Consultation

General Medical Council

Good medical practice: public consultation on core guidance on professional standards

July 2022

MPS general comments on *Good medical practice*: public consultation on core guidance on professional standards

Medical Protection Society welcomes the opportunity to respond to the proposed changes to *Good medical practice* and thanks the GMC for engaging with us constructively throughout the consultation process.

We are the world's leading member-owned, not-for-profit protection organisation for doctors, dentists and healthcare professionals. Our in-house experts assist with a wide range of legal and ethical problems that can arise from their professional practice. The benefits of membership include assistance with medical and dental council inquiries. Through our work in this area, we have vast experience around the world of advising members on professional standards and also in supporting them if they are referred to a regulator. Our role as a medical defence organisation means that we have significant insight into such regulatory referrals, as well as a particular perspective which informs our response to this consultation.

We do not underestimate the work and dedication that has gone into creating this updated proposed draft of *Good medical practice* (GMP). There are changes in the new draft that we support and will be happy to welcome and promote. There are however some changes where we have significant concerns. Given the importance of this guidance, this document - which summarises the most important points in our submission from our perspective - focuses on the areas where we have concerns about the proposed changes and where we think further work is needed before final release.

Setting the bar for 'good medical practice' at the right level

We have significant concerns about the extent to which some of the proposed amendments to GMP could lead to an increase in referrals and investigations.

Threshold statement

We are particularly concerned about the proposal to amend the language to describe the fitness to practise threshold statement.

As stated in response to question 6 of the survey, we strongly urge the GMC to retain the text within the threshold statement which states that 'only serious or persistent failure to follow this guidance will put your registration at risk'.

Less than 3% of referrals to the GMC seem to result in erasure, suspension or conditions, which clearly suggest that there is a significant disconnect between the expectations of those referring doctors to the GMC and the purpose and operation of the regulator.

The 'serious and persistent' text in the current threshold statement at least plays a role in combatting the lack of awareness regarding the high bar that exists for GMC action. Removing this

language will send out precisely the wrong message in terms of the nature of complaints that should be the business of the GMC at a time when there is consensus that regulation should 'move upstream' with only the most serious and egregious of cases being dealt with by the regulator. More significantly, if the regulator no longer has to deem something to be 'serious or persistent' in order for a referral to progress, there is an increased chance that more lower level concerns could progress to an investigation.

New additions to GMP

We also have significant concerns as to whether a number of the proposed new additions to GMP are the best way to achieve positive change and also that there could be significant implications from their inclusion.

GMP has to strike a fine balance; it has to outline the standard of professional conduct that the public expects from its doctors while also setting out the appropriate principles that underpin the decisions the GMC will make about a doctor's fitness-to-practise.

Patients, employers and colleagues can point to the requirements in GMP when considering a doctor's actions, including whether to refer a complaint about a doctor to the GMC; and the GMC considers whether action is required based on the requirements set out in GMP and other guidance.

While we understand the case for wanting to drive improvements in medical practice in a range of areas and the good intentions that would have gone into this review of GMP, some of the changes could pose some challenges to healthcare professionals. The move from 'duties' to 'behaviours' is one such example. Duties are derived from the rights others have that need to be respected, while behaviours are more likely to be subjective and could therefore be more open to interpretation. In our view, using the word 'duties' is much more accurate and provides healthcare professionals with a clear standard they need to comply with.

In our view, some of the proposed changes to this version of GMP come too close to describing the behaviours expected from the perfect doctor, rather than that of a doctor who is practising in a way which means they are professional, their patients are safe, and that they should not be referred to the regulator.

Based on our experience and expertise in supporting doctors who are faced with a regulatory investigation, we have serious concerns that this guidance -which sets out a counsel of perfection - could be misused by employers, colleagues and patients, leaving medical professionals increasingly subject to distressing referrals and investigations.

To take one example, we fully understand the desire to emphasise the importance of effective teamworking and interpersonal relationships and of communicating courteously with colleagues (new paragraphs 2 and 3). Seeking to optimise team dynamics by adding a requirement to be 'courteous' within GMP does however expand the areas under the purview of the regulation which could be dealt with more proportionately at a local and managerial level. Similarly, on paragraph 5, the GMC includes a new duty -now behaviour - that doctors should role model supportive, inclusive and compassionate behaviour. While ideally we would like all doctors to be courteous, compassionate, inclusive and supportive at all times, the reality of practice sometimes makes it highly difficult to showcase these attributes. These changes could see the door being left open to a deluge of subjective referrals raised by disgruntled colleagues, which could be followed by tit-for-tat complaints, with prolonged legal debates about what is and is not considered 'courteous' or 'compassionate'.

Similarly, the amendment to paragraph 22 includes the requirement for healthcare professionals to treat patients with kindness, courtesy and respect. While of course it would be desirable for all

doctors to be kind and courteous measuring those attributes is very challenging. Also, must a doctor who is a not kind to a patient be referred to the regulator? What is the threshold for when this becomes an issue that calls into question a doctor's fitness to practice? In our view, being respectful to patients is a must, and while being kind and courteous are desirable attributes, they are too subjective and emotive terms to set the bar for referrals to a regulator.

Indemnity and insurance

We understand from the consultation documents that the GMC proposes to make changes to the requirements within GMP in relation to indemnity and insurance, with the main aim being to remove the requirement to have 'adequate' indemnity or insurance given the challenges that come with advising individual stakeholders on what constitutes adequate indemnity or insurance.
We note that the proposed draft paragraph 88, unlike the current paragraph 63, does not make it clear whether these indemnity or insurance arrangements relate to clinical negligence claims or other medicolegal risks faced by doctors, including referral to the GMC. We believe that this is a potentially beneficial change as doctors should be advised to protect themselves from wider medicolegal risks other than claims. For example, as the GMC are aware, the benefits for all parties are clear when the doctor has legal representation and we believe that GMP should play a role in highlighting this. We would however recommend an additional paragraph is necessary to clarify this point.

In terms of terminology, we would strongly advise against the use of the term 'cover' which is an insurance term and which arguably is not an appropriate descriptor either for discretionary indemnity provided by medical defence organisations which have served healthcare professionals and their patients well for over 130 years, nor the discretionary nature that underpins each of the state backed schemes for NHS organisations for all NHS activity. We also advise that the text should refer to insurance 'or' indemnity, rather than insurance 'and' indemnity as healthcare professionals are not required to hold both.

Based on the above points, while we think that the current paragraph 63 is sufficient, if the GMC are to proceed with making changes to this section of GMP, we would propose the following alternative text: 'You must ensure that you have indemnity or insurance for the full scope of your practice. You should keep your arrangements (be it indemnity or insurance) under regular review'. 'You should also ensure that you have arrangements in place that enables you to request advice and support in the event of other medicolegal risks, including complaints, referrals to the GMC, disciplinary procedures, inquests and fatal accident inquiries'.

We are keen to contribute our expertise in this area to ensure the final text is appropriate for healthcare professionals and their patients. Seemingly small changes to the requirements in this area can have significant unintended implications that we are keen to help you avoid. We are also concerned that this template survey for organisations and individuals acting in a professional capacity does not flag up the proposed changes in this area, explain the rationale behind them, and that consequently you may not receive feedback on this point from other stakeholders less close to the potential implications. We therefore expressly request that the GMC works with MPS to agree the final text of GMP with regard to indemnity arrangements during and following this consultation and certainly prior to the final text being confirmed.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

Contact
Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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