Policy for Handling Moderate and High Level concerns about the Professional Conduct and Clinical Performance of Practitioners on the Performers Lists and Community Pharmacists

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Policy Statement

1. This policy details the actions that will be undertaken when NHS Leicester City and NHS Leicestershire and Rutland PCTs (hereafter referred to as the "LLR PCT Cluster") have a moderate to high level concern about the professional conduct and/or clinical performance of a practitioner on its performer’s lists or a community pharmacist. It should be noted that the health of a practitioner can impact on performance.

2. The procedure for implementing these actions is comprehensively explained in the Procedure for handling concerns about the professional conduct and clinical performance of Practitioners on the Performers List, and Community Pharmacists. This policy has been developed using appropriate national guidance and regulations. It aims to ensure that patient safety is maintained while providing a supportive approach to the management of underperformance that can be remediated.

3. The organisational hierarchy referred to in this document reflects those employed at the time of the organisational form that was in place at the time of publication. The details of the processes involved are defined in the procedures document which accompanies this policy.

Introduction

4. This policy is for staff handling moderate to high level concerns about the conduct, performance or health of practitioners (General Practitioners, General Dental Practitioners, Community Pharmacists, and Optometrists). It is informed by advice for PCOs. *Primary Medical Performers Lists Guidance, 2004* and recent work carried out by the National Clinical Assessment Service (NCAS) – *Handling Performance concerns in Primary Care, 2010*. The policy is underpinned by *the National Health Service (Performers Lists) Regulations 2004, amended 2006* and *Tackling Concerns Locally, 2009*.

5. A concern which may lead to a Regulatory Body referral could be defined as:

   - A practitioner’s performance has harmed patients or put patients at risk of harm;
   - A practitioner’s performance has harmed staff or put staff at risk of harm;
   - A practitioner has shown deliberate or reckless disregard of clinical responsibilities towards patients;
   - A practitioner’s health is compromising patient safety;
   - A practitioner has abused a patient’s trust or violated a patient’s autonomy or other fundamental rights;
   - A practitioner has behaved dishonestly, fraudulently or in a way designed to mislead or harm others;
   - A practitioner whose performance or behaviour has eroded public confidence in health services

6. The purpose of this policy is to ensure that there is a robust, rigorous, clear, fair, consistent, non-discriminatory and lawful approach, which adheres to
relevant and appropriate national guidance and regulations, to the identification, investigation, management and resolution of clinical underperformance and unprofessional conduct or practitioner’s health issues that puts the safety of patients at risk or is in the public interest.

7. Additionally, Medical Revalidation will require that the governance process within primary care is subject to closer scrutiny. The statutory functions are outlined in The Medical Profession (Responsible Officers) Regulations 2010. The Responsible Officer should ensure that systems within the designated body, the PCO are sufficiently robust to result in a recommendation for revalidation to the GMC if a medical practitioner demonstrates performance which meets the standards outlined in Good Medical Practice. Failure to meet these standards consistently may result in a negative recommendation.

8. The roles of the Clinical Commissioning Groups (CCG’s) are still under development. It is not yet clear how complaints made to the CCG’s will be managed or how this will be affected by the role of the Local Office of the National Commissioning Board.

9. The RO role only pertains to GPs, not pharmacists, dentists or optometrists whilst the principles within remain applicable to all professionals.

Scope and Purpose of the Policy (including Statutory Requirements)

10. This policy pertains to all independent practitioners (GPs, Dentists, and Optometrists) on the Performers Lists of LLR PCT Cluster. The RO role only relates to GPs. The policy also covers Community Pharmacists who have a contract with the PCT.

11. In addition, the policy covers GPs, Dentists, Optometrists and Community Pharmacists employed by a practice or independent contractor. Any action undertaken within the terms of this policy does not negate the contractual responsibilities that an employer has towards an employee and towards its contracting organisation.

12. It does not apply to non medical staff employed by independent practitioners (e.g. practice nurses, dental surgery assistants, hygienists, dispensing technicians, dispensing technicians) as performance concerns would be dealt with through internal procedures. The PCT will offer guidance and thus assure patient safety.

13. It does not apply to any practitioner employed by the PCO e.g. salaried GPs, Dentists and Pharmacists as performance concerns are dealt with through the PCT Human Resources procedure.

14. It does not apply to medical staff retained on another PCOs performers list but employed by medical staff retained on LLR PCO performers list.

15. The policy provides guidance which is in line with the following national legislation and current regulation which focuses on ensuring safe as well as best practice performance:

- National Health Service (Performers List) Regulations 2004, amended 2006
- General Medical Council’s ‘Good Medical Practice’ (2006)
- General Dental Council’s ‘Standards for Dental Professionals’ (2006)
- Tackling Concerns Locally, Department of Health, 2009
- General Pharmaceutical Council’s ‘Standards of Conduct, Ethics and Performance 2010’
- General Optical Council’s ‘Code of Conduct for Individual Registrants.’
- The Medical Profession (Responsible Officers) Regulations 2010
- National Clinical Assessment Service (NCAS) – Handling Performance concerns in Primary Care, 2010.

16. Legal advice can be sought at any stage during the implementation of this policy and its procedures in order to ensure that the action taken by the PCT is equitable, fair and lawful.

Aims and Principles

17. The aims of the policy are as follows:

- To ensure patient safety
- To ensure staff safety
- To enhance public confidence in the NHS by demonstrating an early response to moderate and high level concerns about performance
- To ensure that, when concerns are raised about a practitioner, there is an auditable, rigorous and lawful investigation of all the issues contributing to that concern and that this takes place in a timely, fair and proportionate manner
- To define the entry into and exit from the stages of an investigation by criteria and risk assessment
- To ensure that as the cause for concern process is inevitably stressful for a practitioner, if there is any doubt about the health of the practitioner, to err on the side of caution and refer for an occupational health assessment. [To ensure that the practitioner] receives support from their GP, and is not involved in any investigation process until they are declared fit for work
- To offer appropriate and pastoral support and to signpost a practitioner under investigation to external support e.g. Local Professional Committees/mentor
- Where appropriate, to ensure a practitioner is referred to the relevant Regulatory Body
- To document and securely file all communication, actions and decisions to ensure that information and reports provided to the Screening Group and Reference Committee enable informed decisions to be made that are in accordance with performers list regulations
- To ensure that the Independent Panels involved in making decisions that affect a practitioners status are properly constituted i.e. members have had no involvement in the investigation process and are appropriately trained and of a senior status, [are] able to execute their delegated powers effectively and appropriately
• To provide a framework which will allow a rapid response when a practitioner’s fitness to practise is considered to be of moderate or high level concern, but recognising that complex problems can take time to investigate and it is better to have a high quality investigation than a rushed one.

• To ensure that reports have had appropriate clinical advice

18. The policy is based on a number of principles. These are as follows:

• Protection
  o The protection of patients and public
  o The protection of a practitioner from vexatious allegations
  o To uphold the principles of Equality and Diversity
  o To safeguard information in line with the PCT’s policy on information governance
  o To refer as appropriate to the Regulatory Body or to a Statutory Body e.g. police
  o To ensure that the PCT fulfils its statutory obligations to minimise risk to patient safety

• Process
  o To ensure that actions taken are appropriate, consistent and lawful
  o To ensure that clear guidance is in place for the practitioner and those involved in the cause for concern process
  o Accountability at all stages through documented audit trails
  o To ensure that decisions are supported by evidence that is transparent, unbiased and defensible
  o To ensure that there are no conflicts of interest between those involved in the investigation and those involved in making decisions based on the outcome of the investigation

• Support
  o To signpost the practitioner to external personal support e.g. Local Professional Committees as cause for concern is a stressful process
  o To encourage a referral for an occupational health assessment
  o To offer support [as appropriate] to those reporting concerns or affected by those concerns
o To ensure that there are no conflicts of interest

Roles and Responsibilities

19. This section provides an overview of individual, directorate and committee duties and responsibilities:

The Board of the LLR PCT Cluster [and the Clinical Commissioning Group Boards] have a duty to ensure that the requirements of this Policy are upheld. The PCT Board will receive quarterly reports outlining the number of practitioners on its performers lists who are under investigation including the reasons for their referral or who have had performers list action taken against them following the outcome of an investigation. This report provides assurance to the Board that systems and processes are in place to meet the requirements of this policy. A Bi annual report will be presented in the confidential session of the Board giving an overview of the decisions made on individual cases.

The Chief Executives of the LLR PCT Cluster and the Clinical Commissioning groups have overall responsibility for the strategic and operational management of [their organisations], and for ensuring that this policy complies with all legal, statutory and good practise guidance requirements.

The Responsible Officer’s role and responsibilities are defined in the statutory guidance outlined in ‘The Medical Profession (Responsible Officers) Regulations, 2010’. He or she is responsible for the maintenance of the Medical Performers List, the quality of annual appraisals for medical practitioners, the quality of any investigation where practise gives cause for concern, appropriate referral to the General Medical Council, and the monitoring of conditions, undertakings and action plans, where imposed by the GMC. He or she will make recommendations to the GMC for revalidation. He or she is answerable to the GMC and to the Chief Executive and is supported by the Medical Directorate team. The Responsible Officer is not involved in case management and is a member of the Reference Committee.

The Medical Director (or deputy) has executive responsibility for ensuring that the policy for handling concerns about the professional conduct and clinical performance of all practitioners on the performer’s lists and community pharmacists are adhered to in the management of all cases.

The Director of Quality (or deputy) is a member of the Reference Committee and provides advice on all aspects of Corporate Governance.

The Director of Commissioning Development (or deputy) provides advice to the Reference Committee on all primary care contracting issues.

The Reference Committee is a sub-committee of the Trust Board. It will receive and consider evidence from the Performance Screening Group. It will then decide if performers list action against a practitioner should be considered and if so, what that action should be. Except in the case of conditional inclusion or mandatory removal, all proposals for performers list action will be referred to an Independent Panel of the PCT. Performers list action encompasses suspension, removal, contingent removal and all reviews
including that of conditional inclusion. The Reference Committee will receive updates from Human Resources regarding progress with PCT employed medical practitioners who are giving cause for concern. Terms of Reference for the Reference Committee are set out in Appendix 2 of the Procedure for this policy. Guidance for the proposed suspension of a practitioner is contained in Appendix 3 of the Procedure for this policy. Guidance for the proposed removal or contingent removal of a practitioner is contained in Appendix 4 of the Procedure for this policy.

An Independent Panel has delegated authority from the LLR PCT Cluster to consider performers list action proposed by the Reference Committee and to decide in accordance with the performers list regulations whether action is to be taken against a practitioner and if so, what that action will be. Terms of Reference for an Independent Panel are set out in Appendix 5 of the Procedure for this policy.

The Quality Committee’s on behalf of the Board will receive in confidential mode quarterly reports relating to cases of independent practitioners who no longer present a high level cause for concern but require a proactive approach to support those practitioners to minimise risk.

The role of the Performance Screening Group is to review all new moderate and high level concerns relating to clinical underperformance and unprofessional conduct. Concerns considered to be high level will be reported to the Reference Committee with evidence and recommendations. Concerns considered to be moderate will be discussed and action agreed on how to manage the concern. If these concerns are to be dealt with by the appropriate Directorate i.e. medical directorate, primary care contracts, complaints etc assurance will be sought by the Cause for Concern Team on co-ordination and completion of action plans. Should concern escalate, the Performance Screening Group will review progress and may refer to the Reference Committee for further action. Terms of Reference for the Performance Screening Group are set out in Appendix 1 of the Procedure for this policy.

The Cause for Concern Manager is responsible for managing the processes contained within this policy and its procedures when a practitioner gives rise to a concern involving patient safety and public confidence; and also for managing some of the individual cases involved. The Cause for Concern Manager is a member of the Performance Screening Group and in attendance at the Reference Committee meetings.

The Cause for Concern Coordinator is responsible for case managing practitioner cases that could give rise to concerns involving patient safety and public confidence and supporting the Cause for Concern Manager in fulfilling all the key result areas and responsibilities associated with investigations and their outcomes so that risks to patient safety and public confidence are contained and minimised. The Cause for Concern Coordinator is a member of the Performance Screening Group and may also be in attendance at the Reference Committee when deputising for the Cause for Concern Manager.

The Cause for Concern Team is responsible to the Medical Director and consists of the Cause for Concern Manager, Cause for Concern Coordinators and Cause for Concern Administrator. The Team is responsible for the day to day management of cases; providing specialist knowledge to PCT officers of
professional regulatory systems and codes of professional practise and works closely with the Associate Medical Directors involved in these cases.

The Medical Directorate Team is responsible to the Deputy Medical Director and accountable to the Responsible Officer. The Team will advise and assist in the clinical management of all cases involving medical practitioners. Members of the Team may act as medical advisors to the Performance Screening Group and may attend the Reference Committee if required.

Clinical Advisers (dental, pharmacist and optometrist) provide knowledge and expertise on individual cases and will usually be the clinical lead in an investigation team and attend the Performance Screening Group as appropriate.

Appraisal and Revalidation Team manages the two Performers Lists of LLR PCT Cluster. The team is responsible for informing GPs, Dentists and Optometrists of any changes to their inclusion following an Independent Panel's decision, i.e. conditional inclusion, contingent removal, suspension or removal. The local office of the GPhC is responsible for ensuring that pharmacists undertake CPD and demonstrate development.

The Primary Care Contracts Team is represented on the Performance Screening Group and a senior member of the Team attends the Reference Committee. The Team approves and pays suspension payments under the Statement of Financial Entitlements (SFE). After the closure of a case that has involved the implementation of an action plan, the Primary Care Contracts Team may be responsible for ongoing contractual monitoring of the long term implementation of this action plan.

Representatives of the Local Professional Committees may attend the Reference Committee in an advisory capacity. A representative from a LPC is invited to attend when one or more of the practitioners from the professional group represented by the Local Professional Committee is being discussed. The role of a Local Professional Committee representative is to provide advice and guidance to the Reference Committee. Professional representatives do not take part in the decision process.

Equality and Diversity Statement

20. This policy takes into consideration when implementing procedures all specific equality areas (age, disability, gender, race, religion or belief and sexual orientation). All personnel involved in implementing the procedure will receive appropriate equality and diversity training. The Due Regard Template can be found in Appendix 9 of the Procedure for this policy.

21. Every effort will be taken to ensure that the composition of Committees and Panels involved in implementing this policy will reflect the diversity of local family health services within Leicester, Leicestershire and Rutland PCT Cluster in accordance with the Human Rights Acts 1998.

22. All family healthcare practitioners are also expected to abide by their Regulatory Body's code of conduct. These may set out principles and values for their profession, but also gives the general public reassurance of their professionalism and what they can expect from their practitioner.
Training

23. Formal training is required for those involved in leading the implementation of this policy. Training by legal services, in managing investigations, conducting hearings and applying performers lists regulations, should be made available to:

- Members of the Cause for Concern team
- Members and Attendees of the Performance Screening Group
- Members and Attendees of the Reference Committee
- Members of Independent Panels
- Clinical Advisors or investigators
- Members of the Medical Directorate

Monitoring / Audit Arrangements

24. The Quality Directorate will monitor the policy and there will be a regular review of compliance with the policy, and any variations will be reported to the Reference Committee and actions taken as appropriate. A report will then be submitted to the Quality Committee.

25. The policy will be reviewed annually or sooner if the regulations/legislation changes. There are robust arrangements for the maintenance and storage, electronically and hard copy of all information relating to individual cause for concern cases to ensure a clear audit route throughout the process. The Cause for Concern Team will comply with all requests, subject to legal advice, relating to internal audits, freedom of information requests and subject access requests.

26. The identification of all personnel involved in cases discussed by the Performance Screening Group and Reference Committee will be kept confidential through the use of unique ID numbers. Personnel will include practitioners, patients, practice staff and supervisors. E-mails and papers sent via e-mail that identify practitioners will be password protected.

27. Electronic case files are stored on secure files. Replicated case files are kept in hard copy in a secure cupboard. Archived hard copy files are kept in a separate secure cupboard indefinitely.

28. Concerns regarding staff employed by a primary care contractor should be dealt with through their employers in the first instance. It is recognised that contracted practitioners do not always have the resources or expertise to
investigate moderate to high level concerns arising from staff’s conduct and/or clinical competence. When a high level concern has been raised about a member of staff employed by a primary care contractor and it requires investigation the contract holder should contact the PCT Cause for Concern Team for advice and support. If there is a significant patient safety implication or if the contract holders are not appearing to act, the PCT may work with the contract holder(s) to resolve the issues.

29. It should be noted that The Nursing and Midwifery Council is the regulatory body for Nurses and Midwives and Specialist Community Public Health Nurses.

Related Policies and Procedures

30. This policy needs to be read in conjunction with the following NHS and PCT policies and procedures:

- Handling Concerns about the Performance of Healthcare Professionals, 2006 (NCAS and DH)
- Complaints Policy and Procedure
- General Practitioner Appraisal Programme and General Practitioner Revalidation Programme, 2010
- Non-engagement of GPs in the Annual Appraisal Programme, 2010
- Media Handling and Photography Policy
- Policy for the Reporting and Handling of Serious Incidents LLR PCT Cluster
- Whistle Blowing Policy
- Performers List Procedures (2010)
- Primary Medical Performers Lists, Delivering Quality in Primary Care, 2004 (DH)
- Pharmaceutical Services and Local Pharmacy Services Regulations, 2005, amended 2010

Abbreviations

- CCG - Clinical Commissioning Groups
- DoH - Department of Health
- GDC - General Dental Council
- GMC - General Medical Council
- GPhC - General Pharmaceutical Council
- GOC - General Optical Council
- GP - General Practitioner
- GPhC - Royal Pharmaceutical Society of Great Britain
- HR - Human Resources Department
- LDC - Local Dental Committee
- LMC - Local Medical Committee
- LOC - Local Optometric Committee
- LPC - Local Pharmacy Committee
- NCAS - National Clinical Assessment Services
- PCT - Primary Care Trust
- SUI - Serious Untoward Incident
- Tribunal - First Tier Tribunal

References

- Back on Track: Restoring doctors and dentists to safe professional practice, 2006 (NCAS and NPSA)
- DH – Tackling Concerns Locally – Performers List systems review of current arrangements and recommendations for future – March 2009
- Farley Report December 2004, Commissioned by Leicestershire, Northamptonshire and Rutland SHA
- Final Reports from Council for HC Regulatory Excellence (CHRE)
- Good Medical Practice for General Practitioners, 2008 (RCGP and GPC)
- Handling Performance Concerns in Primary Care, 2010 (NCAS)
- Health and Social Care Act 2008:  
  - Part 2 Regulation of Health Professionals and Social Care Workforce.  
- How to Conduct a Local Performance Investigation, 2010 (NCAS)
- Local GP Performance Procedures, 2006, (NCAS, CGST and NPSA)
- NCAA 2004 – Understanding Performance Difficulties in Doctors
- General Practitioner Appraisal Programme and General Practitioner Revalidation Programme, 2010
- NPSA/NCAS – Handbook
- NPSA – (NCAS) 2006 – Local GP Performance Procedures
- NHS Performers Lists Regulations 2004; amended regulations 2006
- Pharmaceutical Services and Local Pharmacy Services Regulations, 2005, amended 2010
- Primary medical performers delivering primary care – Advice for PCT’s on list management – 2004
- Protecting the public – Learning from Fitness to Practise – CHRE 2009
- Scoping of Possible Health Issues for Pharmacists, 2009 (NCAS)
- Tackling Concerns Locally, Department of Health, 2009
- PCT Whistle Blowing Policy and Procedure (currently being updated)
- Delivering quality in primary care: Primary Care Trust management of practitioners lists. General ophthalmic services practitioners (2005)
- Guidance for Primary Care Trusts on ophthalmic performers list management (2008);
- Delivering quality in primary care: Primary Care Trust management of primary care practitioners' lists. Community chemist contractors, bodies corporate (2005)