FACTSHEET

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Occupational Health for the Non Specialist

Doctors practising outside the specialty of occupational health, both GPs and Consultants, will regularly receive requests from patients to complete forms relating to different aspects of occupational health. These may range from basic pre-employment medicals or return to work certificates, to full medical assessments, sometimes in contemplation of litigation or as part of an employment law grievance procedure.

This factsheet is aimed at addressing some of the most common scenarios encountered by General Practitioners and Consultants when undertaking occupational health assessments; we have addressed common queries raised by our members below.

Who has access to Occupational Health reports – patient or employer?

The *Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024* provides that:

51.2 *You should be satisfied that the patient understands the purpose and scope of the report and of any examinations or investigations required to support its preparation and that the professional standards for consent and disclosure are followed.*

51.3 *The report should be confined to the purpose for which the report has been requested. You should inform the patient that you have a duty to the third-party as well as to the patient and that you cannot omit relevant information from the report.*

51.4 *In producing your report, you should distinguish clearly between facts identified and verified by you, and information provided to you by the patient or by others.*

51.5 *You are entitled to request a professional fee for providing a medical report. The fee should be appropriate to the service provided and must not be based on the outcome of litigation. The content of reports must not be influenced by financial or other inducements or pressures.*

In advance of any occupational health assessment, the following should be clear to both patient and doctor:

- on whose behalf the GP is providing a service; whether the patient or the employer;
- who has requested the report;
- what it will contain;
- where it will be sent; and,
- who will ultimately have access to the report.

Challenges may arise where the doctor is both the patient's usual healthcare provider, and in this instance is acting on behalf of the employer, e.g. a pre-employment medical, a return to work assessment or a disability assessment. It should be clear to both the patient and the doctor that these are separate roles to the normal GP consultation.

The Faculty of Occupational Medicine of RCPI in its '*Guidance on Ethical Practice for Occupational Health Physicians'* (the **"RCPI Guide**") quotes clearly:

1.2 *It is recognised that the practice of occupational medicine may at times place doctors in positions in which conflicts of interest or loyalty may arise as a consequence of their dual obligations. In all of their relationships with people, occupational physicians should understand the capacity in which they are acting at that time and ensure that other parties also understand that position. In particular, doctors giving*

occupational medical advice to companies where employees of the company may also be their patients should ensure that the roles are distinct, separate and that this is understood by all.

Good practice would therefore dictate that ***in advance*** of any occupational assessment, a discussion is held with the patient and the situation clarified at the outset. This should include the reason for the examination, the form that it will take, and the nature and extent of any information to be provided to the employer. The discussion should be clearly and appropriately documented in the medical records.

Where the consultation is requested by the employer, must the patient consent to the assessment?

Patients aged 16 years and over can consent to medical treatment and are presumed to have capacity to do so, unless the contrary is proven. The consent of the patient is, therefore, required for both the medical assessment and disclosure of the report to their employer.

The examining doctor should confirm that the patient consents to the assessment; if patient consent is unclear or withheld, the consultation should be terminated and further advice sought. No clinical information should be disclosed to the employer in these circumstances.

Fitness to work assessment – how much detail should be included for the employer?

In an assessment to determine a patient's fitness to work, the advice and information given to the employer should be confined to '*fit for work*', '*unfit for work*', or '*fit for work with certain accommodations*'. The details of the patient's medical history and/or clinical findings should not ordinarily be disclosed to the employer.

Again, the RCPI Guide states:

2*. Individual clinical findings are confidential and information given to the employer should generally be confined to advice on ability and functional limitation.*

The RCPI Guide continues:

….More detailed information should only be disclosed with the consent of the employee. This latter course of action should only be in exceptional circumstances, in individual cases, where more detailed insights on the impact of the condition are necessary and appropriate to enable the employer to come to a decision.

In the event that an employer sends an employee for a review in the context of establishing the employee's fitness to work, details of the medical history, including replies to any questionnaire together with the results of a physical examination are confidential and should not be disclosed to the employer, except under exceptional circumstances and normally only with the express written consent of the employee.

Knowledge of patient's working conditions

Where the patient's GP is assessing the patient for the purpose of providing an opinion on their fitness to work and believes that they do not have adequate knowledge of the patient's occupation and working conditions/environment, or feels that they do not have sufficient expertise to undertake the requested assessment, then it is reasonable for the GP to request that the company arrange an independent occupational health assessment of the patient for that purpose.

When might the patient not be entitled to a copy of an occupational health report?

Where an employer is aware that an employee intends to issue/has issued legal proceedings arising out of an incident that occurred in the workplace, it is arguable that the employer, in engaging the doctor to prepare a report, is entitled to assert legal privilege over that report and/or correspondence with the doctor.

To satisfy the requirement of "contemplation of litigation", it is likely that the employer will need to be in receipt of an initiating letter from the employee's solicitor. Where the report is prepared for the company in the context of litigation, the patient cannot be furnished with a copy of the report without the consent of the company, as the company may claim litigation privilege over the report in those circumstances.

However, you should bear in mind that the employee may inevitably see the reports at the hearing of a case, for example through disclosure and exchange as part of High Court litigation.

At the outset of each consultation with the patient, it is important to clarify on whose behalf the doctor is providing a service; the patient or the employer. Should there be any perceived conflict of interest, it may be in the best interests of both the patient and the GP/Consultant to request that the company seek an independent medical review of the patient and an independent medical report in the context of the litigation.

These can be complex situations and where there is any doubt, you should contact Medisec for support and specific advice.

Storage and access to employee medical records held on employer premises

When attending to employees on-site, extra care should be taken regarding security of confidential medical records. They should be inaccessible by management or staff, and only the authorised medical and nursing staff should have access. In order to provide truly informed consent, the employee should be in full knowledge of to whom the records are likely to be disclosed. The RCPI Guide states '*Companies or their legal advisors or insurers have no automatic right of access to any medical records or reports.'*

If the doctor ceases to provide occupational health services to the company, the records should be securely transferred to the new provider, and if the occupational health department ceases to operate, the records should be securely transferred to the employee's GP; subject to the employee giving consent.

Can I undertake drug screening of employees on behalf of the company?

Some companies request that employees undergo regular screening for prohibited substances. Before agreeing to partake in such screening, the doctor should ensure that the company policy adheres to standard practice and that the employee is clear on what the company policies state and what they require regarding disclosure. The employee's consent is still required, even if testing is required by law as per Section 13 of the *Safety Health and Welfare at Work Act 2005* or other legislation.

How do I deal with unexpected clinical findings?

Where a doctor, in the process of performing an occupational health examination, makes an unexpected clinical finding, whether in the context of a screening assessment or if litigation is in being, they must act in the best interest of the patient and inform the patient of any follow up investigations or treatment that may be necessary; whether with their own GP or with a specialist. The fact that a doctor is contracted by a company for the purpose of carrying out an assessment to prepare a report does not obviate the duty of care that a doctor owes to a patient.

Standard forms

Often a doctor will be presented with a pre-employment or other medical form that is unsuitable for today's standards. The doctor is not obliged to adhere to the exact questions listed on the form and can carry out their assessment of the patient and give the information as they see fit for today's standards of terminology, practice and confidentiality.

In summary

Any doctor who undertakes occupational health assessments and provides occupational health reports should always, at the outset of each consultation with the patient, clarify on whose behalf the doctor is providing a service; i.e., the patient or the employer. They should clarify that both doctor and patient understand the reason for the assessment, the extent of what information will be disclosed and to whom. Remember that there are ultimately very few instances where patient consent is not necessary for disclosure of medical information to their employer.

Whenever there is any doubt and/or a possible conflict of interest; and often there is; consider suggesting that the employee be referred for an independent occupational health assessment.

Please do not hesitate to contact Medisec for specific advice.

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