

# Improving the Performance of Doctors

## Complaints Investigations and Remediation

SHARING INFORMATION WITH PATIENTS AND CARERS



### HAPIA GOOD PRACTICE GUIDE

2014

HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION



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HAPIA – the Healthwatch and Public Involvement Association

# HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION

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## AIMS AND OBJECTIVES OF HAPIA

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- 1) Supporting the development of Local Healthwatch and Healthwatch England [HWE] as powerful and effective bodies that enable the public to monitor, influence and improve health, social care and public health services.
- 2) Promoting democratic and accountable public involvement organisations across England, which genuinely empower patients, care receivers, carers, and all individuals and communities to influence planners, commissioners and providers of health, social care and public health services, in order to create safe and effective services.
- 3) Investigating, challenging and influencing health, social care and public health bodies, which fail to provide, commission and develop safe, effective, compassionate and accessible services.
- 4) Holding the government to account for its legislative and policy commitments, which are intended to enable the public to influence health, social care and public health services.
- 5) Collaborating with other community and voluntary sector bodies, patients and service users to achieve the Association's objectives.

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## SHARING INFORMATION WITH PATIENTS, CARERS AND THE PUBLIC

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This Good Practice Guide has been prepared by the Healthwatch and Public Involvement Association (HAPIA) to enhance an understanding of the principles and benefits of sharing information with patients and carers, when a doctor is being revalidated, or undergoing complaints investigation or remediation.

The NHS introduced Revalidation in December 2012. The process renews the licences of doctors to practise, ensuring doctors are working to the highest medical standards and are continuously improving the way they practise. **Revalidation** takes the form of annual appraisals, which include a requirement for doctors to ask patients about their experiences of how the doctors has provided care and treatment. When the system was launched, the Secretary of State made the following statement:

“As well as improving patient safety and quality of care, Revalidation will improve public confidence that the doctors who are providing care and treatment to patients in the UK are up to date and fit to practise”.

Most patients and the public are not aware that Revalidation has been introduced, and on hearing about the new process to license doctors, are surprised and even shocked that it does not happen already.

**Remediation** is the process of addressing concerns about performance of doctors (their knowledge, skills and behaviour) that have been identified through assessment, investigation, review or appraisal. It is intended to ensure that the doctor provides safe and effective care to patients.

The term Remediation covers all activities that help doctors, including advice, formal mentoring, further training, improving existing skills and rehabilitation.

For doctors, appraisals and Revalidation are important opportunities to demonstrate to patients and colleagues that they are continuously improving the way they care for patients, both through reinforcing and updating their skills, and reflecting on what patients and colleagues have told them.

Sharing and demonstrating the benefits and outcomes of Revalidation is a great challenge, especially for doctors whose appraisals raise concerns and who need to demonstrate that they are tackling weaknesses in their performance, either clinically or in relation to the ways they communicate with patients and colleagues.

Below, we present some of the key issues that can arise during the process of complaints investigation and Remediation - and the response of **Medical Defence Unions** to our Questions and Answers. The questions are HAPIA's own; the answers are derived from discussions with a number of voluntary and community organisations.

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## KEY QUESTIONS TO CONSIDER DURING COMPLAINTS INVESTIGATION AND REMEDIATION

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**Q1) When there is a complaint or concern about a doctor, do patients have a right to know?**

A1) There is no right for patients to know, but if patients have suffered harm or if patients of a Clinic or Practice have expressed doubts about a doctor's competence, it would be right to offer assurances them about the doctor's fitness to practise and that action is being taken.

**Q2) Patients often know when a doctor is not performing well, so would it be best to create a positive and innovative process, so that patients know that such doctors are improving their skills and actively working to provide the best care?**

A2) The benefits of good investigation, effective appraisals and where necessary, retraining and remediation are considerable, especially if the doctor is able to demonstrate to patients that he or she welcomes the opportunity, and cares enough about patients to share details of their progress and improvements in their skills and effectiveness.

**Q3) If patients are being encouraged to make use of the information available when choosing which doctor to consult, is it fair to withhold information where there are concerns?**

A3) It is not fair to deny patients this information when they are choosing which doctor to consult. But it is also not fair to a doctor under investigation to have to share information, if they are later found innocent

of allegations made against them. A compromise position would perhaps be that a doctor who is undergoing Remediation for lapses in clinical practice, should be required to declare this in the sources of information patients use to make choices, but only if this declaration can be accompanied by text explaining that Remediation is a positive and creative process for retraining doctors.

**Q4) Is informing patients about a doctor whose medical practice is being investigated, consistent with a duty to protect the public and the duty of care?**

A4) If the doctor has been suspended, it is reasonable for patients to know that the doctor is being investigated and will not practise during the period of investigation. Patients need to know that a good and effective process of investigation is underway that will if necessary, be followed by Remediation. If the doctor is found to have followed the *Good Medical Practice* guidance patients should be told. Patients can then exercise their own judgement about whether they wish to receive care from that doctor.

**Q5) Is there a genuine public interest in providing information about a doctor when a complaint has been made, but the matter is not serious enough for the doctor to be suspended?**

A5) A threshold needs to be established - and widely understood - in relation to less serious complaints. It would not be reasonable to share information about less serious complaints, unless the information has become known to patients and reassurance needs to be provided that appropriate action has been taken. However, if the complaint is upheld and Remediation follows there may be a case for sharing some information.



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**Q6) If a patient or carer has made a complaint about a doctor, is it best to let the patient have detailed information about the investigative process being undertaken, and any consequent requirements for training or Remediation?**

A6) When a patient or carer has made a complaint, it is essential that they are informed in confidence of the steps which have been taken to investigate the complaint. They should also be told of any subsequent steps that are taken regarding Remediation or retraining, should the complaint be upheld.

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**Q7) If a patient or carer is invited to meet a doctor to discuss a complaint or incident, how can openness and honesty be protected from public scrutiny, should the patient or carer pass information on to the media?**

A7) Preserving privacy when complainants are involved in a meeting in which details of the investigation or other associated actions are disclosed is essential. Compliance may depend upon ensuring that the patient or carer understands the need for privacy – that it is not to protect the doctor, but in the interests of justice. The meeting needs to be carefully planned so that it is clear to the complainant that there is a commitment to openness, honesty and learning. This will, in most cases, discourage information being passed to other parties. Complaints meetings are daunting for patients and carers, and an advocate or mediator may be needed.

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**Q8) If witnesses are invited to give evidence to the investigation of a doctor, can their privacy be protected?**

A8) Patients are likely to feel very stressed at the thought of giving evidence to a complaint investigation. There is no reason for their identity to be revealed beyond the direct parties to the hearing. If a patient fears that he or she will be refused access to healthcare as a result of giving evidence, they must be reassured. A policy on giving reassurance to witnesses attending hearings should be produced (see note below on the GMC Witness Support Programme).

**Q9) What guarantees can be given to a witness to an investigation concerning a GP, that they will not be removed from the doctor's list?**

A9) As GPs do have the right to remove patients from their list (unlike other doctors), it should be possible for GPs to provide an assurance, in writing, that they will not remove a patient from their Practice list if they have given evidence to a complaints hearing or investigation, and furthermore, that their contribution is valued.

**Q10) If a medical error or serious incident has occurred, which results in the patient being told that they have been harmed (Duty of Candour), is a duty placed on the doctor or the employer to also inform the patient about the doctor's process of learning, and reflection, to prevent a similar errors?**

A10) There is no additional duty placed on the doctor or the employer, apart from the Duty of Candour itself. It would, however, be unreasonable to deny a patient or carer knowledge and information about a process intended to improve the doctor's practise, and protect patients from harm.

**Q11) Could a statement from a doctor under investigation - that reads something like the following - enhance the reputation of the doctor:**

**“I would like my patients to know that I have not been performing as a doctor as well as I would wish. I am, therefore, going through a comprehensive process of training and development to enhance my clinical practise and skills, in order to become a better doctor.”**

A11) Evidence of a doctor’s reputation and skills is very important for public assurance that individual doctors working in Practices, Clinics and all other locations, are providing safe, effective care. Building more open relationships where doctors can be honest about weaknesses in their practice and show how they are addressing these, would help to build more effective medical practice and reassurance to the public. The form of words used in this question is an example of one possible approach to this issue.

**Q12) If a doctor wishes patients to know there have been problems and/or complaints and is going through a process of investigation and/or training, could there be any pressure on the doctor to remain silent?**

A12) There have, unfortunately, been pressures from some Trust legal advisors for doctors and hospitals managers to remain silent when there has been a problem with a doctor’s clinical performance. This culture of silence is harmful to doctors and undermines the trust that patients want to have in their doctors.

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## RESPONSE FROM THE MEDICAL DEFENCE UNIONS

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*'Sharing Information with Patients, Carers and the Public'*

We intend these comments for general circulation, and please feel free to circulate them as you see fit.

- We recognise the frustrations that patients, carers and relatives experience when they are trying to get information, because they have a concern or they want to make a complaint. There are a number of different procedures, and each has a different purpose, and it can be extremely confusing.
- Doctors can be called to account in a number of ways because of one single incident and it can be a distressing and protracted experience. There may be a complaint, a claim, a complaint to the GMC, an investigation by the employer or contracting body, a criminal investigation and, if a patient has died unexpectedly, an inquest – all arising from the same incident.
- If something goes wrong, patients must be told, and it is the duty of the doctor responsible for providing the care to ensure that this is done. The doctor should not wait for the patient to ask, but should provide the information as soon as possible. The General Medical Council sets out, in its main guidance document for doctors, *Good Medical Practice* (paragraph 55), how it expects doctors to act when something has gone wrong.

“You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:

- a) Put matters right (if that is possible)
  - b) Offer an apology
  - c) Explain fully and promptly what has happened and the likely short-term and long-term effects.”
- The NHS Complaints Procedure is the route for patients who want make a complaint - for example, because they want to find out more about what happened, and why, and what is being done to stop the same thing happening again. They must be given a full response and an apology when appropriate. The GMC also gives clear guidance about what it expects doctors to do if a patient makes a complaint. *Good Medical Practice* (paragraph 61) says:

“You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient’s complaint to adversely affect the care or treatment you provide or arrange.”

The GMC also give clear guidance - in a separate leaflet to doctors who are considering ending their professional relationships with patients – which makes it very clear that the fact a patient has made a complaint, or has raised concerns, is not an appropriate reason to end a professional relationship with that patient.

[http://www.gmc-uk.org/guidance/ethical\\_guidance/21160.asp](http://www.gmc-uk.org/guidance/ethical_guidance/21160.asp)

- Doctors who do not comply with GMC guidance may be reported to the GMC and may, if the matter amounts to impaired fitness to practise, be referred to a Fitness to Practise Panel which can decide whether the allegations are true, and if so, whether the GMC should impose a sanction, which can include suspension or erasure from the list of registered medical practitioners.
- The NHS complaints regulations allow patients to bring a complaint about a matter, at the same time as they are bringing a claim. The MDU and MPS encourage our members to investigate the complaint, and to respond as fully as possible and in a timely manner. The information doctors provide in the complaints response may be of use to the patient and solicitor, because it should enable them to decide whether or not they are in a position to bring a claim and whether it is in the doctor's interests to provide a detailed response.
- It is possible that as a result of a complaint made by a patient or a carer, or as an entirely separate decision because of concerns raised elsewhere, an employer or a contracting body may decide to investigate concerns about a doctor. In these circumstances a patient may be approached to provide a statement as a witness, and possibly to give evidence if the matter progresses to a panel/hearing.

These proceedings are designed for the purpose of determining if the allegations against the doctor have any factual basis and, if they are proven, to allow the employer or contracting body to determine what course of action it needs to take in respect of the doctor. It will also need to take into account its duty to protect the patients who use its services or services commissioned by it, and the wider the public.

These investigations and proceedings are entirely confidential for employment and defamation law reasons, and because of the employers/contracting body's duties owed to the doctor under Data Protection Legislation. The patient has no rights to information about these investigations, though they will have expectations that the body will act appropriately, and with due concern for its responsibilities to patients and the public as it undertakes the investigation and reaches a determination and takes a decision on sanction, if any.

If the allegations are proven the organisation may consider it appropriate to publish limited information about the outcome, subject to legal constraints upon it and to the rights of the doctor to confidentiality.

- If a doctor is excluded or suspended during such an investigation, the fact that the doctor is excluded or suspended pending further investigation may be confirmed, but the employer/contracting body may not provide any further information.
- Patients who raise concern with the GMC have no rights in the procedures, as it is for the GMC to pursue the case. Patients may be asked to act as witnesses and are not entitled to information about the confidential details of the investigation.

The GMC provides a service for witnesses, including patients and others who are asked to give evidence at Medical Practitioner Tribunal Service hearings. Further details are available at:

[http://www.gmc-uk.org/concerns/witnesses/witness\\_support.asp](http://www.gmc-uk.org/concerns/witnesses/witness_support.asp)

The GMC also publishes information about investigations that it can legally put in the public domain on the GMC and MPTS websites. <http://www.mpts-uk.org/hearing/1708.asp>

## **EXTRACT FROM GMC WITNESS SUPPORT PROGRAMME ADVICE**

<http://www.gmc-uk.org/concerns/witnesses.asp>

### **SUPPORT FOR WITNESSES GIVING EVIDENCE TO TRIBUNALS**

There may be factors that might make giving evidence particularly difficult for some witnesses. If you have a disability, illness or a condition such as a depression or anxiety, a learning difficulty, a physical disability, or you experience difficulty in social situations, then this may affect how you give evidence before a panel.

The way in which you present evidence may also be affected in situations where the allegations are of a sexual nature and you are the alleged victim, or you feel intimidated due to your age, gender, race, cultural background or sexuality.

If you have any concerns about giving evidence, please raise this at an early stage with your GMC contact. They will discuss your circumstances with you and let you know whether adjustments can be made to assist you, or if any special measures (e.g. screens or video-link), can be put in place to help you give evidence.



## TALKING TO SOMEONE ABOUT BEING A WITNESS

Being a witness can be a stressful experience for some people. If you feel that you would like support, you might wish to speak to someone who is independent of the GMC and the MPTS.

Our witness service provides dedicated support for people who have made a complaint to the GMC, or who may be asked to give evidence to a hearing.

It is a confidential service run by volunteers from the charity Victim Support.

You can access support from the service at any time - before, during or after attending a hearing.

The witness service can provide:

- Telephone support
- Home visits or face to face support in your local community
- An opportunity to talk to someone confidentially about how you are feeling
- Help to understand what happens during an investigation into a complaint about a doctor
- An opportunity to visit the hearing centre before the day you are due to give evidence
- An independent supporter who can accompany you on the day and be in the room while you give evidence to a hearing
- Practical assistance to make sure the GMC and the MPTS is aware of any arrangements that are needed to enable you to attend the hearing and help completing your expenses claim form
- Sign-posting to other organisations that can provide further support.

This service is free, confidential and independent.

Please remember that, while volunteers are able to provide emotional support and practical help, they are not qualified to provide professional counselling or legal advice. They are also not allowed to discuss the evidence.

#### CONTACT US ...

If you would like to use this service, you can ask your Solicitor to make a referral.

Alternatively, you can contact the Witness Service Manager yourself

- Telephone: 0161 954 1997
- Email: [witnesssupport@gmc-uk.org](mailto:witnesssupport@gmc-uk.org)