

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'.

¹ See British Medical Association (2018) *Access to health records – Guidance for health professionals in the United Kingdom*. London: BMA. www.bma.org.uk/ethics



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.

The Association of British Insurers (ABI) and the BMA have agreed principles for requesting and obtaining medical information electronically from GP practices. One of these principles is that the electronic process must provide an audit trail of the consent process which is available to both the patient and the GP.²

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. 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.³

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.

2 The principles can be found on the BMA website at: <https://www.bma.org.uk/advice/employment/gp-practices/service-provision/medical-information-requests-from-insurers>

3 See British Medical Association (2019) *Mental capacity toolkit*. London: BMA. <https://www.bma.org.uk/advice/employment/ethics/mental-capacity/mental-capacity-toolkit>

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 General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 2018) 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 which relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient) and after taking into account the balance between the duty of confidentiality to the third party and the right of access of the applicant, the data controller concludes it is reasonable to withhold third party information.

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. Therefore 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. All registered doctors, however, are obliged to follow GMC guidance which states that individuals must be offered the opportunity to see a report written about them for employment or insurance purposes before it is sent.⁴

Occupational health physicians

In the past there has been debate and contention about the extent to which occupational health physicians were subject to the legislation. Advice from the Faculty of Occupational Medicine recognises that this debate has now to a greater extent been brought to an end by GMC guidance on confidentiality. GMC guidance advises all doctors, including occupational health physicians, to offer individual the opportunity to see their report before it is sent to the employer.⁵ As set out in the guidance from the Faculty, the GDPR and the DPA 2018 allow individuals subsequent access to the report.⁶

4 General Medical Council (2017) *Confidentiality: good practice in handling patient information*, para 115 London: GMC.

www.gmc-uk.org. Patients are also entitled to access to the report after it has been sent under the GDPR and the DPA 18.

5 Faculty of Occupational Medicine of the Royal College of Physicians (2018) *Ethics Guidance for Occupational Health Practice*, para 3.71. London: FOM

6 Faculty of Occupational Medicine of the Royal College of Physicians (2018) *Ethics Guidance for Occupational Health Practice*, para 3.71. Op cit

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.

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