

## PRACTICE OBSERVED

## Pitfalls in Practice

## Employment law

## II: The importance of the employment contract

NORMAN ELLIS

A contract of employment exists as soon as an employee proves his acceptance of an employer's terms and conditions of employment by starting work, and both employer and employee are bound by the terms offered and agreed. Often the initial agreement is verbal and not written down. But within 13 weeks of an employee starting work the employer must give him a written statement about the main terms of employment with an additional note on disciplinary and grievance procedures. (This requirement does not cover employees who normally work less than 16 hours, unless they have worked for eight or more hours a week for five years.) I recommend that contracts should be provided for all staff, whether part-time or full-time.

Irrespective of what the minimal legal requirement may be, there is every reason to treat the employment contract as an important legal transaction between the two parties and to document it properly. If this is done the documentation should at least avoid those disputes of interpretation which are simply "your word against mine." The employer is legally obliged to provide an employee within 13 weeks of starting work a written statement which either contains (or refers to another document containing) the following particulars:

- (1) Name of the parties
- (2) Date employment began and statement about continuity
- (3) Job title
- (4) Pay
- (5) Hours

British Medical Association, BMA House, Tavistock Square, London WC1H 9EP  
NORMAN ELLIS, MA, PhD, under secretary and senior industrial relations officer

- (6) Holiday and holiday pay provisions
  - (7) Sick pay
  - (8) Pension
  - (9) Notice
  - (10) Grievance, disciplinary, and appeals procedures.
- It thus seems only sensible to take the exercise a stage further by preparing and issuing a comprehensive contract of employment that includes these.

Once you get the contract of employment right then you have gone a long way towards ensuring that unforeseen disputes do not arise from current employment legislation. This is because the task of preparing and agreeing the contract has made sure that you are familiar with current employment law and have not unknowingly acted contrary to it at the outset. In addition, if any dispute should arise and you find yourself having to defend your personnel practices and policies, your position will be greatly strengthened if it can be shown that you acted in good faith and had taken reasonable steps to act in accordance with the law.

## Rights of the employee

In this section I summarise the main employment rights. It is not a comprehensive list; a few selected employment rights which have only limited relevance to the general practitioner have been omitted—for example, those concerned with suspension on medical grounds, the right to receive guaranteed pay, the involuntary of an employer, and the rehabilitation of offenders.

- (i) Contract of employment
- (a) After four weeks' employment the employee is given the

## (ix) Equal pay

Employers are required to afford equal treatment to men and women who are employed on "like work" or work rated as equivalent under a job evaluation study. Equal pay is, therefore, not restricted to remuneration alone, but includes all terms of a contract of employment other than those relating to death or retirement benefits.

## Remedies available to employees

The remedy for an alleged breach of contract lies at present with the civil courts. The remedies where written statements of the terms and conditions of employment are concerned lie with industrial tribunals. The tribunal has power only to determine what particulars the written statement shall include; it does not have the power to arbitrate where any of the particulars is in dispute. Such cases are dealt with by the civil courts. The various remedies for unfair dismissal have been explained above.

Remedies under all the other provisions outlined above lie with industrial tribunals, and in some cases where an employer is found not to have complied with one or more of the provisions the tribunal may make an award of compensation to be paid by the employer to the employee.

## How to introduce a written contract

Once a doctor has decided to introduce written contracts among his staff there is a risk that he may act hastily and cause unnecessary anxiety. It is important not to upset staff who have served the practice loyally over many years by suddenly asking them to sign and exchange written contracts. A useful approach might be to treat the whole exercise as something which was being "imposed" on the practice from outside. The next step, then, requires discussing in detail what the written contract might contain, bearing in mind the draft document recommended in the next article. It is possible that some matters may be unclear, and it may be necessary to clarify the details of certain terms and conditions of service—for example, sick leave and holiday provisions. What often emerges during this exercise is that there are inexplicable variations between the terms and conditions of different staff, which have simply evolved on an ad hoc basis. A later article will explain how you can best change the terms and conditions of an existing contract.

This series of short articles can only provide a general guide to the provisions of existing legislation. They do not offer a definite statement of law.

This is the fourth of six articles on employing staff.

## Medical Records

## I: A personal view

KEITH WALKER

In my view medical records are a useful tool. As with all our other tools, except one's writing implement, one can get by without them, but for everyday patient care I would rate the usefulness of good clinical records higher than a thermometer, a sphygmomanometer, and even that faithful companion, the stethoscope. The main difference between the clinical record and these other tools is what we can do with it ourselves. With just a little effort we can really make records work for us.

This is a highly personal account of how I have attempted to improve our own practice records. I make no claim for the originality of my methods. Many of the ideas have been published and I have given references where possible, but I do acknowledge my indebtedness to many colleagues whose work is not published but whose ideas I have refined or adapted to suit our practice. I have tried and rejected some ideas. I have included a description of these projects, not to deny the principles involved (had I not thought they were good ideas I wouldn't have tried them) but to show that there are problems with some of the ideas for improving records in our type of practice.

Scarborough, North Yorkshire  
KEITH WALKER, MA, MSc, general practitioner

## Practice set up

The motive and the opportunity for change will obviously depend on how one's practice is set up. We have a two-man practice in a small seaside town, with a list of patients just topping 4000. The organisation of the practice really began in 1968 when our former senior partner, a single-handed with about 2500 patients, took on two part-time receptionists and started an appointments system. When I joined the practice in 1969 we had unorganised records; we had patients who were used to coming to the premises only at surgery times, thus leaving the receptionists with little to do between surgery hours; and we had small personal lists. This last was balanced in part by the rapid expansion of the practice, work as clinical assistants, an influx of visitors from June till September, and the fact that the practice had a large retirement population, nearly three times the national average, with about 32% of the practice population over age 65.

## Bulging record envelopes

This preponderance of elderly people, many with chronic conditions requiring chronic medication, gave impetus to the idea of improving our records. A record envelope bulging with disordered record cards and hospital letters folded and stuffed in anyhow does not present the easiest source of background

right to a certain minimum period of notice, dependent on length of service, and will usually be entitled to pay during notice. Similarly, after a week's employment the employee is required to give a minimum notice of one week.

(b) Employers must provide employees with a written statement of the main terms and conditions of their employment.

## (ii) Itemised pay statement

An employer must provide each employee with an itemised pay statement, which shows gross pay and take-home pay, and the amounts and reasons for all variable deductions. The statement must show the amount and reason for each fixed deduction, or alternatively the total amount of all fixed deductions with the amounts and reasons given in a separate annual statement.

## (iii) Trade union membership and activities

An employer may not lawfully take any action against an employee for being a member of, or for taking part at an appropriate time in the activities of, an independent trade union. An employer may also not take any action against an employee to compel him to join a non-independent trade union, or to compel him to join an independent trade union in a closed shop if he genuinely objects to membership on grounds of conscience or other deeply held personal convictions.

## (iv) Time off work

(a) *Time off for trade union duties and activities.*  
An employee who is an official of an independent trade union, which is recognised by the employer, must be allowed reasonable time off with pay to carry out trade union duties if these are concerned with industrial relations between the employer and his employees. An employee who is a member of an independent trade union that is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is not obliged to pay the employee for time off for trade union activities.

(b) *Time off for public duties.*

An employee who is also required, under certain circumstances, to permit any employee who holds certain public positions reasonable time off to perform these duties. This covers such offices as Justice of the Peace, members of a local authority, members of any statutory tribunal, and members of certain health, education, water, and river authorities. The employer is not obliged to pay the employee for the time off he takes for public duties.

(c) *Redundancy and time off to look for work.*

An employee who is being made redundant, and who has been continuously employed by his employer for at least two years, is entitled to take reasonable time off with pay to look for another job or to make arrangements for training for future employment.

(d) *Time off for antenatal care.*

Any employee who is pregnant may not be unreasonably refused time off with pay to attend appointments for antenatal care. Other than in the case of the first appointment during the pregnancy, an employer is entitled to see a certificate from a registered medical practitioner, midwife, or health visitor stating that the employee is pregnant, and to see evidence of the appointments.

## (v) Rights of the expectant mother

(a) *The right to keep a job*

A woman who is expecting a baby, and who has worked for her employer continuously for at least 2 weeks or more than 10 years' service after 1 October 1980, where at no time did the total number of employees exceed 20, has the right not to be dismissed because of pregnancy, unless her condition makes it impossible for her to do her job adequately or her continued employment would be against the law. (In these circumstances she must be offered a suitable alternative job if one is available.)

(b) *The right to receive maternity pay and to return to work*

To have the statutory rights to maternity pay and to return to her work an employee must at least continue to be employed (whether or not she is at work) until immediately before the beginning of the 11th week before the expected week of confinement. At the point before the 11th week she must have 104 weeks of continuous service and work 16 hours per week or more (or 5 years' service if she works eight hours or more but less than 16 hours).

To receive maternity pay she must also normally give an employer written notice in writing (if required) of her maternity absence. The employer is also entitled to see the doctor's or midwife's certificate showing the expected week of confinement. Statutory maternity pay comprises 9/10 of "normal" pay, less certain deductions including flat rate maternity allowance (whether due or not) and lapses for any six weeks' absence starting at or after the 11th week. Employers may claim full rebate from the Department of Employment of maternity payments made in accordance with legislation.

To qualify for the right to return to work a woman must fulfil the maternity pay provisions and must normally tell the employer, in writing at least 21 days before her absence, that she intends to return to work. She must also give written notice at least 21 days before her return.

Furthermore the employer may request (not earlier than 49 days after the notified confinement week date) written confirmation of her intention to return. This request should be in writing and warn that failure to write back within 14 days of receipt will deem the right to return. The right to return may be exercised at any time up to 29 weeks beginning with the week in which the child was born. The date of return may be extended beyond this in certain specified instances.

Nevertheless the right to return shall not apply where the total number of employees did not exceed five (at the time immediately before the maternity absence began) and it was not reasonably practicable for the employer to permit her to return.

Finally, any employer who takes on a temporary replacement for an employee who has stopped work to have a baby should advise the replacement (in writing, at the time of engagement) that the employment will be terminated when the original employee returns.

## (vi) Unfair dismissal

Employees have the right not to be unfairly dismissed, and employees who think they have been unfairly dismissed may seek a remedy by complaining to an industrial tribunal. Unfair dismissal has worried many general practitioners. It is important and will be discussed in detail, in a separate article.

## (vii) Redundancy pay

Employees are required to make a lump sum compensation payment called a "redundancy payment" to certain employees dismissed because of redundancy with at least two years' continuous service. The amount is related to the employee's age, length of service with the employer, and weekly pay. A proportion of the payment may be refunded by the Department of Employment.

## (viii) Sex and race discrimination

It is unlawful for employers to discriminate on grounds of sex or against married persons. It is also unlawful to discriminate on racial grounds—on the grounds of race, colour, nationality (including citizenship), or ethnic or national origins. Discrimination is prohibited by employers in recruitment and in relation to existing employees—for example, in training and promotion.

Employers with fewer than six employees are excluded under the Sex Discrimination Act, but this does not apply to discrimination by way of victimisation.

medical information about the patient. Even when the correct, current clinical record card was found, the clinical notes could appear to be lost between records of issue or repeat prescriptions.

This was the problem that faced us in 1969, and still faces us each week with a fair proportion of the new records arriving from the family practitioner committee. My attempts to improve all this fell into three main categories: firstly, changes that could be made with little effort on the doctor's part, and which gave a good return in terms of record improvement or doctor's time saved; secondly, improvements that required a little effort by the doctor but were worth while; thirdly, methods of record improvement that we experimented with but abandoned or modified owing to poor return for the cost in effort or money. I describe our first three record improvement schemes in some detail as all have worked successfully in our practice for some years and may be applied in most practices.

## Improvements needing little of the doctor's effort

## PUTTING THE RECORD IN ORDER

A quarter hour's work by the office staff following this schedule can transform the worst jumble of papers into a useful tool.

- (1) Check envelope for tears; mend minor defects; replace worn envelopes, transferring all current data.
- (2) Check details on envelope and correct errors where possible.
- (3) Sort record cards in date order. If there are more than three cards punch a single hole near the left-hand edge 2 to 3 cm down from the top. Put cards in this order, from the front: vaccination/summary card; old repeat prescription cards; maternity record cards; other special cards; old clinical record cards with oldest at the front. Use a single, 25 mm treasury tag to hold this bundle of cards together, and place in the medical record envelope with the back of the bundle facing forward. Place all cards in current use loose in the envelope in front of the tagged bundle. (Practical point: allowing a short treasury tag and placing it down from the top edge means that loose ends don't dangle from the record envelope.)
- (4) Sort letters, lab reports, etc, into date order, oldest at the front. Fold size A5 once 1 cm lower than the middle of the page, and with the writing outwards (fig 1). Fold A4 twice, first horizontally 2 cm below the centre of the page with writing outwards, then back vertically 1 cm to the right of the middle. Discard ephemeral reports. (Our office staff discard ward discharge notes, old pregnancy test results, and urine cultures over a year old, but I'm sure that this is a conservative list.)

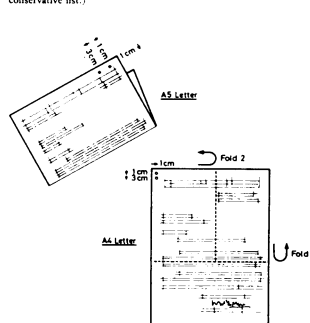


FIG 1—Method of folding and tagging A5 and A4 letters that allows speedy personal filing of correspondence.

Punch two holes in the upper left-hand corner of the bundle about 1 cm in from the left-hand edge and 1 and 3 cm from the top. Insert a 40 mm treasury tag through these holes with the tag end to the rear. (Practical points: single-hole tagging is satisfactory for the record cards because they are fairly stiff and of uniform size, but two-hole tagging for the letter bundle makes it more stable. Inserting the card file in the envelope with oldest at the back, and the letter file with oldest at the front, means that the tags end up on opposite sides of the envelope, so that they do not catch on one another.)

This procedure, carried out entirely by the office staff, makes a great difference to the usefulness of the record, but a couple of other tasks, which I prefer not to delegate, round off this tidying up. Though this can be done methodically, I tend to do it when looking through a record before writing a letter or report or when I have a few minutes to spare between patients in a surgery.

(1) Discard any unused record cards—such as old blank cards, those with no important records or illegible records. (Circular HC(80/7), although not directly referring to records in general practice, gives guidance on what records should be retained for legal reasons.)

(2) Prune the letters file. I am constantly surprised to find how many superfluous letters we have on file—for example, in a series of letters: (a) "Dear Doctor: Please see this patient who appears to have a right inguinal hernia (RIH)." (b) "... Thank you for referring this patient with RIH." (c) "... Your patient had his RIH repaired today..." (d) "... Your patient was discharged home today after RIH repair..." (e) "... Your patient was seen at the surgical follow-up clinic; he is discharged to your care..." I would keep only letter (c) as a long-term record.

Some doctors combine this procedure with making a summary card, and occasionally I do this using the reverse of the vaccination record card, but I have never thought that the return justified the effort of doing this routinely.

## FAMILY FILING

When the records are put in order in this way the envelopes are often considerably thinner, allowing all the records of members of a family living together to be kept inside a standard guinea record envelope. We cut the top 10-15 mm off the envelope, which makes it easier to get individual records in and out. We find family filing has a double benefit in our practice: firstly, at consultations, both in the surgery and on home visits where the consultation is so often extended to other family members; secondly, we use lateral filing on open shelves, so a far greater envelope with the family surname written down the left-hand side helps record retrieval. We have extended the principle to patients in communal homes, so that when called to visit one patient in a home we take all the cards and often need them. It is not practical to file the records of patients in homes in outer envelopes, but they are filed under the name of the home outside the general alphabetical file. These cards are marked with an olive green tag in the top left-hand corner to remind staff of the special filing.

When I first introduced family filing I duplicated a skeleton family tree on the back of the family record envelope. This method of recording family history has been described in several papers,<sup>1-4</sup> and can certainly give a useful instant summary of family history, but we thought that the effort of preparing it outweighed its usefulness, so this is an idea tried and dropped.

## REPEAT PRESCRIPTION RECORD CARD (RPRC)

Once these schemes to tidy up the record envelopes were running smoothly I turned my attention to the clinical record card itself. With a little bit of work this can be made not only a useful aide-memoire regarding the last consultation, but also can give a patient's complete medical background on a quick reading. The first hindrance to this aim in our practice was that the clinical record cards were largely filled with dates of issue of repeat prescriptions for chronic medication. Not only did this obscure the clinical notes, but each prescription was written twice by the doctor, once on the prescription form and once in the notes, and was a waste of medical time. A few practices at that time issued repeat prescription cards to the patient to carry,<sup>5</sup> but we thought it was important to have such a record in the notes, and have used such a card regularly since 1970. I initially modified a standard continuation card,<sup>6</sup> identifying it with a yellow tag. Repeat prescriptions were listed opposite a code letter, written in full exactly as they should appear on the prescription form. When