

The relevance of whether a doctor holds a Licence to Practise

Supplementary Guidance to the *Sanctions Guidance (2016)*

- 1 The *Sanctions guidance* is for use by medical practitioners tribunals, in cases that have been referred to the MPTS for a hearing, when considering what sanction to impose following a finding that the doctor's fitness to practise is impaired. It also contains guidance on the issue of warnings where a tribunal has concluded that the doctor's fitness to practise is not impaired. It outlines the purpose of sanctions and the factors to be considered.
- 2 This supplementary guidance provides information about the licence to practise and the issues that the tribunal should bear in mind when considering what action, if any, to impose in cases where the doctor does not hold a licence. It should be read in conjunction with the *Sanctions Guidance (2016)*.
- 3 All doctors who hold registration are entitled to a licence to practise. Most doctors who appear before a tribunal will hold a licence to practise but there may be cases where an unlicensed doctor appears before a tribunal, either because he/she has never held a licence or because he/she has recently relinquished his/her licence.
- 4 Although doctors will require a licence to undertake activities involving contact with patients, the fact that a doctor does not currently have a licence does not replace the role of the tribunal in ensuring patient safety where there are fitness to practise concerns.
- 5 Fitness to practise sanctions attach to a doctor's registration and not his/her licence. It is important the tribunal bears this in mind when considering appropriate sanctions in cases where a doctor's fitness to practise has been found to be impaired. Submissions may be made suggesting that, as the doctor is currently unlicensed, there are no patient safety issues and that action is therefore not required. It is important to remember that:
 - a A registered doctor is entitled to a licence unless their registration is currently suspended.

- b** All registered doctors are expected to comply with *Good medical practice*, regardless of whether or not they hold a licence.
 - c** Taking action against registered doctors who have been found to be impaired will be important in maintaining public confidence and the integrity of the register.
- 6** If a doctor's registration is suspended or his/her name is erased by a tribunal the doctor's licence will automatically be withdrawn. If conditions are imposed or undertakings agreed the doctor will continue to be entitled to hold a licence but will be expected to comply with any conditions or undertakings.
- 7** A tribunal may impose conditions on or agree undertakings with unlicensed doctors in the same way as for licensed doctors. If an unlicensed doctor is subject to health related conditions or undertakings he/she will be subject to medical supervision in the same way as licensed doctors. Practice related conditions or undertakings may still be appropriate even though a doctor doesn't currently hold a licence.
- 8** The tribunal will need to consider all potential sanctions starting from the position of whether it would be appropriate to impose no sanction and considering conditions, suspension and erasure in turn. The tribunal should bear in mind that if it imposes no sanction on an unlicensed doctor, that doctor may at a later date successfully apply for a licence and would not be subject to any restrictions to protect patients.
- 9** If a tribunal imposes conditions on or agrees undertakings which are practice related with a doctor who does not currently hold a licence, for example a requirement to work under medical supervision or to undertake a course of training, the conditions or undertakings will continue to attach to the doctor's registration during the period which they are unlicensed.
- 10** Should the doctor successfully apply for a licence at a later date, he/she will need to comply with the conditions when taking up any course of employment.
- 11** When imposing conditions on an unlicensed doctor, tribunals should impose them for whatever term is appropriate in all the circumstances regardless of whether the doctor is licensed or unlicensed. A doctor's licensing status may be subject to change.
- 12** The points set out at paragraphs 5 a-c above also apply when a tribunal is reviewing conditions or undertakings at a review hearing. The licensing process is not designed to replace the fitness to practise procedures in ensuring patient safety and the tribunal will need to consider the most appropriate action taking account of all the circumstances of the case. Where a doctor has been unlicensed for some considerable period the tribunal may wish to explore whether the doctor wishes to take voluntary erasure or may consider whether more robust action may be required such as suspension depending on the individual circumstances.