Department of Health and Social Care consultation on regulating anaesthesia associates and physician associates – a summary of AvMA's online response

About Us

Action against Medical Accidents (AvMA) is the national charity for patient safety and justice. We provide free independent specialist advice and support to patients and families affected by avoidable harm in any kind of healthcare setting. This provides us with a unique and extensive insight into the experience of patients and families following such patient safety incidents. We use this experience, and our knowledge of the healthcare system, to work with others to develop policies, systems and practices to improve patient safety and the way that patients and families are treated following avoidable harm. AvMA welcomes the opportunity to respond to this consultation on regulating anaesthesia associations (AAs) and physician associates (PAs).

Overview

AvMA is supportive of providing the General Medical Council with the necessary powers and duties to regulate AAs and PAs in the UK. AvMA also acknowledges that this consultation sets a wider framework for the future overhaul of professional regulatory reform. We welcome that in so doing the Government commits itself to improving patient and public safety. Indeed, unless patients and their safety remain at the heart of professional regulation, then it is unlikely that professional regulators can ever hope to enjoy continuing public confidence in their role.

The Government explain that the reforms proposed through this consultation span the four areas of regulation namely:

- Governance and operating framework
- Education and training
- Registration and
- Fitness to practice

We also note that the overall thrust of this consultation and the changes planned is to allow the professional regulators the opportunity to have greater autonomy and flexibility so that they can more rapidly adapt to changing circumstances. As a principle, AvMA welcomes this desire and drive to give the regulators greater autonomy and flexibility and acknowledges that no one's interest is served by outdated regulations that cannot be easily changed without primary legislation. However, we also caution that in granting this greater flexibility and autonomy, it does not come at the cost at effective engagement with not just the medical professionals but also with the ultimate end-users of their protection namely patients and the public at large. If the regulators are not seen to effectively engaging with and listening to all stakeholders, not just the professions they regulate, then confidence will quickly be eroded. That would be a great pity and own goal given the Government openly say in their consultation that the "*overarching purpose of the regulation of healthcare professionals is public protection."*

Turning to the detail of the consultation, we have a number of concerns about some of the specific proposals most especially regards the changes being proposed to the powers of the

GMC in respect of Fitness to Practice matters and in relation their Governance and oversight.

Concerns about Governance and oversight

Whilst supportive of the need for greater autonomy and flexibility for professional regulators, subject to our comments above, and recognising that these proposals signal the start of wider and more substantive reforms, we believe that the Government should tread with caution to ensure that the checks and balances needed to ensure continuing regulatory oversight remain effective. To that end, we believe it would be helpful if the role of the Professional Standards Authority was also clarified within this context and that their role for effective oversight of the professional regulators be strengthen to ensure that have the ability to collect the necessary data from the professional regulators such that they can continue to provide effective oversight of what could be fast-changing area of regulation in the years ahead.

Concerns consequential to the move to a three-tier process for fitness to practice.

Removal of Section 29 powers: In the current arrangements there is a considerable opportunity for the overarching regulator – the PSA – to use their Section 29 powers to challenge a fitness to practice decision where the public interest would appear to warrant it. Through the proposals set out here – where in practice most cases would be considered by Case Examiners in the second of the three-stage process - there is no opportunity for Case Examiners decisions to be reviewed using Section 29 – or equivalent powers. We believe this is a mistake and will erode public trust in the professional regulators if replicated through this and subsequent reforms. The fact that the PSA have successfully used such powers in the public interest previously shows that there is a case for their continuity, and we cannot support what is proposed here in their absence. What is instead proposed for reviewing a Case Examiner's decision is far too narrowly drafted and has removed the need for public protection from the grounds for review. We believe this is far too narrowly drafted to be effective.

Initial assessment stage: We note that the decision would appear to have been taken to exclude the codification of the initial assessment stage of the fitness to practice rules from the draft Order. We believe this runs against the need to ensure regulatory consistency over time and lacks transparency given the importance of this stage in determining what does, and does not, get investigated at the next stage. We would therefore urge the Government to reconsider this decision in the desire for consistency and transparency.

The power to review conditions and suspension: At present the GMC, through their Fitness to Practice Panels have a range of powers at their disposal which can target and restrict the practice of a registrant tailored to their circumstances and new evidence. It would appear however that in framing the draft Order, the Government have inadvertently considerably narrowed the powers and would exclude any decision from being reviewed by Case Examiners. We believe it is essential that regulators are given clear powers to review conditions and suspensions and so ensure that registrants remain fit to practice. And insofar as the Order is drafted to suggest that any conditions imposed can only apply for 12 months, this again appears to be too restrictive and does not take account of the myriad circumstances that can arise with a registrant and as such should be extended to something closer to that which exists today (typically three years).

The definition of impaired fitness to practice: in drafting the Order the Government have very narrowly defined impaired fitness to practice to mean (i) inability to provide care to a sufficient standard; or (ii) misconduct. The current definition is wider and covers both the registrants mental and physical health. We believe it remains imperative that the regulators are able to deal adequately with registrants mental and physical health insofar as it may impair their ability to act safely in the patient's best interest.

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