GUIDANCE ON ETHICS FOR OCCUPATIONAL PHYSICIANS 6th Edition – May 2006

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Revised Text for Articles 3.37 – 3.40 in the light of GMC Guidance on Confidentiality (October 2009)

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Consent for preparation and release of an occupational health report

3.37 The term "occupational health report" in this context means the written output of a health assessment by an occupational physician for employment purposes based on confidential information provided by the patient or, with appropriate consent, a fellow health professional. Reports based solely on information provided to an occupational physician by the commissioning body (employer, pension scheme, insurance company, etc) are out of scope of this guidance since they do not involve disclosure of further information and simply represent interpretation of data.

3.38 It is the duty of the occupational physician to ensure that the subject of the health assessment has been properly informed about its purpose, its nature and its outputs, including likely consequences. The occupational physician should ensure that the patient has consented to the process including the preparation and release of an occupational health report. Where practicable the individual's written consent should be obtained but, if not (for example with telephone consultations), recording verbal consent contemporaneously in the occupational health record will suffice. Consent may be withdrawn at any stage of the process but occupational physicians do not need to obtain confirmation of consent at each stage or to remind patients of their right to withdraw.

3.39 The overriding principle which occupational physicians should apply in producing reports is one of "no surprises". An individual participating in an occupational health assessment should be absolutely clear about the process in which they are engaging and what will be reported about them to a third party (employer, insurer, pension scheme, OH provider, etc). Explanations should be given in a way that the patient is likely to understand and deliberate omission in describing the outcome of an assessment is ethically unacceptable. The most transparent method of avoiding surprises is to explain the content of the report during a consultation and to offer to show the patient a copy before sending it to the recipient. This approach may be eminently practicable for a face to face consultation in a traditional site based service but such delivery models are by no means the norm in current occupational health practice and alternative assessment methods are becoming increasingly prevalent. The ethical principle of "no surprises" stands regardless of the practical means by which it is discharged and occupational physicians should ensure that innovation in service delivery is not allowed to compromise fundamental tenets of medical practice.

3.40 Occupational physicians registered with the UK General Medical Council should be aware that the 2009 revision of the GMC guidance on confidentiality prescribes a greater level of process detail than previously in relation to the release of reports for employment purposes. In particular paragraph 34 states that a doctor 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:*
> *(i) they have already indicated that they do not wish to see it*
> *(ii) disclosure would be 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."

As stated in the previous paragraph, offering to show the patient a report before it is sent is certainly one way of discharging the occupational physician's ethical responsibilities and it is prudent for UK registered doctors to comply with the GMC guidance. There are very real practical difficulties for some occupational physicians in implementing this guidance, especially for those operating outside a traditional model. There are additionally potential consequences for both the patient and the commissioning body relating to withdrawal of consent for report release. Such concerns centre particularly on health assessments for safety critical roles and key occupational groups like the Armed Forces. Some of these difficulties may be minimised by the occupational physician as follows:

- having clarity of purpose about the assessment being undertaken and whether it is necessary to process information in a way that involves a disclosure;
- ensuring that the patient receives comprehensive information about the whole process at the outset and provides consent for the entire sequence of activity;
- emphasising the duty of the occupational physician to be impartial and to build trust with every patient contact;
- making it explicit to the patient and the commissioning body that this is a consensual process in which consent can be withdrawn at any time but not seeking renewed consent at every stage;
- considering copying all reports to patients as a routine when sending them out;
- seeking to identify the nature of a patient's concerns about the provision of a report – often these relate to perceptions of their employer's actions rather than the report itself. Signposting the patient to sources of advice (e.g. trade union, Citizens Advice, etc) may be helpful;
- developing simple procedures to offer to show or provide an advance copy of a report to the patient when such access is requested;
- in cases where the patient asks to see a copy of the report before it is sent, allowing a reasonable period between providing the report to the patient and sending it to the commissioning body and advising the patient of these timescales;
- taking account of any factual errors highlighted by the patient and reviewing their impact on the professional judgement provided but making it clear to the patient and the commissioning body that stated opinion will not be altered as a result of lobbying;
- reminding patients that if consent to release a report is withdrawn the employer will have to act on whatever information is available to them and that this may not be in the best interests of the patient;
- where consent to release a report is withdrawn, retaining a copy of it within the occupational health record but marking it clearly to indicate that it has not been and will not be released;
- advising patients that in some cases, such as where there is a legal requirement or a public interest justification, disclosure may be made without their consent.

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