RESPONSE TO GENERAL DENTAL COUNCIL CONSULTATION ON FITNESS TO PRACTISE DRAFT RULES

Introduction

Action against Medical Accidents (AvMA) is an independent charity which has been promoting patient safety and access to justice for people affected by medical accidents for over twenty years, As such, AvMA has always taken a special interest in the regulation of health professionals and the crucial role that regulation has in the protection of patients. This interest is informed by our considerable experience of helping people identify the best course of action to take when they have concerns about the safety of a health professional and of assisting people with taking cases to the GDC and other regulators.

Use of Civil Standard of Proof

The GDC has particularly requested feedback on its proposal to use the civil rather than legal standard of proof in the work of its practice committees.

AvMA strongly supports the proposal to move to use of the civil standard of proof and wishes to commend the GDC in proposing this bold and positive step – one which we hope will be followed by other regulators of health professions. Our reason for supporting this proposal is that we believe **the protection of patients must be the first and foremost priority for regulators**. It is incongruous that if a regulator has reason to believe that a health professional is not fit to practise 'on the balance of probabilities' that it should not take steps to protect patients from that professional. To require proof 'beyond reasonable doubt' that a dentist is not fit to practise before being able to take steps to protect patients would inevitably put patients at risk. It is the tendency to give the benefit of any doubt to health professionals which has over the years led to a growing lack of trust in regulators of health professionals.

Terminology

We recommend that the terminology used to describe circumstances in which members of the public or others bring issues to the attention of the GMC which may call into question a registrant's fitness to practise is reviewed. Current terminology such as 'complaint' or 'allegation' have pejorative connotations for some people which may deter them from reporting issues in the interests of patient safety. It is already the practice of the GDC and other regulators to refer issues of general complaint to employers or appropriate complaints procedures. The GDC will only investigate potential fitness to

practise issues. It is therefore misleading to suggest that members of the public or others can 'make a complaint' to the GDC about individual registrants. If the GDC pursues the matter, the so-called 'complainant' is no longer treated as if she/he were a complainant, but rather as a witness. We advocate a term such as 'reporting' fitness to practise concerns. The adoption of more appropriate terminology may help avoid complaints being inappropriately directed to the GDC.

Support for Members of the Public reporting to the GDC / acting as 'Witnesses'

AvMA's experience is that many people are deterred from reporting health professionals to regulators because of the daunting nature of the procedures. Ordinary people may need specialist independent help in reporting a health professional's potential unfitness to practise, and in acting as a witness if the matter is investigated further by the GDC. Staff of the GDC can not perform this role fully because they need to remain totally objective – neither supporting the reporter of potential unfitness to practise or the registrant. We recommend that the GDC considers pooling resources with other regulators to help fund a specialist support service for people considering reporting a health professional to a regulator and to support those people who do through the fitness to practice procedures / acting as a witness. Such a service would also help reduce the number of inappropriate 'complaints' being made to the GDC by advising people of the most appropriate complaints procedure or other ways of having their concerns addressed. We recommend that these issues are also addressed by the rules.

Investigating Committee

We question whether an Investigating Committee is necessary or appropriate. It may be that staff of the GDC, taking appropriate independent clinical advice where needed, would be in a position to investigate issues concerning fitness to practise themselves on behalf of the Registrar. However, we would like to ensure that there is independent lay involvement in the process and the overall scrutiny of the investigation process. If an investigating committee is used, it is imperative that it does not act and is not perceived as another barrier to getting concerns about a health professional dealt with and that it can operate speedily. The system must provide the registrar with an early opportunity to refer a case to the Interim Orders Committee and reduce the risk of patients being put at risk due to the time taken for cases to be investigated and progress through the committee structures of the GDC.

Interim Orders Committee

We believe that it is imperative that Interim Orders to protect patients can be made without delay. The rules and practical arrangements must allow for the Committee to consider interim orders on the recommendation of the registrar immediately – without having to convene a meeting.

Practise Committees

We would be interested in the possibility of combining the different committees into one. Might this be more efficient? We would also recommend that the relevant literature clarifies exactly what is meant by ‘erasure’ . People have been dismayed in the past that dentists who have been removed from the list can re-enter it within a relatively short period of time. We think that there is a strong argument for erasure / removal being permanent or at least the erasure lasting for of a minimum period of 5 years and for there having to be exceptional reasons provided and a thorough consideration of the individual’s fitness to practise before anyone can be re-registered.

Disclosure of Information

We welcome the rules allowing for the disclosure of information provided by respondents to the source of the report / ‘complaint’. We recommend that this is made even more unequivocal by removing the words ‘where appropriate’ from the draft rules. Such information should only be withheld in the most exceptional circumstances, and when this is done the other party should be advised that such information has been withheld and why. We also welcome the rules making it explicit that the rationale for decisions be explained to all parties. The absence of such transparency has in the past contributed to a lack of trust in regulators.

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