Health Professions Council
Health Committee, 7th September 2006

Standards of conduct, performance and ethics: background and context

Executive Summary and Recommendations

Introduction

The attached paper provides background and context to the standards of conduct, performance and ethics and is divided into three sections:

Section 1 explains the legal context of the standards.
Section 2 examines changes in legislation and guidance
Section 3 reviews the codes of conduct produced by other regulators

Decision

The Committee is invited to discuss the attached paper.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1

Date of paper

28th August 2006

Appendix 1

Section 1: Legal background and context to the standards

Article 21 (1) of the Health Professions Order 2001 ("the order") provides that:

The Council shall—

(a) establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and give them such guidance on these matters as it sees fit

The standards have two main functions:

- in making decisions about fitness to practise cases; and
- in making health and character decisions at the point of entry to the register.

Applicants and registrants (on renewal) are required to sign a declaration confirming that have signed and will keep to the standards.

The relationship of the standards of conduct, performance and ethics to other standards and frameworks

There is some overlap in content between the standards and the council's standards of proficiency. For example, the standards ask registrants to '…respect the confidentiality of patients, clients and user at all times' whilst the standards of proficiency say that registrants must 'be able to maintain confidentiality and obtain informed consent'.

The standards of proficiency, however, perform a different function in describing the threshold abilities necessary to be admitted to the register.

The standards complement other standards and frameworks such as policies and protocols developed by employer and guidance or codes of conduct produced by professional bodies and others.

The standards are written in a way so that they can be relevant to wide range of registrants and can take into account changes in the law, technology or working practices which might take place over time.

There is normally more than one way in which the standards can be met. Registrants can make their own informed decisions about the best way in which they can meet our standards. This might be by following the guidance provided by their professional body which is often aimed at promoting best practice.

Example

The existing standards say:

"You are personally responsible for making sure that you promote and protect the best interest of the people you care for. You must respect and take account for these factors when providing care and must not exploit or abuse the relationship with a patient, client and user" (Paragraph 1)

The British Association of Dramatherapists provides clear guidance on one aspect of how its members might meet this standard:

"Dramatherapists should be aware of professional boundaries with all clients. Role awareness is of paramount importance in the therapy relationship. Under no circumstances should a sexual relationship be formed with a client or ex client. Social contact with clients should be avoided". [1]

Example

The existing standards say:

"You must not knowingly release any personal or confidential information to anyone who is not entitled to it…" (Paragraph 2)

The Chartered Society of Physiotherapists suggests ways in which their members might meet this standard in the practice environment:

"If a telephone call is received in a physiotherapy department, unless the physiotherapist is confident that they recognise the voice of an anxious relative, the caller must be informed that no information about the patient can be divulged". [2]

Employers also often take into account local circumstances, such as a specific area of practice or the available to resources to develop ways of working which are practice, effective, and meet the needs of patients, clients and users and our standards.

The standards and fitness to practise

Rule 9 of the Health Professions Council (Conduct and Competence Committee) Rules Order of Council 2003 says:

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[1] British Association of Dramatherapists, Code of practice, September 2005, http://www.badth.org.uk/Dth/codeofpract.htm, p.5.
[2] Chartered Society of Physiotherapy, Rules of Professional conduct, 2002, http://www.csp.org.uk/uploads/documents/csp_rules_conduct.pdf, p.22.

'Where the Committee has found that the health professional has failed to comply with the standards of conduct, performance and ethics established by the Council under article 21(1)(a) of the Order, the Committee may take that failure into account but such failure shall not be taken of itself to establish that the fitness to practise of the health professional is impaired.'

A fitness to practise panel can therefore only take into account the standards of conduct, performance and ethics in determining whether a registrant's fitness to practise is impaired. The introduction to the existing standards explains that the standards are not a complete list and that an allegation could be found well founded even in the unlikely circumstances that a 'breach' of the standards of conduct, performance is not identified.

Section 2: Changes to legislation and guidance

In this section we look at changes to legislation and guidance since the publication of the standards in 2003. We look at how references to best practice and legislation are made in the existing standards.

Changes in legislation and guidance since the publication of the standards of conduct, performance and ethics include:

- **Disability discrimination act – amendment 2005**

- Extended responsibilities to ensure that policies and procedures do not discriminate against disabled people to qualifications bodies (such as regulators).

- **Prescription Only Medicines (Human Use) Amendment order 2005**

- Extended supplementary prescribing to include chiropodists and podiatrists, physiotherapists and radiographers

- **HIV Infected health care workers: Guidance on management and patient notification (Department of health, revised 2005)**

- Guidance on steps that health professionals who are infected with HIV and employers should take to ensure patient safety
- Updated to include advice on notification exercises when a health care worker is found to have HIV.

Advice from HPC's legal advisor is that there have been no changes to legislation, guidance or any case law which would indicate that a specific change in the standards is necessary.

The existing standards

The existing standards do not make any reference to specific legislation or guidance by name. However, the following references are made:

"You must also keep to the conditions of any relevant data-protection legislation and follow best practice for handling confidential information relating to individuals at all times" (Paragraph 2, confidentiality).

"You must keep to your employers' procedures on consent and be aware of nay guidance issued by the Department of Health or other appropriate authority in the country in which you practice" (Paragraph 9, consent).

The importance of following best practice, employers' procedures and legislation is highlighted with regard to these two areas. However, the references are flexible enough to accommodate changes in best practice, legislation or guidance which take place over time.

It is noteworthy, however, that other areas of the standards do not have similar references to the positive duties of registrants to follow or take account of best practice or keep to guidance or legislation.

Conclusions

1.1 There are no specific changes in legislation or guidance which immediately suggest that a specific change to the standards is necessary.

1.2 The standards should be written in broad terms (as presently) to ensure that they remain relevant and up-to-date despite any changes in legislation or guidance.

1.3 The Committee should consider whether the positive duty of registrants to be aware of legislation, guidance and best practice, and act appropriately, could be more consistently expressed in the standards and/or introduction.

Section 3: Other regulators' standards

In this section we look at the work undertaken and standards produced by the other UK health regulators.

Statement of common principles (2001)

A statement of common principles was developed by the UK healthcare regulators in 2001 which describes the principles common to all health professionals and common to the codes of conduct produced by the regulators.

Links to the existing standards of conduct, performance and ethics are shown in brackets and in italics.

"All health care workers are personally accountable for and their decisions and actions and must be able to justify the matter in which they exercise their professional judgement. While the scope of their practice varies, all are bound by a common duty to safeguard and promote the interests of their patients and clients. To do this they must:

1. **Be open with patients and clients and show respect for their dignity, individuality and privacy and for their right to make decisions about their treatment and health care**:

   - Listen to patients and clients and provide information in a way they can understand (*SCPE 7*);
   - Keep information about patients and clients confidential (*2*);
   - Ensure appropriate consent has been given before providing treatment or undertaking investigations (*9*);
   - Make sure their personal beliefs and values do not prejudice their patients' or clients' care (*1*).

2. **Justify public trust and confidence by being honest and trustworthy**:

   - Always act with integrity and never abuse their professional standing or privileges (*1, 13, 14, 16*);
   - Not ask for, or accept any inducement, gift hospitality or referral which may affect, or be seen to affect, their judgement (*1*);
   - Recommend the use of particular products or service son the basis of clinical judgement not commercial gain (*1, 15*);
   - Declare any personal interests to those that may be affected (*1*).

3. **Act quickly to protect patients, clients and colleagues from risk of harm**:

   - If either their own or another health care worker's conduct, health or performance may place patients or clients at risk (*1, 4*);
   - If there are risk of cross infection or other dangers in the environment (*11*);
   - If health and safety cannot be safeguarded (*1, 4*)

4. **Provide a good standard of practice and care**

   - Recognise and work within the limits of their competence (*6, 12*);
   - Maintain and improve their professional knowledge and skills (*5*);
   - Make records promptly and include all relevant information in a clear and legible form (*10*).

5. **Co-operating with colleagues from their own and other professions**:

   - Respect the skills and contributions which others bring to the care of patients and clients (7);
   - Within their work environment, help professional colleagues to develop professional skills and competence (7);
   - Not require colleagues to take on responsibilities which are beyond their level of competency (8)".

Other regulators' standards

The UK health regulators each produce equivalent standards for their registrants. These are sometimes known as a 'code of conduct', 'code of ethics' or 'code of practice' or similar. The General Osteopathic Council and General Chiropractic Council both publish documents which incorporate both the standards of conduct, performance and ethics and the standards of proficiency.

We look here at the equivalent standards produced by the General Medical Council (GMC), Nursing and Midwifery Council (NMC), General Dental Council (GDC) and Royal Pharmaceutical Society of Great Britain (RPSGB).

General Medical Council

The GMC produces Good Medical Practice (GMP) which is intended to be a positive guidance document for doctors to use in their professional lives. GMP was originally produced to move away from previous publications which focused more on statements of professional misconduct rather than providing positive guidance to doctors. The GMC has been reviewing GMP since February 2005 and is due to republish the guidance in September 2006.

The guidance is generic to all doctors, is very detailed and includes reference points to the GMC's supplementary guidance publications. The principles outlined in the August 2005 consultation draft of GMP are:

- Respect human rights;
- Make the care of your patient your first concern;
- Provide a good standard of practice and care;
- Protect and promote the health of patients and the public;
- Respect each patient's dignity and individuality;
- Work with patients as partners in their care; and

- Be honest and trustworthy.[3]

Notable areas of the consultation draft code which the Committees may wish to consider when reviewing the standards are:

'*50. Delegation involves asking a colleague to provide treatment or care on your behalf. You will still be responsible for the overall management of the patient, and accountable for your decision to delegate. When you delegate care or treatment you must be sure that the person to whom you delegate has the qualifications, experience, knowledge and skills to perform the duties which they will be required to carry out. You must always pass on enough information about the patient and the treatment needed.*' (GMP consultation draft, p. 23).

The standard nicely clarifies that a professional remains responsible for the decision to delegate rather than the outcome of the care or treatment of the patient after delegation has taken place.

Throughout the standards there is a strong focus on professional accountability and the importance of the professional being able to justify their decisions. The main body of the guidance is preceded by this sentence: 'You are personally accountable for your professional practice and must always be prepared to justify your actions and decisions' (GMP consultation draft, p. 4).

The GMC website provides further information about their review, including a report undertaken by the Picker Institute Europe into public and professional opinions of its guidance. Please see: http://www.gmc-uk.org/guidance/good_medical_practice_review/formal_consultation.asp.

Nursing and Midwifery Council

The NMC publishes 'The NMC *code of professional conduct: standards for conduct, performance and ethics'* (latest edition July 2004).

The code says that nurses, midwives and specialist community public health nurses must:

- Respect the patient or client as an individual
- Obtain consent before you give any treatment or care
- Co-operate with others in the team
- Protect confidential information
- Maintain your professional knowledge and competence
- Be trustworthy
- Act to identify and minimise and risk to patients and clients
- Hold indemnity insurance where appropriate (recommendation)[4]

[3] General Medical Council, Good Medical Practice (consultation draft), August 2005, http://www.gmc-uk.org/guidance/good_medical_practice_review/Good_Medical_Practice_Aug_2005.pdf.
[4] Nursing and Midwifery Council, The NMC code of professional conduct: standards for conduct, performance and ethics, November 2004, http://www.gmc-uk.org/guidance/good_medical_practice_review/formal_consultation.asp.

The existing code is very detailed, providing, in particular, detailed guidance about dealing with confidentiality and consent issues. Much of this duplicates separate guidance which the NMC already produces as formal publications or as advice sheets which are available via their website or from their professional advice service.

Notable areas of the code which the Committees may wish to consider when reviewing the standards are:

4.5 When working as a member of a team you remain accountable for your professional conduct, any care you provide and any omission on your part. (page 8)

4.6 You may be expected to delegate care delivery to others who are not registered nurses or midwives, Such delegation must not compromise existing care but must be directed to meeting the needs and serving the interests of patients and client. You remain accountable for the appropriateness of the delegation, for ensuring that the person who does the work is able to do it and that adequate supervision or support is provided. (page 8)

The NMC code is stronger than the existing standards on the tension between team working and individual responsibility as a registrant. The existing standards at paragraph 8 might be interpreted as inferring that a registrant who delegates to another professional would continue to be responsible for the outcome of the work undertaken by that professional. The NMC's standards are clearer in that they clarify that the professional delegating the work to another remains accountable for the decision to delegate.

The NMC is currently reviewing their code of conduct and a representative from the Executive recently attended a consultation event about the review. The likely outcome of the review is that the NMC code of conduct will become less detailed and instead articulate clear principles which are built upon in the NMC's supplementary guidance.

General Dental Council:

The GDC produce 'Standards for Dental Professionals'. The latest edition of the standards was published in June 2004.

The standards say that dentists are responsible for doing the following:

- Putting patients' interests first and acting to protect them
- Respecting patients' dignity and choices
- Protecting the confidentiality of patients' information
- Co-operating with other members of the dental team and other health care colleagues in the interests of patients
- Maintaining your professional knowledge and competence
- Being trustworthy[5]

[5] General Dental Council, Standards for dental professional, June 2004, http://www.gdc-uk.org/News+publications+and+events/Publications/Guidance+documents/Standards+for+dental+professionals.htm.

The GDC concluded that the standards or ethical guidance should:

- Act as guide for dental professionals on the principles of ethical practice
- Establish a framework of principles and values which dental professional should operate within
- Be addressed to individual professionals but be accessible to all
- Not include detailed guidance on specific complex issues – which should be published separately elsewhere[6]

In contrast with the existing standards, the GDC includes clauses about responding to complaints (in recognition that a large number of dental professionals work in private practice) and a clause about following local procedures relating to child protection.

Royal Pharmaceutical Society of Great Britain

The RPSGB currently produces a 'Code of Ethics and Standards for Pharmacists' and 'The Code of Ethics for Pharmacy Technicians'. The Society is currently undertaking a review of the codes and plans to produce one code for pharmacists and pharmacy technicians. The existing code for pharmacists is very technical and detailed, covering topics such as medicines legislation affecting pharmacists.

In their consultation document on a proposed new structure for the code of ethics, the RPSGB proposes that the code should:

- be based on a set of 'over-arching principles';
- not need to change much over time;
- be applicable to all – even when their role does not involve direct patient care;
- be clear and understandable for both profession and members of the public; and that
- detailed or technical guidance should be given in separate publications.

The following are the principles for pharmacists and pharmacy technicians proposed in the recent consultation:

- Make the care of patients your fist concern
- Exercise your professional judgement in the interest of patients and the public
- Demonstrate respect for people
- Promote the rights of patients to participate in decisions about their care
- Maintain your professional knowledge and competence
- Be honest and trustworthy
- Take responsibility for your working practices[7]

[6] Council for Healthcare Regulatory Excellence, response to performance review questionnaire, http://www.chre.org.uk/Website/about/Functions/performance/performance2004_2005/Questionnaire_responses_by_question/Question%20E.A1.pdf.

One notable area of the draft code produced by the RPSGB is around reporting concerns:

*Raise concerns if policies, systems or working conditions, or the actions, professional performance or health of others may compromise patient safety and ensure that systems are in place to report these concerns. (*Page 6)

The existing standards explain the importance of reporting concerns about other health professionals and say 'as soon as you become aware of any situation which puts a patient, client or user at risk, you should discuss the matter with a senior professional colleague'. However, it may be beneficial to specifically clarify that this includes circumstances where systems and policies, as well as individuals, may be affecting patient safety and patient care.

Conclusions

1.1 Regulators are relatively consistent in the standards they set: the terminology and structure of each set of standards differs between regulators but the underlying philosophies are the same.

1.2 The existing standards are consistent with the principles agreed by the regulators in 2001.

1.3 Most other regulators focus on their codes or standards as 'guidance' for the professionals they regulate.

1.4 There is general consensus amongst the regulators studied that standards of conduct should be:

1.4.1 easy to understand for patients and professionals alike;
1.4.2 based on overarching principles with some further detail on key points; and that
1.4.3 detailed or technical guidance should be published in separate publications.

1.5 The Committee is invited to consider adopting the text overleaf which seeks to express the broad areas of principle on which the standards should be based. This position could be used as part of informing registrants of the work of the review. It could also guide the Committees during the review process.

[7] Royal Pharmaceutical Society of Great Britain, Consultation on the Structure of the Revised Code of Ethics for Pharmacists and Pharmacy Technicians, June 2006, http://www.rpsgb.org/pdfs/coeconsbackground.pdf.

Position:

The Committee believes that the standards (and introduction) should:

- focus where possible on providing guidance to registrants based around our expectations of their behaviour;
- be based on overarching principles with some further detail on key points (with more detailed guidance available elsewhere);
- be clearly applicable to all registrants including those engaged in research, clinical practice, education and roles in industry;
- be written in broad terms to accommodate changes in best practice, technology, legislation and in wider society; and that
- they should not seek to cover every situation which might arise in a registrant's professional life or in fitness to practise proceedings.

Health Professions Council
Health Committee, 7th September 2006

Standards of conduct, performance and ethics review: possible changes

Executive Summary and Recommendations

Introduction

The attached paper details suggested changes to the standards. The changes have been suggested by the Executive.

The Committee is invited to discuss these identified areas and compare them to the other information considered, in particular, the responses to the 'call for ideas'. Discussion of these areas may form a useful part of discussion at the Council away day on 4th and 5th October 2006.

Decision

The Committee is requested to discuss the attached paper.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1

Date of paper

28th August 2006

Appendix 1

Standards of conduct, performance and ethics: possible changes

Introduction

The Committee may wish to consider the following observations about the present introduction to the standards:

1.1 The existing introduction focuses almost entirely on the standards and their use in fitness to practise inquiries rather than their helpfulness as a benchmark which can guide registrants.
1.2 There is no acknowledgement of professional body advice and guidance, or of working practices and protocols developed by employers which can help registrants meet the standards
1.3 There is little emphasis on interpreting the standards, in particular, the importance of making reasonable, informed decisions with the standards in mind.
1.4 Specifically, page 1 of the introduction includes a reference to HPC taking 'disciplinary' action – a term which is no longer used in the Health Professions Order or during the fitness to practise process.

The standards

1. You must act in the best interests of your patients, clients and users

"You must protect patients if you believe that they are threatened by a colleague's conduct, performance or health, The safety of patients, clients and users must come before any personal and professional loyalties at all times. As soon as you become aware of any situation that puts a patient, client or user at risk, you should discuss the matter with a senior professional colleague".

4. You must provide any important information about conduct, competence and health.

"You should also provide information about the conduct or competence of other healthcare providers if someone who is entitled to know asks for it."

In the existing standards we explicitly make reference here, and in paragraph 4, about ensuring that health professionals report concerns about the conduct and competence of colleagues. This standard later goes on to say about taking appropriate action when 'any situation' might put a patient, client or user at risk. However, it might be appropriate to make more explicit here that registrants should also take action if a policy, process or system rather than an individual's conduct is putting patients at risk. The Council is often contacted by registrants who are concerned that the policies of their employer might compromise patient care and mean that they are unable to meet our standards.

4. You must provide any important information about conduct, competence or health

"Even so, you must tell us (and other relevant regulators and professional bodies) if you have any important information about your conduct or competence….In particular you must let us know if you are:

- convicted of a criminal offence (other than a minor motoring offence or accept a police caution;
- disciplined by an organisation responsible for regulating or licensing a health or social-care profession; or
- suspended or placed under a practice restriction by an employer or similar organisation because of concerns about your conduct or competence."

We might give attention to amending this part of the standards in two ways. Firstly, we may wish to explore ways in which we could clarify what is meant by a 'minor motoring offence'. This has the potential to be misunderstood. Whilst we would not wish to be notified of parking tickets or speeding fines (as they are minor matters and, in any event, do not constitute a conviction or caution), we would wish to know convictions for drink driving or dangerous driving. It may be more appropriate to simply state that we need to be informed of any criminal convictions or cautions.

Secondly, we need to make reference here to conditional discharges. To receive a conditional discharge an offender has to go to court and be found guilty (or admit their guilt) for an offence. No further action is taken against them on the condition that they do not commit a further offence within a prescribed period (no more than 3 months). However, under legislation, a conditional discharge cannot be considered to be a conviction for any other purpose (i.e. in regulatory proceedings) and we are not routinely informed by police forces when a conditional discharge has been received.

The Council needs to be aware of conditional discharges as, in a small number of cases, they may raise concerns regarding the fitness to practise of a registrant. This has recently happened in a case. In these circumstances the Council would proceed on the basis of misconduct. We should therefore consider amending this paragraph to take account of this

4. You must provide any important information about conduct, competence or health

"You should also tell us about any significant changes in your health, especially if you have changed your practice as a result of medical advice. We will keep this information private but it is vital that you tell us, and if you do not, we could take action against you."

12. You must limit your work or stop practising if your performance or judgement is affected by your health

"You have a duty to take action if you health could be harming your fitness to practise. We can take action against you if you do not take action and your physical or mental health is harming your fitness to practise

You should also tell us about significant changes to your health and any changes you make to your practice as result."

In paragraph 12 of the standards we explain how registrants must limit their practise or stop practising if their performance or judgement is affected by their health. We expect registrants to act responsibly and to demonstrate insight and understanding into their condition. They should stop working or limit their practice in some way to ensure that they practice in a way which poses no risks to patients, clients, users or themselves. For example, a registrant might refer patients requiring a particular treatment to a colleague if they are no longer able to carry out that treatment safely and effectively. Alternatively, a registrant could move away from clinical practice into a role in management, education or industry.

The existing standards say that registrants should tell us of any significant changes in their health. Whilst it is important that registrants feel able to contact the Council for advice relating to its standards, the act of informing us demonstrates insight and understanding and therefore conforms with the obligations described in paragraph 12. Health matters would not normally cause concern unless there was evidence that a registrant had been practising when their health meant that were unable to do so safely and effectively. Therefore a registrant who does not tell us about a health condition but effectively self regulates would be of no concern.

In addition, paragraph 12 in the existing standards seems to focus on the possible consequences of failing to take appropriate action rather than the positive duty of registrants to ensure that they limit or stop practising if their performance is affected by their health. Paragraph 4 also suggests that we might take action against someone solely because they failed to tell us about a health condition or any changes they had made to their practice because of medical advice.

5. You must keep your professional knowledge and skills up to date

"You must be capable of meeting our standards of proficiency that relate to clinical practice. You have to meet these standards, whether you are in clinical practice or not, and this includes managers, educators and researchers. However, it is important to recognise that the standards of proficiency are minimum standards of clinical practice. If you want to be on our register and use a professional title, you must maintain your clinical standards so that you are able to practise the basic skills of your profession safely, even it this no longer forms the basis of your day-to-day work.

We cannot and will not test all registrants to check that are still meeting the standards of proficiency. However, we can and will test you if we have reason to believe that you might not meet the standards of proficiency anymore".

This paragraph is now inconsistent with the introduction to the standards of proficiency and other publications such as 'Managing fitness to practise' and 'A disabled person's guide to becoming a health professional'.

The standards of proficiency describe the threshold standards necessary for safe and effective practice. Someone successfully completing an approved course will meet the standards of proficiency.

Once someone is successfully registered we expect them to meet the standards of proficiency which apply to their scope of practice. This recognises that a registrant who specialises in a particular clinical area after registration or who moves into education, management, research or a role in industry may be unable to continue to meet each of the standards of proficiency. We explain about scope of practice in paragraph 6 of the existing standards. Registrants need to ensure that they practise safely and effectively and undertake any necessary training or experience necessary to do so.

Therefore the existing standards are incorrect in that they suggest that registrants need to meet all of the standards of proficiency even if they do not work in clinical practice or if they have specialised in a particular area.

In addition, paragraph 5 suggests that we can and will test registrants if we have reason to believe that they might not meet the standards of proficiency. This is incorrect. The Council has no powers to 'test' registrants or to ask them to undergo a performance assessment. Instead, concerns about the competence of a registrant would be referred to the fitness to practise process. The Conduct and Competence Committee considers any lack of competence cases referred to it and will look at whether a registrant has met the standards of proficiency in deciding whether an allegation of lack of competence is well founded.

8. You must effectively supervise tasks you have asked others to carry out for you

"Whenever you give tasks to another person to carryout on your behalf, you must be sure that they have the knowledge, skills and experience to carry out the task safely and effective.

Whoever you ask to carry out a task, you must always continue to give adequate and appropriate supervision and you will stay responsible for the outcome."

This standard relates to delegating tasks to someone else to carry out on your behalf. This therefore differs from referral to another professional.

The important parts of this standard would seem to be that the health professional should ensure that they only delegate a task to someone who they are satisfied is able to carry out that task safely. They should also ensure that that individual receives adequate supervision.

The existing standard suggests that a health professional remains responsible for the outcome of the work carried out after delegation. This is problematic. For example, a physiotherapy manager delegating a task to a junior physiotherapist would need to ensure that they were satisfied that the junior could carry out the task. They would also need to offer appropriate supervision. However, the junior physiotherapist would also have responsibilities (as a registered health professional) to ensure that he or she did not practise outside of her scope of practice. Therefore, although the manager would be accountable for any failure of supervision and for the decision to delegate, the junior physiotherapist would still remain accountable for the appropriateness of the treatment given.

It may therefore be appropriate to amend this standard to make it clearer that registrants remain accountable for the decision to delegate rather than the outcome following that delegation.

15. You must follow our guidelines for how you advertise your services

We have received a small number of queries about this standard from registrants asking to see our guidelines on advertising. The standard as written would seem to infer that guidelines exist over and above the detail in the standard. It may be more appropriate to amend the standard heading so that it reads: "You must make sure that any advertising is accurate" or something similar.

16. You must make sure that your behaviour does not damage your profession's reputation

"You must not get involved in any behaviour or activity which is likely to damage your profession's reputation or undermine public confidence in your profession."

This standard has been identified as the standard most used by fitness to practise cases (in a sample of cases discussed in another paper).

However, the Committee may wish to discuss the following comments. The purpose of the Council's fitness to practise processes are to determine whether a registrant's fitness to practise is impaired and to take appropriate to protect the public and the public interest. Protecting the public might include preventing public contact with an incompetent practitioner or a practitioner who has displayed inappropriate behaviour. Protecting the public interest would entail acknowledging the shortcomings of a practitioner and taking action to protect public confidence and faith in health professionals generally.

The Committee may wish to accordingly consider whether it would be more appropriate in the standards to focus more on 'public confidence' rather than 'the reputation of the profession'. It may that the wording 'damage your profession's reputation' is too close to the old-style conception of regulators' disciplinary procedures which focused on infamous conduct in a professional respect or serious professional misconduct.

Health Professions Council
Health Committee, 7th September 2006
Standards of conduct, performance and ethics review: fitness to practise cases review

Executive Summary and Recommendations

Introduction

The attached paper analyses a sample of fitness to practise cases to determine the usage of the standards by fitness to practise panels and identify any trends.

Decision

The Committee is invited to discuss the attached paper.

Background information

The Professional Liaison Group (PLG) which reviewed the standards of proficiency considered a paper which analysed the use of the standards of proficiency in lack of competence cases considered by the Conduct and Competence Committee. The conclusions given in that paper broadly match those in this paper.

The paper is available on the HPC website: http://www.hpc-uk.org/assets/documents/10000E18plgsop_meeting_20060124_enclosure04i.pdf.

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1: Fitness to practise cases review
Appendix 2: Summary of cases
Appendix 3: Frequency of usage

Date of paper

28th August 2006

Standards of conduct, performance and ethics: fitness to practise cases review

Introduction

This paper will review and analyse a sample of fitness to practise cases. It will look at:

(i) the ways in which the standards are used by fitness to practise panels;
(ii) whether this reveals any trends; and
(iii) whether we can draw any conclusions about the standards.

The context

Article 21 (1) (a) of part V of the Order (Fitness to practise) says that:

The Council shall –

> *(a) establish and keep under review the standards of conduct, performance and ethics expected of a registrant and prospective registrants and give them such guidance on these matters as it sees fit.*

Article 22 (4) and associated rules further say that in considering an allegation a panel may only have regard to a breach of the standards in deciding whether fitness to practise is impaired. A breach of the standards cannot be taken of itself to establish impairment.

This means that reference to breaches of the standards cannot be included in an allegation drafted by the Investigating Committee. However, in reaching and in explaining their decisions panels can usefully use the standards as a clear expression of expected professional behaviour and performance.

Fitness to practise cases

This paper uses as its evidence base the fitness to practise cases considered at a final hearing between April 2005 and April 2006. This includes cases considered by the Conduct and Competence Committee involving misconduct, convictions or cautions. However, lack of competence cases, cases considered by the Health Committee, cases of incorrect or fraudulent entry considered by the Investigating Committee and reviews of conditions of practice and suspension orders are not included.

Appendix 2 is a table which summarises the cases. This includes a brief summary of the nature of the allegation, the outcome and whether any reference to the standards was made in the decision reached by the panel.

Appendix 3 shows the frequency of usage against each paragraph of the standards.

The use of the standards of conduct, performance and ethics by fitness to practise panels

Out of the 31 cases sampled, panels made reference to the standards in 19 cases.

In one case a panel concluded that a Radiographer's fitness to practise was impaired by reason of his conviction for downloading child pornography. The panel concluded:

'… the panel finds [..] this [..] a very serious matter and that [name] is in breach of the Health Professions Council's Standards of Conduct, Performance and Ethics, in particular standard number 3, relating to high standards of personal conduct, and standard 16, ensuring that a registrant's behaviour should not damage his profession's reputation by undermining public confidence.'

In another case, a panel determined that the appropriate course of action was to remove an occupational therapist's name from the register. In their decision they identified several breaches of the standards:

[in relation to persistent poor time keeping]

'It amounts to a breach of Standards 1 and 16 of the H.P.C. Standards of Conduct, Performance and Ethics. It is a factor which clearly impairs her fitness to practice.'

[in relation to the confidentiality of patient records]

'The Panel finds that the answer to this allegation is to be found in the terms of Standard 2 of the H.P.C. Standards of Conduct, Performance and Ethics which make it clear that information about patients must be treated as confidential and used only for the purposes for which it is given, that the information must not be released to anyone not entitled to it, and (in the absence of express consent) that information must only be used to continue to care for the person concerned.'

[in relation to the confidentiality and security of patient records]

'Again, the answer to whether this was a breach lies in the terms of the H.P.C. Standards. It is stated within Standard 10 of the H.P.C. Standards of Conduct, Performance and Ethics, "You must protect information in records against loss, damage or use by anyone who is not authorised." The Panel finds that the taking of these files home amounted to a breach of the security of the records.'

In the first of these examples the panel identifies behaviour amounting to misconduct by referring to 'breaches' of the standards. In the second, the standards are figured as an authoritative source for panels to refer to in determining whether an allegation is well-founded.

In 3 cases a more general reference to the standards was made. In one case a panel concluded:

'by reference to the standards of conduct, performance and ethics, the Panel concludes that there is evidence, in five of the episodes listed in the chronology, of misconduct'.

In another case the panel referred to the registrant being in breach of *'the standards of her profession'*.

Trends

Out of the cases sampled, paragraph 16 ("You must make sure your behaviour does not damage your profession's reputation") was used the most by fitness to practise panels. Other standards used frequently by panels include "You must behave with integrity and honesty" and "You must keep high standards of personal conduct".

Cases where paragraph 16 was referred to included falsifying records, breaching confidentiality, misuse of controlled drugs and convictions for offences including indecent assault and attempted murder.

These standards seem to be used by panels more frequently because they are generic and flexibly cover a variety of different types of conduct which panels consider. Other standards, such as paragraph 2 relating to confidentiality, and paragraph 11 relating to risks of infection, relate to more specific areas of professional practice so would only be used by panels in certain cases where those areas are relevant.

Lack of competence cases

The PLG reviewing the standards of proficiency considered a paper which analysed use of the standards of proficiency by panels considering lack of competence cases.

The paper concluded that although no general conclusions could be drawn about the standards, the usage by panels indicated that the standards continued to represent threshold competences and accurately reflected and expressed current practice.

Some panels considering lack of competence cases will also make reference to the standards of conduct, performance and ethics. In particular, paragraphs 6 (act within the limits of your knowledge, skills and experience) and paragraph 10 (record keeping).

Conclusions

The Committee is invited to consider the following conclusions:

1.1 Only around 0.1% of registrants are presently ever the subject of complaint. Fitness to practise cases therefore represent a very small sample on which to base any specific conclusions about the standards.

1.2 The review of cases does not immediately suggest any standards which need to be changed.

1.3 However, a majority of panels use the standards in reaching and formulating their decisions.

Appendix 2: Summary of cases

	Prof	Nature of allegation	Outcome	Ref to SCPE in decision?
				[paragraph]
	RA	Forged timesheets	Struck off	No reference
	OT	Destruction of patient records	Caution	No reference
	CH	Falsifying patient records	Suspension	2, 10, 14, 16
	PA	Unprofessional behaviour	Caution	General reference to standards
	RA	Conviction for child pornography	Suspension	3, 16
	PH	Removal of patient records	Conditions	No reference
	BS	Supplying fraudulent information	Struck off	14
	PH	Unprofessional entries in patient records	Caution	No reference
	PA	Inappropriate behaviour	Struck off	1, 3, 14, 16
0	PH	Inappropriate comments to staff	Caution	1,3, 13, 16
1	BS	Conviction for attempted murder	Struck off	3, 16
2	OT	Unprofessional behaviour	Suspension	Reference to breach of standards
3	PA	Conviction for theft	Struck off	3, 14, 16
4	PH	Conviction for indecent assault	Struck off	14, 16
5	PH	Breach of patient confidentiality	Suspension	1, 2, 14, 16
6	BS	Competence/ failure to disclose information	Suspension	14
7	OT	Caution for obstructing a constable	No further action	16
8	DT	Drinking on duty	Suspension	Reference to breach of standards
9	DT	Conviction for breaching data protection act	Caution	2
0	PA	Caution for theft from employer	Struck-off	No reference
1	PH	Patient boundary issues	Conditions	No reference
2	ODP	Theft and taking controlled drugs	Suspension	1, 3, 13, 16
3	RA	Performance issues	Suspension	1, 5
4	PA	Falsifying information	Caution	3, 14, 16
5	PH	Inappropriate relationship with patient	Caution	No reference
6	BS	Performance issues	Suspension	1, 5, 6, 10
7	BS	Drinking on duty	Suspension	No reference
8	OT	Poor record keeping/ breach of confidentiality	Struck off	1, 2, 7, 10, 16
9	PA	Assisting theft from employer	Struck off	14
0	CH	Breach of medicines legislation	Caution	No reference
1	ODP	Convictions/ failure to disclose to employer	Struck off	3, 4, 14

Appendix 3: Frequency of usage

	SCPE paragraph	Frequency
1	You must act in the best interest of your patients, clients and users	7
2	You must respect the confidentiality of your patients, clients and users	4
3	You must keep high standards of personal conduct	8
4	You must provide any important information about conduct, competence or health	1
5	You must keep your professional knowledge and skills up to date	2
6	You must act within the limits of your knowledge, skills and experience…	1
7	You must maintain proper and effective communications with patients, clients, users…	1
8	You must effectively supervise tasks you have asked others to carry out for you	0
9	You must get informed consent to give treatment (except in an emergency)	0
10	You must keep accurate patient, client and user records	3
11	You must deal fairly and safely with the risks of infection	0
12	You must limit your work or stop practising if your performance …	0
13	You must carry out your duties in a professional or ethical way	2
14	You must behave with integrity and honest	10
15	You must follow our guidelines for how you advertise your services	0
16	You must make sure that your behaviour does not damage your profession's reputation	12

Health Professions Council
Health Committee, 7th September 2006

Standards of conduct, performance and ethics review: Plan of activities

Executive Summary and Recommendations

Introduction

At its meeting on 6th July 2006, the Council approved a workplan for the review of the standards of conduct, performance and ethics.

Appendix 1 is a revised work plan which incorporates the papers to be considered at each meeting. A further round of meetings in January to consider draft standards has been added.

Appendix 2 is the more detailed workplan approved by the Council on 6th July 2006 (and the Conduct and Competence Committee on 20th April 2006).

Decision

The Committee is invited to note the plan of activities.

The Conduct and Competence Committee will be asked to consider whether a further round of meetings to consider draft standards is necessary and, if so, to approve an alteration to the plan of activities.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1: Revised plan of activities
Appendix 2: Workplan as agreed by Council on 6th July 2006

Date of paper

28th August 2006

Appendix 1

Plan of Activities: Meetings and papers

1) Papers for first round of meetings: Health Committee (07/09), Investigating Committee (14/09), Conduct and Competence Committee (19/09).

- Outcomes of mini consultation period – most up-to-date for meeting of Conduct and Competence Committee (includes responses from panel chairmen).
- Background and context: including legal context, other regulator's standards and changes in legislation.
- Suggested changes to the standards (from the Executive)
- Review of fitness to practise cases heard to date

2) Discussion days – 25th September 2006 (patient/ public), 29th September (professional bodies/ unions)

3) Council away day – 4th/ 5th October

4) Papers for second round of meetings: Health Committee (07/11) Investigating Committee (16/11) and Conduct and Competence Committee (22.11).

- Committee considers written report of discussion at the away day and at the patient/ public and professional bodies/ union's discussion days.
- First draft of standards/introduction

5) Papers for third round of meetings: Health Committee (16/01/2007), Investigating Committee (23/01), Conduct and Competence Committee (30/01)

- Final draft of standards/ introduction
- Recommendation of Conduct and Competence Committee made to Council

6) Council Meeting – 29th March 2006

- New standards/ introduction considered by Council for approval

7) Three month public consultation

8) Consideration by Conduct and Competence Committee (final standards and consultation responses)

9) Final approval by Council

Appendix 2

Health Professions Council
Council Meeting, 6th July 2006
Review of the standards of conduct, performance and ethics: Work plan

Executive Summary and Recommendations

Introduction

Article 21 (1) of the Health Professions Order 2001 ("the order") provides that:

The Council shall—

(a) establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and give them such guidance on these matters as it sees fit

Article 27 of the order further provides that the Conduct and competence Committee shall—

(a) having consulted the other Practice Committees as it thinks appropriate advise the Council (whether on the Council's request or otherwise) on—

(i) the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants and prospective registrants

The attached work plan sets out the proposed timetable of activities to review the existing standards of conduct, performance and ethics.

At its meeting on 20th April 2006, the Conduct and Competence Committee agreed the work plan and recommended its approval by the Council.

Decision

The Council is invited to approve the attached workplan.

Background information

The work plan was considered by the meeting of the fitness to practise chairmen and deputy-chairmen on 3rd March 2006. Their comments have been incorporated into the workplan.

Resource implications

- Research and writing of committee papers

- Consultation on new standards (if appropriate)
- Producing consultation responses document

- Type-setting and publication of new standards (if appropraite) online and in hard-copy.

Financial implications

- Editing of new standards (if required) by the Plain English campaign
- Publication of new standards (if required)

Background papers

None

Appendices

None

Date of paper

26th June 2006

Review of the standards of conduct, performance and ethics: Work plan

1. Terms of Reference

To review the Standards of conduct, performance and ethics to make sure that they:

(i) assist in HPC's primary role to protect the public;
(ii) conform to public expectations of health professionals;
(iii) are suitably generic so that they are relevant to registrants of all 13 professions;
(iv) are appropriate to the situations faced by registrants; and
(v) are easily understood by registrants, members of the public and other stakeholders.

The standards are used in fitness to practise proceedings and in making admission decisions about good health and character and the review will ensure that the standards continue to be fit for these purposes.

2. Lead

The Conduct and Competence Committee should lead the review, taking into account the views of the Health Committee and Investigating Committee and members of the Education and Training Committee. They should make recommendations to the Council.

The review will follow the proposed work plan as far as possible. However, the Conduct and Competence Committee will be responsible for any subsequent alteration to the plan of activities and timetable.

3. **Plan**

The review should take into account the views of all relevant stakeholder groups.

There should be an initial online consultation period during which feedback about the standards is invited from HPCs stakeholders. This will be an online form which asks a small number of questions about the existing standards and invites any comments or suggestions about whether or how they should be amended. The form will be available via a link from the front page of the HPC website and will be publicised via:

- a press release;
- an article in the news letter; and
- a letter to all key stakeholders

The review should also consider and take into account:

- the standards and codes of practice of other organisations;
- any changes in legislation since the original standards were produced;
- information from fitness to practise panellists and a review of the cases heard to date;
- information from the professional bodies; and
- information from groups who have a patient/ public involvement perspective.

The above is not an exhaustive list.

The above approach is suggested as a thorough way of reviewing the standards. The initial consultation will allow the Council to reach a potentially wide range of stakeholders who have an interest in the standards. This will inform the progress of the subsequent review process.

4. Plan of Activities

The following is a suggested plan of activities for the review:

July/August 2006

Initial Online Consultation – approximately 6 weeks

September 2006

Meetings of the Health Committee (7th September 2006), Investigating Committee (14th September 2006), Conduct and Competence Committee (19th September 2006).

Discussion forums with patient / consumer groups and professional bodies

These meetings have been provisionally scheduled for **25th September 2006** and **29th September 2006**.

There will be participation of the chairs of the three fitness to practise committees.

October 2006

Discussion at Council away day – 4th and 5th October 2006 (pending the approval / opinion of the new President)

November 2006

Draft produced and presented at meetings of Health Committee (7th November 2006), Investigating Committee (16th November 2006) and Conduct and Competence Committee (22nd November 2006). Views sought from members of the Education and Training Committee (electronic).

December 2006

Recommendations of Conduct and Competence Committee made to Council for discussion/ approval at meeting – 14th December 2006.

January to March 2007

Public consultation

April 2007

Conduct and Competence Committee – 23rd April 2007. Committee considers draft consultation responses document and makes decisions regarding final draft of the standards.

July 2007

Council meeting 5th July 2007 – new standards ratified (subject to plain english editing).

Health Professions Council
Health Committee, 7th September 2006

Standards of conduct, performance and review: Results from the "Call for ideas"

Executive Summary and Recommendations

Introduction

The review of the standards was publicised on the HPC website, via a press release, a letter to the professional bodies and in the August 2006 newsletter.

Information about the review was publicised by a number of professional bodies on their websites and in their professional journals.

We invited our stakeholders to e-mail any feedback about the existing standards and how they might be changed. The attached paper details the feedback received.

Decision

The Committee is invited to discuss the attached paper.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1: Results from the 'call for ideas'

Date of paper

28th August 2006

Appendix 1

Results from the "call for ideas" – Responses from registrants

Introduction

We received 8 responses from registrants to the call for ideas.

One registrant said that they thought 3 years was too short a time before starting to review the standards and that they should remain the same for at least another 2 years. They said: "At present it seems as if you might be looking to change for changes sake."

We also received a response from NHS professionals. Although they did not offer a view on the standards, they drew our attention to their 'Code of behaviour' for flexible workers, which builds on the codes of conduct produced by the HPC, GMC and NMC. It is available on the NHS professionals website.

The majority of responses we received were very positive about the standards. One physiotherapist said: "My view as a band 7 physio is that the document is a very good example of specific, relevant and clear standards in good old plain English. The intro was good, the standards are as they should be and in keeping with the CSP's core standards, I don't think any of the text needs rewording or expansion."

The responses we received are structured under the questions we asked.

Do you think the introduction clearly explains the role and purpose of the standards?

All those who commented on the introduction were happy that it was sufficiently clear.

Do you think the standards are appropriate and relevant to all registrants?

A deputy head orthoptist said she thought that the standards were both appropriate and relevant.

Do you think there are any standards which need more information or which might usefully be reworded?
Do you think there are other standards which you think should be added?

An Orthoptist said that: "The standards seem fine as they are and any more information may be overkill." They concluded that no additional standards were necessary.

Another orthoptist asked whether practitioner's responsibilities with respect to child protection should be made explicit in standard one. They also suggested that standard 9 might state that verbal consent is acceptable. Another registrant suggested adding

reference to CPD and reflective practice under the standard regarding scope of practice.

An occupational therapist said that something should be included about truth telling. They said: “How can you provide a service to someone, when you have been told not to tell them about their terminal illness. Is it ok to lie?”

A clinical director said that we needed to be more specific about providing information and that it was important that managers provided important information. They also felt that we needed to try and safeguard against circumstances where owing to illness or suspension someone has been out of practice for more than two years but continues to sign their renewal declaration.

A physiotherapist drew on her personal experience in suggesting that the standards included a more specific reference to the expectation of relationship between clinicians and clients. In dealing with a patient/ professional boundary issue concerning a junior member of staff, she found that the standards as written did not explicitly state that relationships should not take place.

The registrant pointed to the ‘disciplinary actions’ taken by the HPC in the past as evidence of our views of relationships with clients and said that: “I (…) think that avoiding close emotional/physical relationships with clients does need to be more overtly expressed in our standards and more clearly written into our code of conduct”.

Responses from panel chairs

Introduction

In July 2005, the Council appointed 15 panel chairs to chair hearings of the Investigating, Health and Conduct and Competence Committees. Prior to this date Council Members were involved in chairing fitness to practise panels.

The panel chairs were drawn from existing registrant and lay panel members. There are 4 registrant panel chairs and 11 lay panel chairs.

There were 8 responses to the invitation to comment.

General

The standards are generally well received by the chairs who responded.

One chair said that her experience of using the standards when considering fitness to practise cases had been a very positive one. She said: 'At the panels I have chaired, we have found the standards extremely useful in formulating our decisions – they have helped us to be precise in what we consider has been wrong, and I think […] they have provided clarity for our findings and rationale for the sanctions imposed'.

One chair said that his experience had not revealed any problems with the standards thus far. Another said that it had found the standards to be a 'useful and necessary document' which is easily understood as brief and acts as a 'yardstick' for decisions.

Do you think the introduction clearly explains the role and purpose of the standards?

One chair thought that the introduction was clear but questioned whether the following sentence might be a little 'clumsy': 'We must explain the standards of conduct, performance and ethics that registrants and prospective registrants must keep to, and that it what this document is for'.

Do you think the standards are appropriate and relevant to all registrants?
Do you think there are any standards which need more information or which might usefully be reworded?
Do you think there are other standards which you think should be added?

Two of the chairs who responded said that no changes were necessary. One said: 'So far we have not felt the need to look for anything more than the current standards'. Another said that he found the standards 'extremely useful'.

Five chairs made suggestions for changes to the standards which were mainly minor in nature:

1. One chair said that there should be a definition of the word ethics and that resolving such dilemmas might involve justifying a decision to others. He also suggested that

the standards might mention something about resolving conflicts between professional conduct and human rights.

2. One chair noted that standards 2, 3, 4 give examples of failure to meet the standards and asked whether there should also be examples of how they can be met.

3. A chair suggested that we might reword standard 4 where we say that registrants should declare all convictions, 'other than a minor motoring offence'. She asked: 'I wondered if a registrant could deem a motoring offence to be a minor when a panel may not do so'.

They also pointed to paragraph 5 where we say we will keep information disclosed about health conditions confidential. The chair wondered whether this was always strictly correct, given that it is possible that proceedings before the Health Committee could follow.

4. A chair pointed to the list given in standard 3 which identifies some specific types of behaviour which might lead to removal from the register. He suggested that this list might be extended, or extra information added to standards 14 and 16, to cover misuse of drugs and internet pornography.

5. Another chair made a number of suggestions which are detailed as follows against each standard:

Standard 2: We could add information about consent to photography or recorded images

Standard 3: We could add more information about abuse towards vulnerable children/ adults

Standard 4: We could add that panels will always consider self-referrals

Standard 10: We could make clearer that records should contain enough information to allow another health professional to continue treatment based on those records

Standard 13: We could make clearer the positive duty to understand the standards required of them

Standard 14: We could clarify that importance of conduct goes beyond contact with patients

Standard 17: An additional standard 17 was suggested: "You should comply with any requirements of your professional body" including: standards of practice, CPD and indemnity insurance.

Conclusion

1.1 The Committee is invited to discuss the comments received from registrants and panel chairs.