

Operational Policy for LHBs on the Management of Performance Procedures for Doctors on the Performers List

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Status: Final

Intended Audience: LHB officers and staff, NWSSP-CS, GPs, BMA, LMCs
Members of the Public

OPERATIONAL POLICY FOR LOCAL HEALTH BOARDS ON THE MANAGEMENT OF PERFORMANCE PROCEDURES FOR DOCTORS ON THE PERFORMERS LIST.

1 Introduction

- 1.1 This Operational Policy has been developed to guide the management of the internal aspect of Local Health Board Performance Procedures for General Medical Practitioners (hereafter called GPs), in accordance with the Welsh Assembly Government Guidelines WHC (2005) 059 (**Annex 1**). The procedure applies to all doctors on the Medical Performers Lists (MPL) in Wales and should provide a uniform and consistent approach and interpretation across Wales. In the case of doctors in training the Post Graduate Dean must be consulted regarding any performance issues.
- 1.2 This procedure draws upon guidance issued by the Health Departments for dealing with disciplinary matters and management of primary care practitioner lists, the NHS Wales Act 2006 together with relevant regulations thereunder. In any matters of doubt or conflict reference should be made to such Acts and Regulations.

2 Purpose

- 2.2 Local procedures are designed to:
- Protect the safety and well being of patients;
 - Respond to expressions of concern about practitioner performance (at an early stage whenever possible);
 - Provide a structured framework for the review and/or investigation of concerns;
 - Ensure any review or investigation is open, transparent and fair to all parties;
 - Provide an accurate assessment and report upon which to base decisions and appropriate action;
 - Focus on good practice.

LHBs are responsible for investigating and taking appropriate action in response to concerns expressed to them about any GP or GP specialty trainee (GPST) either included on their Performers List or providing NHS General Medical Services in their catchment area. The responsibility for formal action in respect of a GP rests with the LHB in whose MPL the GP is included. (special arrangements will apply in respect of the minority of GPs who are also included on the

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Performers List of a Primary Care Organisation in England, Northern Ireland or Scotland).

3 Principles

3.1 At all stages patient safety must be paramount.

In the early stages of the procedures, the emphasis should be formative rather than punitive. It is important that potential problems are identified early to manage clinical risks more appropriately, and to share lessons which may be learnt from the process

The process must be open and fair for GPs, and perceived to be so. It should be carried out in a timely manner; and a well documented audit trail should be recorded.

Whilst some of the information itself may be confidential, it is important that the process is transparent so that all concerned can be assured of its fairness, appropriateness and robustness.

The LHB should work with the LMC to ensure the procedures are fair and reasonable

3.2 Concerns about an individual GP's or a Practice's Performance can come from a variety of sources. It is essential that evidence is triangulated and verified by appropriate investigation. Concerns need to be well documented, factual and evidence based, rather than anecdotal. Unsubstantiated complaints should not form part of the evidence in this process.

3.3 Support and guidance for the Doctor should be available at every stage from the Local Medical Committee (LMC), the British Medical Association (BMA) and/or the Medical Defence Organisation. In addition support should be available from:

- Primary Care Support Service (PCSS) or equivalent;
- Provision of a 'buddy' system for the GP;
- Provision of a mentor for the GP

3.4 At any stage of the process outlined in WHC (2005) 059, the Medical Director may request the advice of the Primary Medical Care Advisory Team (PMCAT), the Welsh Postgraduate Dept of General Practice in Cardiff University (the Deanery) or the National Clinical Assessment Service(NCAS).

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If there is evidence to suggest there is a case for an adjudication of Serious Professional Misconduct, as defined by the General Medical Council, then the (Assistant) Medical Director should consider referral to the General Medical Council (GMC).

3.5 The investigation and decision process should ideally be completed within a 3 month period from the time it was agreed to investigate the concern. It is acknowledged that this may not always be possible in more complex cases.

3.6 The LHB must take note of this statement in the WHC. "A GP should not be liable for the consequences of a lack of resources from the LHBs, and should this situation arise, it is advisable that independent advice be sought (the LMC may be an appropriate body to be involved) to avoid the effect of the LHB judging itself." (WHC (2005) 059)

4 Stage 1 - Receipt of concern and initial assessment

4.1 The LHB should have a system to ensure concerns raised about a practitioner's performance are brought to the attention of the Medical Director or a senior member of that directorate.

4.2 Where concerns are thought to be minor and do not pose any risk to patients, the practitioner or practice nor the LHB, the Medical Director or Assistant Medical Director (MD/AMD), (hereafter referred to as (A)MD), can decide to deal with the matter under the LHB's standard Clinical Governance processes by addressing concerns as areas of development, or through the GP appraisal process. The (A)MD may make informal enquiries of the practitioner concerned or his/her practice. The (A)MD may refer to other information held by the LHB.

4.3 The LHB needs to ensure that all concerns raised are recorded and managed appropriately. Care needs to be taken, however, to ensure that reported concerns are not malicious. The LHB should ensure that any allegation of a malicious or potentially malicious nature is adequately corroborated by additional evidence from another source or verified by an independent investigation before action is considered. Previous unsubstantiated or unproven complaints or concerns should not form part of any evidence against an individual GP without further investigation.

4.4 It is recommended that all reports of a "whistle blowing" nature are handled in accordance with the LHB whistle-blowing policy.

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4.5 If at any time there is thought to be a health component to the concern, an occupational health referral and assessment should be considered. If at any time there is thought to be a behavioural component to the concern, a behavioural assessment in relation to work/working practice should be considered.

5 Stage 2 - Investigation and Screening

5.1 Where concerns are of a more serious nature or there is a need for more information the (A)MD may require a more detailed investigation or screening process which may lead to or involve a screening panel. It may be necessary to undertake an investigation prior to the panel to establish more facts to support decision making by the Panel. It is recommended that the case is discussed with NCAS prior to setting up a screening panel. The screening panel may also ask that more information is obtained by means of a new or further investigation

5.2 The (A)MD should check the Medical Performers List (MPL). Where the LHB, on whose MPL the GP is included, differs from the LHB with whom the concerns were first raised, the screening process reverts to the LHB on whose MPL the GP is included. This is particularly important where GPs are freelance/locum and working across several LHBs. All GPs working in Wales must be either on or have applied to join the MPL in Wales. There is a 3 month period from the time of issue of a grace period letter for new applicants during which they can practice in Wales without being on the MPL.

5.3 The investigation may be carried out by LHB staff, an independent medical practitioner specially contracted to the LHB for this purpose or by PMCAT. Any involvement of PMCAT will be subject to clear terms of reference agreed with the LHB. GPs on the LHB's Performers List and practices contracted with the LHB are required to cooperate with any such investigation under Regulation. The LHB will issue PMCAT (or any other investigator) with a letter of authorisation to carry out the investigation. Case records should not be looked at without this authorisation.

5.4 The (A)MD may appoint another LHB officer to lead or coordinate the investigation (as the Investigating Officer) but shall retain responsibility and oversight for the conduct of the investigation.

5.5 The purpose of the investigation is to ascertain facts in an unbiased manner. The function of the investigator(s) is to ascertain what has happened and provide information on any contributory factors. The investigator(s) may advise the LHB whether there is a continuing risk. Any action to be taken in relation to that risk is the remit of

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the LHB. The Investigating Officer will compile a factual report and may make recommendations for consideration by the LHB.

- 5.6 The practitioner concerned must be informed in writing by the LHB as soon as it has been decided that an investigation is to be undertaken. (S)he should be notified of the name of the Investigation Officer and made aware of the specific concerns or complaint that have been raised. The practitioner should be given the terms of reference for the investigation. The LHB should not notify the Local Medical Committee (LMC) without the consent of the practitioner at this stage (WHC (2005) 059) except where specified in Regulation (eg if GMS contract sanctions are proposed). The practitioner should be informed of any subsequent changes to the terms of reference
- 5.7 Once the Investigation Officer has completed the investigation the (A)MD will decide whether further action can be undertaken informally or whether to convene a Screening Panel.

6 Screening Panel

6.1 Purpose

The function of a LHB Screening Panel is to consider any allegations and available evidence regarding concerns about the professional performance of a GP and to make recommendations on the way forward to address the issues. The use of a screening panel is not a statutory requirement.

6.2 Composition

The composition of the Screening Panel should be 3 to 4 individuals and include:

- A non officer LHB Board Member (Chair)
- A doctor nominated by the LMC
- One or two of the following:
 - A Locality/Area/Network Clinical Director (or other senior medical representative) on GP performer list
 - Head of Primary Care (contractor Services) (or nominated equivalent)
 - Other Asst Med Dir Primary Care not involved so far in the investigation

The same individuals, either LHB or LMC nominee, should not be members of both the Screening Panel and the Reference Panel for the same practitioner.

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The Medical Director of the LHB (or an Assistant Medical Director) should be in attendance at the Screening Panel and should introduce the case.

The Investigating Officer (if not the AMD) should also attend to present the results of the investigation and be questioned by the panel or practitioner. If a member of PMCAT has been involved in the investigation (s)he may also be asked to attend and answer questions

A Community Health Council representative may also be asked to attend as an observer.

The GP must be involved at this stage and may be accompanied by a companion. Without prejudice to the procedure set out in Schedule 2 to the Employment Act 2002, the companion may be an official or lay representative of the British Medical Association or defence organisation; a representative of the LMC, or a friend, partner or spouse. The companion may be legally qualified but he or she should not be acting in a legal capacity. (WHC (2005)059)

6.3 Terms of Reference

- The panel must act in a fair and transparent manner;
- The Screening Panel should consider the original allegations/concerns and any submissions presented to it by the LHB and the GP;
- The panel should consider whether claims have been substantiated and not take action with regard to unsubstantiated claims other than to request more information;
- The panel may also consider any submissions made by the practice in which the GP works;
- This information should normally be made available to the GP two weeks or ten working days prior to, but as a minimum at least one week or five working days prior to the Screening Panel taking place;
- If the GP refuses to attend it will not be possible to produce an agreed action plan and the LHB will need to consider whether to convene a reference panel or use other informal arrangements. If there are extenuating circumstances such that the GP is unable to attend, the Chair may agree to delay the panel;
- The panel makes recommendations to the LHB and/or practitioner. The panel should take a formative learning approach unless a referral to a statutory body is indicated;

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6.4 Outcome

- The Screening Panel should agree an appropriate way forward for the resolution of the concerns which have been raised, which will usually be an action plan with timescales;
- The Screening Panel may recommend further formal investigation which may include referral for a NCAS assessment or referral to a Reference Panel if they feel that patient safety has been, or is likely to be, significantly compromised;
- The Screening Panel may recommend referral to the General Medical Council should the concerns be of a sufficiently serious nature.

7 Action Plan

7.1 Where appropriate, the investigation report will support the (A)MD and/or Screening Panel in making recommendations to the practitioner and/or LHB. This may lead to an action plan agreed between the LHB and the practitioner.

The GP needs to be fully engaged in this process and a level of understanding established between the LHB and GP. There needs to be:

- clarity of the objectives;
- identification of the responsible individual or organisation to provide support and to assist the practitioner in making changes;
- identification of any further training needs;
- a reasonable agreed timescale;
- a clear monitoring system;
- clarity as to who is providing financial support for which activity within the action plan. There is no mandated body or individual required to provide this as of April 2012;

7.2 Action plans should be overseen and monitored through the Clinical Governance procedures of the LHB.

7.3 The individual GP's partners may also need to be involved, especially if the concerns are wider than the individual GP and appertain to the Practice as a whole.

8 Action plan reviews

- 8.1 There will be a timescale agreed in the action plan and an agreed period of review by a LHB officer. There should be the potential to review at an earlier stage if this is indicated.
- 8.2 If the agreed objectives are not met within the agreed time table, then the LHB should make it clear that the action plan is in danger of failing. The reasons behind this should be explored urgently with the GP or Practice and a decision made as to whether additional support or actions are required.

9 Stage 3 - Reference Panel

9.1 Purpose

The function of the LHB Reference Panel is to consider evidence regarding professional performance concerns of a GP. The Reference Panel makes recommendations to the LHB chief executive officer regarding the practitioner's status on the Medical Performers' list and/or restriction of practice.

- 9.2 The evidence may come from a number of sources (eg a report from the GMC, an independent investigation commissioned by the (A)MD etc). The LHB will conform with the requirements of the National Health Service (Performers Lists) (Wales) Regulations 2004 (as amended).

9.3 Membership

The membership of the Reference Panel will include:

- LHB Officer with the power of suspension (bestowed by the Chief Executive Officer). This member will normally chair the panel;
- Non Officer Member of the LHB Board;
- Medical Director or Assistant Medical Director of another LHB
- Local Medical Committee Nominee;

(The Local Medical Committee member of the Reference Panel is in addition to any LMC representative present at the panel meeting who is acting in the capacity of a "friend" of the GP).

- 9.4 Panel members should be independent of the process up to this stage. LHB or LMC nominees should not be involved in both the Screening Panel and be members of the Reference Panel. However,

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membership of a previous reference panel relating to the practitioner should not preclude further involvement in the process. All Panel members should have had training/experience in performance procedures.

9.5 In addition, those “in attendance” at the Reference Panel will include:

- The Medical Director of the LHB or representative of the MD
- A “friend” of the GP;
- A Senior Member of NHS Wales Shared Services Partnership Contractor Services (NWSSP-CS) or any successor organisation to advise on the processes and procedures.
- A Recorder to ensure that accurate records are kept of the proceedings.

9.6 **Terms of reference**

The Reference Panel will conform to the requirements of the National Health Service (Performers Lists) (Wales) Regulations 2004 (as amended). Detail is provided in the Regulations and in the model procedures published by the NHS Wales Business Service Centre – Contractor Services Department in Feb 2008 (amended May 2010).

The LHB must consult with NCAS if it is considering suspension, contingent removal or removal of the Performer from its Performers List unless it is necessary to effect immediate action to protect patients before such advice is available.

9.7 **Outcome**

The final decision rests with the LHB as the statutory body through the Chief Executive Officer or their authorised nominee.

The chair should ensure the practitioner is notified both verbally and in writing within seven days as to the outcome of the hearing and that the practitioner is advised fully of any right of review and appeal.

The LHB must issue a letter to other statutory organisations notifying such organisations of any decision to remove, contingently remove or suspend. The performer must also receive a copy of this letter.

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Annex 1**WELSH HEALTH CIRCULAR****WHC (2005) 059****Issue Date: 27 June 2005****Status: Good Practice****Title: GUIDANCE FOR LOCAL HEALTH BOARDS ON LOCAL PROCEDURES FOR GENERAL
MEDICAL PRACTITIONERS****For Action by:**
Chief Executives of Local Health Boards**Action required** *See paragraph(***For Information to:**
Local Health Boards - Medical Directors,
Business Service Centres**Sender:** Mr John Sweeney, Director of Community, Primary Care & Health Services Policy
Directorate, National Assembly for Wales**National Assembly contact(s) :** Mr Martyn Shipp, General Medical Services, HSC-CPCHSPD,
National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ**Enclosure(s):** LHB Guidance on Local Procedures for GPs - New Guidance

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Summary

1. Professional standards and performance sit at the heart of the NHS. It is essential that where valid concerns arise there are in place the effective means to investigate and act upon, where appropriate, the findings from such investigations. It is important that there is a consistency in the processes and procedures applied by all Local Health Boards.
2. The attached guidance for LHBs provides a framework for taking forward investigations of concerns in a professional manner that is both sensitive to the need to protect patients and fair and supportive to the individual doctor.

Action

3. To note and ensure investigations of concerns about general practitioners are carried out in accordance with the principles and procedures set out.

Yours sincerely

John Sweeney
Director of Community, Primary Care & Health Services Policy Directorate
Health & Social Care Department