

Raising concerns and whistleblowing



MPS



Putting members **first**

Advice correct as of May 2014

One of the most difficult situations faced by any clinician is when you are concerned that a colleague's behaviour, health or professional performance may be placing patients at risk. This factsheet outlines your duty to raise concerns when patients may be at risk of harm.

Entering into and leaving employment

Doctors must ensure that, when entering into employment, they do not sign contracts with "gagging clauses" written into them, which forbid them to raise concerns about colleagues or procedures in the workplace. Doctors must also be careful when leaving employment that they do not sign compromise agreements which contain gagging clauses. The GMC, in its *Raising and Acting on Concerns about Patient Safety* (2012) guidance, says, "You must not enter into contracts or agreements with your employing or contracting body that seek to prevent you from or restrict you in raising concerns about patient safety. Contracts or agreements are void if they intend to stop an employee from making a protected disclosure."

Concerns about colleagues

Deciding what to do when you have concerns about a colleague's behaviour is always uncomfortable. However, the General Medical Council (GMC) has given clear advice in *Good Medical Practice* (2013). The relevant advice is found under the heading "Respond to risks to safety" (paragraphs 24 – 25). You must promote and encourage a culture that allows all staff to raise concerns openly and safely.

The guidance makes it clear that the safety of patients must come first at all times. This means that a doctor who has concerns that a colleague may not be fit to practice must take prompt, appropriate action. They should explain their concerns clearly and honestly to an appropriate person from the contracting or employing body. Any specific local procedures should be followed, and concerns should usually be documented in writing.

In such circumstances you should seek advice from MPS about how to raise such concerns, to ensure that your position is protected.

Paragraph 16 of *Raising and Acting on Concerns about Patient Safety* says where local procedures have not

resolved the problems or if your local representative is part of the reason you are concerned, the relevant regulatory body should be informed (for example the GMC for doctors, the Nursing and Midwifery Council for nurses and midwives, and so on). In such circumstances you should seek advice from MPS as to how to take the matter further. You should ensure you have made a record of your concerns and the steps you have taken to try to remedy matters.

Concerns about resources and procedures

Sometimes you may be concerned that patient safety is (or may be) seriously compromised by issues unrelated to the performance or conduct of colleagues. For example, you may have such concerns about inadequate premises, equipment or other resources, or about the systems, policies or protocols you are asked to work to.

In such circumstances, the GMC again advises that you are under an obligation to take appropriate action. Paragraph 25(b) of *Good Medical Practice* says that you must raise your concern in line with GMC guidance and your workplace policy, making a record of the steps you have taken. If this does not result in appropriate action being taken to remedy the situation you should contact MPS for advice on how to take the matter further. Again, it is important that you record your concerns and document the attempts you have made to remedy matters.

Doctors working in management

If you are in a management position within an organisation, then you may have other responsibilities. The GMC has produced specific guidance in such circumstances – see *Leadership and Management for all Doctors*, available at www.gmc-uk.org/leadership.

This contains further advice for doctors in such positions who might find themselves concerned about patient

safety (whether due to the actions of colleagues or not). In particular, the advice makes it clear that there must be adequate procedures in place for identifying and dealing with potential risks to patients, staff and the wider community. The GMC also advises that where you have good grounds to believe that patients or the health of the wider community might be at risk of serious harm, you must take appropriate steps (in line with the advice in *Good Medical Practice*).

Public disclosure

Trying to decide whether an issue should be made public is difficult, and can be very stressful. If you have done all you can by raising the concerns within the organisation, but the risk remains, the GMC advises that you may consider making your concerns public. In such circumstances you should ensure your concerns, and the steps you have taken, have been properly documented, and contact MPS before raising any such matter publicly to ensure that your position is protected at all times.

NHS guidance and legal issues

All doctors have a duty to familiarise themselves with the Health Service Circular dealing with the Public Interest Disclosure Act 1998, and whistleblowing in the NHS. This is available at www.legislation.gov.uk. Further advice and support is available at the Public Concern at Work website, at www.pcaw.co.uk.

Further information

- General Medical Council, *Good Medical Practice* (2013)
- General Medical Council, *Leadership and Management for all Doctors* (2012)
- General Medical Council, *Raising and Acting on Concerns About Patient Safety* (2012)
- Public Concern at Work - www.pcaw.co.uk
- NHS Scotland, *Implementing and Reviewing Whistleblowing Arrangements in NHS Scotland PIN Policy* (2011) - www.scotland.gov.uk
- Public Interest Disclosure Act 1998 - www.legislation.gov.uk

For medicolegal advice please call us on:

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www.mps.org.uk

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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