

Firearms

Guidance from the BMA Ethics Department

July 2011

Certifying patients' fitness to hold firearms

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General principles

There is nothing to prevent doctors from countersigning shotgun certificate applications when they are simply acting as a person of good standing. In the same circumstances there is no bar to them acting as a referee for a firearm certificate application. Where the applicant is a patient, however, doctors are advised not to endorse such applications unless they believe that they have sufficient knowledge about the individual to justify a judgement that the individual could safely possess and control such firearms or shotguns. In the BMA's view, such occasions will probably be rare. Doctors must make it clear that they are in no position to judge the 'future dangerousness' of any applicant.

If doctors have reason to believe that an individual has access to firearms and is currently a danger to him or herself or to society they should encourage the individual to return the licence and surrender the firearms or shotguns. Doctors should, however, also be prepared to breach confidence and inform the appropriate authorities if necessary. They need to bear in mind that they may need to justify the decision if confidentiality is breached without the individual's permission.

Introduction

This guidance note has been drawn up in response to enquiries from doctors concerned about being asked to certify the 'fitness' of their patients to hold firearms by acting as countersignatories or referees to shotgun or firearm certificate applications. More rarely, the BMA is asked by doctors about notifying the relevant authorities about an individual who legally holds firearms or shotguns but whom they believe is unfit to do so, and advice is also given in this area.

Current legal situation

Application forms for firearms and for shotguns are different. Applicants for both need to provide a number of medical details, including whether they suffer from any 'medical condition or disability including alcohol and drug related conditions'. They also have to make a declaration as to whether or not they have ever suffered from epilepsy or been treated for 'depression or any other kind of mental or nervous disorder'.^{1,2}

An application for a firearm requires two referees. They must have known the applicant personally for two years, be 'of good character' and be resident in Great Britain. They cannot be members of the applicant's immediate family. Referees are asked to confirm that, to the best of their knowledge, the answers to questions 1 to 16 of the form are correct, and to endorse one of the applicant's photographs to the effect that it bears a current true likeness to the applicant, and complete separate forms which must not be revealed to the applicant, but sent under separate cover to the police firearms licensing department. These forms relate to the applicant's physical and mental health, including any evidence of alcohol or substance abuse and of any underlying mental or physical disabilities. The forms also request information about any relevant domestic difficulties or whether anybody living with the applicant may give cause for concern. Again in the BMA's view, few doctors are likely to have this level of knowledge of an applicant. A referee can be of any background or occupation.

An application for a shotgun, by contrast, requires the endorsement of a single countersignatory in place of the referees. In addition to the general requirements for being a referee, the countersignatory must also be either a Member of Parliament, Justice of the Peace, minister of religion, doctor, lawyer, established civil servant, bank officer or 'person of similar standing'. Countersignatories are required to confirm that they know of no reason why the applicant should not be permitted to possess a shotgun and to 'bear in mind the character, conduct and mental condition of the applicant in so far as they are relevant'.³ At the time of writing, the Home Office was considering replacing the countersignatories for shotgun certificates with a single referee.

Although acting as a referee for a Firearm Certificate clearly entails greater responsibility, the ethical guidance given here applies to both shotgun and firearms licences.

Medical information and letters to GPs regarding application for or renewal of licences

Application forms for both firearm and shotgun certificates require the applicant to give permission for the police to approach the applicant's GP in order to obtain factual information about the applicant's medical history. Following discussion between the BMA and the Association of Chief Police Officers (ACPO) in 2010 it was agreed that when an individual applies for a licence, or applies for a renewal of a licence for a firearm or shotgun, a letter will be sent from the police to his or her GP informing them of the fact. Ordinarily, certificates are renewed every five years. The purpose of the letter is to provide an opportunity for the patient's GP to alert the police to any medical concerns that may have a bearing on the individual's ability safely to possess a shotgun or firearm. If there are no concerns, the letter does not need to be replied to. Unless, in the GPs view, the patient presents an immediate risk of serious harm to themselves or another, consent for any disclosure will be required from the patient. If the GP does wish to disclose a concern, and the patient refuses consent to any disclosure, the refusal will have to be relayed to the police, thereby potentially jeopardising the application. Following advice from the Information Commissioner, copies of the original letter from the police should not be retained in the medical record, but doctors are at liberty to make a note in the medical record, as they would with any other request for health information by a third party. (Further information about applicants who may pose a risk of harm to themselves and others, and on the use of tags in the medical record is given below.)

The role of the countersignatory

The decision as to whether an individual is fit to be entrusted with firearms or shotguns rests in law with the police and, ultimately, the courts. Under the Firearms Act 1968, the onus is therefore on a chief officer of the police, not the countersignatory or referee, to be satisfied that the applicant has a good reason for acquiring a shotgun or firearm and that its acquisition would not be prejudicial to public safety or peace. (As mentioned above, it is the countersignatory's or referee's role to confirm that he or she has no knowledge that would prohibit the applicant having a firearm or shotgun.) It is also the responsibility of a chief officer to ensure that applications for firearms or shotgun certificates by anyone of 'intemperate habits or unsound mind' are refused.⁵

Home Office guidance on the role of referees and countersignatories

According to Home Office guidelines for the police,⁶ the role of the countersignatory or referee is to provide information and opinions that the police can take into account when making a judgement. Neither are expected to offer an 'expert' opinion, regardless of their backgrounds. In particular, doctors acting as referees or countersignatories should do so on a personal basis rather than as medical professionals, and they should not therefore be expected to offer any medical opinion as to the applicant's mental state or likely future behaviour. It is open to the police to contact the referee or countersignatory to discuss the information provided on the reference form or any other matter relating to the application.

In its previous guidance on firearms, the BMA expressed concern that doctors were being asked to make predictions about an applicant's 'future dangerousness'. The BMA believes that doctors are not in a position to make such a judgement. The guidance from the Home Office therefore makes it clear that doctors are not and should not be called upon to offer such an opinion.

Issues for concern

Although the BMA welcomes the Home Office guidance relating to countersignatories and referees, it still has some concerns about the weight placed on their endorsement. Although the guidance suggests that countersignatories and referees are not called upon to offer a medical opinion, the Association is concerned that excessive emphasis may still be given to an endorsement by a doctor, because of the specialist nature of his or her expertise. Doctors who have contacted the BMA have pointed out that they very rarely have sufficient knowledge of the mental stability of an individual to certify that he or she has not suffered from any mental disorder, nor will they be able to give a meaningful medical opinion on more general issues such as the 'character, conduct and mental condition' of the applicant.

As previously indicated, the doctor is only one of a number of people 'of good standing' or 'good character' who can be asked to act as a countersignatory or referee for a shotgun or firearm certificate application. When the doctor is simply acting in this capacity, that is where the applicant is not a patient, then the Association believes that there is nothing to prevent doctors from endorsing the application, as long as this is made clear. Where the applicant is a patient, however, the Association believes that doctors are not seen by the public as solely persons of good standing but are still considered to be making a medical assessment and therefore have a greater responsibility. In these circumstances, the Association advises doctors not to endorse applications unless they have a sufficiently detailed knowledge of the patient's mental and physical health to be confident that the individual can safely possess and control firearms without endangering themselves, their families or the public. The BMA expects that very few doctors will be this confident about their knowledge of a patient.

Applicants who may present a risk

In the majority of cases, individuals obtain firearm or shotgun certificates with the assistance of people of good standing, and no problems arise. In exceptional circumstances, however, a doctor may have good reason to believe that an individual either applying for a firearm or shotgun certificate, or already in possession of one, may represent a danger either to themselves or to others. In these circumstances doctors should strongly encourage the applicant to reconsider or revoke their application. If the applicant refuses, the doctor should consider breaching confidentiality and telling the police firearms licensing department of their concerns. Consent should initially be sought from the applicant for contacting the police, but if it is not possible to obtain consent, the doctor should consider making his or her concerns known without consent wherever feasible. Where possible, the doctor should discuss the reasons for this with the applicant beforehand. The GMC's guidelines on consent in these circumstances are given below:

Disclosures to protect the patient or others

Disclosure of personal information without consent may be justified where failure to do so may expose the patient or others to risk of death or serious harm. Where third parties are exposed to a risk so serious that it outweighs the patient's privacy interest, you should seek consent to disclosure where practicable. If it is not practicable, you should disclose information promptly to an appropriate person or authority. You should generally inform the patient before disclosing the information.⁷

Doctors should bear in mind that, as in other situations where a doctor may consider breaching confidentiality, doctors may be called upon to justify their decision either before a court or the GMC.

'Tagging' medical records

Following a coronial inquiry into a firearms-related death, in 2009 the BMA was involved in discussions concerning the desirability of GPs placing electronic tags in medical records to indicate that the patient either held a firearm or shotgun certificate or had applied for one. Advice from the Information Commissioner's Office indicates that holding this data would be in contravention of the Data Protection Act and electronic tags should not therefore be used for this purpose.

Objections to signing firearms certificates

The BMA has received enquiries in the past from doctors who do not wish, on grounds of conscience, to sign firearm or shotgun certificate applications. Doctors are under no obligation to sign these certificates and the BMA would support any doctor who refuses such a request.

Further information

For further information about these guidelines, BMA members may contact the BMA on 0300 123 123 3 or at:

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References

- 1 The law relating to certification for firearms and shotguns in England and Wales is contained in the Firearms Acts 1968 to 1997 and the Firearms Rules 1998s3-7. In Scotland the law is contained in the Firearms (Scotland) Rules 1989 s3-7 (SI 1989 No. 889). In Northern Ireland, certification for firearms and shotguns is contained in the Firearms (Northern Ireland) Order 1981 part 3 (as amended)
- 2 Firearms Acts 1968 to 1997. Firearms forms 101,103 and 125.
- 3 Firearms Act 1968 to 1997. Firearms form 103: part D.
- 4 Home Office. *Firearms law: guidance to the police 2002*. Norwich: HMSO, 2002: 47.
- 5 Firearms Act 1968 to 1997. Firearms forms 103: notes to part D.
- 6 Home Office. *Firearms law: guidance to the police 2002*. Norwich: HMSO, 2002.
- 7 General Medical Council (2000) *Confidentiality: protecting and providing information*. London: GMC. para 36.

