



## POSITION STATEMENT

### Confidentiality of Employee Health Records

The Association of Occupational Health Professionals in Healthcare believes an imperative exists with regard to the confidentiality of occupational/employee health records. The occupational health professionals in healthcare settings including nurses, nurse practitioners, physicians, physician's assistants, and all allied health professionals are charged with the protection of the individual worker's right to privacy with regard to his or her employee health records. As a general rule, release of information beyond medical fitness for duty or that, which is required by law, cannot be undertaken without the specific written request of the employee.

Regulations and statutes that address privacy and confidentiality issues include federal regulations included under the Occupational Safety and Health Administration (OSHA), the Americans with Disabilities Act (ADA), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)\*. Federal law also restricts disclosure of drug and alcohol abuse treatment records. Workers' compensation is excluded by HIPAA and pertinent information can be accessed according to the corresponding state' workers' compensation act for work-related injuries, illnesses or exposures. In addition, health care facilities may have health information requests made by other regulatory bodies such as The Joint Commission and state department of public health. Each state has specific statutes for mandatory reporting of items such as communicable disease diagnosis which may include personally identifiable data. Release of information contained in the employee health record following receipt of a subpoena, warrant, or summons that is issued or ordered by a court, a grand jury, or by a judicial officer must only be done based on the statutory requirements of the State where the records are maintained, and should only include that information specifically described in the subpoena, warrant or summons.

Employee health records include the pre-placement medical history, results of physical examinations, medical surveillance and other screening data, vaccination records, information on assessments made at the request of the employer or the employee, exposure follow-up records, documentation of observations and counseling, and any other health records which come under the control or are initiated by the occupational health professional, regardless of the source.

Management's requests for information beyond medical fitness for duty, workplace safety, or that required by law must be carefully reviewed as management is not empowered to override the obligation of confidentiality imposed upon the employee health professional. Health related information contained in the record shall be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the duties of persons with certain injuries or illnesses and regarding necessary accommodation; (ii) medical, first-aid and safety personnel may be informed when emergency or special medical treatment may be required; and (iii) government officials investigating compliance with state and federal law may be informed. An employer also reserves the right to disclose information from an employee's health record to anyone other than the employee when failure to disclose such information might place others at risk. Consultation with company legal counsel may be indicated. Aggregate health information without any form of identifiers can be used for statistical purposes to justify the cost/benefit of safety and health program initiatives.

Accurate health information cannot be secured when the confidentiality of these records cannot be insured. Failure to secure complete and accurate information from an employee in the healthcare setting may present a threat to the health of patients as well as other healthcare workers.

*\*Note: HIPAA's authority does not address an employer's use of information contained in the employee*

health record. In addition, occupational health professionals should also be aware of and refer to any statutory laws governing their particular state.

**References:**

Centers for Medicare and Medicaid Services. (2002). *The Health Insurance Portability and Accountability Act of 1996 (HIPAA)*. Retrieved July 13, 2005, from <http://www.cms.hhs.gov/hipaa/>

McHugh, J. (2003). Confidentiality of employee health records. *AAOHN Journal*, 51(9), 378-383.

American Hospital Association, "*Guidelines for Releasing Patient Information to Law Enforcement.*"

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