# Fareham and Gosport
# PCT Management of Primary Care Practitioner Lists
# General Practitioners

## The Suspension, Refusal, Conditional Inclusion, Contingent Removal of General Practitioners

**Introduction**

1.1. It is the responsibility of the PCT to manage the lists of general practitioners (GPs) who provide or assist in the provision of General Medical Services (GMS) or perform Personal Medical Services (PMS).

1.2. This paper outlines the procedures for Fareham and Gosport PCT when considering the suspension, refusal, removal, conditional inclusion or contingent removal of a general practitioner (GP) from the relevant list.

1.3. This paper is based on guidance by the Department of Health[1]. The guidance is detailed and comprehensive and this paper is not intended to replace it as a source of reference but instead summarises the procedures as they apply to Gosport and Fareham PCT.

1.4. The PCT may have matters brought to its attention from a number of sources that might lead the PCT to conclude that some action needs to be considered in relation to the doctor. Example are:-

- concerns expressed by other NHS professionals, managers, trainees or other non-clinical staff;
- reviews of performance, including appraisal;
- clinical governance, clinical audit and other quality improvement activities;
- complaints by patients, their family or carers or their representatives;
- information from regulatory bodies;
- litigation following allegations of negligence;
- information from the police or coroner;
- judgements made in courts

1.5. Where removal or contingent removal is thought necessary the H&SC Act (and its subsequent related regulations) require that as a minimum:-

- the doctor is told in writing what action the PCT is proposing;
- the doctor is told the grounds on which the PCT it is acting;
- the doctor is given 28 days in which to make written representations;
- the doctor is given a right to an oral hearing before the PCT, if he requests one, within that 28-day period.

1.5 The PCT is required by law (for example regulation 8(3) and 10(9) of the NHS (General Medical Services Supplementary List) Regulations 2001 to tell the doctor the grounds on which it is acting. The PCT must tell the doctor all the facts, including copies of any records or written statements, it intends to rely upon either as part of its decision making process or at an oral hearing so that the doctor is able to address these issues if he so wishes. The doctor must be in possession of these facts if he is to be able to respond to the matters being put to him.

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[1] http://www.doh.gov.uk/pclists/implementationadvice.doc

1.6 If there are no representations the PCT can make its decision but if there are written representations they must be considered before the decision is made.

1.7 If a hearing is requested one must be arranged. On the day of the hearing or as soon as practical thereafter the PCT may make its decision. The PCT should not delay the decision making whilst awaiting the next scheduled board meeting.

1.8 Decisions must be notified in writing, they should explain why the decision has been made, including any facts relied upon by the PCT in reaching its decision, and explain any appeal or review rights - including how they can be exercised.

1.9 The PCT should act fairly and in accord with good Human Resource management principles.

1.10 The PCT procedure relating to hearings outlined below will apply to suspension decisions, reviews of conditional inclusions and for reviews of contingent removals. The mandatory procedures outlined in 1.4 to 1.8 apply equally to review decisions.

## 2 Process

### 2.1 The Responsible Board Member

2.1.1 The management of inquiries is vested in the Chief Executive, hereafter referred to as the 'responsible board member'. In the absence of the Chief Executive another Executive Director of the PCT who is nominated to 'act up' for the Chief Executive is authorised to undertake this role. The responsible board member or their authorised deputy will make all decisions to suspend/remove or contingently remove a doctor. Except in sensitive cases it would be unusual for that responsible board member or their deputy to undertake the subsequent inquiries personally.

2.1.2 Where the PCT is investigating a doctor through its procedures and where there is evidence to suggest that there is a realistic prospect that removing, contingently removing or the suspension of the doctor will have to be considered on efficiency, fraud or unsuitability grounds, under their discretionary powers (mandatory decisions need simply to be signed off by the responsible board member) the responsible board member should:-

- nominate an officer to manage any further investigation ("the investigator[2]" for ease of reference);

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[2] It would be good practice for the investigator to be drawn from a small group of suitably experienced staff (ideally these staff could be shared between Health Authorities/PCTs so they build up experience). Using an investigator from another PCT or PCT might be helpful where the issues that gave rise to the investigation, particularly in a supplementary list case, originated in another PCT area. In this way the investigator would be familiar with local issues. It also has the advantage of sharing resource implications between Health Authorities where the difficulties involving the doctor are restricted to PCT "A" but the list entry is controlled by PCT "B". PCT "B" must, however, take the decision on suspension/removal/contingent removal. Where two or more Health Authorities have an interest, a GP principal on two or more PCT lists, they could each nominate the same investigator to examine the issues.

- unless there are reasons to the contrary notify the doctor of the name of the investigator and outline the nature of the PCT's concerns;
- notify any other PCT on whose list the doctor is included.

2.1.3 This is a PCT investigation to consider whether there are grounds to take action against a doctor. It must not be confused with a fraud investigation where there are strict rules that, for example, the NHS Counter Fraud Service must be informed and that a properly accredited officer must carry out the investigation. The investigator can use the findings of a fraud investigation as matters on which to base any further enquiries or on which to make recommendations about further PCT action.

## 2.2 The investigating officer

2.2.1 The Investigating officer nominated by the responsible Board member will:

- conduct any investigations into allegations or concerns about a doctor, establishing the facts for any future oral hearing and investigating and reviewing the position of any suspension;
- not be the same as the person making the decision to remove, contingently remove or suspend the doctor and does not have the authority to impose, vary or lift the order, and may not be a member of the any panel hearing the case;
- involve suitably qualified and experienced clinicians where a clinical judgement is required during the investigation process[3], any such clinician should not be a member of any panel hearing the case;
- ensure that checks are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible;
- ensure that most written statements have been collected prior to the decision to convene an oral hearing ;
- consider and comment on any new evidence that may, on occasion, be presented at an appeal hearing .

2.2.2 The course and nature of the investigation are a matter for the officer concerned, guided by the responsible board member, who needs to be free to discuss the issues with the doctor and others as he sees fit (subject to the appropriate data protection/confidentiality rules). The investigator can be an official of the PCT or of a neighbouring PCT or NHS Primary Care Trust. It needs to be remembered that an "investigation" could be very short in some instances such as where the decision is based on clearly established facts such as an adverse GMC report or a criminal record. Matters looking at competency or fraud are likely to need more work. A referral to NHS Counter Fraud Service might be required in fraud cases.

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[3] It is important that where an investigation is examining clinical issues that relevant clinical input is obtained. This should be from someone with recent relevant experience of the clinical issues in question and might be from a general practitioner (with no link to the doctor under investigation), a medical director or some other competent person (such as a doctor involved in clinical governance) or body (such as the NCAA). Where a GP registrar is involved it would be good practice to additionally involve the relevant Post-Graduate Dean and GP Tutor.

2.2.3 At any stage the investigator can discuss the need for a suspension with the responsible board member and if necessary invoke the necessary procedures.

2.3 **Reporting the Findings of an Investigation**

2.3.1 When the investigator has completed the investigation a report must be prepared for the PCT (where two or more Health Authorities are involved each PCT needs to receive a report as each authority must reach its own decision). The report should specifically contain recommendations as to whether the doctor should be retained on the list, should be removed or should be contingently removed from it (including a recommendation as to the appropriate conditions) and as to whether a suspension appears appropriate. The investigator is not to be able to remove, contingently remove or suspend the doctor on his own authority, where the investigator is the responsible board member the decision ought to be made by an authorised deputy.

2.3.2 Where the PCT conclude that the doctor will not be suspended, removed or contingently removed, and he was aware of the investigation, they should notify the doctor accordingly. Where there are concerns remaining, such as performance, it would also be appropriate to discuss these with the doctor at this stage. This might include action against the doctor for a breach of his terms of service as per the NHS (Service Committee and Tribunal) Regulations 1992.

2.3.3 Where the PCT conclude that there appear to be grounds on which to remove or contingently remove the doctor under their discretionary powers they are legally obliged to follow the procedures in 1.4 – 1.8 above.

2.3.4 Any decision to suspend, remove or contingently remove is reserved to the responsible board member or an authorised deputy.

**2.4 Request by the Doctor for an Oral Hearing**

2.4.1 Where a doctor receiving a notification that he is to be suspended, removed, or contingently removed, seeks an oral hearing the PCT will convene a panel to consider those representations (see 1.7 above). The panel will be Chaired by the responsible board member or by an authorised deputy. The panel will not sit in public.

2.4.2 The list of those individuals attending any particular panel meeting, including any observers, will be agreed between the chairperson and the parties to the hearing (which includes the doctor), with the chairperson having the absolute right to adjudicate in cases of intractable dispute.

2.4.3 Witnesses who have made statements that may be used during the hearing may be called to attend the hearing. The decision to call witnesses lies solely with the chairperson who will only call witnesses it is considered that their attendance will be significant to the decision making process. There is no requirement for all or any witnesses to attend and in most cases written statements should prove sufficient. Witnesses who are asked to attend a hearing are there to give direct evidence. If in exceptional circumstances they

choose to be accompanied by a representative, the representative will not be able to participate in the hearing.

2.4.4 The PCT panel will meet within 28 calendar days of receiving the doctor's representations.

2.4.5 The panel will to be chaired by the responsible board member or deputy and include one PCT non-executive Director plus one suitably qualified medical representative drawn from the establishment of the PCT (or a neighbouring PCT) or from the executive board of a local (or neighbouring) PCT.

2.4.6 The Chairman of the Panel will send the doctor full details, including any written evidence, of the PCT's case against him (see 1.5 above). These details should be sent no less than 7 calendar days prior to the date set for the panel. Any late documents should be sent as soon as possible together with an offer to put back the date of the panel to comply with the 7 calendar day advance notification requirement if the doctor wishes.

2.4.7 If the doctor requests a postponement for any reason other than on health grounds it is suggested they be asked to offer an alternative date, convenient to the PCT, within 7 calendar days of the original hearing. This also applies if the PCT wish in exceptional circumstances, to seek a postponement, and any such postponement must not be unreasonable.

2.4.8 If the doctor's ill health prevents the hearing taking place the PCT should consider at what point they refer the matter to the occupational health service. After a reasonable period (not normally less than 6 weeks) proceeding with the hearing in the doctor's absence will be considered unless there are compelling reasons for further delay. The PCT will act reasonably before taking this course of action.

2.4.9 The panel reserves the power to hear a case in the doctor's absence where it is satisfied that the doctor knew of the arrangements and has failed to attend without good cause.

2.4.10 The investigator (who cannot be a member of the panel) will put the case for removal/contingent removal. The doctor will then be afforded the opportunity of making his own representations. A friend of his choice may accompany and represent the doctor. This can be a representative of the LMC or someone from a medical defence organisation. There is nothing to prevent the friend being legally qualified, however, these are internal procedures and there will be no right or need for legal representation for either the PCT or doctor in these circumstances. This means no legally qualified person addresses the committee or puts questions directly, or indirectly, to witnesses either on behalf of the PCT or on behalf of the doctor.

2.4.11 The panel is free to consider written and oral submissions from third parties where this appears relevant to them. The chairperson will have the absolute right of adjudication where there is a dispute relating to admissibility. Witnesses may be questioned by the panel or by either party to the hearing.

2.4.12 The decision will be notified to the doctor in writing (see 1.8 above). The notification will include, as appropriate, reasons for the decision (including any facts relied upon), clarification of any appeal and review rights and confirmation of any intent to make a referral to the FHSAA for a national disqualification or to any external or professional body.

**Annex E**

**Criteria that must be considered by the PCT in discretionary decision making as extracted from the regulations.**

**NHS (GMS) Regulations (Reg 7B & Reg 18E(3))**
**NHS (GMS Supplementary List Regulations (Reg 6(4) & Reg 11)**

1. When considering applications for admission the PCT must consider the following criteria before making any discretionary decisions to refuse to admit or conditionally include a doctor in its lists:-

i. the nature of any offence, investigation or incident;

ii. the length of time since such offence or incident was committed and since any conviction or investigation;

iii. whether there are other offences, incidents or investigations to be considered;

iv. any action or penalty imposed by any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such offence, incident or investigation;

v. the relevance of any offence, investigation or incident to the provision by him of general medical services and any likely risk to his patients or to public finances;

vi. whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997 applies.

vii. whether he has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a PCT's lists or from equivalent list (in Wales, Scotland or NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;

viii whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland or NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;
and

ix. whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

2. When considering the removal or contingent removal of a doctor on discretionary efficiency grounds the PCT must, in respect of the information it is relying on, consider:-

i. the nature of any incident of conduct which was prejudicial to the efficiency of the general medical services provided by the doctor;

ii. the length of time since the last such incident (if any) occurred, and since any investigation into that incident was concluded;

iii. any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;

iv. the nature of the incident and whether there is a likely risk to patients;

v. whether the doctor has ever failed to comply with a request by the PCT to undertake an assessment by the NCAA;

vi. whether the doctor has previously failed to make a declaration or comply with an undertaking required by these Regulations ;

vii. whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;

viii. whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;

and

ix. whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

3. When considering the removal or contingent removal of a doctor on discretionary fraud grounds the PCT must, in respect of the information it is relying on, consider:-

i. the nature of the incidents of fraud;

ii. the length of time since the last incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded;

iii. whether there are other incidents of fraud or other criminal offences to be considered;

iv. any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;

v. the relevance of any investigation into the incident of fraud to the provision by him of general medical services and the likely risk to patients or to public finances;

vi. whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and

if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;

vii. whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;
and

viii whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

4. When considering the removal or contingent removal of a doctor on discretionary unsuitability grounds the PCT must, in respect of the information it is relying on, consider:-

i. the nature of any criminal offence, investigation or incident ;

ii. the length of time since any offence, incident, conviction or investigation ;

iii. whether there are other criminal offences to be considered;

iv. the penalty imposed on any criminal conviction or the outcome of any investigation ;

v. the relevance of any criminal offence, or investigation into professional conduct, on the provision by the doctor of general medical services and the likely risk to patients;

vi. whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997 applies;

vii. whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;

viii. whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action;
and

ix whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

**Recommendation**
**The Fareham and Gosport Primary care Trust is asked to adopt the procedure as described for a temporary period until there has been full consultation with the Local Medical Committee.**