



# Doctors in Difficulty – Current Hot Spots

National Association of Medical Personnel Specialists

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# Hot Spots



- Informal Resolution
- Exclusion and restrictions
- Conduct or capability?
- Proceeding to a hearing
- Some other substantial reason

# Informal Resolution



- Nothing wrong with making a record of informal discussions
- When does a case cross the threshold into formal process?
- Why not use a letter of expectations or a behavioural contract?
- Mediation where team dysfunction involved

# Exclusion and Restrictions – Key Principles



- Reserve for only the most exceptional cases
- Interim measure only for minimum period necessary
- Extensions reported to CEO/Board and report, when requested, to Designated Board Member
- Seek advice from PPA
- Authorised officers?

# Basis for Exclusion: Immediate (Two Weeks)



- Serious concerns
- Protect the interests of other staff, for example after a critical incident or breakdown in relationships between a doctor and the rest of the team; or
- There is a clear risk that the presence of doctor likely to impede gathering evidence or otherwise hinder the investigation

# Basis for Exclusion: Formal (Four-Week Renewable)



- Need to protect interests of patients or other staff pending the outcome of a full investigation of:
  - allegations of misconduct
  - concerns about serious dysfunction in clinical service
  - concerns about lack of capability or poor performance of sufficient seriousness that it is warranted to protect patients
- OR
- The presence of the doctor in the workplace is likely to hinder the investigation

# Exclusion and Restriction - Caselaw



- *Jahangiri v St George's University Healthcare NHSFT*
  - exclusion must be necessary not merely appropriate
  - consider other restrictions, especially where clinical ability not in question
- *Al-Obaidi v Frimley Health NHSFT*
  - excluded pending investigation as Trust concerned would interfere with witnesses
  - 3 months later exclusion lifted and restrictions on practice imposed: limited to working at one site
  - injunction granted: decision irrational

# Conduct or capability? (1)



- Conduct (Part 3): "*wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care...or create serious dysfunction*"
- Capability (Part 4): "*Inappropriate clinical practice*"; "*ineffective clinical team working skills*"; "*inappropriate delegation*"

# Conduct or capability? (2)



- If mixed conduct and capability concerns, “*they should usually be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately*” (*Hussain, Chhabra*)
- Where doctor alleges incorrect classification: grievance, representations to Designated Board Member and/or injunction... (*Fynes*)

# Drafting the Allegations



- Critical issue: take care when drafting terms of reference as they form the basis of the whole investigation
  - if generic “headlines”, give examples where possible
- Upon completion of the investigation, what are the allegations to take to a hearing?
  - can differ from terms of reference
  - ensure conduct/capability matters can be distinguished
  - must give doctor sufficient detail on allegations
  - which allegations should you pursue and which should you deal with informally?

# Framing Allegations (1)



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- You managed an emergency patient inappropriately on 1 April 2014

OR...

# Framing Allegations (2)



- *The panel is asked to consider whether, in relation to any of the incidents set out below, Dr A was guilty of wilful, careless, inappropriate or unethical behaviour:*
  - you deliberately removed the patient from the emergency list without good reason on 1 June 2019, in circumstances where the patient was suffering significant blood loss and required urgent surgery
  - you refused to come in from on-call on 5 June 2019 in circumstances where it was clear that immediate surgery was necessary.

# Proceeding to a Hearing



- Are the allegations serious enough to go to a hearing at all?
  - *Al-Obaidi v Frimley Health NHSFT*
- Are the allegations sufficiently serious that dismissal for gross misconduct should be on the table?
  - *Ardron v Sussex Partnership NHSFT*
- What is the impact of procedural irregularities?
  - *Al-Obaidi v Frimley Health NHSFT*
  - *Idu v East Suffolk and North Essex NHSFT*

# Some Other Substantial Reason



- Expiry of a fixed-term contract
- Breakdown in working relationships
  - *Kerslake v North West London Hospitals NHST* (2012)
  - *Ezsias v North Glamorgan NHS Trust* (2011)

# Dido Harding Letter



- Independence and impartiality throughout
- Rigorous decision-making methodology at every stage
- Trained and competent, properly resourced
- Safeguard health and well-being: OH, communication plan, compassionate
- Board oversight

# Discussion and questions

Capsticks

