



The Association of Chartered Physiotherapists in Occupational Health and Ergonomics

Guidance on Confidentiality and Consent for Occupational Health Physiotherapists

Configuration Management

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Summary

This guide is intended to set out, remind and update all ACPOHE members about the standards of good practice for Confidentiality and Consent, for physiotherapists working in Occupational Health and Ergonomics. It has been updated to support SEQOHS for Occupational Health Physiotherapy.

The context of Occupational Health and Ergonomics clinical practice differs significantly from that of physiotherapists working in other areas. This is because there are responsibilities to workers as well as to employers. This can be a delicate position, and it is very important to clearly understand your role and responsibilities to the worker and to the employer.

Disclaimer

This document is considered up to date at the time of writing and offers an overview of current legislation and practice. The document will be reviewed at regular intervals.

If you wish to suggest resources or content to add to this document please e-mail ACPOHE@buryphysio.co.uk

1 Confidentiality

1.1 Introduction

Much of our work involves us in having access to confidential and/or sensitive information. Workers have a right to expect that a physiotherapist or other members of an Occupational Health team will not disclose any personal information that is learnt during the course of their professional duties, unless the worker gives their permission or statute permits otherwise. Without assurances about confidentiality workers may be reluctant to give information which is needed in order to provide good care.

Abide by the principle that ***employers are entitled to advice about an individual's fitness for work, but are not entitled to diagnoses or specific clinical details, without the prior consent of the worker and a genuine need to know.*** You must ensure that managers understand the constraints on disclosure of personal health information imposed by the worker's entitlement to confidentiality.

Remember that ***OH medical records are the property of the company, BUT that does not give company managers the right of access to them***¹. Accidental disclosure should be prevented (see the section on the use and protection of confidential information).

1.2 Legal and professional aspects

The use of confidential patient information needs to be both lawful and ethical. The law provides a minimum standard that does not always reflect the appropriate ethical standards that the law and professional regulatory bodies require. Relevant provisions are in Appendix 1.

Physiotherapists are governed by the Health Care Professions Council (HCPC) and their code of practice. The HCPC publication 'Confidentiality – a guide for registrants' will help you to make informed and reasonable decisions relating to issues of confidentiality. A provision important to OH practice is to obtain a service user's informed consent if you are passing on their information, and to get express consent in writing if you are using the information for reasons which are not related to providing care or services for the service user.

1.3 Principles of confidentiality

- When you are responsible for confidential information you must make sure that the information is effectively protected against improper disclosure when it is 'processed' i.e. manipulated, disposed of, stored, transmitted or received etc.

- When workers give consent to the disclosure of information about them, you must make sure they understand what will be disclosed and to whom, the reasons for disclosure, and the likely consequences.
- You must make sure that workers are informed whenever information about them is likely to be disclosed to others, and that they have the opportunity to withhold permission.
- You must respect requests by workers that information should not be disclosed to third parties, except in exceptional circumstances (for example, where their own or others' health or safety would otherwise be at serious risk).
- If you disclose confidential information you should release only as much information as is necessary for the purpose. If it is appropriate to share information gained in the course of your work with others, you must make sure that as far as is reasonable, the information will be kept in strict professional confidence and used only for the purpose for which the information was given (shared).
- If you decide to disclose confidential information, you must be prepared to explain and justify your decision.
- You must abide by these principles in perpetuity.

1.4 Guidance on the use and protection of confidential information

- Workers expect that information about them will be treated as confidential.
- Record worker information accurately and consistently in line with the CSP core standards for record keeping.
- Paper records should be:
 - accessed only by members of the OH team on a need-to-know basis
 - in locked rooms or locked filing cabinets (preferably fire-resistant) with a secure key system
 - transported in a secure notes carrier
 - locked in a car boot if left briefly but should not be left overnight
- Any personal information held on a computer system is safeguarded by the Data Protection Act. No computerised databases holding personal information should be created without registration under this Act.
- Non-clinical staff within the team should have training on confidentiality and sign a confidentiality agreement as a condition of employment.
- Personal information should be anonymised or encrypted wherever possible if it is being moved and it is in electronic format.

- The unauthorised passing on of personal information by any member of staff is a serious matter, warranting consideration of disciplinary action and possibly risking legal action by others.
- Care should be taken to ensure that unintentional breaches of confidence do not occur, eg:
 - do not leave files/computer terminals unattended/unsecured
 - double check to avoid transmitting information to the wrong person or fax machine
 - do not allow sensitive conversations to be overheard
 - guard against people seeking information by deception.
 - do not share your Username & Password
 - log out or lock your screen down when leaving your desk for any length of time.
- A data controller must be identified either by the employer, or within the OH Company. Independent OH professionals may need to register themselves as data controllers with the Information Commissioner <https://ico.org.uk/>
- Even when there is a professional data controller the physiotherapist retains professional and ethical responsibility for maintaining the confidentiality of records.

2 Consent

2.1 Introduction

Consent is the voluntary agreement given by a person to allow something to happen to them, and/or to be done to them, and/or to allow their participation in something. It is your professional duty to explain clearly to the worker the proposed intervention, what it will entail, any likely risks and the potential outcomes. It is only after you have done this and checked that the worker has understood that they can give their valid consent.

Consent is a continuous process, not a one-off occurrence; it is for the purpose for which it was given and it can be withdrawn at any time. Consent may be implied or explicit. **Implied consent** should not be relied upon except in circumstances where it is obvious, routine and generally accepted. **Explicit consent** may be oral or written. In either case it is prudent to record the key elements of the discussion you have had with the worker in your notes or on the consent form. The CSP information paper on Consent and Physiotherapy Practice (2012) advises that you take written consent where clinical care is not the prime aim of the intervention or if there may be significant consequences for the worker's employment, social or personal life.

2.2 Ensuring good practice regarding consent in Occupational Health

You must:

- Ensure that workers understand the purpose, context and potential outcomes of the Occupational Health assessment, including what information employers or third parties may have requested of you.
- Be satisfied that, wherever possible, the worker has understood what is proposed, and consents to it before you provide treatment or investigate their condition or provide a report to employers or third parties.
- Ensure that they have provided informed consent to any disclosures, make a record of this and respect their right to withhold such information if agreement cannot be reached.
- When seeking information from another Clinical Specialist, you must obtain informed consent from the worker and observe their rights under the Access to Medical Reports Act when seeking information from another specialist.

2.3 GMC Guidance on Consent

In October 2009 the General Medical Council (GMC) published new guidance on consent:

- The guidance for doctors is if they are providing a report on an employee to the employer, (based on an examination or on records) the doctor should offer to show the report to the employee, or give them a copy, **before** it is sent to the employer. This gives the employee the chance to correct any errors of fact before the report is issued.
- Exceptions include if the employee has already indicated that they do not wish to see it, or if disclosure would cause harm to a third party.

2.4 ACPOHE advice for physiotherapists working in Occupational Health

As yet, there is no guidance on Confidentiality and Consent from the Chartered Society of Physiotherapists (CSP) specifically on this for physiotherapists working in the Occupational Health and Ergonomic field, so ACPOHE advises that physiotherapists should follow the same guidance used by the GMC.

This is because if physiotherapists and Occupational Health Advisors (OHA) did not comply with the GMC guidance, it would allow employers to request physiotherapist and OHA reports to 'bypass' the need to show the worker the reports written about them. This has been deemed to be ethically wrong.

2.5 How to comply with the GMC Guidance

- The easiest way to comply with the GMC Guidance is to describe verbally the content of your report to the worker when they are with you. Some physiotherapists will dictate the report in

front of the worker, and some will actually type the report in the worker's presence, so that the final report is seen by the worker at the end of the consultation.

- The principle is that ***there should be no surprises!*** You can let the worker read the report either before you send it as above, or send a copy to them at the time you send it to the employer.
- A small proportion (0-10%) may ask to see the report before it is sent, so a delay is incurred in only a small number of cases.

3 Reference and Resources

CSP Information Paper PD078, Consent and Physiotherapy Practice (2012).

<http://www.csp.org.uk/publications/consent-physiotherapy-practice>

Ethics Guidance for Occupational Health Practice. Faculty of Occupational Medicine, December 2012. <http://www.fom.ac.uk>

Occupational Health Law, 5th edition, Diana Kloss, 2010.

Employment Law and Occupational Health: A Practical Handbook. Joan Lewis and Greta Thornbury, 2010.

Confidentiality – NHS Code of Practice' Department of Health November 2003.

<http://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>

HCPC publication 'Confidentiality – a guide for registrants'

<http://www.hcpc.org.uk/assets/documents/100023F1GuidanceonconfidentialityFINAL.pdf>

The Data Protection Act 1998 <http://www.gov.uk/data-protection/the-data-protection-act>

Contemporary Occupational Health Nursing, A Guide for Practitioners. Greta Thornbury 2014.

4 Appendix 1 - Legal and professional provisions

4.1 The Common Law Duty of Confidentiality

The common law duty of confidence requires that confidential information can be disclosed only with the permission of the person who provided it, or the person the information relates to, unless there is an overriding public interest in disclosing the information without permission.

4.2 The Human Rights Act 1998

The Act creates the right to privacy and to family life. Health information on employees should only be gathered if necessary for the reasons given in the code, be used appropriately and treated confidentially.

4.3 The Data Protection Act 1998

Under the terms of the Act, health information is 'sensitive personal data'. Sensitive data must be:

1. processed fairly and lawfully
2. obtained for specific and lawful purposes
3. adequate, relevant and not excessive
4. accurate and where necessary, kept up to date
5. not kept for longer than necessary
6. processed in accordance with the data subject's rights
7. kept secure
8. not transferred abroad unless to countries with adequate data protection laws

4.4 The Access to Health Records Act 1990 (AHRA)

The AHRA gives the individual the right to access their medical record. Subject access rights to health records follow the Act's provisions, including fee charging levels. There is a maximum fee of £10 for computer records and £50 for copies of manual records or a mixture of manual and computer records. Charges are for copying and posting the records only and should not result in a profit for the record holder. No fee can be charged to someone who simply wants to inspect their own health records.

4.5 The Access to Medical Reports Act 1988 (AMRA)

The AMRA gives individuals a right of access to medical reports relating to them which are supplied by a health professional (the initial act related to doctors) for employment purposes. An employer may not apply to a health professional for such a report without the employee's consent

4.6 'Confidentiality - NHS Code of Practice'

The 'Confidentiality – NHS Code of Practice' is a guide to required practice for those who work within or under contract to NHS organisations concerning confidentiality and patients' consent to the use of their health records. The requirements that must be met in order to provide patients with a confidential service are:

- a. PROTECT – look after the patient's information
- b. INFORM – ensure that patients are aware of how their information is used
- c. PROVIDE CHOICE – allow patients to decide whether their information can be disclosed or used in particular ways
- d. IMPROVE – always look for better ways to protect, inform, and provide choice.

4.7 Sharing Information - The Caldicott Principles

Information sometimes should be shared to provide safe care or to avoid dangers due to missing information. The duty to share information can be as important as the duty to protect patient confidentiality. The Caldicott Principles provide guidance on how patient identifiable information should be handled between agencies. They should be understood and considered prior to disclosure of patient information.

The Caldicott principles are:

1. Justify the purpose(s) of using confidential information
 2. Only use it when absolutely necessary
 3. Use the minimum that is required
 4. Access should be on a strict need-to-know basis
 5. Everyone must understand his or her responsibilities
 6. Understand and comply with the law.
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