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To: All Panellists

Legal Assessors

Cc: Panel Secretaries

Undertakings

Further to recent queries regarding when undertakings 'end' we felt it would be helpful if we provided some clarification.

There are differences in how undertakings cease to be effective dependent on whether the undertakings were agreed with the Case Examiners or agreed with the Fitness to Practise Panel.

Case Examiner undertakings

At the conclusion of an investigation, Case Examiners can end an investigation by closing it with no action or providing the doctor with advice, offering the doctor a warning, referring the matter to the fitness to practise panel or by inviting the doctor to agree to comply with the undertakings they consider suitable in accordance with Rule 10 [The General Medical Council (Fitness to Practise) Rules 2004].

Where it appears to the Case Examiners that the undertakings should be varied or cease to apply, for example where there is a breach of undertakings, rule 10 (7) applies, the Registrar may invite the doctor to agree to comply with such varied undertakings as they consider appropriate

Case Examiner undertakings will remain in place until;

- They are varied by the Case Examiners, in which case the Registrar will invite the doctor to agree a new set of varied undertakings (rule 10(7)(a))

- The Case Examiners consider that the undertakings should cease to apply, in which case the Registrar will direct that the undertakings should be revoked (rule 10(7)(b)) or
- The Registrar refers the matter to a FTP Panel because of :
 - a failure to agree varied undertakings
 - a breach of the undertakings or
 - the health or performance of a doctor deteriorating or otherwise giving rise to further concern regarding the doctor's fitness to practise (rule 10 (8)).

Where a breach does occur, the undertakings do not automatically cease to apply as a result of the breach. The breach will only have the effect of ending the undertakings if (and when) the Registrar makes the decision to refer the matter to the FTP Panel.

Panel undertakings

After a decision on impairment has been made during a fitness to practise panel hearing, a doctor can offer undertakings to the panel. Where the panel consider that these undertakings are sufficient to protect patients and protect the public interest, the panel can agree to these undertakings and take them into account, as an alternative to imposing any sanction (rule 17 (m) and (n)).

These undertakings will remain in place until:

- They are varied by the Case Examiners, in which case the Registrar will invite the doctor to agree a new set of varied undertakings (rule 37A(2)(a))
- The Case Examiners consider that the undertakings should cease to apply, in which case the Registrar will direct that the undertakings should be revoked (rule 37A(2)(b)) or
- The outcome of a review hearing as a result of a breach of the undertakings or the health or performance of the doctor deteriorating or otherwise giving rise to a concern regarding the doctor's fitness to practise (rule 37A(3)).

Where a breach does occur, the undertakings do not automatically cease to apply as a result of the breach. The breach will only have the effect of ending the undertakings once an outcome has been reached by the review panel, as the undertakings were agreed by the panel and so only they can consider whether the

undertakings should end. It is for the reviewing panel to consider what sanction, if any, should be imposed at that time.

Interim Order Panel hearings

Where a matter has been referred to an Interim Orders Panel due to an alleged breach of undertakings, consideration should be given to the above information to establish whether the undertakings remain in place. Interim Orders Panels should remind themselves of the voluntary nature of the undertakings in place and consider what is the necessary order to impose, if any.

Where an order for conditions or suspension is imposed by an Interim Orders Panel, any previous undertakings may also continue to remain in place subject to the above.

If you need any further clarification please contact the Panel Development Team.

Yours sincerely

Panel Development Team