



for patient safety and justice

Consultation responses on duty of co-operation
Department of Health
Room 423, Wellington House
133-155 Waterloo Road
London SE1 8UG

7th July 2010

Department of Health “Duty of Co-operation” consultation

Thank you for the opportunity to comment on the proposals and draft regulations. Please find attached the consultation response questionnaire completed on behalf of Action against Medical Accidents ('AvMA' – the charity for patient safety and justice). This letter is to summarise AvMA's main suggestions regarding these proposals. AvMA is the leading patients' charity focussed on patient safety and supporting people affected by things going wrong in healthcare. Our views stem from over twenty five years experience of working with patients and their families and of working in partnership with health professionals, departments of health, the NHS, fellow patients groups and specialist lawyers. We contributed extensively to the 'Tackling Concerns Locally' working party and other work connected with the White Paper in response to Shipman and other important inquiries. These issues are a key priority for us.

We welcome the overall direction of travel of the reforms and their policy intention. We would however like to draw attention to some areas of concern we have about the proposals as they stand.

1. We are very concerned that it is intended to bring in these regulations with no coherent plan as to how they will be regulated and apparently no sanctions being available for organisations who fail to comply with them. We recommend that the power that the legislation provides to make it an offence not to comply with the regulations is used. Whilst we agree that encouragement and support will be the most important factors in making this initiative a success, we believe it needs to be underpinned by potential sanctions which underline that compliance is

mandatory. We understand that discretion will have to be used over how such sanctions are applied whilst organisations are getting to grip with the new system. However, without making these measures realistically mandatory, they will not work.

2. We would like to see more clarity about what is expected from local organisations in situations where there are potential serious concerns about a health professional's fitness to practise / patient safety stemming from concerns about an individual. Whilst we agree that allegations will normally need to be subject to some form of investigation locally to establish whether they are credible, the wording of the consultation document can be interpreted as implying that even very serious concerns might be subject to full investigation locally before a decision is taken to refer the health professional concerned to the appropriate regulator. There is a danger here that local organisations / employers will be attempting to do the job that the regulators are equipped to do and that a case will need to be proven locally before a regulator might get involved. There are real concerns about the ability of some employers to carry out investigations of appropriate quality and also about the potential for conflict of interest for employers investigating their own employees when there may be serious consequences for the organisation itself. We believe that the default position should be that if there is reason to believe that the allegations *if proven* suggest a potential threat to patient safety or lack of fitness to practise, that the case should be referred to the regulator without delay and appropriate restrictions put in place. The draft regulations as they stand are insufficient. Whilst they put a duty on organisations to 'share' information with designated organisations such as regulators, this is in the context of responding to requests. We recommend that regulation 6 is amended to make it a requirement for organisations to refer cases proactively to regulators in these circumstances.

We would also like to take this opportunity to emphasise our strong support for the proposal to make sharing of information about complaints and clinical negligence claims with relevant bodies compulsory. We pushed for this in the Shipman and other inquiries. It is a nonsense that bodies responsible for clinical governance such as PCTs currently have no information about clinical negligence claims against a GP for example.

Yours sincerely

Peter Walsh
Chief Executive