

Emma Page
NHS Counter Fraud and Security Management Service
Weston House
246 High Holborn
London
WC1V 7EX

FITNESS TO PRACTISE AND LEGAL
AFFAIRS DIRECTORATE
Inspectorate
Telephone: 020 7572 2311
Facsimile: 020 7572 2510
e-mail: jackie.giltrow@rpsgb.org

Ref:
codeofpracticepowerstocounterNHSfraud&se

Dear Ms Page

Re: Consultation: A Code of Practice for the use of powers to counter NHS fraud and security incidents

The Royal Pharmaceutical Society of Great Britain (RPSGB) is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis, which is expected to become statutory under anticipated legislation.

The primary objectives of the Society are to lead, regulate, develop and represent the profession of pharmacy. The Society leads and supports the development of the profession within the context of the public benefit. This includes the advancement of science, practice, education and knowledge in pharmacy. In addition, it promotes the profession's policies and views to a range of external stakeholders in a number of different forums.

The RPSGB supports measures to tackle fraud and security incidents and breaches within the NHS and believes that overall, the Codes of Practice strike an appropriate balance between protecting patient confidentiality, setting out good practice around requests for disclosure of documents, and countering NHS fraud and security issues.

The RPSGB would like to make a few comments, which are generally relevant to both Codes of Practice set out at Annex A and B.

It should be made clear throughout the Code that the powers set out in the Health Act 2006 only relate to NHS fraud and that the requirements of compulsory disclosure are limited to this extent.

It would be helpful to confirm authorised officers' powers in relation to hybrid documents that potentially relate to NHS and non NHS fraud and the policy in relation to disclosure of these documents.

Confirmation of the position of disclosure notices served on self employed personnel would be helpful. For example, many pharmacists are self employed locums, although they may be the pharmacist in personal control of a pharmacy. Paragraph 24 of Annex A refers to 'any person employed by an organisation' and it is not clear whether self employed personnel are intended to be covered.

Paragraph 33 of Annex A could usefully include the key factor 'Has the request for disclosure been made to the appropriate person?' Many documents are held by company Head Offices so a request for disclosure made on front line employed staff would not necessarily be appropriate. All companies that own pharmacies are legally required to appoint a superintendent pharmacist who is legally and professionally responsible for ensuring that policies and standard operating procedures are in place within the company to ensure safe and effective provision of pharmacy services in accordance with legal and professional requirements.

Mention is made of 3rd parties being brought in to assist investigations, it should be made clear that the requirements of the Code in relation to access and security of documents should apply to these individuals and that confidentiality of protected information should be maintained by them.

With respect to protecting patient confidentiality, the RPSGB is of the view that in deciding whether to share protected information obtained using the powers set out in the Health Act 2006 and the NHS (Wales) Act 2006, consideration should be given to the organisation's responsibilities under relevant legislation e.g. the Data Protection Act 1998, Article 8 of the European Convention on Human Rights (ECHR), the Freedom of Information Act 2000, the common law duty of confidence, considerations of commercial sensitivity and any other relevant legislative or common law obligations.

In general terms and subject to relevant legislation and case law, confidential or personal information should only be disclosed if there is a good public interest reason to do so. Where disclosure of protected information is considered, the consent of the patient should be obtained wherever practicable or consideration should be given to removing any information which relates to and can identify a patient. The Society has recently published a new Code of Ethics for pharmacists and pharmacy technicians, which requires them to take all reasonable steps to prevent accidental disclosure or unauthorised access to confidential information and to ensure that they do not release confidential information without consent, apart when permitted to do so by the law or in exceptional circumstances.

I hope that these comments are of use to you.

Yours sincerely

J T Giltrow (Mrs)
Chief Inspector