

Access to medical reports

Guidance from the BMA Medical Ethics Department

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Access to Medical Reports Act 1988 and Access to Personal Files and Medical Reports (Northern Ireland) Order 1991

These pieces of legislation give patients the right to see medical reports written about them, for employment or insurance purposes, by a doctor who they usually see in a 'normal' doctor/patient capacity. This includes reports written by the patient's GP or a specialist who has provided care and, in some circumstances, an occupational health doctor.

This right can be exercised either before or after the report is sent. Patients have the right to signal any disagreement with matters of fact recorded in the report, and to append their disagreement to the report, or to withdraw their consent for the release of the information. Reports written by independent medical examiners are not covered by the legislation but, in the BMA's view, patients are entitled to see these reports under data protection legislation.¹

In this guidance, the organisation that requests the report – the insurance company or employer – is known as 'the applicant'.

Consent

The applicant must inform the patient of its intention to seek a medical report and obtain consent. Before any medical report can be provided the doctor must be satisfied that the individual has given valid consent to the release of the information.

In order to improve the consent process, in 2003, the BMA and the Association of British Insurers jointly published a general practitioner's report (GPR) package.² The package includes:

- a standard covering letter for insurers to send to GPs, together with an overview of the types of information that are relevant to different types of insurance policy
- a standard GPR form
- a standard consent declaration for patients.

Where information is requested relating to an adult who lacks capacity, authorisation may be granted by a welfare attorney who has authority to make decisions on the patient's behalf.³ Where no attorney has been appointed, information can be released where there is both a legitimate need for the information, *and* releasing the information would be in the best interests of the incapacitated adult.

Individuals' rights

As part of the consent process the applicant must notify patients of their rights under the legislation. These are:

- to withhold permission for the applicant to seek a medical report (that is, to refuse consent to the release of information)
- to have access to the medical report after completion by the doctor either before it is sent to the applicant or up to six months after it is sent
- if seeing the report before it is sent, to instruct the doctor not to send the report; and
- to request the amendment of inaccuracies in the report.

Seeing the report

It is the applicant's responsibility to inform the doctor whether the patient wishes to see the report and also to inform the patient that a report has been requested.

If the patient has expressed a wish to see the report, he or she has 21 days to arrange this. The doctor must not send the report before this 21-day period has elapsed unless the patient has seen the report within that period and has explicitly agreed to it being sent.

A patient who has not requested access during the consent process may nonetheless make a subsequent request. If the request is received before the report is sent, the doctor must not send the report until the patient has made arrangements to see the report or 21 days have elapsed since the patient's request was made.

Doctors are required to keep copies of reports for six months and patients have the right to request access to the report during this period.

Amendments

If patients believe there are factual inaccuracies in the report they may apply in writing for the information to be amended. If the doctor does not agree that there is an error, a note should be appended to the report regarding the disputed information.

Doctors must not comply with patients' requests to leave out relevant information from reports. If a patient refuses to give permission for certain relevant information to be included, the doctor should indicate to the applicant that he or she cannot write a report, taking care not to reveal any information the patient did not want revealed.

Fees

The patient is entitled to receive a copy of the report on request and the doctor may charge a reasonable fee to cover the cost of copying the report.

Withholding information

In keeping with the subject access provisions of the Data Protection Act 1998 the doctor should withhold from the patient any information the release of which would cause serious harm to the mental or physical health of the patient. In the context of employment or insurance reports, this is likely to be an exceptionally rare occurrence.

The patient also has no right of access to any information where disclosure would be likely to reveal information about another person or reveal the identity of someone, other than a health professional acting in a professional capacity, who has supplied information to the doctor about the individual, unless that person has consented to its disclosure.

In any case where a doctor invokes these provisions to restrict access to the report the patient must be informed of that restriction, and the rest of the report should be made available.

Doctors' responsibilities

Doctors who receive requests for reports

The main responsibilities of doctors who receive requests from insurance companies or employers for medical reports are to:

- date stamp all requests for reports and date correspondence sent to the applicant (in order to ensure compliance with the 21-day rule)
- collate requests for access with requests for reports
- release reports only after acting upon the patient's expressed wishes in relation to seeing the report
- not release a report which has been 'accessed' until the patient indicates it may be released
- if the patient has expressed a wish to see the report but has made no attempt to do so, the report may be sent 21 days after the receipt of the application
- amend factual errors or append a note outlining the patient's disagreement, as appropriate
- keep copies of reports for a minimum of six months and provide patients with access to them on request.

Doctors providing independent medical reports

The legislation applies only to medical reports written by a medical practitioner who has been involved in some way in the diagnosis or treatment of the individual patient. Thus medical reports written by independent medical examiners or indeed by any doctor who has never been involved in treating the patient are excluded from this legislation. Such patients are, however, entitled to access these reports under the Data Protection Act 1998.⁴ The General Medical Council (GMC) also advises that where doctors have contractual obligations to a third party, such as an insurance company, they must offer to show patients the medical report, or give them copies, whether or not this is required by law.⁵

Occupational health physicians

The extent to which occupational physicians are subject to the legislation has long been a matter of debate. The degree of contact and nature of consultations with employees are likely to be relevant and the Faculty of Occupational Medicine advises that ultimately 'it is for occupational physicians to determine, on each occasion, whether or not previous activities amount to provision of care as defined by the legislation'.⁶ Examples of when the legislation will apply to occupational physicians are set out in the guidance issued by the Faculty of Occupational Medicine.⁷

Doctors making requests for reports

Doctors who act as medical officers to an insurance company or employer and are instrumental in requesting or receiving such reports must ensure that patients are advised of their rights and doctors are aware of their responsibilities.

Failure to comply with the legislation

An application may be made to a court if there has been a failure to comply with the terms of the legislation. A court may enforce compliance with the legislation – including ordering the release of a report that has been withheld where the court is not convinced disclosure would cause serious harm to the individual.

For further information about these guidelines, BMA members may contact:

askBMA on 0300 123 123 3 **or**
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References

- 1 See British Medical Association (2008) *Access to health records – Guidance for health professionals in the United Kingdom*. London: BMA. www.bma.org.uk/ethics
- 2 See joint British Medical Association/Association of British Insurers (2003) *General Practitioner's Report (GPR) documents*. www.bma.org.uk/ethics
- 3 See British Medical Association (2007) *The Mental Capacity Act 2005 – Guidance for health professionals*. London: BMA. And British Medical Association (2009) *Medical treatment for adults with incapacity – Guidance on ethical and medico-legal issues in Scotland*. London: BMA. www.bma.org.uk/ethics
- 4 See British Medical Association (2008) *Access to health records – Guidance for health professionals in the United Kingdom*. London: BMA. www.bma.org.uk/ethics
- 5 General Medical Council (2004) *Confidentiality: protecting and providing patient information*. London: GMC. www.gmc-uk.org
- 6 Faculty of Occupational Medicine (2006) *Guidance on ethics for occupational physicians (6e)*. London: FOM.
- 7 Faculty of Occupational Medicine (2006) *Guidance on ethics for occupational physicians (6e)*. Op cit.

