



Department
of Health

Annexe B

The performers lists and suspension

Consultation Questions

Please fill in and/or tick the appropriate response.

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I do not wish my response to be passed to other UK Health Departments

I do not wish my response to be published in a summary of responses

Are you responding: - *as a member of the public*
 - *as a health or social care professional*
 - *on behalf of an organisation*

If you are responding as a health or social care professional, please supply the following details:

Profession:

Country of qualification Please indicate as appropriate:

UK Other EEA Rest of World

Area of work

NHS Social Care Private Health
Voluntary Regulatory Body Professional Body
Education Union Local Authority
Trade Body Other (please give details)

If you are responding on behalf of an organisation, please supply the following details:

NHS Social Care Private Health
Voluntary Regulatory Body Professional Body
Education Union Local Authority
Trade Body Other (please give details)

The Optical Confederation represents the 12,000 optometrists, the 6,000 dispensing opticians and 7,000 optical businesses in the UK who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation we work with others to improve eye health for the public good.

The performers lists and suspension

Consultation Questions

Q1: Do you agree the 2013 Regulations should be amended so that NHS England is not required to remove practitioners from the performers list who are subject to suspension by an interim order? If not, please explain why.

Agree **Disagree** **Unsure**

Please set out your reasons in your response.

Comments

We agree this for all the reasons set out in the executive summary of the consultation, most notably that the current requirement is disproportionate and does not reflect the fact that an interim suspension order is a neutral act which is not intended as a punishment. Moreover, with the removal of this requirement, practitioners can continue to be paid – although we would be grateful for clarification as to whether payments whilst suspended will also be made to performers who are not contractors.

Q2: Do you agree the 2013 Regulations should be amended so that NHS England automatically suspends practitioners who are subject to an interim suspension order? If not, please explain why.

Agree **Disagree** **Unsure**

Please set out your reasons in your response.

Comments

We prefer the position under the 2004 Regulations which was that Primary Care Trusts had the discretion to consider the facts available and make their own decisions which included the option not to take any action at all.

We note from paragraph 1.15 of the consultation introduction that NHS England favours reverting to the position under the 2004 Regulations. This allows each case to be considered individually and still provides the option for NHS England to suspend a practitioner at this interim stage without it being a mandatory requirement.

Moreover practitioners should not be subject to automatic interim suspension orders by their Regulator. Every suspension is a serious comment made against that individual even when it is designed not to be punitive - and each case should be investigated before a decision to suspend is taken. If a practitioner is suspended by the Regulator for a period of greater than 6 months and NHS England wished to follow suit, they would need to make an application to the 1st tier tribunal as under the NHS Regulations the suspension period can be no greater than 6 months.

This would have a cost implication for all parties. In any event, whilst the performer is suspended by the Regulator there is no risk to patients, as the performer is unable to provide any patient care whilst suspended, and it is therefore difficult to understand how an automatic suspension provides greater protection to patients.

There is also an additional cost to NHS England, as any suspension will involve notification to the practitioner, who may exercise their right to make representations at an oral hearing.

Finally, It is important to maintain NHS England's ability to act independently from the Regulator; such an approach would be consistent with the remainder of the Regulations.

There remains a lack of clarity as to the process that will occur if/when the Regulator revokes an interim suspension order. It is an unfortunate reality that such processes often take longer than desired. There is a real risk that such an additional step will mean further delay before a practitioner can resume practising once the suspension has been removed.

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Q3: Do you think there are any additional equality issues that need to be considered?
Are you able to assist us in providing evidence?

Agree **Disagree** **Unsure**

Please set out your reasons in your response.

Comments

We have no additional comments.

Q4: Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Please set out your reasons in your response.

Comments

We have no evidence on the costs of the proposed change but believe that the cost of NOT making the change is an equally valid consideration given the very obvious increased risk of litigation costs in not correcting what amount to an anomaly in the current Regulations.

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Q5: Do you think there are any benefits not already discussed relating to the proposed changes?

Agree () **Disagree** () **Unsure** ()

Please set out your reasons in your response.

Comments

Q6: Do you have any comments on the draft amendment regulations themselves?

Comments