

OHS

instructions



OHSI 2.4 Medical Records and Confidentiality

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1. Purpose and Scope

To ensure that confidential clinical information is effectively protected against improper disclosure at all times and that it is only released to individuals who are entitled to receive it.

This policy applies to all individuals who may have access to, gain knowledge of or be entrusted with confidential clinical information.

2. Definitions

Occupational health nurse

Registered general nurse with a post-registration specialist qualification in occupational health nursing recognised by the statutory nursing bodies of the UK or:

Registered general nurse who has received specific training from and is under the supervision of an occupational health nurse or occupational physician.

Occupational health physician

Registered medical practitioner with diploma or higher qualification in occupational health (AFOM, MFOM, FFOM or specialist accreditation)

Confidential clinical information

All clinical records, information obtained during consultations, test results, medical reports and the reasons given for attendance at a medical centre will be regarded as confidential clinical information. The definition includes information that is 'personnel in confidence' or 'management in confidence' that forms part of the clinical record (e.g. the diagnosis given on a sick note or correspondence from managers). The definition includes, but is not restricted to, 'sensitive personal data' as defined in the Data Protection Act 1998.

Information can be treated as confidential regardless of the manner in which it is received, permanently recorded (if at all) or transmitted.

Responsible Occupational Health Nurse / Occupational Physician

The occupational Health Nurse or Physician with direct professional and managerial responsibility for an area or areas (e.g. health centres) where confidential clinical information is usually created, used and stored.

Legal terms

Data controller, data, data subject, health record and health professional have the same meaning as in the Data Protection Act 1998.

3.Principles

3.1. General

Guidance produced by representative professional bodies will be complied with.

Safeguards will be required to ensure the protection of information in manual and automated (e.g. electronic) systems. In particular it is possible for the recipient of an electronic mail message to have arranged for messages to be forwarded to another person in their absence. This can occur even if the properties of the message have been set to 'confidential' and must be taken into consideration when deciding upon the most appropriate method of communication in individual cases.

In exceptional circumstances confidential clinical information may have to be released without the consent of the individual concerned. Any such disclosure will be in accordance with the law and any guidance issued by the relevant professional body. A senior colleague will normally be consulted.

3.2. Statutory Provisions

All relevant statutory provisions will be complied with. For example:

3.2.1. Health & Safety at Work etc. Act 1974

In order to ensure the Health and Safety of employees and others it may be necessary to obtain consent for limited release of confidential information to relevant parties. Where consent to release of confidential information cannot be obtained then general advice will be given, sufficient to ensure health and safety.

3.2.2. Data Protection Act 1998

Individuals or their representatives, authorised in writing, may apply for access to their occupational health records.

Applications made in this way will be regarded as being under the provisions of the Data Protection Act 1998 and the person responsible for providing access will be familiar with the provisions of that Act.

Once the 'data controller' or their representative is sure the applicant is entitled to see the record, they must give access within certain time limits.

If the information that the data subject is entitled to have is unintelligible to a layperson, an explanation of the relevant terms must be provided.

Subject to the above, it is policy to disclose those parts of the record that pre-date the Act, even if this is not a statutory requirement.

3.2.3. Access to Health Records Act 1990

The entitlements under this Act, as they relate to health records of living individuals, have been largely repealed and replaced by the Data Protection Act 1998. Applications may continue be made for the release of information that relates to individuals who have died.

3.2.4. Access to Medical Reports Act 1988

Where the Occupational Health Doctor or Nurse requests a report from an employee's General Practitioner or a Specialist, the Provisions of the Access to Medical Reports Act 1988 apply. The person requesting the report will be familiar with the provisions of the Act.

The employee's rights under the Act will be explained to him or her and an appropriate consent form signed (e.g. consent.doc)

3.2.5. *Equality Act 2010*

Confidential clinical information may be held which indicates that an individual will be classed as disabled under the Act.

Management will need to know what "reasonable adjustment" might be necessary but any disclosure of confidential information requires informed consent.

3.3. Disclosure to Legal Advisers

Requests for disclosure in connection with litigation must be accompanied by an appropriate written consent or court order. The responsible Occupational Health Nurse or Physician will examine the contents prior to disclosure to ensure that the material is covered by the consent form or court order.

Particular care will be taken to avoid inappropriate disclosure of material that may be legally privileged, for example, copies of correspondence between the employee or the employer and their legal representative that may have been filed in the medical records.

3.4. Medical Consultations and Confidentiality

The GMC have issued guidance on confidentiality and say that any form of Occupational Health consultation by an Occupational Health Physician (OHP) is the same as other medical encounters in the sense that confidentiality applies in exactly the same way. For the purposes of confidentiality the employee is in the same relationship with the doctor as any other patient. Anything that flows from the encounter is medically confidential, even a simple fit/not fit opinion. The patient must give informed consent to every aspect of the consultation, including any output from it, otherwise the consultation cannot proceed.

So a consultation with an occupational physician needs to have the following elements:

At the beginning of the consultation: The patient must be told the reason for the consultation, what it will involve and the possible outcomes. It must be explained that the content of any report will be discussed with the patient at the end of the consultation and that relevant information cannot be concealed or withheld.

At the end of the consultation: The OHP needs to indicate what information or opinion he or she would like to communicate, and to whom. He or she can only go ahead with that if the patient consents, so the patient can be given three options:

1. Just agree that the doctor will write a report along the lines discussed and send it to the intended recipient. A copy will be available in the occupational health notes for the patient to see if he or she wishes. This is often fine for a simple fit/not fit outcome or a simple review letter.
2. The OHP will prepare a report along the lines discussed and send it out as normal, with a copy to the patient at the same time. Many choose this option.
3. The OHP allows the patient to know the exact content of the report and gets specific consent before it is sent to anybody else. This can be achieved by dictating or writing the report in front of the patient there and then, or corresponding with them after the consultation. The latter probably introduces an unacceptable delay for the referrer so is to be avoided if possible.

None of the consent has to be in writing but it is probably advisable in contentious cases. A note should always be recorded in the medical record to indicate that consent has been dealt with.

Doctors should normally follow GMG guidance. Other health professionals may also choose to adopt the same principles.

If the patient does not consent

If the patient withholds or withdraws consent at any stage, the interview/examination should be terminated and the referrer notified that no opinion can be given. If the patient has opted for 3 above and asks for

changes to be made, by all means correct factual inaccuracies but do not have the medical opinion refashioned, restricted or otherwise interfered with; simply notify the referrer that there was no consent for the release of the report.

4. Responsibilities

4.1. Administrator

Ensure that any request for the release of confidential information is brought to the attention of the responsible occupational health nurse or physician

Ensure that, where information is to be released, the original or a copy of it is retained within the Company at the location where the information is normally stored.

Ensure that all written communications concerning individuals are marked 'medical in confidence'. Confidential information that is to be sent by post must be securely packaged and marked "Strictly Confidential - to be opened by addressee only".

Arrange for medical records and records of health surveillance to be kept for a minimum of 60 years, or 30 years post employment, whichever is the longer, from the date of the last entry.

4.2. Responsible OH Nurse or Physician

Ensure that arrangements have been made for confidential clinical information to be kept securely at all times.

Personally authorise any disclosure, having obtained informed written consent from the individual concerned or in accordance with a court order.

Ensure that personnel who are not health professionals understand their responsibility to keep all clinical information confidential and sign an agreement to that effect (Appendix 1). Arrangements for ensuring that these agreements are made and recorded will be included in induction training programmes.

4.3. Health Professionals

Comply with guidelines concerning confidentiality, which have been issued by the body or bodies responsible for ensuring standards of ethics and practice within their profession. Provide employees with information about the arrangements for maintaining medical confidentiality and protecting sensitive personal data from inappropriate disclosure. Information may be usefully summarised in a "confidentiality promise" that can be publicised (Appendix 2).

5. Audit Criteria

Is confidential clinical information kept securely at all times?

Are the appropriate informed consents obtained prior to any disclosure?

Do non-medical personnel understand their responsibility to keep clinical information confidential and have they all signed an agreement to that effect?

6. References

Faculty of Occupational Medicine of the Royal College of Physicians. Guidance on Ethics for Occupational Physicians (6th Edition). FOM, London 2006. <http://www.facocmed.ac.uk/library/index.jsp?ref=509>

General Medical Council. Duties of a Doctor Registered with the General Medical Council - Guidance for Doctors: Confidentiality. GMC, London, October 2009. www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp

General Medical Council. Supplementary Guidance. Confidentiality: disclosing information for insurance, employment and similar purposes
http://www.gmc-uk.org/static/documents/content/Confidentiality_disclosing_info_insurance_2009.pdf

Nursing and Midwifery Council. The Code., Advice Sheet: Confidentiality.
Both available at <http://www.nmc-uk.org>

All of the Acts of Parliament referred to.

OHS Forms: consent.doc

7.Revision History

Author	Issue	Date	Reason for revision	Review by
David Shackleton	1	16.12.98	First Issue	March 2002
David Shackleton	2	05.03.01	Incorporate Data Protection Act	March 2003
David Shackleton	3	26.01.10	Incorporate GMC Guidance	January 2012
David Shackleton	4	13.09.11	Incorporate Equality Act	September 2013

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**OCCUPATIONAL HEALTH
MEDICAL CONFIDENTIALITY AGREEMENT
FOR NON-HEALTH PROFESSIONALS**

During the course of your employment you may have access to gain knowledge of or be entrusted with medical and/or personnel information concerning individual members of staff. This information may contain matters of a highly sensitive and/or personal nature.

You understand that access to this information, whether it is in computerised or manual records, is made available only to those members of staff who have an absolute right and need to know - that is, qualified health professionals. As a direct consequence of carrying out your duties (clerical, administrative, security or maintenance), you may at some time have or gain access to an individual's medical records.

You agree not to disclose to any person or make any use of such confidential information as described above at any time, whether during or after the end of your employment with the Company.

This duty includes keeping strictly confidential the names and other details relating to those individuals making and keeping appointments with occupational health.

Breach of this undertaking will be viewed very seriously by the Company and may be an offence under the Data Protection legislation. Such a breach could result in disciplinary action being taken against you.

I, the undersigned, understand and accept the above agreement.

Signed:

Date:

Occupational Health Confidentiality Promise

Confidentiality is fundamental to the work of all occupational health staff. Occupational health professionals are bound by an ethical code of conduct in the same way that they would be in a hospital or general practice. Other members of the occupational health team understand their responsibility to protect sensitive personal information and have given an undertaking that they will do so.

We keep a record of the work we do so that the Company can comply with health and safety law, protect the health of employees and ensure that people are fit to do their jobs. Sensitive personal information, which relates to your health, is kept in written and computerised records that are confidential. You should be aware that occupational health doctors, nurses and physiotherapists work as a team and may share the information that you give to them, unless you ask them not to.

Your occupational health records will include details of medical examinations and consultations from the time you joined the company onwards. They will also include advice that has been given to management. When we provide any information for managers then this is restricted to an opinion on whether or not a person is medically fit to do a particular task and whether any modifications or restrictions are necessary. Of course, there is some information that is already known outside the occupational health department for example the reasons for absence that appear on a sick note.

If there is ever a need to release any confidential information then we will always obtain your permission first. Normal medical confidentiality will apply.

As well as complying with the ethical codes of health professionals we also comply with the Data Protection Act 1998. This is one of the reasons for giving you the information in this promise. It also gives us the chance to ask you to sign the agreement below to show that you have seen this information and consent to us keeping your occupational health records in the way we have described.

If you want to see your occupational health records or you want more information about our confidentiality policy then you should contact the manager of your occupational health department.

I have read this confidentiality promise and understand the information that it contains.

I agree to information about me being kept and used in this way.

Signed

Name

Date