



# LMC NEWS

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### CCG CONSTITUTIONS

All four CCGs have agreed to include the advice of the BMA lawyer in their constitutions. However eleven out of fourteen practices in Stafford have decided that their constitution would have an addendum or 'comfort letter' to reflect LMC involvement at Membership Board level but not on the Governing Body. The CCG is a member organisation and therefore as representative of GP members the LMC has a right to hold Observer status on the CCG Governing Body. Limiting the participation of the LMC to that of a lay person or member of the public when attending the CCG board meetings is unacceptable. The LMC advises our Stafford GP colleagues to reconsider their decision.

### RECORDING COMPLAINTS IN THE MEDICAL RECORD

A GP has enquired whether the details of a complaint should be recorded in the patient record. It is the advice of the BMA and defence organisations that there should be no reference to the complaint and associated process in the clinical record.

### DATA PROTECTION ACT

The LMC understands the view of some GPs that the Data Protection Act is unfair and puts a huge burden on general practice. Unfortunately, the Data Protection Act stands, and whilst we may all shout (unhappily) that was never intended for the use by companies such as Legal and General, they are making legal requests within the letter of the law.

The GPC is fully aware of our concerns and wish to change the law but our views are only a small part of a bigger picture where elements of it wish the access to records to be provided for free.

### MEDICATION BY COVERT MEANS

A GP has queried his involvement in the decision making for medication by covert means in a nursing home. First do consult a defence organisation. Is the patient competent to consent or refuse consent? If they are competent then do not agree. If they are not competent (which the practice may need to assess) and there is no advance directive, court of protection, or lasting power of attorney for health issues, then it is appropriate to act in the patient's best interests.

There are two complexities - the assessment of consent and the assessment of best interests. For example a patient who is non-verbal, but can find some way of indicating that they don't want any medication to prolong their life, and holds this view consistently may be competent. They may not need to be able to retain detailed information about an individual medication.

How you assess what these best interests are could be debated at length, but the legal UK view is that this would generally be the prolongation of life balanced in part by the minimisation of pain. The minimization of psychological suffering, e.g. in demented patients, is extremely complex and not an easy place to go.

Hence the advice to consult someone good at a defence organisation and get the best advice.

### DISEASE REGISTER REVIEW TEMPLATE

You may have been frustrated to receive the request from the PCT to complete a disease register review template. Apparently it arose from the 5% QOF visit and the GP Assessor who recommended that the form should be completed in future.

It is debateable whether we are obliged to comply but the PCT is using their obligation to monitor the contract as the reason. You may have also wondered what happened to the high trust low bureaucracy contract that we requested in

2004. However, the GPC advice led the LMC to recommend that we do not have a firm basis to recommend colleagues not to complete the form.

### CAN WE CHARGE FOR COPYING A COMPLETED ESA 1134 FORM

A patient is asking for copies of the ESA 1134 form that the doctor has completed in request for information from the employment and support allowance Benefits Agency. Can we charge for photocopying?

This request will be under the Access to Medical Records and the Data Protection Act. The amount you can charge varies depending on how the health records are held. You can charge a maximum of £10 for complying with a subject access request to health records held on a computer system only. You can charge a maximum of £50 for complying with a subject access request to health records held in a manual filing system, or a combination of electronic and manual filing systems. Or you can offer the applicant the opportunity to inspect the documents in person for a charge of £10. Many GPs may choose to either waiver the photocopying charge to the patient or make a small charge depending on the circumstances.

### FREEDOM OF INFORMATION REQUESTS

Several practices have received freedom of information requests from a private researcher about ESA appeals and another from a company called Codex Global about CQC registration.

The BMA lawyer advised that the information requests about ESA appeals is disclosable. The ESA is a public body and the information is required as a result of the ESA discharging its public function. It would therefore be difficult to argue that the information could be withheld. However, only salary scales should be disclosable not actual income. For information, purely private GP income is not disclosable.

Codex are requesting information from practices about their use of formal quality improvement programmes in anticipation of CQC registration. This was on behalf of an independent organisation (not CQC).

The advice of the GPC lawyer is as follows:

- GP practices are obliged under the FOIA to respond to requests about the information they hold and have recorded in any form;
- Practices should consider whether they have the information requested. FOIA does not require a public authority (GP practices are public authorities for the purposes of FOIA) to produce or obtain information that it does not have, so if for instance, a decision or intention has not yet been reached, a FOIA request will not require the practice to reach one in order to answer the question. Where the practice does not hold the information requested, they should say so;
- For question 1 in the attached questionnaire, practices should consider whether they have recorded their future intentions and reasons. If not, then the information does not exist (although note

than even an email, or voicemail, dialogue between staff/partners will count as recorded information);

- If the practice does have the information, then it should be provided unless one of the exemptions applies. There are a number of exemptions which are outlined in Part II (sections 21 - 44) of the legislation (<http://www.legislation.gov.uk/ukpga/2000/36/contents>). However, it should be noted that some exemptions are qualified, meaning even if the exemption applies, the practice will need to consider whether it is in the public interest to disclose the information or not;
- One exemption that could apply to the questions being asked here is that of Commercial Interests (Section 43 - a qualified exemption). Practices should consider whether their business decisions are commercially sensitive when deciding if Section 43 applies;
- When refusing to disclose on the basis of an exemption, the practice should comply with section 17 of the Act (i.e. the refusal should be communicated to the applicant in a refusal notice).

In summary, we advise practices to respond to this FOIA request, and to ensure they answer each question separately. Codex Global will accept basic responses to each question. Please note though that practices should answer each question truthfully, based on the information they hold and have recorded in any form.

We also suggest that practices ask Codex for confirmation that the responses provided are adequate, they do not require any further information and that the request is now closed.

**Dr David Dickson**  
**LMC Secretary**

### DATES OF NEXT MEETINGS

15th Nov South Staffordshire LMC **PCT**  
SSPCT Edric House, Rugeley

22nd Nov South Staffordshire LMC **LMC**  
SSPCT Edwin House, Burton

The meetings with the **LMC** are for the full committee of LMC members without the PCT.

The meetings with the **PCT** are for the LMC Executive and the PCT alone.

## LMC MEMBERS

The following is a list of current members of the South Staffs LMC

Dr V Singh (Chairman)	01543 870580
Dr D Dickson (Secretary)	01283 564848
Dr P Gregory (Executive member)	01543 682611
Dr G Kaul (Executive member)	01543 414311
Dr P Needham (Executive member)	01283 565200
Dr T Scheel (Executive member)	01283 845555
Dr A Burlinson and Dr O Barron (job share)	01889 562145
Dr J Chandra	01543 870560
Dr J Eames	01785 815555
Dr A Elalfy	01785 252244
Dr C McKinlay (Treasurer)	01283 564848
Dr E Odber	08444 773012
Dr A Parkes	01827 68511
Dr A Selvam	01543 571650
Dr E Wilson	01922 415515
Dr A Yi	01543 870590
Dr H Zein-Elabdin	01922 413207

## DR V SPLEEN

Dear Reader

I have become aware recently of a new form of torture that is surely outlawed by the Human Rights Act. It is delivered by e-mail with impossibly short time scales and is designed to make you agree to anything just to make it stop. It is ..... the 360 degree review. Long beloved of educationalists (and the authorities know who you are by the way) the idea of helping people identify their learning needs and their unconscious failings that are so obvious to everybody but them has been around for a long time. I seem to have been inundated with requests from people on courses with leadership in the title as well as job assessment centres to do 360 just to establish how world class their leadership skills already happen to be. There is never a box for "He seems like a good chap who would be nice to small children and animals" which frankly is about all you can say, being honest about some folk. They always want to know about "vision" but again there is never a box to tick to say that it would best be sorted out with an eye test.

On the surface of it, all this seems harmless enough, but now this seemingly innocuous thing has been dragged away to a dark place and evilly cross bred with other foul intentions to create that most cynical of all monitoring methods, the Organisational 360. I seem to be swamped with these recently particularly about CCGs. You want to be helpful but how do you make something up about organisations that don't actually exist yet, only on paper and in the imaginations of the government and senior civil servants. I feel if I don't say something sensible then they won't get authorised and Richard Branson will end up running the Health Service and the West Coast Main Line- not a - pleasing thought. My cunning plan is to say that everything and everybody is just splendid-couldn't be better, "Top Notch and all that" - anything but Richard - I couldn't stand the publicity stunts.

And now of course, we ourselves are going to inflict this on our mates for Revalidation - it is so good to spread the joy a little wider. Perhaps we could inflict it on patients - that could reduce demand.

So, to finish, let's get some practice in.

My thoughts on this subject were excellent.

Do you

Agree so much you have entered a state of eternal bliss?

Agree a bit less than the above?

Strongly agree?

Still agree but not as much as I did a week last Wednesday?

Probably agree?

Possibly agree?

Possibly disagree?

You get the idea.....

Regards

**Venture**

**The views expressed in this column are those of the author and not necessarily those of the LMC**