

14 January 2014

petitions@scottish.parliament.uk

Andrew Howlett
Assistant Clerk
Public Petitions Committee
The Scottish Parliament

Dear Mr Howlett,

**Response to the Scottish Parliament Public Petitions Committee –
PE1495 on the use of 'gagging clauses' in agreements with NHS staff**

Thank you for the opportunity to respond to the Public Petitions Committee's call for views on the use of 'gagging clauses' in agreements with NHS staff.

I have set out below how our guidance to doctors applies in this area.

The status of General Medical Council guidance

The General Medical Council (GMC) is the independent regulator of doctors in the UK. Our statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. We do that by controlling entry to the medical register and setting the standards for medical schools and postgraduate education and training.

We are responsible for advising doctors on good practice to help them provide better care for patients. Our core publication, *Good medical practice* sets out the principles and values on which good practice is founded and all doctors are required to be familiar with and follow the guidance in GMP and our explanatory guidance on a range of issues. If a doctor seriously or persistently breaches the guidance we act to protect patients, if necessary by removing the doctor from the register, or restricting or removing their right to practise medicine.

All doctors have a duty to act when they believe patients' safety is at risk, or that patients' care or dignity are being compromised.

Raising and acting on concerns about patient safety

The petition calls on the Scottish Government to ban the use of 'gagging clauses' in compromise agreements within NHS Scotland.

Our interest in this matter extends only to the role of doctors and any impact on their ability to comply with our guidance.

In *Good medical practice* we make clear that we expect **all** doctors, whatever their specialty or grade, to

'promote and encourage a culture that allows all staff to raise concerns openly and safely' ([paragraph 24](#)).

The guidance also states, in paragraph 25:

'You must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised'

and goes on to describe how to raise a concern, and what other action to take, depending on the circumstances. Our guidance *Raising and acting on concerns about patient safety* (2012), expands on these principles, and paragraph 8 explicitly states that doctors must not enter into restrictive contracts:

'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.'

The Public Interest Disclosure Act 1998 protects individuals making disclosures that **'tend to show' that the health or safety of a person is or may be endangered. These are 'protected disclosures'.**

Paragraphs 21 and 22 also clarify specific duties pertaining to doctors in management roles:

"If you are responsible for clinical governance or have wider management responsibilities in your organisation, you have a duty to help people report their concerns and to enable people to act on concerns that are raised with them.

A doctor with these responsibilities must make sure that:

- a. there are systems and policies in place to allow concerns to be raised and for incidents, concerns and complaints to be investigated promptly and fully
- b. you do not try to prevent employees or former employees raising concerns about patient safety – for example, you must not propose or

condone contracts or agreements that seek to restrict or remove the **contractor's freedom to disclose information relevant to their concerns**

- c. clinical staff understand their duty to be open and honest about incidents or complaints with both patients and managers
- d. all other staff are encouraged to raise concerns they may have about the safety of patients, including any risks that may be posed by colleagues or teams
- e. staff who raise a concern are protected from unfair criticism or action, including any detriment or dismissal.'

In order to support doctors in this area, we provide an on-line decision making tool on raising concerns and also provide a confidential helpline for doctors to seek advice and support on this issue.

We recognise that there is further scope for us to promote our guidance on good practice, and we continue to raise awareness of it and do what we can to ensure compliance.

Throughout 2014 we will continue to look for ways to embed the principles in **doctors' day to day practice.**

I hope that this is useful in explaining our guidance.

Please do not hesitate to contact me if you require further information.

Yours sincerely,

Jackie Bell
Scottish Projects Officer
GMC in Scotland