THE SOUTH AFRICAN SOCIETY OF OCCUPATIONAL MEDICINE

ETHICAL AND PROFESSIONAL CONDUCT FOR OCCUPATIONAL MEDICAL PRACTITIONERS

Revised by Dr F.H. Fox

SASOM GUIDELINE 17

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ISBN: ISBN: 978-1-919727-74-5
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ETHICAL AND PROFESSIONAL CONDUCT FOR OCCUPATIONAL MEDICAL PRACTITIONERS

1. INTRODUCTION

1.1. The last update of this document occurred in 2011 and since then there have been several developments that have affected the practice of occupational medicine. Locally, legislation has changed and there have been changes to the approach taken by the Health Professions Council with regard to medical practice. Internationally, ICOH has been through a process of updating its code of ethics and the Faculty of Occupational Medicine in London has recently updated its document. Occupational medicine is now a specialty in South Africa and an increasing number of specialists are now being qualified by the College of Medicine. This necessitates a review of this document.

1.2. Doctors practising in the field of occupational health and medicine are encouraged to update their knowledge through the reading of this document (and other references), to address the changes needed in their contracts or relationships and, where necessary, their practice.

1.3. The South African Society of Occupational Medicine calls on its members to apply the ethical principles detailed below in their everyday practice.

2. LEGAL

2.1. The Law does not provide guidance on ethical behaviour for doctors and occupational health and safety law mostly only talks about the responsibilities of the Employer and Employee. The Mine Health and Safety Act (section 13(5) talks about the duty of the occupational medicine practitioner to promote occupational health and safety and assist employees with matters pertaining to occupational medicine but there is no mention of ethics. However, laws are rules established and enforced by Government and are utilitarian rules intended to minimise conflict in society. It is the occupational physician's first responsibility to know and obey applicable laws.

2.2. The body of legislation that affects occupational health practice is considerable and the Occupational Medical Practitioner, as a minimum, must have a good working knowledge of the following Acts and any other legislation relevant to his/ her area of practice:

2.2.1. The National Health Act, (Act 61 of 2003).

2.2.2. Occupational Health and Safety Act (Act 85 of 1993) and its regulations.

2.2.3. Mine Health and Safety Act (Act 29 of 1996) and its regulations.

2.2.4. Occupational Diseases in Mines and Works Act (Act78 of 1973)

2.2.5. Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993)

2.2.6. Employment Equity Act (Act 55 of 1998).

2.2.7. Basic Conditions of Employment Act (Act 75 of 1997) and codes of good practice.

2.2.8. Medicines and Related Substances Control Act 101 of 1965 and its amendments (1997and 2002).

2.2.9. The Labour Relations Act (Act 28 of 1956) as amended in 1996.

2.2.10. The National Road Traffic Act (Act 93 of 1996) and Regulations.

3. STANDARDS

3.1. **Health Professions Council of South Africa (HPCSA)**

3.1.1. The HPCSA is the primary governing body for the medical profession in South Africa and sets the rules regarding ethical standards for the profession. These are listed in separate

guidelines that can be accessed and downloaded from the HPCSA website http://www.hpcsa.co.za/Conduct/Ethics. The HPCSA also occasionally publishes ethical rules in the Government Gazette which gives an indication of the weight that the HPCSA attaches to these Rules.

3.1.2. In addition, there are numerous other documents and guidelines regarding clinical practice and research with which the occupational medicine practitioner (OMP) must be familiar. These can be found on the HPCSA website.

3.2. **The College of Public Health Medicine (Division of Occupational Medicine)**

3.2.1. The Colleges of Medicine is an independent academic body that is concerned with the qualification of medical specialists in South Africa and sets the standards for the required qualifications to practise as a specialist. The College of Public Health Medicine (Division of Occupational Medicine) is specifically concerned with the curriculum, examinations and qualification for occupational medicine as a specialty. The College does not set standards or produce guidance on ethics or any aspect of practice for any of the 27 specialties that constitute the Colleges of Medicine.

3.3. **South African Society of Occupational Medicine (SASOM)**

3.3.1. SASOM is a specialist subgroup of the South African Medical Association (SAMA) and, like other specialist societies within SAMA, provides advice and guidance on aspects of medical practice in relation to its specialty. This document is part of that guidance.

4. ETHICAL PRINCIPLES

4.1. The ethical principles in occupational health are the same as those for the rest of medical practice that are set out in the 'Georgetown Mantra' and have been adopted all over the world. A detailed discussion of these is beyond the scope of this document but suffice to say they are the basis for all ethical analysis in occupational health practice.

4.2. The four ethical principle are listed below:

4.2.1. Respect for the autonomy of the individual;

4.2.2. Beneficence (doing good);

4.2.3. Non-maleficence (doing no harm);

4.2.4. Distributive justice (all individuals have equal rights and responsibilities).

4.3. These principles are not spelt out in detail here and will emerge in each aspect of occupational medicine practice as it is discussed below.

5. OCCUPATIONAL HEALTH PRACTICE

Interacting with other professionals

The occupational health physician may be working alone or in a multidisciplinary team of health care workers, safety professionals, occupational hygienists and human resources professionals. In addition there may be interactions with family practitioners and other medical specialists who are involved with treating employees that are seen in the occupational health practice.

5.1. **Clinical colleagues**

5.1.1. Occupational medical professionals will necessarily come into contact with other medical practitioners either on a referral basis or, increasingly outside the realm of occupational health care, with the worker's primary care provider.

5.1.2. In South Africa the occupational health service or clinic often has an overlapping primary care role. One of the advantages of a factory based occupational health clinic is the easy access to health care for the worker to prevent absenteeism from time off to visit clinics and doctors. Workers normally have access to health care outside the factory from a mix of State and private health care providers and the occupational health professional must be careful not to take over or interfere with treatment (supersession). There is value to be added through cooperation with the worker's family physician or primary care provider in assisting with follow up and monitoring of chronic disease and by providing information to them about work-related issues and exposures which may be relevant. This interaction must take place with the informed consent of the individual on each occasion.

5.1.3. In situations, such as remote sites, where primary care or emergency services are provided by the company the line between occupational medicine and clinical care may be very blurred. It is important that continuity of care is maintained when the worker returns home and that occupational medicine practitioners stay within the bounds of their competence. Care should also be taken to ensure that all referrals take place in writing to a competent professional.

5.2. **Non-clinical colleagues**

5.2.1. The exchange of information with non-clinical colleagues in HR, Safety and Management is sometimes necessary and of benefit to the worker. Care must be taken not to release confidential medical information unless the worker has given informed consent to this.

6. SPECIFIC ISSUES FOR OCCUPATIONAL MEDICINE PRACTICE IN SOUTH AFRICA

6.1. **Medical certificates**

6.1.1. The occupational medicine practitioner is often called upon to provide medical certificates related to the fitness of employees. These may be required variously for fitness to perform work, continue in work or employment, compensation claims, assessment of incapacity for medical retirement purposes and simple day to day sick certificates.

Medical certificates are issued for a specific purpose. To "certify" that a person is fit or unfit to work, that a person was in a certain place at a certain time or that an examination has been done. A medical certificate is essentially the doctor's opinion based on what he/she has done.

Medical certificates generally do not include clinical information (with the exception of the sick note, where the patient's permission must be sought for including the diagnosis) and, since they are given to non-medical people are not intended to be medically confidential.

The HPCSA is quite clear that medical practitioners must take care not to sign medical certificates unless they have personally examined the patient/ worker.

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7. International Code of Ethics: ICOH

SASOM subscribes to the International Code Ethics from the International Commission on Occupational Health (ICOH). The full text is adopted as follows.

"BASIC PRINCIPLES

The following three paragraphs summarize the principles of ethics and values on which is based the International Code of Ethics for Occupational Health Professionals.

The purpose of occupational health is to serve the protection and promotion of the physical and mental health and social well-being of the workers individually and collectively. Occupational health practice must be performed according to the highest professional standards and ethical principles. Occupational health professionals must contribute to environmental and community health.

The duties of occupational health professionals include protecting the life and the health of the worker, respecting human dignity and promoting the highest ethical principles in occupational health policies and programmes. Integrity in professional conduct, impartiality and the protection of the confidentiality of health data and of the privacy of workers are part of these duties.

Occupational health professionals are experts who must enjoy full professional independence in the execution of their functions. They must acquire and maintain the competence necessary for their duties and require conditions which allow them to carry out their tasks according to good practice and professional ethics.

DUTIES AND OBLIGATIONS OF OCCUPATIONAL HEALTH PROFESSIONALS

Aims and advisory role

1. The primary aim of occupational health practice is to safeguard and promote the health of workers, to promote a safe and healthy working environment, to protect the working capacity of workers and their access to employment. In pursuing this aim, occupational health professionals must use validated methods of risk assessment and health promotion, propose effective preventive measures and follow up their implementation. While responding to the health and safety needs expressed by employers, workers or authorities, the occupational health professionals should be proactive in terms of improving health and safety at work on the basis of their professional competence and ethical judgment. The occupational health professionals must provide competent and honest advice to the employers on fulfilling their responsibility in the field of occupational safety and health as well as to the workers on the protection and promotion of their health in relation to work. The occupational health professionals should maintain direct contact with safety and health committees, where they exist.

Knowledge and expertise

2. Occupational health professionals must continuously strive to be familiar with the work and the working environment as well as to develop their competence and to remain well informed in scientific and technical knowledge, occupational hazards and the most efficient means to eliminate or to minimize the relevant risks. As the emphasis must be on primary prevention defined in terms of policies, design, choice of clean technologies, engineering control measures and adapting work organization and workplaces to workers, occupational health professionals must regularly and routinely, whenever possible, visit the workplaces and consult the workers and the management on the work that is performed.

Development of a policy and a programme

3. The occupational health professionals must advise the management and the workers on factors at work which may affect workers' health. The risk assessment of occupational hazards must lead to the establishment of an occupational safety and health policy and of a programme of prevention adapted to the needs of undertakings and workplaces. The occupational health professionals must propose such a policy and programme on the basis of scientific and technical knowledge currently available as well as of their knowledge of the work organization and environment. Occupational health professionals must ensure that they possess the required skill or secure the necessary expertise in order to provide advice on programmes of prevention which should include, as appropriate, measures for monitoring and management of occupational safety and health hazards an understanding of national regulatory requirements, and, in case of failure, for minimizing consequences. The quality and effectiveness of occupational health programmes should be regularly audited in the objective of continual improvement.

Emphasis on prevention and on a prompt action

4. Special consideration should be given to the rapid application of simple preventive measures which are technically sound and easily implemented. Further evaluation must check whether these measures are effective or if a more complete solution must be sought. When doubt sexist about the severity of an occupational hazard, prudent precautionary action must be considered immediately and taken as appropriate. When there are uncertainties or differing opinions concerning nature of the hazards or the risks involved, occupational health professionals must be transparent in their assessment with respect to all concerned, avoid ambiguity in communicating their opinion and consult other professionals as necessary.

Follow-up of remedial actions

5. In the case of refusal or of unwillingness to take adequate steps to remove an undue risk or to remedy a situation which presents evidence of danger to health or safety, the occupational health professionals must make, as rapidly as possible, their concern clear, in writing, to the appropriate senior management executive, stressing the need for taking into account scientific knowledge and for applying relevant health protection standards, including exposure limits, and recalling the obligation of the employer to apply laws and regulations and to protect the health of workers in their employment. The workers concerned and their representatives in the enterprise should be informed and the competent authority should be contacted, whenever necessary.

Information, communication and training

6. Occupational health professionals must contribute to the information for workers on occupational hazards to which they may be exposed in an objective and understandable manner which does not conceal any fact and emphasizes the preventive measures. The occupational health professionals must co-operate with the employer, the workers and their representatives to ensure adequate information and training on health and safety to the management personnel and workers. In communicating about risks at work and their management, occupational health professionals are required to address language barriers, cross-cultural differences and other diversities among the management personnel and workers that may affect the effectiveness of communication. Occupational health professionals must provide appropriate information to the employers, workers and their representatives about the level of scientific certainty or uncertainty of known and suspected occupational hazards at the workplace.

Commercial secrets

7. Occupational health professionals are obliged not to reveal industrial or commercial secrets of which they may become aware in the exercise of their activities. However, they must not withhold information

which is necessary to protect the safety and health of workers or of the community. When needed, the occupational health professionals must consult the competent authority in charge of supervising the implementation of the relevant legislation.

Health surveillance

8. The occupational health objectives, methods and procedures of health surveillance must be clearly defined with priority given to adaptation of workplaces to workers who must receive information in this respect. The relevance and validity of these methods and procedures should be consistent with available scientific evidence and relevant good practice. The surveillance must be carried out with the non-coerced informed consent of the workers. The potentially positive and negative consequences of participation in screening and health surveillance programmes should be discussed as part of the consent process. The health surveillance must be performed by an occupational health professional approved by the competent authority.

Information to the worker

9. The results of examinations, carried out within the framework of health surveillance must be explained to the worker concerned. The determination of fitness for a given job, when required, must be based on a good knowledge of the job demands and of the work-site and on the assessment of the health of the worker. The workers must be informed of the opportunity to challenge the conclusions concerning their fitness in relation to work that they feel contrary to their interest. An appeals procedure must be established in this respect.

Information to the employer

10. The results of the examinations prescribed by national laws or regulations must only be conveyed to management in terms of fitness for the envisaged work or of limitations necessary from a medical point of view in the assignment of tasks or in the exposure to occupational hazards. In providing such information, the emphasis should be placed on proposals to adapt the tasks and working conditions to the abilities of the worker. General information on work fitness or in relation to health or the potential or probable health effects of work hazards, maybe provided with the informed consent of the worker concerned, in so far as this is necessary to guarantee the protection of the worker's health.

Danger to a third party

11. Where the health condition of the worker and the nature of the tasks performed are such as to be likely to endanger the safety of others, the worker must be clearly informed of the situation. In the case of a particularly hazardous situation, the management and, if so required by national regulations, the competent authority must also be informed of the measures necessary to safeguard other persons. In his advice, the occupational health professional must try to reconcile employment of the worker concerned with the safety or health of others that may be endangered.

Biological monitoring and investigations

12. Biological tests and other investigations must be chosen for their validity and relevance for protection of the health of the worker concerned, with due regard to their sensitivity, their specificity and their predictive value. Occupational health professionals must not use screening tests or investigations which are not reliable or which do not have a sufficient predictive value in relation to the requirements of the work assignment. Where a choice is possible and appropriate, preference must always be given to non-invasive methods and to examinations, which do not involve any danger to the health of the worker concerned. An invasive investigation or an examination which involves a risk to the health of the worker

concerned may only be advised after an evaluation of the benefits to the worker and the risks involved. Such an investigation is subject to the worker's informed consent and must be performed according to the highest professional standards. It cannot be justified for insurance purposes or in relation to insurance claims.

Health promotion

13. When engaging in health education, health promotion, health screening and public health programmes, occupational health professionals must seek the participation of both employers and workers in their design and in their implementation. They must also protect the confidentiality of personal health data of the workers, and prevent their misuse.

Protection of community and environment

14. Occupational health professionals must be aware of their role in relation to the protection of the community and of the environment. With a view to contributing to environmental health and public health, occupational health professionals must initiate and participate, as appropriate, in identifying, assessing, advertising and advising for the purpose of prevention on occupational and environmental hazards arising or which may result from operations or processes in the enterprise.

Contribution to scientific knowledge

15. Occupational health professionals must report objectively to the scientific community as well as to the public health and labour authorities on new or suspected occupational hazards. They must also report on new and relevant preventive methods. Occupational health professionals involved in research must design and carry out their activities on a sound scientific basis with full professional independence and follow the ethical principles relevant to health and medical research work. These include social and scientific value, scientific validity, fair subject selection, favourable risk benefit ratio, informed consent, respect for potential and enrolled subjects, review of protocols and potential conflicts of interest by an independent and competent ethics committee and protection of confidential data. The occupational health professionals have a duty to make their research results publicly available. They are accountable for the accuracy of their results.

CONDITIONS OF EXECUTION OF THE FUNCTIONS OF OCCUPATIONAL HEALTH PROFESSIONALS

Competence, integrity and impartiality

16. Occupational health professionals must always act, as a matter of prime concern, in the interest of the health and safety of the workers. Occupational health professionals must base their judgments on scientific knowledge and technical competence and call upon specialized expert advice as necessary. Occupational health professionals must refrain from any judgment, advice or activity which may endanger the trust in their integrity and impartiality.

Professional independence

17. Occupational health professionals must seek and maintain full professional independence and observe the rules of confidentiality in the execution of their functions. Occupational health professionals must under no circumstances allow their judgment and statements to be influenced by any conflict of interest, in particular when advising the employer, the workers or their representatives in the undertaking on occupational hazards and situations which present evidence of danger to health or safety. Such conflicts

may distort the integrity of the occupational health professionals who must ensure that harm does not accrue with respect to workers' health and public health as a result of conflicts.

Equity, non-discrimination and communication

18. The occupational health professionals must build a relationship of trust, confidence and equity with the people to whom they provide occupational health services. All workers should be treated in an equitable manner, without any form of discrimination as regards their condition, gender, social aspects, convictions or the reason which led to the consultation of the occupational health professionals. Occupational health professionals must establish and maintain clear channels of communication among themselves, the senior management responsible for decisions at the highest level about the conditions and the organization of work and the working environment in the undertaking, and with the workers' representatives.

Organizational ethics and contracts of employment

19. The public or private institutions and organizations employing occupational health professionals should adopt a programme of organizational ethics that is aligned with the ethical principles of this Code. These institutions and organizations should enable and support the conduct of occupational health professionals according to the principles of the Code. Occupational health professionals must request that a clause on ethics be incorporated in their contract of employment. This clause on ethics should include, in particular, their right to apply professional standards, guidelines and codes of ethics. Occupational health professionals **must not accept**[SASOM's emphasis] conditions of occupational health practicewhich do not allow for performance of their functions according to the desired professional standards and principles of ethics. Contracts of employment should describe advisory roles and responsibilities, stateprofessional independence of occupational health professionals andcontain the guidance on the legal, contractual and ethical aspects. Approachesfor the management of conflict, access to medical records andthe protection of confidential information should also be addressed.Occupational health professionals **must ensure**[SASOM's emphasis] that their contract ofemployment or service does not contain provisions which could limittheir professional independence. In case of doubt about the terms of thecontract legal advice must be sought and the competent authority mustbe consulted as appropriate.

Records

20. Occupational health professionals must keep good records with theappropriate degree of confidentiality for the purpose of identifying occupationalhealth problems in the enterprise. Such records include datarelating to the surveillance of the working environment, personal datasuch as the employment history and occupational health data such asthe history of occupational exposure, results of personal monitoring ofexposure to occupational hazards and fitness certificates. Workers mustbe given access to the data relating to the surveillance of the workingenvironment and to their own occupational health records.

Medical confidentiality

21. Individual medical data and the results of medical investigations mustbe recorded in confidential medical files which must be kept securedunder the responsibility of the occupational health physician or the occupationalhealth nurse. Access to medical files, their transmission andtheir release are governed by national laws or regulations on medicaldata where they exist and relevant national codes of ethics for healthprofessionals and medical practitioners. The information contained inthese files must only be used for occupational health purposes.

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Collective health data

22. When there is no possibility of individual identification, informationon aggregate health data on groups of workers may be disclosedto management and workers' representatives in the undertaking or tosafety and health committees, where they exist, in order to help themin their duties to protect the health and safety of exposed groups ofworkers. Occupational injuries and work-related diseases must be reportedto the competent authority according to national laws andregulations.

Relationships with health professionals

23. Occupational health professionals must not seek personal informationwhich is not relevant to the protection, maintenance or promotionof workers' health in relation to work or to the overall health ofthe workforce. Occupational health physicians may seek further medicalinformation or data from the worker's personal physician or hospitalmedical staff, with the worker's informed consent, but only forthe purpose of protecting, maintaining or promoting the health of theworker concerned. In so doing, the occupational health physicianmust inform the worker's personal physician or hospital medical staffof his or her role and of the purpose for which the medical informationor data is required. With the agreement of the worker, the occupationalhealth physician or the occupational health nurse may, ifnecessary, inform the worker's personal physician of relevant healthdata as well as of hazards, occupational exposures and constraints atwork which represent a particular risk in view of the worker's state of health.

Combating abuses

24. Occupational health professionals must co-operate with other healthprofessionals in the protection of the confidentiality of the health andmedical data concerning workers. Occupational health professionalsmust identify, assess and point out to those concerned procedures orpractices which are, in their opinion, contrary to the principles of ethicsembodied in this Code and inform the competent authority whennecessary. Thisconcerns in particular instances of misuse or abuse ofoccupational health data, concealing or withholding findings, violatingmedical confidentiality or of inadequate protection of records inparticular as regards information placed on computers.

Relationships with social partners

25. Occupational health professionals must increase the awareness ofemployers, workers and their representatives of the need for full professionalindependence and commitment to protect medical confidentialityin order to respect human dignity and to enhance the acceptabilityand effectiveness of occupational health practice.

Promoting ethics and professional conduct

26. Occupational health professionals must seek the support and cooperationof employers, workers and their organizations, as well as ofthe competent authorities, professional and scientific associations andother relevant national and international organizations, for implementingthe highest standards of ethics in occupational health practice.Occupational health professionals must institute a programme ofprofessional audit of their activities to ensure that appropriate standardshave been set, that they are being met, that deficiencies, if any,are detected and corrected and that steps are taken to ensure continuousimprovement of professional performance."

The full text of the ICOH Code of Ethics with its bibliography can be downloaded from http://www.icohweb.org/site/code-of-ethics.asp

Frequently Asked Questions

How should an OMP deal with the request from the employer to access information obtained in the course of rendering occupational health services to its employees?

Employers may require information about employees for a variety of reasons; medical surveillance data to assist with improvement of controls and information about fitness to enable placement of an employee, to mention just two. In all cases the OMP should be able to provide information to the employer without releasing clinical information.This may be in the form of a report, certificates of fitness, sick certificates, in meetings and in counselling sessions. Where it is necessary to release clinical information about an individual it must only be done with the informed consent of the employee. Anonymous data about groups of individuals is not a problem.

From the HPCSA rules.

The following points are taken from the HPCSA rules.

In the circumstance that an OMP is asked to write a report about or examine a patient, or to disclose information about a patient from existing records for a third party to whom the practitioners have contractual obligations.

1. The OMP must be satisfied that the patient has been told at the earliest opportunity about the purpose of the examination or disclosure, the extent of the information to be disclosed and the fact that relevant information cannot be concealed or withheld;
2. Where forms are to be completed, the OMP should show the form to the patient before completing and ensure that the patient understands the scope of the information requested;
3. Obtain, or have seen, written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf;
4. Disclose only information relevant to the request for disclosure;
5. Include only factual information that the OMP can substantiate, and ensure that it is presented in an unbiased manner;
6. Patients may wish to see reports written about them before they are disclosed.
7. In all circumstances the OMP should check whether patients wish to see their reports - unless patients have clearly and specifically stated that they do not wish to do so.
8. Disclosures without patients' consent to employers, or any other relevant third party, can be justified only in exceptional circumstances, for example when they are necessary to protect others from risk of death or serious harm.

What is informed consent?

The reader is referred to booklet 9 of the HPCSA guidelines for a full description http://www.hpcsa.co.za/Uploads/editor/UserFiles/downloads/conduct_ethics/rules/generic_ethical_rules/booklet_9_informed_consent.pdf

The first paragraph of the introduction in the booklet summarises this

"Successful relationships between health care practitioners and patients depend upon mutual trust. To establish that trust practitioners must respect patients' autonomy - their right to decide whether or not to undergo any medical intervention, even where a refusal may result in harm to themselves

or in their own death. Patients must be given sufficient information in a way that they can understand, to enable them to exercise their right to make informed decisions about their care. This is what is meant by an informed consent"

The client in the occupational health consultation is sometimes a patient and sometimes not. No matter what the context of the interaction the need for informed consent remains whenever an examination, investigation, test or request for information is undertaken.

There are three important components to this description; patient autonomy, harm and sufficient information. While the client in the occupational health setting is not always a patient in the medical sense autonomy will always apply when medical testing is undertaken. The harm is different from the clinical setting and may be the loss of employment or the opportunity for employment but equally the rights of third parties must also be considered as an unfit employee may easily put the safety of others at risk. This is not always so readily apparent in the normal clinical setting. Sufficient information is just as important as in the clinical setting and should include the legal requirements for testing in medical surveillance as well as the meaning of positive or negative results. Too often insufficient information is given to employees who are expected to undergo tests without any explanation.

Therefore, in the context of medical testing or examination the employee must be fully:

1. informed of the nature of the test or examination and the reason for it,
2. fully informed of the results of the test,
3. fully informed of how and when the test results will be used and,
4. what the potential impact of the test or examination results will be on continued employment.

In the context of a request for disclosure of information informed consent means that:

1. The employee hasthe knowledge of the nature or extent of the information to be disclosed, and
2. the OMP is confident that the employee appreciates and understands the nature of the disclosure.
3. Also, the OMP is confident that the employee consents to the disclosure, and
4. is confident that the employee also appreciates, understands and consents to the potential consequences of disclosure, as explained to the employee by the OMP.

How should the OMP deal with the employee who refuses to submit to occupational medical testing?

Medical examination and testing in the occupational testing is done for several reasons; the determination of fitness to work, placement in suitable work, protection of the health and safety of the employee and third parties (his/ her colleagues, the general public and consumers) and last for the purposes of medical surveillance related to exposure to health hazards in the working environment. The performance of these tests is required by Law and there should be a clause in the employment contract requiring the employee to undergo any necessary tests from time to time. Employees must be made aware of this requirement at the time of employment, of their right to refuse testing and the consequences (discipline, loss or denial of employment) if tests are refused. However, refusal of tests is usually based on lack of knowledge and insufficient information. In most cases where the employee refuses tests agreement will be obtained once full information about the test and the reasons for testing have been given. If the employee still refuses testing the matter should be referred to the HR department for management under the

company disciplinary process. It goes without saying that there must be a sound medical and legal reason for doing the required test and in the case of preplacement examinations the test or examination must be an inherent requirement for the job.

What is the hierarchy of medical recommendations made to an employer (e.g. can the OMP 'overrule' the recommendations of a private doctor, even a specialist in the field of disease?)

The OMP will often be in the position of being asked to adjudicate on the advice of another doctor with regard to the fitness to work of an employee.

There are several situations where requests for advice may arise.

The most common is in adjudication of sick leave. This seldom arises unless there is frequent absence or suspicion of sick leave abuse. The Basic Conditions of Employment Act allows for the employer to insist on a medical certificate if the period of absence is longer than 2 days or if there have been 2 or more absences within a period of 8 weeks. The requirements for sick certificates are given in the general ethical rules of the HPCSA. If these requirements are not met the Employer may refuse to give paid leave for the absence.

"16.(1) A practitioner shall grant a certificate of illness only if such certificate contains the following information –
(a) the name, address and qualification of such practitioner;
(b) the name of the patient;
(c) the employment number of the patient (if applicable);
(d) the date and time of the examination;
(e) whether the certificate is being issued as a result of personal observations by such practitioner during an examination, or as a result of information which has been received from the patient and which is based on acceptable medical grounds;
(f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient: Provided that if such patient is not prepared to give such consent, the practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;
(g) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
(h) the exact period of recommended sick leave;
(i) the date of issue of the certificate of illness; and
(j) the initial and surname in block letters and the registration number of the practitioner who issued the certificate.
(2) A certificate of illness referred to in subrule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.
(3) If pre-printed stationery is used, a practitioner shall delete words which are not applicable.
(4) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself."

The general practitioner is often not knowledgeable about the workplace and may not be in a position to provide appropriate advice as mentioned in rule 16(1)(g). In this case, after careful review of the clinical findings the OMP may overrule the sick note of an outside practitioner. If possible the OMP should contact the general practitioner and discuss the change, the conversation can be used to provide information about the workplace to the GP for future reference.

Similarly, in dealing with recommendations from specialists (particularly where it outsidethe OMP'sfield or experience) it is good practice to discuss the case with the specialist concerned to

get a better understanding of the specialist's view of the employee's incapacity and to discuss options for placement.

Abuse of sick leave is a more difficult problem as it may involve multiple doctors without knowledge of the patient's behaviour or a single practitioner who is behaving unethically. In the first scenario the employer is entitled to request a report detailing the employee's illness (this will be issued to the employee on request under rule 16(4))either by the OMP or by the employee's own doctor and the case should be dealt with under the company's performance management procedure. In the second scenario the practitioner should be warned of the suspicion of sick leave abuse and possibly reported to the HPCSA.

In any situation involving the overriding of another doctor's sick certificate the OMP must take care not to exceed his/ her own scope of practice but equally recognise that he/ she is in the position of knowing more about the workplace than the outside practitioner and has additional training in the field of occupational medicine. Doctors outside the workplace may make blanket recommendations without any knowledge of the possible accommodations that can be made to keep the employee in gainful employment.

How can an OMP deal with perceived unethical behaviour of a colleague?

The HPCSA ethical rules (Rule 25) are explicit on placing a duty on every doctor to report the impairment of or the unprofessional, illegal or unethical conduct of practitioner. In the case of impairment, there is a duty on every doctor to report his or her own impairment or suspected impairment to the Council if he or she is aware of his or her own impairment or has been publicly informed, or has been seriously advised by a colleague to act appropriately to obtain help in view of an alleged or established impairment.

Ethics is a personal subject and is seldom a black and white issue and while there may be ethical rules the application of these is nearly always context specific, and there may be different personal interpretations. This means that what is perceived by one as unethical behaviour may not seems so in the eyes of others. However, where there is obvious unethical behaviour one is duty bound to bring it to the attention of the person acting unethically. Before taking action though, it is a good idea to consult with another colleague, preferably a more senior one. If, after advising the individual of the transgression, the behaviour continues the next step may be to ask the SA Society of Occupational Medicine to intervene (they are able to sanction members) and the last resort should be to complain to the HPCSA. In serious transgressions the HPCSA may be the first resort.

How can an OMP deal with perceived coercion from an employer to acts or omissions which may lead to unethical behaviour?

There will be occasions when the OMP is asked to do something that contravenes medical ethics. This may be, amongst others, providing confidential information about an employee, declaring an employee fit or unfit, colluding in unfair dismissal or assisting in a disciplinary process where the OMP has a conflict of interest and is asked to takes sides with the employer. In all situations the OMP must carefully examine the ethical position and refuse to be coerced into unethical behaviour. This may sometimes mean resigning a position if the coercion is serious and on-going.

Under which conditions can an employer contract the services of an OMP?

There are several pieces of legislation that require employers to engage the services of an occupational medical practitioner (OMP) to conduct medical surveillance. Only one, the Mine Health and Safety Act speaks of full-time employment. The Occupational Health and Safety Act in its Regulations refers to ensuring that employees are under medical surveillance but does not specify how that is to be done. Other Acts require that employees be medically certified as fit to work and refer to medical practitioners registered with the HPCSA.

In addition to medical surveillance, OMPs may be requested to conduct fitness for work examinations, disabilityassessments and the diagnosis and management of occupational disease.

"Mine Health and Safety Act

Manager to establish system of medical surveillance

13. 3) Every employer who establishes or maintains a system of medical surveillance must-
a) engage the part-time or full-time services of-
i) an occupational medical practitioner; and"

There are several ways in which the employer can contract the services of an OMP. These are dependent on the particular circumstances. Employment can range from full-time, salaried positions to fee for service consultations and includes part-time or hourly contractual arrangements.

The rules for these arrangements are broadly covered in the ICOH document under paragraphs 17 and 19 and also in the HPCSA ethical rules. These apply both to full time and part-time employment.

There are two specific HPCSA documents which provide guidance: Booklet 2 – Ethical and Professional Rules of the Health Professions Council of South Africa and Booklet 5 – Guidelines on Over-servicing, Perverse Incentives and Related Matters. Note that the ethical rules in booklet 2 are issued under section 49 of the Health Professions Act, 1974 and were promulgated in the Government Gazette. Section 18 of Booklet 2 concerns professional appointments and is quoted below:

"Professional appointments

18. (1) A practitioner shall accept a professional appointment or employment from employers approved by the council only in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession.
(2) A written contract of appointment or employment referred to in sub rule (1) shall be made available to the council at its request."

The contract referred to above should be drafted in line with the ethical guidelines laid out in the ICOH document and the guidance in HPCSA booklet 5. The concern of the HPCSA is around practitioners being put under pressure to make decisions that unfairly disadvantage patients and this is explained in paragraph 2.9 of the booklet which defines "improper financial gain". The perspective of the HPCSA is around the clinical doctor patient relationship but there are many situations where the occupational health client needs the same protection. When entering into an

employment relationship with a company the practitioner must be careful to ensure that unethical behaviour cannot be coerced through performance based remuneration. Legal advice may be advisable in drafting a suitable contract of employment.

In all cases, employers wishing to employ an OMP (in the form of an employment contract) must only do so if they have received approval by the HPCSA. OMP's must not enter into employment contracts with employers other than those in possession of an approval for employment by the HPCSA. Where the relationship between the OMP and the 'employer' is defined in a Service Level Agreement (i.e. outside a contract of employment), there is no requirement for pre-approval by the HPCSA.

Can an OMP be employed by a non-medical employer and, under which conditions can an OMP work for a service company (Service Company being a company which provides occupational medical services to employers)?

The answer to the first part of the question (employment)is yes. The conditions are spelled out above.

The second part of the question is more difficult since it involves an unregistered (in terms of the Health Professions Act) person making money from the services of a registered person. Section 8 of the Ethical Rules (booklet 2) deals with this particular issue. Section 8(2)

"A practitioner shall practise in or as a juristic person who is exempted from registration in terms of section 54A of the Act only if such juristic person complies with the conditions of such exemption"

Section 54A of the Health Professions Act reads:

"54A. Exemption from operation of provisions of Act

(1) The Minister may in consultation with the council by notice in the Gazette exempt any juristic person or class of juristic persons specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation of any of the provisions of this Act, so as to enable such juristic person to practise a profession, likewise specified, in respect of which registration in terms of this Act is a prerequisite for practising."

If the employer has been granted exemption in terms of section 54A a doctor may be employed by them. The rules regarding perverse incentives and maintenance of professional independence still apply.

Guidance on occupational health service providers is given below.

Generally, suppliers of occupational medical services can be divided intothree types:

1. Organizations supplying occupational medical services
2. Individual practitioners
3. Group practices

ETHICAL AND PROFESSIONAL CONDUCT FOR OCCUPATIONAL MEDICAL PRACTITIONERS

1. Definition of Organizations supplying occupational medical services

An organisation supplying occupational medical services is a provider of clinical or non-clinical occupational health services to an employer.

There are two classes of such occupational medical service providers:

a. Those supplying non-clinical services, who do not require statutory registration: these providers are referred to as **Occupational Health Service Organisations** and may not provide clinical services; and

b. Those supplying clinical services, who are registered with the Health Professions Council of South Africa; these providers are referred to as **Incorporated Practitioner's Organisations** and may also provide non-clinical services.

2. Scope of service

A. Occupational Health Service Organisations

i. Occupational Health Service Organisations are suppliers or organisers of non-clinical occupational health services and occupational health consulting experts.

ii. Occupational Health Service Organisations may assist employers with consultation, organisation and management of:

   a. The infrastructure and nursing personnel of workplace healthcare services
   b. The supply/renting of specialised medical equipment required to perform occupational screening or surveillance, including audiometric, lung function, vision screening equipment
   c. The overall organisational management of workplace healthcare services
   d. Non-clinical standards of workplace healthcare service
   e. The auditing processes of workplace healthcare services
   f. The development of occupational health policies and procedures ensuring statutory compliance or employer's strategic OHS objectives
   g. Health risk assessment, training, health education
   h. Emergency planning, first aid and COIDA/ODMWA administration
   i. Health statistical management, trending and expert advice in respect of sick absence or employee wellness
   j. And any other non-clinical health services.

iii. Occupational Health Service Organisations may <u>not</u> engage in, or offer occupational (including primary health) medical examinations or certification; they may not contract or employ registered medical practitioners to perform medical services on account of the Occupational Health Service Organisation (unless they have met the conditions required by the HPCSA).

iv. Occupational Health Service Organisations are not subject to statutory controls and there are no rules applicable to:

a. Registration with a Council or Government Department
b. The naming of the organisation
c. Advertising, canvassing, touting or advertorial claims of excellence or uniqueness.
d. The use of, contents or information on stationery
e. Pricing of itinerant practice
f. The receiving of paying of commission
g. The continuity of service, covering or supersession
h. Financial interests in or referrals to doctors or hospitals

B. Incorporated Practitioners Organizations

i. Incorporated Practitioner's Organisations are suppliers of clinical and non-clinical occupational services, who are registered with the Health Professions Council of South Africa.

ii. Incorporated Practitioner's Organisations may assist employers with consultation, organisation and management of non-clinical services (as listed for Occupational Health Service Organisations) and may manage employers' or independent occupational health clinics where medical examinations, specials tests, biological monitoring or primary health care services are required.

iii. Incorporated Practitioner's Organisations may contract or employ registered medical practitioners, under the terms and conditions defined by the HPCSA.

iv. Incorporated Practitioners' Organizations conform to the following:

a. They are incorporated and registered with the Registrar of Companies as a private company in terms of the Companies Act.
b. Only natural persons registered with the HPCSA or another Incorporated Practitioners' Organizations, all the directors of which are HPCSA-registered practitioners, may be shareholders of the company.
c. Only a person who is a HPCSA-registered practitioner may be a director of the company.
d. Each shareholder may practise personally only the profession in respect of which he or she is registered with the HPCSA.
e. Each shareholder of the organisation remains subject personally to the provisions of the Health Professions Act and the disciplinary authority of the Council.
f. No person, whether a natural person or a juristic person, may directly or indirectly in any manner whatsoever share in the profits or in the income of the Incorporated Practitioners' Organizations or have any interest therein unless such person is a shareholder of the company.
g. If the Incorporated Practitioners' Organizations at any time neglects or omits to comply with any of the conditions as stipulated, such neglect or omission shall constitute conduct on the part of the directors or shareholders in respect of which the Council may take disciplinary steps.
h. Registered persons with other statutory bodies in terms of other acts of Parliament (e.g. nurses) cannot be shareholders.

v. Incorporated Practitioners' Organizations are subject to statutory rules in respect of

a. Advertising and canvassing or touting
b. Information on professional stationery
c. Naming of a practice
d. Itinerant practice
e. Fees and commission
f. Partnership and juristic persons
g. Sharing of Rooms
h. Covering
i. Supersession
j. Impeding a patient
k. Professional reputation of colleagues
l. Professional confidentiality
m. Retention of human organs
n. Signing of official documents
o. Certificates and reports
p. Issuing of prescriptions
q. Professional appointments
r. Secret remedies
s. Defeating or obstructing the council or board in the performance of its duties
t. Performance of professional acts
u. Exploitation
v. Medicine and medical devices
w. Financial interests in hospitals
x. Referral of patients to hospitals
y. Reporting of impairment or of unprofessional, illegal or unethical conduct
z. Research, development and use of chemical, biological and nuclear capabilities
aa. Dual registration

vi. Individual medical practitioners (shareholders or directors) of an incorporated Practitioners' Organizations may extend the scope of occupational health (nursing) practitioners, by virtue of Section 56(6) of the Nursing Act.

C. Individual practitioners

i. Individual practitioners can be:

a. Occupational medicine practitioners
b. Occupational medicine specialists
c. Occupational health practitioners.

ii. These are defined on the basis of statutory registration with the respective Council as:

a. "occupational medicine practitioner" means a medical practitioner as defined in the Health Professions Act, 56 (Act No. 56 of 1974), who has registered an additional

qualification in occupational medicine with the Health Professions Council of South Africa and who is in good standing with such Council;

b. “occupational medicine specialist” means a medical practitioner as defined in the Health Professions Act, 56 (Act No. 56 of 1974), who is registered with the Health Professions Council of South Africa as Occupational Medicine Specialist and who is in good standing with such Council;

c. "occupational health practitioner" means an occupational medicine practitioner or an occupational medicine specialist or a professional nurse as defined in the Nursing Act, 2005 (Act No. 33 of 2005) who has registered an additional qualification in occupational health with the South African Nursing Council and who is in good standing with such Council.

iii. Individual occupational medicine practitioners or specialists are suppliers of clinical and non-clinical occupational services, who are registered with the Health Professions Council of South Africa.

iv. Individual occupational medicine practitioners or specialists may assist employers with consultation, organisation and management of non-clinical services (as listed for Occupational Health Service Organisations) and may manage employers’ or independent occupational health clinics where medical examinations, specials tests, biological monitoring or primary health care services are required.

v. Individual occupational medicine practitioners or specialists may contract or employ registered medical practitioners, under the terms and conditions defined by the HPCSA.

vi. Individual occupational medicine practitioners or specialists may extend the scope of occupational health (nursing) practitioners, by virtue of Section 56(6) of the Nursing Act.

D. Group practices

i. Group Practices are suppliers of clinical and non-clinical occupational services, all the members of which are individually registered with the Health Professions Council of South Africa.

ii. Group Practices may assist employers with consultation, organisation and management of non-clinical services (as listed for Occupational Health Service Organisations) and may manage employers’ or independent occupational health clinics where medical examinations, specials tests, biological monitoring or primary health care services are required.

iii. Group Practices may contract or employ registered medical practitioners, under the terms and conditions defined by the HPCSA.

iv. **Group Practices**conform to the following:

a. Group practices for medical practitioners are governed by the HPCSA Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act and the HPCSA Guidelines on over servicing, perverse incentives and related matters.
b. There is currently no HPCSA register for group practices.
c. Doctors may not share practices, rooms or income with a person or entity not registered in terms of the Health Professions Act; this means that doctors and nurses cannot legally enter into a group practice.
d. Doctors in group practice may only use their own name or the name of other registered practitioners; they may not use other designations than a name (explicitly, the words “hospital”, “clinic” or “institute” or any other expression which may give the impression that the practice forms part of, or is in association with, a hospital, clinic or institute, must not be used).