

Council meeting 10 & 11 October 2006

PUBLIC BUSINESS

Annual declaration of fitness to practise

Purpose

To establish a policy for the introduction and application of sanctions to members and registrants who fail to make a declaration when renewing registration.

Strategic objective domain

An organisation that consistently performs as a regulator, professional representative leader and publisher.

Recommendations

Council is asked to agree the proposals as set out below for the introduction of sanctions, from 2008, for failing to make an annual fitness to practise declaration during the retention exercise, when powers under the Pharmacists and Pharmacy Technicians Order (2006) come into force.

Additionally, Council is asked to agree interim arrangements as set out below for those members and registrants who have failed to make a declaration in 2006, and in relation to those who may fail to make a declaration in 2007, prior to the introduction of powers under the Pharmacists and Pharmacy Technicians Order (2006).

- i. In 2006, to write again to members who have failed to make a declaration and advise them a note will be made on their file.
- ii. In 2007, to write to members who fail to make declaration and advise them that a note will be made on their file *and* that their names will be published in *The Pharmaceutical Journal and* that they will not be eligible for a letter of good standing/certificate of current professional status.
- iii. To note that under the new rules any member who fails to make a declaration when paying their 2008 retention fee will be removed from the register as though they had not paid the fee.

1. Background

In 2005, recognising that it could not guarantee that legal proceedings and convictions of relevance to the fitness to practise of members and registrants would be reported to it, the RPSGB introduced a declaration on the retention fee form. If one of the Society's roles is to assure the public by maintaining registers which can be interrogated online 24 hours a day, then the legal and professional standing of members and registrants is entirely relevant. The purpose of the declaration was to ensure the continued good standing of members and registrants. Its introduction brought the RPSGB into line with the other health and social care regulators, and the expectations of the Council for Healthcare Regulatory Excellence.

The 2006 retention fee form contained a similar, although amended, declaration.

The declaration signed by practising members and registrants confirms their commitment to the code of ethics, to work under the standards and guidance published by the RPSGB, to undertake CPD, and that he or she has not been and is not the subject of any matters relevant to his or her fitness to practise (regulatory, civil, or criminal proceedings and investigations). Non-practising members and registrants sign a declaration to confirm they will not practise.

Several thousand (mostly direct debit payers) did not sign or made annotations to the declaration in 2005. No action was taken in respect of these individuals in 2005.

Fewer than 2000 members failed to make the declaration in 2006. These members have been written to and the majority have responded positively to the request for a declaration. Approximately 500 have not responded to the request for a declaration.

The Pharmacists and Pharmacy Technicians Order (2006) and consequential Royal Pharmaceutical Society of Great Britain (Registration Rules) Order of Council 2006 were published for consultation earlier in 2006. The draft rules require members and registrants to make a declaration during the course of the annual fee collection cycle. Failure to make a declaration will result in automatic removal from the register as though a retention fee had not been paid. An early review of the small number of responses received to the rules consultation sees a majority in favour of automatic removal, although raising concern about the specific timescales proposed.

The Order requires members and registrants who wish to be entered into the non-practising part of either register to make a commitment not to practise. Failing to make such a commitment would mean a member or registrant would be deemed to be practising. The retention fee collection exercise is a natural juncture at which declarations are collected from members and registrants. Under the Order, it would be timely for the statutory requirement to make a commitment not to practise to be in the form of a declaration and collected in 2007 as part of the 2008 fee collection exercise. This places additional meaning/weight on the making, collection and recording of the declaration.

The declaration has several elements as indicated above, but will need to be augmented to include requirements in relation to health and professional indemnity insurance.

This paper also needs to be considered in the wider context of the RMC's considerations about the period for collecting fees (March 2006) and the other developments relating to the retention fee collection exercise.

2. The procedure 2006 to 2007

The RPSGB has written to all members who failed to make a declaration during the course of the 2006 retention fee exercise. Nearly 2000 letters were sent, the vast majority of which were sent to members who pay their fees by direct debit and may not have appreciated they had been asked to sign the form/make a declaration.

It is proposed to write a second time to those 350 or so practising members who continue to fail to make a declaration, advising them that this will be noted and if they find themselves subject to a fitness to practise complaint or investigation, it may be taken into account. Correspondence at this stage will also highlight the requirements for retention on the register from 2007. Fitness to practise checks and letters of good standing/certificates of current professional status will state that a declaration had not been received.

Recommendation: in 2006, to write again to members who have failed to make a declaration and advise them a note will be made on their file.

Those members and registrants who fail to make a declaration for 2007 will be written to in a similar fashion, but additionally advised that their names will be published in the *Pharmaceutical Journal* as members of the RPSGB who had not made the annual declaration. Correspondence at this stage would also highlight the requirement for retention on the register from 2008. Fitness to practise checks will state that a declaration had not been received. Letters of good standing/certificates of current professional status will not be issued by the RPSGB for those members and registrants who have failed to make a declaration.

Recommendation: in 2007, to write to members who fail to make a declaration and advise that a note will be made on their file and that their names will be published in the Pharmaceutical Journal and that they will not be eligible for a letter of good standing/certificate of current professional status.

3. Procedure from 2008

Under the draft registration rules it is proposed that members and registrants will be required to make their fee payment for retention before the registration year begins. So if a payment is not received by 31 December 2007, they will be removed from the register on 1 January 2008. Similarly, if members and registrants fail to make a declaration before 31 December 2007, then they will be removed from the register as though they had not made a payment.

The Health Professions Council has already introduced the requirement to make a declaration as an integral part of its renewal process. The HPC's experience suggests the number of members and registrants who will be removed from the register for failing to complete the declaration is likely to be limited. In 2006, the HPC "lapsed" 10% of its registrants because they had not paid or failed to make a declaration. The HPC identified approximately 4% were "lapsed" as a result of members not appreciating that the declaration needed to be made (mostly direct debit payers). The RPSGB erases a much smaller proportion of its registers for failing to make payment, about 1.2% (584 in 2006). If the proportion removed as a result of failing to make a declaration, in comparison to those removed for non-payment, is similar to that experienced by the HPC then 390 members may be erased in 2008 for not completing the declaration.

The declaration to be signed in 2007 and 2008 under the new rules will be augmented by clauses covering adequate professional indemnity arrangements and health, which were not covered in the 2006 declaration.

Members and registrants who have adverse findings or current investigations to disclose should not find themselves disadvantaged by the requirement to make a declaration. Making a disclosure will be encouraged, and experienced as relatively easy to complete and non-threatening. Those who submit information about an offence, conviction, or their health status in one of the prescribed ways (we currently ask for a form to be completed) will be deemed to have made the declaration and will be retained on the register if they comply with all other requirements for continued registration (paying a fee). The issues disclosed will be handled by standard fitness to practise machinery, including the new health processes that will be included in the Order.

Action: to note under the new rules that any member who fails to make a declaration when paying their 2008 retention fee will be removed from the register as though they had not paid the fee.

Members and registrants wishing to be entered in or remain on the non-practising part of a register would similarly be removed from the register in the event a declaration was not made in time. Defaulting to the practising part of the register will not apply.

4. Risk Implications

There is significant risk to the RPSGB's reputation as a regulator if it asks for the completion of a declaration and then does not pursue those who fail to make one. This will especially be the case if any of those members are subsequently found to have caused harm that could have been predicted through disclosure of matters relevant to fitness to practise.

During interim arrangements (2006-2007) there is a risk of legal challenge, resulting in financial loss (awards and costs incurred in defending any challenge). Challenges may be directed at the RPSGB's right to require completion of a declaration or to publish the names of those members who failed to make a declaration. Under current arrangements, the RPSGB relies on its Charter to request the completion of the annual retention declaration by members.

The publicised and phased escalation of sanctions and the new rules obviate the risk of challenge identified.

5. Resource Implications

Additional staff time will be devoted to this exercise in future within the scope of existing job roles. Additional correspondence with members and registrants who fail to comply with requests for declarations is estimated to add £500 in direct costs to the costs of the Registration Division.

6. Recommendations

Council is asked to agree proposals for the introduction of sanctions from 2008 for failing to make an annual fitness to practise declaration during the retention exercise when powers under the Pharmacists and Pharmacy Technicians Order (2006) come into force.

Additionally, Council is asked to agree interim arrangements for those members and registrants who have failed to make a declaration in 2006, and in relation to those who may fail to make a declaration in 2007, prior to the introduction of powers under the Pharmacists and Pharmacy Technicians Order (2006).

- i. In 2006, to write again to members who have failed to make a declaration and advise them a note will be made on their file.
- ii. In 2007, to write to members who fail to make declaration and advise them that a note will be made on their file *and* that their names will be published in *The Pharmaceutical Journal* *and* that they will not be eligible for a letter of good standing/certificate of current professional status.
- iii. To note that under the new rules any member who fails to make a declaration when paying their 2008 retention fee will be removed from the register as though they had not paid the fee.

Andrew Gardner
Head of Registration