

IOH Response to the General Medical Council (GMC) Guidance on Confidentiality

Background

The GMC have introduced new guidance to doctors about confidentiality and consent. The guidance was due to come into force on 12 October 2009 but the GMC accepted, on the basis of representations from relevant parties, that additional time would be needed for occupational health providers, in particular to amend their current policies, procedures and practices and the regulator agreed to allowing a “reasonable period” for this to occur.

IOH will be launching the new procedure in March 2010

The single most important aspect of the new guidance is that employees should be offered the opportunity to see a report written about them before it is sent to the intended recipient.

It is clear that this is not intended to provide an opportunity for the employee to alter the opinion of the occupational health professional, but it does provide scope for them to identify any factual errors that there may be in reports and to withdraw consent to the release of the report should they so wish.

Objectives

The new process is intended to achieve 4 things:

- 1) To comply with the new GMC guidance
- 2) To maintain the quality of our occupational health advice
- 3) To ensure we are still able to provide a timely service to employers and employees
- 4) To ensure equality, this procedure will apply to all grades of occupational health professionals in the multidisciplinary team

The Process

- 1) Consent form sent to employee with appointment letter
 - 2) Employee brings completed consent form to occupational health appointment
 - 3) Occupational health doctor or nurse explains the reasons for the consultation to the employee
 - 4) Occupational health doctor or nurse explains the outcome of the consultation to the employee
 - 5) Depending on the response to the consent form:
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- a) Employee does not request a copy so report sent to Employer 2-4 working days after occupational health appointment
- b) Employee and Employer sent a copy of the report 2-4 working days after occupational health appointment
- c) Employee requests copy of report prior to copy being sent to Employer
 - Where possible, reports will be sent by email. E-mail is now considered faster and more secure than the post, as anyone can open a letter
 - In cases where the employee does not include their e-mail address or an employee does not have an e-mail address, reports will be sent via the post
 - The Report is accompanied with a covering letter explaining the employee's right to challenge the factual content of the report. This will explain that the report will be sent to their employer 48 working hours later in the case of e-mail (or 4 working days in the case of reports sent by post in view of the longer time taken for delivery)
 - The employee will be **advised of the consequences** of not consenting to the report being sent to the employer. The employer will still be able to act without the medical information and if the employee is refusing access to a medical report then they cannot be expected to make adjustments without it
 - The employee can contact the occupational health doctor or nurse by telephone if there are any factual inaccuracies
 - Feedback will not be invited from employees and the default position will be for release of the report if we do not hear to the contrary. Where employees notify us of factual errors that do not significantly affect our advice to the employer (for example, use of 'Mrs' instead of 'Ms') then these will be corrected and the report sent to the employer without delay
 - If they subsequently withdraw consent for the report, then a short note will be sent to management/HR informing them of the employee's decision

Closing Remarks

Although the new GMC guidance initially caused some challenges, it is not a significant departure from what was previously considered good practice anyway. Although the explicit requirement to offer employees the option of previewing a report is new, it has always been good practice that employees should be made aware of the content of a medical report at the time of a face-to-face consultation and that they have had the option of revoking consent at any point in the process should they wish.
