to their employer?

No. The GMC guidance says that you **should offer** to show or give a copy of the report before it is sent. Very many patients will decline the offer – especially if they trust you and their employer.

13 What is the difference between "must" and "should"?

The GMC explains the difference in *Good Medical Practice*. "Must" is used for an overriding duty or principle. "Should" is used when explaining how a duty or principle might be met, when it may not apply in all circumstances or when there are factors outside the doctor's control that affect compliance with the guidance.

14 It is my practice to dictate my reports in front of the individual – does that constitute "showing" it to them?

The GMC has clarified its guidance in this matter by stating:

When patients are assessed and the report is prepared in their presence, there will be no difficulty in communicating its contents to the patient. In those cases, the purpose of the guidance and the underlying legal and ethical duties will have been satisfied.

Occupational physicians should nevertheless be mindful of the potential for transcription errors and disputes about whether dictated reports have been amended prior to dispatch.

15 Some colleagues routinely copy reports to the individuals they see even if they indicate that they do not wish to see them in advance – should I be doing that?

The duty is to ensure that patients are aware of what is being said about them and it is becoming commonplace for occupational physicians to discharge that obligation by supplementing a verbal explanation with a copy of the report. Occasionally individuals indicate that they would prefer not to see a report and those wishes should be respected. You should also ensure that your processes are acceptable to your client organisation and that you do not inadvertently breach any contractual agreements.

16 Sometimes managers seek verbal clarification of reports I have written – am I allowed to speak to them?

A disclosure of confidential information can be in writing, verbally, electronically, etc - the duties of a doctor are not altered by the medium used though the means of discharging them may be. It is clearly unethical to use a conversation to circumvent procedures designed to meet the requirements relating to confidentiality and consent. Clarification of written reports should be restricted to the explanation of what has already been disclosed and not be used to introduce new information obtained in confidence.

17 I have heard that some providers are considering getting nurses to issue the reports of assessments carried out by occupational physicians to get round the need for advance disclosure – is there any problem with that?

It would be ethically improper to construct a process with the purpose of evading the duty to obtain consent for a disclosure. Occupational physicians cannot abrogate the duty to ensure that a patient has been apprised of the outcome of an assessment which they have carried out and that agreement to the disclosure of related confidential information has been obtained. There is a further obligation on occupational physicians to ensure that other members of the team behave ethically and it is understood that the Nursing and Midwifery Council will be updating its ethical guidance in due course.

18 If someone indicates that they want to see a report before I send it, how long should I allow them before passing it to the organisation that commissioned it?

There is no "one size fits all" answer and you need to behave reasonably. Precise timings will depend upon the nature of your practice, the views of your patients, the requirements of your clients, the method of communication and a range of other factors. A number of large providers with multiple clients are working to 3 days for electronic transfers and 5 days for postal transfers before sending reports on – that may be too long or too short for your situation. Whatever timings you decide upon, you should make them explicit to any patients who choose to exercise this option.

19 Someone, who asked to see their report before it was sent, wants me to make amendments – what should I do?

You should make it clear from the outset that you will not change a professional opinion on the basis of lobbying by the patient, their employer or any other party. You will, naturally, wish to take account of any factual errors highlighted and their impact on your professional judgement.

20 If someone indicates that they want to see a report before I send it, do I need to get their approval to then send it on to the organisation that commissioned it?

No. Provided you have originally obtained consent for the production of a report and you have no reason to believe that the individual has changed their mind, you can send the report out after the time you have stated to them without getting reaffirmation of their consent.

21 If someone withdraws consent having seen my report, what can I say to the organisation that commissioned it?

Tell them the truth – simple facts unembellished by supposition or presumed motives. You explained the purpose and process of the consultation to the individual who gave their consent for both the assessment and the production of a report to the commissioning organisation. You conducted your assessment and prepared your report on the basis of the evidence you gathered. You offered to show the report to the individual in advance of sending it out, in accordance with GMC guidance. The individual accepted that offer and having seen your report withdrew consent for it to be sent to the commissioning organisation. You are therefore unable to send them the report – unless there are public interest reasons for making a disclosure. It will be prudent to have flagged up this possibility to client organisations and to have agreed practical or contractual issues such as any scale of payments in advance.

22 The organisation that is my customer has said that it does not want me to offer to show individuals reports before sending them – what can I say to them?

You should explain to your customer that any meaningful dialogue between people has to be consensual. If patients don't agree to be referred, or to the production of a report, then forcing them to submit is neither ethical nor practical. The value of an occupational health assessment comes from the individual disclosing confidential information that they are less likely to share with a non medical person and the occupational physician then using their knowledge and experience to provide guidance to both the individual and the commissioning body on the interplay between health and work issues. That relationship has to be based on trust in the impartiality of the occupational physician, if it is to function effectively, and trust relies on openness. Ensuring that the individual is fully aware of and understands the impartial advice being given should facilitate subsequent communication between them and their employer, etc.