

PRIVACY ACT

*Privacy
Act
Burrus*

INSTRUCTOR: WILLIAM BURRUS

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**MOE BILLER
PRESIDENT**

Coordinators/Business Agents/Local Presidents

The attached documents have been discussed with postal management at the Washington level and agreement was reached on the application of the Privacy Act and the Family and Medical Leave Act. These documents have been shared with headquarters management personnel.

Privacy Act

The privacy of employee medical conditions is protected by law and is not affected by supervisors' desire to know the reasons for absences from work. The law and postal regulations require that confidential medical records be restricted to designated officials. The Postal Service filed in the Federal Register its approved system of records limiting access to confidential medical records. These regulations are published in Handbook EL 806, Chapter 2.

The law and Postal Handbook EL 806 restrict access to confidential medical records, including any medical record containing a prognosis or diagnosis, employee medical history and fitness for duty examination. In addition, the law and regulations severely restrict the right of disclosure and require that any disclosure be summarized on a "need to know" basis. The employee's medical file must reflect all disclosures, including the requester's name, address, and organization. Employees have the right to review their personal file and determine to whom and when disclosures have been made.

Postal officials authorized to request confidential medical information include:

- * EEO counselors and investigators
- * Postal officials acting in an official capacity and needing information to resolve a pending issue
- * Postal inspectors in performance of an official investigation
 - Injury compensation unit personnel
 - USPS attorneys
 - Employee Relations managers
- * Union officials

The asterisked (*) individuals must submit their request through the employee's installation head and may not make a direct request to the medical unit for restricted records. All requests for information must be in writing to the custodian of records before release is made.

Employees may authorize, in writing, other individuals to review or receive copies of restricted medical records. Union representatives are not required to receive written

authorization from the employee if such information is relevant and material to collective bargaining. The union may be required to substantiate the precise bargaining issue, grievance, or contemplated grievance involved and why the requested information is relevant and material. The union official will be referred to the custodian of records for the review.

OWCP forms including a prognosis or diagnosis are included in the category of restricted medical records and access to the restricted medical information is limited to the above listed officials.

The medical professional in the Postal medical unit or a contract physician is the custodian of medical records and is legally responsible for the retention, maintenance, protections, disposition, and disclosure of these records. All requests for information must be submitted to these professionals and the records must be maintained in offices under their supervision and control. No other postal official may retain confidential medical records in desks, file cabinets or any other filing system.

Refer to USPS Handbook EL-806 for further information.

APWU forms have been prepared to protect employees' privacy when they request Family and Medical Leave. It is not required that these forms be used, but the information on the forms must be provided. Form 3971 should not be used to request Family and Medical Leave as it does not contain the necessary information to satisfy the requirements of the law.

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When completing Form 3971 or the appropriate APWU form, THE EMPLOYEE SHOULD ASK THEIR PHYSICIAN IF THE INFORMATION PROVIDED INCLUDES RESTRICTED MEDICAL INFORMATION AND, IF SO, TO NOTE THAT ON THE FORM. If the physician notes that the information is restricted, the Forms should be submitted directly to the postal physician. If there is no physician in your facility, the Form should be submitted to a postal contract physician. If the supervisor demands to be provided the medical form containing the physician-designated restricted information, the employee should comply after informing the supervisor that the demand violates the Privacy Act.

Definitions of diagnosis and prognosis are as follows:

Diagnosis - Distinguishing one disease from another or the determination of the nature of a case of disease based on signs, symbols and laboratory findings.

Prognosis - A forecast as to the probable outcome of an attack of disease or the prospect as to recovery from a disease as indicated by the nature and symptoms of the case.

The APWU forms provide basic information certifying the employee's entitlement to Family and Medical Leave as well as requested postal leave for payment (absences other than FMLA). The presentation of medical information as contained in the forms is sufficient to justify an absence.

Any violations of these provisions should be referred through the local president, who, if unable to resolve, should refer to the office of the Regional Coordinator. If the Regional Coordinator is unable to correct the violation, a review will be made at the national level. Violations of union members' rights that cannot be resolved will be reviewed for the initiation of lawsuits to correct the violation. Violations of the rights of non-members should be referred to the grievance procedure.

The union will provide legal representation for union members and will initiate grievances for requesting non-union members.

In the filing of a lawsuit, the court will have jurisdiction to:

1. amend the employee's record
2. enjoin the Postal Service from future violations
3. Assess damages of no less than \$1,000, payable to the employee.
4. Fine the violating postal official not more than \$5,000

Employees may bring action within 2 years of the date of violation.



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

July 25, 1995

Dear Ms. Rodriguez:

I am informed that many local managers continue to violate the provisions of the Family and Medical Leave Act in requiring employees who return from a serious health condition to provide detailed medical information or submit to a fitness-for-duty examination. The Department of Labor regulations at 825.310 require that such a return to duty certification "need only be a simple statement of an employee's ability to return to work". If clarification of the statement is required the employer's physician, with the consent of the employee may seek clarification of the employee's fitness to return to work. The employer may not delay the employee's return to work while contact with the health care provider is being made. These provisions further provide that "No second or third fitness-for-duty certification may be required".

Local managers reliance upon provisions of the ELM for requiring employees to submit for fitness-for-duty examinations when returning from absences qualifying under the FMLA is misplaced as these provisions are inapplicable to FMLA absences.

Please review the appropriate regulations and respond as to the employer's understanding of the law in the above cited circumstances.

Sincerely,

William Burrus
William Burrus
Executive Vice President

Corine Rodriguez
Labor Relations
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

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Director, SDM Division

Regional Coordinators

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Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

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FMLA/PRIVACY ACT APPEALS

Employee's name _____
Telephone number _____ Hours of work _____
Office _____

FMLA violation _____ Privacy Act violation _____ Date of violation _____

Specific violation of employee rights _____

Management position _____

Documentation attached Yes _____ No _____

Decision at installation level _____
_____ Date _____
Local President's Signature _____

Decision at regional level _____
_____ Date _____
Regional Coordinator's Signature _____

Decision at national level _____
_____ Date _____
Recommend court action Yes _____ No _____

Dir. Industrial Relations' Signature _____ Date _____



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

August 10, 1995

Dear Mr. Vegliante:

I have had the opportunity to review Publication 540 A Guide for Managing Injuries, and bring to your attention provisions contained therein that conflict with the Family and Medical Leave Act.

National Executive Board

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President

William Burrus
Executive Vice President

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Secretary-Treasurer

Thomas A. Neill
Labor Relations Director

Art L. Tunstall
Director, Clerk Division

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Raydell R. Moore
Western Region


A job-related accident or injury that qualifies as a serious health condition under the FMLA is governed by the requirements of the Act notwithstanding the employees entitlement to coverage under OWCP. Specifically, a question included in the "Questions and Answers About Managing Injuries" states that the injured employee may "be examined by a Postal Service physician". As you are aware, an examination by a USPS physician may only be in the context as the employee's choice of physician or as the 2nd or 3rd examination. As the 2nd or 3rd examining physician, the physician may not be a USPS physician or one who is routinely used by the employer. In addition, the question before the 2nd physician is limited to the "adequacy of the documentation" submitted by the employees physician and does not include the listed limitations.

The quoted document also includes a requirement that "if the employee declines the limited duty....., he/she is to be advised of the change, and told that if the limited duty is refused, the claim will be controverted. As required by 825.702 (2) of the FMLA "If the employer offers such a [light duty] position, the employee is permitted but not required to accept the position. As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted."

Page 2 - Anthony J. Vegliante

I request that you review the referenced Publication and initiate the appropriate changes. In the interim, local management should be made aware of the inconsistencies in the Handbook.

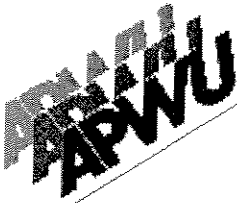
Sincerely,


William Burrus
Executive Vice President

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Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

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AMERICAN POSTAL WORKERS UNION, AFL-CIO
DES MOINES BULK MAIL CENTER, LOCAL #7027
5806 Meredith Drive, Suite "D", Des Moines, IA 50322

Kevin John Beener
President

Dear Member,

I am writing about a matter that is of growing concern among our members, our right to protect our Privacy from the prying eyes of our employer. This right is especially relevant when medical issues are involved.

It was my sincerest wish that this letter could have come as a joint APWU/USPS effort. However management has already delayed too long and this issue is too important to just ignore. Management insists employees are to submit medical documents to their supervisor. The APWU feels these documents are better left entirely in the care of health care professionals. Because we have not reached an agreement, we are forced to utilize existing rules to limit access to private medical information by supervisors.

Please be aware, the importance that each individual places on their Privacy is a personal choice. This writing is merely offered as a guide and individuals must decide for themselves the degree of Privacy they chose to maintain for themselves and their family. I realize this document may seem long, but I feel it is very important and warrants careful review.

Call-In Procedures

The current USPS policy instructs employees reporting an absence to call the Resource Management Data Office (RMD Office). When reporting an absence, current regulations state "the employee must notify appropriate postal authorities of their illness or injury and expected duration of absence as soon as possible." If your absence is covered by the Family and Medical Leave Act (FMLA) you should indicate that the absence is due to a FMLA covered condition. If the condition has already been certified with the employer, nothing else needs to be explained. If the condition has not been certified with the employer, you may be instructed to obtain proper certification. If that is the case, be sure and get the proper FMLA forms from the Union office.

Medical Documentation

Medical documentation needed to substantiate an absence does not need to include a diagnosis/prognosis. The medical note only needs to indicate the employee could not perform their "normal" duties, whatever those duties entail. For example:

"Please excuse Joe Brown from work, he was incapacitated due to a condition that prevented him from lifting heavy mail bags".

- or -

"Please excuse Barb Jones from work, she was incapacitated due to a condition that required long periods of rest."

Such a document provides a clear understanding that you were unable to work yet does not contain a diagnosis or prognosis. Please note the USPS at the Headquarters level has acquiesced that a diagnosis/prognosis is not required to be included in these types of medical excuses (ref: Vegliante letter to W. Burrus).

FMLA Certification

The APWU provides several different forms that should be used for certifying medical conditions that come under the protection of the Family and Medical Leave Act. The APWU FMLA forms are different for each FMLA category and only ask questions pertinent to that FMLA category. These forms are available in the APWU Union room at the BMC.

The USPS provides a single form (WP 380) for this purpose. The USPS form is a general form used for all FMLA categories and consequently asks unnecessary questions. This wouldn't be a problem if we were all FMLA experts. Unfortunately we are not and neither are our doctors, so the simple APWU forms are the best way to go. If you are given the USPS form, please feel free to discard it for the APWU forms, available in the Union room.

Importantly, the APWU FMLA forms do not ask your doctor for diagnosis/prognosis. In fact, the form specifically tells your doctor not to provide such information. Please take the added precaution of informing your doctor NOT to provide a diagnosis or prognosis on these forms.

Intermittent Absences

In many cases, employees are certifying themselves for intermittent absences due to an FMLA covered condition. When certifying an intermittent absence it is important to include the "Frequency and Duration" of your expected intermittent absences. That would be something like; "3-4 episodes per month for 2-4 days per episode". Please be advised that the USPS compares your intermittent leave usage to the frequency and duration documented, so advise your doctor to use the high end of the frequency and the longest duration expected. This will avoid your being sent for an unnecessary medical update because the USPS doesn't understand the definition of "expected".

Return to Work Clearance

This must not be confused with documenting an absence. Return to work documentation is provided to the employer to show an employee is medically able to return to work. There is no requirement that this document contain a medical diagnosis or prognosis! As above, it should

contain sufficient information to indicate to your supervisor that you can return to work, with or without limitations. If you have limitations, those must be clearly indicated in the document.

Common Sense

Your supervisor does not have a need to know your private medical issues. He/she does need to know what you can and cannot do while at work, especially when your normal activities may have been affected by a medical condition. Doctor's notes and the like should be geared towards that end. Please feel free to confer with your doctor over what information is to be included in your medical excuse or return to work certification. It's your privacy and your right to protect it!



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

September 26, 1995

Dear Ms. Wright

This is to bring to your attention an issue of importance to postal employees, the availability of over-the-counter medication. As you are aware, USPS regulations have been modified to remove such medication from existing First-Aid kits. This has resulted in reduced productivity, availability and efficiency of employees who no longer have access to this medication when experiencing discomfort.

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Western Region

I can appreciate the exposure of USPS medical officers in authorizing the dispensation of medication that may have an adverse reaction. I suggest that the placement of vending machines in postal facilities that dispense over-the-counter medication and other medical products would address the USPS concerns and provide a needed service to employees.

If you are receptive to the concept, I believe that further discussion should ensue regarding the cost to employees. I consider this approach to be beneficial to the Postal Service and its employees and the cost should be apportioned.

Please respond at your earliest convenience.

Sincerely,

William Burrus

Executive Vice President

Ms. Ann Wright, Manager
Employee Health & Services
475 L'Enfant Plaza, SW - Room 9801
Washington, DC 20260

WB:rb

114.2 Privacy Act Considerations

114.21 Time and attendance records contain information about individuals. As such, they can be handled and disclosed only in accordance with the Privacy Act and implementing instructions.

114.22 An individual's time and attendance records are maintained within the Postal Service as the Privacy System entitled USPS 050.020, Finance Records-Payroll System.

115 Division of Responsibility

115.1 Supervisor Responsibilities. A supervisor, for purposes of timekeeping, is defined as the person responsible for directing an employee or group of employees in the performance of their duties. The supervisor is responsible for:

- a. Controlling employee access to badges.
- b. Making certain that employees clock in and out according to their assigned schedules and work assignments.
- c. Certifying all daily clock rings that have been generated by the system for full time and part-time regular employees and that deviate from the scheduled tour by more than 0.08 hours (5 minutes).
- d. Certifying all daily time and attendance reports for all employees.
- e. Processing all leave requests.
- f. Processing all temporary schedule changes.
- g. Completing supporting forms as required by the procedures.

115.2 Timekeeper Responsibilities. A timekeeper is the person responsible for keeping records of time worked and leave requested by employees. The timekeeper could be the postmaster, supervisor, or any other person whom the installation head designates as being responsible for the duties of a timekeeper. The timekeeper is responsible for:

- a. Racking badges for use by the employees.
- b. Correcting and adjusting daily and weekly reports.
- c. Recording scheduled and nonscheduled absences.
- d. Examining, cleaning, or requesting replacement of employee badges.
- e. Maintaining files of forms that support time and attendance entries.

f. Assisting the supervisor as the supervisor may require.

g. Assisting in the preparation of adjustment requests.

h. Answering time and attendance inquiries.

i. Making leave entries for employees.

115.3 Employee Responsibilities

115.31 All employees are required to use time recording devices daily if available or record time on manual input forms (see part 212).

115.32 All employees must enter clock rings in proper sequence in order that the elapsed time can be calculated and the administrative costs of timekeeping can be controlled.

116 Other Timekeeping-Related Activities

116.1 Designated Adjustment Clerk. Postmasters and installation heads will designate an adjustment clerk whose responsibility includes assisting employees, timekeepers, and supervisors in making adjustments to pay or leave balances. Employees responsible for processing personnel documents or distributing paychecks should not be involved with the recording of time and attendance information, nor should the same employees be assigned as adjustment clerks.

116.2 Designated Microfiche Custodian. Postmasters and installation heads also designate a microfiche custodian, who is responsible for maintaining files of microfilm for pay periods prior to 11-80, and microfiche files for pay periods subsequent to 10-80. This responsibility shall be given to an employee not personally engaged in preparing or approving time and attendance reports, processing personnel documents, handling payroll listings, or distributing paychecks. The Director of Finance or an employee of the accounting unit will be designated as custodian; such designation must be in writing.

120 Employee and Authorizer Access

121 Employee Badge

121.1 Description and Use. Every time and attendance message or transaction must be identified with the employee's ID number. A plastic badge (called an employee badge) with the employee's 9-digit ID number on it, is made available to the employee at work locations for use in entering clock rings into PSDS. Where necessary

Management Instruction

71-28

Date 5/15/98
Effective Immediately
Number EL-860-98-2
Obsoletes HBK EL-806, Ch. 2
Unit Safety & Workplace Assistance


Yvonne D. Maguire
Vice President
Human Resources

Employee Medical Records

Introduction

This instruction, which replaces Chapter 2 of Handbook EL-806, *Health and Medical Service*, provides guidelines for maintaining the status, availability, organization, and security of employee medical records. These records are essential in the administration of effective services.

Overview

A cornerstone in the development and maintenance of the Postal Service Occupational Health Program is the employee medical record. These employee records are the property of the U.S. Postal Service and are essential in the administration of effective health-related services. The occupational health professional has responsibility for the collection, use, organization, disclosure, and security of employee medical records.

The Postal Service recognizes the sensitive nature of employee medical records and places great emphasis on the custodianship and confidentiality of these documents. Postal Service employee medical records are covered by the Privacy Act. (Privacy Act Systems of Records, System USPS 120.090, *Administrative Support Manual* (ASM) 353, and 5 U.S.C. 552a.)

Questions about access to, or disclosure of, medical records involve the Privacy Act, which applies to records about individuals that are maintained in government systems of records. Although the Privacy Act applies only to information obtained from records, any medical information, whether written or verbal, must be kept confidential, both as a matter of policy and to avoid legal disputes. The Privacy Act provides criminal penalties for any employee who willfully discloses information knowing that disclosure is prohibited, and for any person who knowingly and willfully requests or obtains under false pretenses any records about another person. The Privacy Act prohibits additional copying of covered

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Request for Medical Information (Restricted Medical Records)

Restricted Medical Records Withheld

Sample Letter Denying an Individual's Request for His or Her Own Medical Records

documents, verbal disclosure of information contained in the documents, or distribution of the documents to any person not authorized to receive the information.

Subject to very limited exceptions, such as when release may adversely affect the individual, the Privacy Act permits individuals to obtain access to records about themselves, including medical records, that are maintained in systems of records covered by the Act. The Act prohibits disclosure of an individual's records to persons outside the Postal Service without the individual's express, written consent, except in specified circumstances (see *Release of or Access to Restricted Medical Information*). As noted above, information obtained from a record in a Privacy Act system is protected from disclosure by any means. Thus, a wrongful disclosure may occur under the Privacy Act even if the record itself is not disclosed (i.e., verbal disclosure of information contained in a record).

The Privacy Act and postal implementing regulations at ASM 353 apply to all occupational health professionals, including those under contract with the Postal Service to provide occupational health services. The Postal Service retains ownership of medical records held by the Postal Service or by an occupational health professional under contract with the Postal Service to provide occupational health services. Contractor health professionals must maintain Postal Service records separate from their general filing system and must make them available to a Postal Service health professional upon request or contract termination.

Postal health professionals are bound by federal statutes and regulations regarding their conduct. To the extent that conflicts between ethical standards for such professionals and federal statutes or regulations exist, the federal statutes or regulations will generally take precedence.

Definition

A medical record is any document maintained by the Postal Service or contracted medical provider that contains medical information about current or former employees or applicants for employment.

Categories of Medical Records

The Postal Service maintains three distinct types of medical records, each of which serves a particular function: (1) restricted medical records, (2) administrative medical records, and (3) Office of Workers' Compensation Programs-related medical records. Regardless of the type, access must be limited to those individuals who have a legitimate need to know.

Custodians of Medical Records

Custodians are legally responsible for the retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records within the facilities are managed according to Postal Service policies.

To facilitate both medical and administrative functions, the national medical director delegates custodial responsibility to the senior area medical directors. Additionally, the associate area medical directors, the occupational health nurse administrators (OHNAs), and the health unit staff nurses are considered to have custodial responsibility in the execution of their daily medical and nursing activities. It is the OHNA's responsibility to be aware of the location of the restricted medical records of all employees in the performance cluster.

For facilities without health units, it is the responsibility of the installation head to guarantee that the restricted medical records are maintained and secured by medical personnel. The occupational health nurse administrator serves as the custodian of the restricted medical records in the performance cluster (see Authorized Requester Categories).

Restricted Medical Records

Definition

Restricted medical records contain medical information that is highly confidential, reflect the privileged employee-occupational health provider relationship, and have the most limitations placed on both their access and disclosure. The national medical director is responsible for the handling of all restricted medical records held by the Postal Service. This responsibility is delegated to the senior area medical directors and other medical personnel who are the custodians of medical records maintained within the postal facilities. The purpose of this delegation is to expedite the handling of medically related issues as required by the Postal Service.

Only medical personnel or postal personnel with a need to know have access to this material (see Authorized Requester Categories, Administrative Medical Records, Office of Workers' Compensation Programs-Related Records). These records are maintained only in medical offices or facilities in employee medical folders (EMFs) unless otherwise directed by the national medical director. These offices or facilities include:

- Health units.
- Offices of the occupational health nurse administrators (OHNAs).
Offices of the senior or associate area medical directors.
- Medical facilities contracted by the Postal Service.

Postal Service employee medical records held in contracted medical facilities must be sequestered from the general facility filing system. The Postal Service is the owner of these records and must be provided with these records on request. Because contractor records are Postal Service records subject to the Privacy Act, they are subject to the same rules of access and disclosure as records maintained by the Postal Service. If a contractor receives a request for medical records related to a postal employee, the request must be referred to the OHNA or designated custodian for a response. Records maintained by the contractor must be released to the Postal Service upon cancellation of the contract.

Employee Medical Folder

An employee medical folder (EMF) is established for each employee or applicant for whom detailed medical records are obtained or created. There may be medically related documents found in the EMF that are not considered to be restricted medical records.

The EMF includes, but is not limited to, the following:

- Form 2485, *Medical Examination and Assessment*.
- Other medical documentation used to make suitability determinations.
- Drivers' physical examination records.
- Form 1997, *Health Unit Case Record*.
- Laboratory, radiographic, and electrocardiographic records.
- Diagnoses.
- Medical information used in the assessment of disability retirement requests.
- Medical documentation concerning involuntary separation for medical reasons.
- Medical documentation concerning limited or light duty as a result of medical problems.
- Medical and industrial hygiene information relative to toxic exposures.
- Vaccine record and consent forms.
- Audiometry records, baseline and periodic.
- Medical documents pertaining to dependent child determinations.
- Family Medical Leave Act medical documentation, when it includes restricted medical information, diagnoses and/or does not involve a workers' compensation claim.
- Medical forensic documents.
- Copies of subpoenas for medical records.

Restricted medical records include drug and alcohol testing results. Nonrestricted documents related to drug and alcohol testing may be maintained in the relevant personnel office.

Security of Restricted Medical Records

All records containing restricted medical information must be marked "RESTRICTED MEDICAL" and filed in locked cabinets. Keys must be kept by medical personnel unless otherwise directed by the national medical director. These records may be reviewed or released only under specific conditions and authority.

Release of or Access to Restricted Medical Information

Every request for review or release of restricted medical records must be submitted in writing to the records custodian in the format provided in Attachment 2 and filed in the employee medical folder (EMF) (see Attachment 2). The requesting individual, except for the subject employee, must state the purpose for which the medical information will be used. *The requester must be provided restricted medical information on a need-to-know basis.*

Whenever information from a restricted medical record is released to any authorized person, the EMF must note that action, including:

- The purpose as expressed by the requester.
- The requester's name, address, and organization.
- The signature of the requester.
- The information released.
- The date the information was released.

An annotated copy of the request letter will serve this purpose as long as the letter responds to those requisites (see Attachment 2).

Requesters never automatically receive restricted medical information. Except as provided below, no more information may be reviewed or released than is required to satisfy the need. A request for restricted medical information from any individual not listed in authorized requester categories (see Authorized Requester Categories below) must be forwarded to the senior area medical director.

As noted above, applicants or employees generally are granted access to their own medical records. However, in response to an individual's request for his or her own medical records, the Postal Service records custodian has the discretion to postpone the release of such records. If he or she determines that such release may cause hardship or danger to the individual, the restricted medical records custodian shall request the name and address of the employee's private physician and, if appropriate, forward the records under sealed, restricted cover to that physician. (See *Authorized Requester Categories, Category I, Employees or applicants.*)

Authorized Requester Categories

All requests must be submitted in writing preferably using the form provided in Attachment 2.

Category I

Requesters of restricted medical records or information who may submit requests directly to the medical facility or restricted medical record custodian include the following:

— **Postal Officials:**

- a. Installation head.
- b. Other postal medical personnel.
- c. Human Resources managers.
- d. Postal Service injury compensation specialists.
- e. Postal Service attorneys and Labor Relations specialists.

In general, those officials identified above should, upon request, receive restricted medical records, and not merely a summary thereof.

Postal officials who are provided copies of restricted medical records upon proper request are responsible for the security for such records, and for protecting such records in accordance with the Privacy Act. If the medical personnel have any concerns about the release of such records, the issue should be raised with the National Medical Director. *If a situation occurs where litigation is in process or imminent, the relevant information may be released upon oral request, but must be followed immediately with written documentation of the request and response.*

— **Employees or applicants, i.e., individuals to whom the records pertain (record subjects) or any designees authorized in writing by those individuals:**

Individuals may obtain copies of their medical records in response to written requests. No fees may be charged unless the copies exceed 100 pages (ASM 353.413b).

Individuals may personally review their medical files and, if they wish, obtain copies of selected records. Generally, records are available for inspection and copying during regular business hours, but any reasonable time and place may be designated (ASM 353.414). Third parties may be present only if authorized in writing by the individual (ASM 353.325b).

Employees sometimes submit requests, pursuant to either the Freedom of Information Act or the Privacy Act, that seek answers to questions or other information that is not contained in Postal Service records. Neither Act requires the Postal Service to provide such information, but the information may be provided, if appropriate. If a request for information other than records is denied, the

requester should still be advised of the right to appeal to the General Counsel.

If the Postal Service custodian of restricted medical records determines that the release of all or part of the records to the employee or applicant would have adverse effects on the employee, the custodian must provide the requester with the following:

- a. The date, subject, and creator of each record or related set of records that is being withheld (see Attachment 3 or Attachment 4).
 - b. A statement that a copy of the requested record will be released to a physician designated by the employee.
 - c. A statement citing the requester's right to appeal the withholding decision to the Postal Service General Counsel at Headquarters. The General Counsel, in consultation with the National Medical Director, will decide the appeal. Attachment 3 or Attachment 4 represents the document that must be given to the requester when release of restricted medical record is denied. A copy of Attachment 3 or Attachment 4 must be placed in the EMF.
- *Requester with authority of compulsory legal process, i.e., Postal Inspection Service:* In the case of an investigation, the inspector must put the inquiry in writing and submit the request using an official need-to-know request document or document of similar format.
- *Third parties outside the Postal Service:* Third parties may obtain an individual's medical records only in specified circumstances (see ASM 353.325). The subject individual's consent to release medical records to third parties must be written. This consent must be dated not more than one year prior to the date the request is received. Authorized third parties include:
- a. **Disclosure in Emergencies:** The Privacy Act authorizes disclosure "pursuant to a showing of compelling circumstances affecting the health or safety of an individual." Thus, records may be disclosed to handle a medical emergency. This authority is limited to emergencies, however, and the individual whose records are disclosed must receive prompt, written notification of the disclosure.
 - b. **Office of Personnel Management making determinations relating to:**
 - Veterans' preference.
 - Disability retirement.
 - Benefit entitlement.
 - c. **Federal benefits program administrators:**
 - Office of Workers' Compensation Programs.
 - Retired Military Pay Centers.

- Department of Veterans Affairs.
- Social Security Administration.
- Public Health Service.
- d. Contracted community-based medical facilities providing medical examinations or other medical services.

Category II

Requesters of restricted employee medical records or information who must *submit requests through the employee's installation head* include the following:

- *Postal officials, other than those listed in Category I, acting in an official capacity and in need of specific information:* Medical personnel must first summarize that portion of the medical record necessary and relevant to the requester's need. This must be a written summary. If the requester reviews the summary and claims that the summary is insufficient for their purpose, the medical professional may extract specific portions of the medical record and deliver this material to the requesting postal official. The official is responsible for restricting its use and availability to other persons in accordance with the Privacy Act.
- *Collective bargaining representatives, i.e., authorized union representatives, acting on behalf of the employee in an official union capacity:* The representative must demonstrate that the information sought is relevant and necessary to collective bargaining. Medical personnel must ask the Labor Relations official to assist in a joint decision of relevancy and necessity.
 - a. In certain cases, employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining agreement to which the Postal Service is a party. Requests from postal union representatives without an employee's authorization must be carefully reviewed. Information that is relevant and necessary to collective bargaining is available to an authorized representative *only when acting officially*.
 - b. When a union representative submits a request to inspect an employee's restricted medical records without the employee's authorization, the installation head should instruct the appropriate Labor Relations official to obtain specific answers from the union representative to the following questions (if not provided in the request letter):
 - What is the precise bargaining issue, grievance, or contemplated grievance involved?
 - Why does the union claim that the information being sought is relevant and necessary to resolving the issue or dispute?

- c. If the union representative provides a response to the above questions that the Labor Relations official believes to be inadequate, the installation head should be advised to deny the request.
 - d. If the union representative provides sufficient response and the Labor Relations official and medical personnel agree that the medical information is relevant and necessary, the official will forward the union request to the medical facility where the record is maintained for disclosure.
- *Postal Equal Employment Opportunity officials, i.e., Postal Service EEO counselors and investigators when handling an EEO complaint: Refer to "postal officials" above.*
 - *Requesters involved in legal proceedings in which the Postal Service is a party before a court, administrative body, or tribunal, or other adjudicatory body: This does not include Postal Service attorneys.*
 - *Federal, state, or local agencies when there is an indication of a violation of the law, whether civil, criminal, or regulatory in nature: Information contained in employee medical records may be provided, when necessary, to an agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order involved.*
 - *Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health when needed by either of these organizations in accordance with 29 CFR 19.*
 - *Auditors:*
 - a. National medical program auditors.
 - b. Other auditors and group data collectors as deemed appropriate by the national medical director and the vice president of Human Resources. Records selected for audit must have all employee identifiers eliminated prior to the audit.

A request for restricted medical information from anyone not listed in Category I or Category II must be forwarded to the responsible area medical director.

Supervisor Handling of Medical Information

Medical documentation is necessary to certify the need for medically related absence, sick leave, light duty, or other administrative activities or decisions. Medical documents received by a supervisor from an employee that contain a diagnosis are considered to be restricted medical records and must be forwarded to the local medical records custodian for placement into the employee medical folder. Supervisors, upon re-

ceipt of restricted medical documentation, are subject to Privacy Act requirements concerning the proper handling of restricted medical information.

Withholding Release of Restricted Medical Records

Restricted medical records are exempt from mandatory public disclosure under Section (b)(6) of the Freedom of Information Act (5 USC 552 (b)(6)). An FOIA requester who does not fit into one of the authorized requester categories must be denied the information requested and advised of his or her appeal rights (ASM 352.54).

The requester should be provided the following if the request is denied:

- The date, subject, and creator of each *record* or related *set* of records that is being withheld (see Attachment 3).
- A statement citing the requester's right to appeal the withholding decision to the Postal Service general counsel at Headquarters. The general counsel, in consultation with the national medical director, will decide the appeal (ASM 353.433c). Attachment 3 represents the document that must be given to the requester when release of restricted medical records is denied. A copy of Attachment 3 should be placed in the EMF (ASM 353.428b-c).

Before denying an individual's request for access to his or her own medical records, the medical director or designee must consult with Labor Relations or Postal Service counsel (ASM 353.428a and *Authorized Requester Categories, Category I*).

Individual's Right of Amendment

The Privacy Act permits individuals to request amendment of their records on the grounds that the records are not accurate, relevant, timely, or complete. Most requests for amendment involve challenges to the accuracy of the records. A record need not be amended, however, unless it is factually inaccurate. An individual's disagreement with professional opinions, diagnoses, or evaluations is not grounds for amendment. If a request for amendment is denied, the requester must be advised of the right to appeal to the General Counsel.

Transfer or Mailing of Medical Records

Procedures for transferring or mailing medical records are outlined as follows:

- *Employee is transferred from one Postal Service duty station to another.* The medical folder should be double-enveloped and the inner envelope should be marked "**RESTRICTED MEDICAL — to be opened by medical personnel only**" and sent to the district occupational health nurse administrator.

- The employee is being transferred to another Federal agency. Copies of restricted medical records may be sent by Postal Service medical records custodians directly to other Federal agency medical records custodians only if such record transfer is requested in writing by the record subject. Postal medical record custodians are not to send records to other agencies as a routine procedure. Postal medical records are not to be merged with other Federal agency medical records. However, when an individual is transferred from another Federal agency to the Postal Service, that agency's medical records may be merged in the Postal Service EMF. When the Postal Service receives a request from a former employee, other Federal agencies, or third-party requester for access and release of these other agency medical records (previously received either in an OPF or from a newly hired employee), the Postal Service forwards copies of those medical records (for determinations on releasability) only to the address below. The Postal Service will notify the requester of the referral.

OPM'S OPF/EMF ACCESS UNIT
PO BOX 18673
ST LOUIS MO 63118-0673

Note: Postal Service medical records may be identified by the dates of employment of the postal employee as they relate to the records. This includes Form 1997, as well as other medical documents.

Duplicate copies of restricted medical records must always be sent by *certified mail*. Originals must be mailed by *registered mail*, with a return receipt requested, and a copy should be maintained at the medical facility.

Federal Record Centers and Record Storage and Retrieval

The Postal Service is currently transferring medical records for employees separated on or before December 31, 1989 to the Federal Record Centers (FRC) and to the National Personnel Records Center (NPRC) in St. Louis, MO for employees separated on or after January 1, 1990.

On an annual basis, occupational health nurses should purge the records of all separated employees and transfer them to the appropriate record center. Be sure to maintain a list of all EMFs that have been forwarded from your office in order to facilitate fulfilling requests for these records at a future date.

EMFs should be sent by registered mail to:

CIVILIAN PERSONNEL RECORDS
NATIONAL PERSONNEL RECORDS CENTER
111 WINNEBAGO ST
ST LOUIS MO 63118-4199

Retrieval of Separated Employee Folders

Written requests for medical records will be routed through the National Medical Director at Headquarters:

NATIONAL MEDICAL DIRECTOR
OFFICE OF SAFETY AND RISK MANAGEMENT
HUMAN RESOURCES DEPARTMENT
USPS HEADQUARTERS
475 L'ENFANT PLAZA SW RM 9801
WASHINGTON DC 20260-4235

Retrieval From the Federal Record Centers

Only medical directors may retrieve medical records from the FRCs. Medical directors must use Optional Form 11, *Reference Request — Federal Record Center*. FEDSTRIP ordering offices order this form directly from General Services Administration (GSA); non-FEDSTRIP ordering offices order this form directly from their supporting MSC supply section or their GSA Customer Supply Center.

Administrative Medical Records

Definitions

Administrative medical records are documents that may contain medical information and have limitations placed upon their access or disclosure. These documents provide medical information necessary for management decisions and document management actions.

Custodian: There may be multiple custodians of administrative medical records. Custodians are legally responsible for the retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records within the facilities are managed according to Postal Service policies.

This medical information is maintained by non-medical personnel and is filed in the official personnel folder or within other related files.

Administrative medical records include, but are not limited to:

- Physician statements relative to the employee's fitness-for-duty that contain no restricted medical information.
- Unrestricted portions of *Medical Examination and Assessment* (Form 2485, pages 1 and 6).
- *Authorization for Medical Attention* (Form 3956).
- Sick leave requests.
- Blood donation records.
- Medical suitability waivers.
- Applicant Drug Test personnel notification form.

— — Dependent child determinations based on medical information.

Access

Administrative records may be accessed by postal managers or their designees who have a legitimate need to know.

Office of Workers' Compensation Programs-Related Records

OWCP medical records relate specifically to employee job-related injury or illness. These records are ultimately maintained by injury compensation personnel and include medical information relating to the diagnosis, treatment, and prognosis of injuries or illness for which compensation is or may be claimed. Copies may also be maintained in the EMF. Documentation includes Department of Labor forms and relevant medical information submitted by a physician or other health care provider. OWCP-related records may be made available to postal managers and other authorized officials for injury compensation program matters (ELM 540).

Subpoenas

To the extent required by law, medical personnel must comply with subpoenas, court orders, or other legal processes calling for the disclosure of restricted medical records. When the United States or the Postal Service is not a party to a lawsuit, the release of medical information or records pursuant to a subpoena or court order in litigation is governed by the Privacy Act and the Postal Service's Touhy regulation at 39 CFR 256.12. When restricted medical records are released in response to a subpoena or court order, the medical record custodian must include a cautionary statement as to the possible adverse effect if information from the record were known to the subject or to the public. *The manager of Human Resources and the Postal Service General Counsel in the relevant area or district should be contacted immediately upon receipt of a subpoena.*

Fitness-for-Duty Examinations and Release of Medical Information

Fitness-for-duty examination medical reports, submitted by the examining or consulting physician, are sent to the Postal Service associate medical director (AMD) for review. These reports are considered restricted medical information and must be handled as such. Upon completion of the review process, the AMD makes a recommendation based upon the examination or consultation findings to management

through the district manager of Human Resources or his or her designee. In the event that the district manager of Human Resources considers that full disclosure of the report is necessary, he or she should contact the AMD. The district manager of Human Resources or his or her designee is deemed to have a legitimate need to know (see *Authorized Requester Categories, Category I*), and the AMD should honor the request. The AMD must advise the district manager of Human Resources concerning the significance of relevant information contained in the report. If a dispute develops between the AMD and the district manager of Human Resources over disclosure, such dispute will be resolved by the area medical director in consultation with the area manager of Human Resources.

The district manager of Human Resources is responsible for safeguarding the confidentiality of restricted records and limiting access to those who have a specific need to know. The confidential information must be segregated from other records while in the custody of Human Resources personnel. Upon resolution of the issues under consideration, all confidential information must be returned to the official custodian.

Authorized Requester Categories

Authorized Requester Categories

CAUTION: Requesters in this list never automatically receive restricted medical information. No more information may be disclosed than is required to satisfy the need. A request for restricted medical information from anyone not listed in Categories I and II must be forwarded to the Area Medical Director. Requesters are identified in Privacy Act System 120.090 (ASM, Appendix B).

All requests must be submitted in writing, preferably using the form demonstrated in Attachment 2.

Category I

Requesters of restricted medical records or information who may *submit requests directly to the medical facility or restricted medical record custodian* include the following:

- A. **Postal officials:** Installation head, other medical personnel, Human Resources managers, Postal Service Injury Compensation specialists, Postal Service attorneys and Labor Relations representatives.
- B. **Requesters with authority of compulsory legal process such as subpoenas:** Includes Postal Inspection Service.
- C. **Third parties in limited situations only:**
 - 1. Emergency Medical Personnel.
 - 2. Office of Personnel Management: Veterans' Preference, Disability Retirement, Benefit Entitlement.
 - 3. Federal benefits program administrators: Office of Workers' Compensation Programs, Retired Military Pay Centers, Department of Veterans Affairs, Social Security Administration, Public Health Service.
 - 4. Community-based medical facilities.
- D. **Subject employees or applicants.**

Category II

Requesters of restricted employee medical records or information who must *submit requests in writing through the employee's installation head* include the following:

- A. **Postal officials, other than those listed in Category I.**
- B. **Collective bargaining representatives.**
- C. **Postal Equal Employment Opportunity officials.**
- D. **Requesters for legal proceedings in which the Postal Service is a party:** This does not include Postal Service attorneys.
- E. **Federal, state, or local agencies** when there is an indication of a violation of the law, whether civil, criminal, or regulatory in nature.
- F. **Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health** when needed by either of these organizations in accordance with 29 CFR 19.

Auditors: National Medical Program auditors, their auditors and group data collectors as deemed appropriate by the national medical director and the vice president of Human Resources. Records selected for audit must have all employee identifiers eliminated prior to the audit.

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Request for Medical Information (Restricted Medical Records)

**REQUEST FOR MEDICAL INFORMATION
(RESTRICTED MEDICAL RECORDS)**

Requests for restricted medical information must be submitted in writing. MI EL-860-98-2, *Employee Medical Records*, cites the categories of requesters as well as to whom the request must be submitted. Requests that are not sent directly to the Medical Director or Occupational Health Nurse Administrator are submitted to the installation head.

Name of Employee _____ SSN _____

Requester's
Name _____ Title _____Information Requested _____
_____Reason for Request _____

Signature of Requester _____ Date _____

Signature of Employee _____ Date _____

Signature of Installation
Head/Designee _____ Date _____

MEDICAL FACILITY ACTIONAction Taken _____
_____Information Released/Denied _____

Requester's Signature _____

Custodian's Signature _____ Date _____

Note: Retain this document in the employee's medical folder.

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RESTRICTED MEDICAL RECORDS WITHHELD

In accordance with MI EL-860-98-2, *Employee Medical Records*, the restricted medical record that has been requested is being withheld.

The custodian of restricted medical records withholds release of the requested information for the following reason(s).

_____ Insufficient 'Need to Know' justification.

_____ Release of part or all of the requested information to this requester would have adverse effects or impact negatively upon the employee.

_____ Other _____

Date of withheld
document/information _____

Subject of the withheld document/information

Creator of the withheld document/information

The custodian of restricted medical records may determine that the requested document or information will be released to a physician designated by the employee. This includes requests made by the employee when the custodian determines that release of the information should be through the employee's private physician.

The requester has the right to appeal the withholding decision to the Postal Service General Counsel at Headquarters. The General Counsel, in consultation with the National Medical Director, will decide the appeal.

Requester's signature _____ Date _____

Requester's name (print) _____

Custodian's signature _____ Date _____

Custodian's name (print) _____

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Sample Letter Denying an Individual's Request for His or Her Own Medical Records



**SAMPLE LETTER DENYING AN INDIVIDUAL'S REQUEST FOR HIS
OR HER OWN MEDICAL RECORDS**

Dear Medical Records Requester:

This responds to your letter dated [__date__], in which you requested a complete copy of your Postal Service medical file. Enclosed are [__number__] pages of records from your file. It has been determined, however, that the report of the examination conducted by Dr. [__name__] on [__date__] could have an adverse effect on you if it is released directly to you. Therefore, the report will be provided only to a physician designated by you. If you wish to designate a physician to receive the report, please submit a written designation to this office.

If you consider this letter to be a denial of your request, you may submit an appeal to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-1100. A letter of appeal must include: (1) reasonable identification of the records to which access was requested, (2) a statement of the action appealed and relief sought, and (3) copies of the request, notification of denial, and any other related correspondence. The appeal procedure may be found in ASM 353.433c.

[__signed__]

475 L'ENFANT PLAZA SW RM 10022
WASHINGTON DC 20260-0010

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