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Ref: Consultation response - Performers' List Review v1.0JGFINAL

Dear Mr Harkins

Re: Performers' List Review

I write on behalf of the Royal Pharmaceutical Society of Great Britain (RPSGB) in response to the proposals in the above consultation relating to the review of the Performers' Lists.

The RPSGB is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis, a role that is expected to become statutory in the future. The primary objectives of the RPSGB are to lead, regulate, develop and represent the profession of pharmacy.

Whilst the RPGSB supports the management and handling of risk relating to healthcare professionals providing NHS services in primary care, the RPSGB sees no need for the introduction of Performers' Lists to add to the burden of regulation of healthcare professionals. It is the RPSGB view that the new range of powers available under the Pharmacists' and Pharmacy Technicians' Order 2007 are sufficient to ensure adequate, efficient and proportionate regulation of pharmacists. There is no justification for the operation of a parallel system of fitness to practise for pharmacists operated at local level.

If any proposed changes to regulation in this area of risk go ahead, then these would need to be undertaken in a sensible and proportionate way. The RPSGB considers it an imperative that whatever proposals are adopted, there is comparable regulation of healthcare professional across the whole of the UK.

In March 2006 the RPSGB responded to the consultation by the Department of Health that proposed the extension of list requirements to those pharmacists employed to provide NHS services within primary care. In the RPSGB response to 'Modernising the regulation of primary care – NHS (Pharmaceutical Services Supplementary List) and (Pharmaceutical Service) Amendment Regulations 2006', a number of issues were raised in relation to the maintenance of lists of healthcare professionals.

In particular, the issues surrounding duplication arose with respect to the role of regulators who already maintain lists of registered healthcare professionals and operate fitness to practise processes. The RPSGB still has concerns about unnecessary duplication of information and processes and would support one register and one repository of fitness to practise information.

The Society is concerned about the holding of out of date information on multiple registers. To ensure that multiple registers are kept up to date and provide consistent information remains a challenge. Any list system that relies on a one off check at the point of entry to the list provides no guarantee of patient safety.

Consideration of annual declarations would need to be made, along with the attendant burden that brings to ensure information on the lists is accurate and up to date. It is our view that members of the public would expect one register of healthcare professionals that is up to date and contains all the information that a member of the public requires in order to make an informed decision about using that healthcare professional's services. If continued use is made of the lists, but they are held centrally/virtually, it would seem natural for them to sit with the appropriate regulator.

The RPSGB is concerned at the potential collective administrative burden on Primary Care Trusts and the regulators. The RPSGB has undertaken numerous fitness to practise checks on behalf of PCTs since April 2005, when the providers' list requirements applied to chemist contractors, and, whilst certain information has been provided to the PCTs, it is not clear what controls there have been on its subsequent storage and use at PCT level. What has been clear is that there is inconsistency surrounding implementation across PCTs, with different PCTs asking different questions in relation to the fitness to practise of pharmacists and requiring different standards of "evidence".

Requests for disclosure of fitness to practise history from the regulator for those pharmacists applying for inclusion onto the various lists would have a significant impact on the RPSGB. Previous estimates identified approximately 21,000 pharmacists who would be initially applying for inclusion onto the lists. In addition, there are a further 1000 new registrants every year, many of whom will wish to work within primary care and will be required to be admitted to the lists. Many of the fitness to practise records are historical and not computerised and there is currently no legal provision surrounding the depth and breadth of fitness to practise checks that need to be made by PCTs.

Notwithstanding the above, the RPSGB recognises the importance of the links between the regulator and the PCTs and supports the need for relevant information to be shared between organisations to ensure that an effective and full picture of healthcare professionals' activities is maintained.

Whilst the system is still in its early days, the operation of the Accountable Officer and responsible bodies' duties of co-operation and information sharing under the Controlled Drugs (Supervision of Management and Use) Regulations 2006 (the 'Regulations') has provided a workable hub and spoke method for information sharing and co-operation between responsible bodies around concerns about the management and use of controlled drugs. This model relies on the strong links at local level between the regulators and the PCTs. From the perspective of the RPSGB, the presence of the RPSGB inspectors operating at local level has assisted in the successful operation of the model for pharmacy. In view of this, the RPSGB would advocate that this model should be analysed and the elements of successful operation of the Regulations should be considered when decisions about changes to the powers of PCTs are

considered in the context of fitness to practise and Performers' Lists. Co-operation between responsible bodies (as defined in the Regulations) has avoided the need for multiple investigations into alleged fitness to practise concerns.

Above all, the Society maintains that it is essential that the PCTs exercise their duties equitably, efficiently and effectively, and that there are clear links with the disciplinary processes of the regulators. On the question of whether or not PCTs need a huge raft of extra fitness to practise powers, it was clear during the course of the recent performers' list workshops, held on 5th March 2007, that PCTs felt that their current range of powers was inadequate. However, it is not clear what powers have been used to date and what powers would be necessary to assist with the real, rather than perceived regulatory gaps. With any increased power come the responsibility and the duty to operate procedures in a legally robust manner. However, it remains the view of the RPSGB that an extra system of fitness to practise is not required.

If there is any extension to the NHS disciplinary processes these should be complementary to those exercised by the regulator. It is therefore important that PCTs are permitted to place reliance on the regulatory role of bodies in the most serious of cases but still be in a position to take relevant action necessary to safeguard the public interest – although in cases where public safety is at risk, it is likely that the regulators have sufficient powers to deal with these issues within the current regulatory framework. Such action by PCTs could include referring a case to the regulator for consideration of action to be taken. It should be remembered that it is only in the most serious of cases that powerful measures such as removal from performers' lists would be warranted and it is acknowledged that these will involve a very small minority of practitioners providing services to the NHS.

It is important to ensure that the PCTs have in their power the ability to take action where the regulator refuses or is unable to do so. The RPSGB supports the role of the National Clinical Assessment Service (NCAS) in providing appropriate support and guidance for assisting with the management of poor performance of healthcare professionals in a rehabilitative and supportive manner and is currently in discussions with them in order to consider the extension of the service to pharmacists. The expertise of NCAS should be seen as a powerful tool for PCTs to handle many aspects of concerns about healthcare professionals' performance. It would also be helpful if consistent referral/threshold criteria could be operated between both the regulators and the PCTs and work needs to be undertaken to ensure that this happens.

There will invariably need to be clear guidance and advice provided to PCTs if there are to be changes in the manner in which the list system is operated to ensure that the current confusion is not exacerbated. There would also need to be publicity provided to healthcare professionals in order that any new regulatory regime is seen to be open, transparent, expedient and just and to ensure that the public and the healthcare professions are confident with the manner in the systems are operated.

Assessment of the regulatory impact that any changes to the current system of performers' lists will need to be undertaken to ensure that changes deliver better regulation rather than just more regulation.

I hope that these comments are of use to you. If you wish to discuss any of the matters raised in the RPSGB response, then please contact me using the above contact details.

Yours sincerely

J T Giltrow (Mrs)
Chief Inspector