

21 May 2020

## Introduction

Members may be interested in communication recently received by the Faculty of Occupational Medicine's Responsible Officer (RO), Dr David Fox, from Helen Hardy, Policy and Planning Manager at the GMC.

The RO had asked the GMC for clarity on the interplay between GMC guidance [Confidentiality – good practice in handling patient information](#) and the legal requirements placed on a Selected Medical Practitioner ('SMP') by the Police Pension Regulations.

The specific query was whether, a doctor acting as a SMP, should provide a copy of their medical assessment report to an applicant (police officer/subject) before it is submitted to the police pension authority (PPA) and, if so, whether the applicant is able to prevent its release to the authority.

Although it is appreciated that very few occupational physicians will be working as an SMP, for those that are, the view of the GMC will hopefully be helpful to them when dealing with applicants.

There would also be relevance to any occupational physician if they are providing reports in a context where there may be overriding legislation for the situation in which they are giving written advice. Specifically, occupational physicians should understand, whether there may be any extant legislation that would override the usual approach of providing a report, for preview, to a patient they have been seeing.

## Communication from the GMC

A more detailed explanation is below but, in brief:

- *a SMP is required, under the relevant regulations, to provide a copy of their report to the applicant but not necessarily before it is submitted to the PPA.*
- *the applicant is not able to prevent the report's release to the PPA if they disagree with its contents or the SMP's opinion. Once the examination has taken place, the SMP is required by law to report their opinion to the PPA, and if the subject is dissatisfied with the report they have the opportunity to appeal.*

## Detailed explanation

*The law in this context is set out in the Police Pension Regulations 2006 ('the Regulations'). Regulation 8 sets out a person's eligibility requirements to receive*

pensions awards payable on the grounds of permanent disablement. Regulation 8(2) states that, if the PPA requires it, a person must submit to an examination by a SMP (in accordance with regulation 69) in order that the PPA may determine their eligibility to receive pension awards payable on the ground of permanent disablement.

In accordance with regulation 69(1) the SMP shall report to the PPA their opinion on the likelihood and likely timing of that person becoming permanently disabled for the performance of ordinary duties as a member of the police.

It is therefore the case that once an officer has submitted to an examination, the SMP is then required by law to send their report to the PPA.

If an officer is dissatisfied with the opinion of the SMP, a comprehensive appeals process is set out in Regulation 70.

As you are aware, paragraphs 115-116 of our Confidentiality guidance covers requests from employers, insurers and other third parties. As stated in paragraph 116 of the Guidance, information must be disclosed by doctors if it is required by law which would be the case if the report was produced under the Police pension regulations.

### **Sending the report to the subject**

Regulation 69(2) of the Police Pension Regulations requires a copy of the report to be supplied to the subject of the report. There is no legal requirement to send the report to the subject before sending it to the PPA. The expectation in the regulations appears to be that the report is sent to both parties at the same time.

Paragraph 115d of our Confidentiality guidance states that the doctor should offer to show the patient, or give them a copy of, the report before it is sent. As a matter of good practice, and in accordance with our guidance, it may be preferable for an SMP to send the report to the subject first, or certainly at the same time as sending to the PPA. However, the legal requirement under the regulations to send the report to the PPA means that the subject would not be able to prevent its onward disclosure if they disagreed with the content. There may however be scope for any errors of fact and any opinion that is based on errors of fact to be corrected. This would be consistent with paragraph 10 of our supplementary guidance [Confidentiality - disclosing information for employment insurance and similar purposes](#) which states that if a patient asks a doctor to amend a report, they should correct any errors of fact and any opinion that is based on errors of fact. They should not however remove information, opinion or advice if they believe the report would be false or misleading as a result.

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