TITLE: MANAGEMENT OF A COMPLAINT OR CONCERN ABOUT THE PERFORMANCE OF A MEDICAL PRACTITIONER GUIDELINE

1. GUIDING PRINCIPLES

This guideline identifies the way in which a complaint or concern about a medical practitioner (MP) is to be handled in the WA Country Health Service (WACHS). It grades a response according to the seriousness of the issues raised from a review at a local level to a formal investigation to referral to external agencies including the Medical Board.

Its aim is to ensure that the safety and wellbeing of patients, staff and the community is protected whilst respecting the rights of clinicians to confidentiality and natural justice. It aims to provide a framework whereby complaints or concerns are dealt with as far as possible at a local level consistent, with the responsibility of the health service to ensure the safety and quality of the services it provides to patients. It must be seen within an overall context of safety and quality that takes into account training and continuing education, registration, credentialing and scoping of practice, incident monitoring, quality improvement processes and clinician and consumer interests.

This guideline does not apply to wilful misconduct, which is to be handled through disciplinary processes.

1.1 Clinical Performance and Competence

Clinical performance and clinical competence refers to the knowledge, skills and characteristics possessed and applied by a MP in the course of their work. The term is generally used to refer to technical expertise, however, a clinician needs a range of skills, knowledge and behaviours beyond clinical expertise to provide good patient care particularly in the context of complex modern hospital settings. These skills and attributes include attitudes and interpersonal skills, the ability to communicate with patients and colleagues, the ability to work as part of a team, leadership skills and knowledge of the health system in which the clinician works. Levels of competence vary with experience; however, even at the start of a career, competence should meet a minimum acceptable standard.

Title:	Management of a Complaint or Concern About the Performance of a Medical Practitioner Guideline		
Contact:	Regional Medical Director – Midwest (Dr Andrew Jamieson)		
Directorate:	Medical Services	**TRIM Record Number:**	ED-CO-14-30889
Version:	2.00	**Date Published:**	04/07/2014
Date of Last Review:	November 2007	**Date Next Review:**	April 2019

1.2 Existing Mechanisms

Currently, WACHS uses several mechanisms to assure the safety and quality of clinical work. These mechanisms include the credentialing and clinical privileging (i.e. delineating scope of practice) of all medical practitioners, morbidity and mortality reviews, incident reporting, clinical audit (including WA Audit of Surgical Mortality [WAASM]) and in appropriate circumstances, peer review of clinical performance.

Complaints or other issues of concern about the performance of an MP will normally be dealt with through these mechanisms which focus on a quality improvement / professional development approach. However, in the event of wilful misconduct or conduct which appears to be illegal, disciplinary action may be appropriate in which case the special reporting arrangements outlined later must be used.

1.3 Summary of Guideline

This document identifies three levels for managing a complaint or concern about an individual MP. The first two levels are appropriate for management at a local level if considered appropriate by the relevant managers. A reference to a higher level is available at all times but the focus must always remain on protecting the health and safety of patients.

Details of the procedure to follow for each Level appear in Section 2.

Level 1

Level 1 is applicable where there is concern that the performance, practices or clinical outcomes achieved by an individual MP vary from peers or from expectation, but where there has not been any event involving unexpected mortality or serious morbidity. This level involves a review of that clinician's performance at the local level, may be undertaken informally and may, but does not necessarily, involve the Review of Clinical Conduct Panel as per the MOU with the AMA.

Level 2

Level 2 encompasses a concern about the performance, practices or outcomes of a MP which warrants investigation by Regional authorities using the processes of the MOU. In this level there maybe one or more events involving unexpected mortality or increasingly serious morbidity. There may be a pattern of suboptimal performance or variation in clinical outcomes over a period of time.

Level 3

Level 3 is required where there is significant concern about the performance of an individual clinician occasioned by one or more events involving unexpected mortality or serious morbidity, gaps in clinical performance, an external event relevant to performance or serious concern by colleagues about the health and safety of patients. At this level the Area Health Service Senior Management must be notified and consideration given to advising the concern to the Medical Board. The Area Health Service is to oversee an investigation to determine whether action should be taken in relation to the MP's ongoing appointment or employment, using the processes of the MOU.

1.4 General Principles of Review

Regardless of the level or nature of action to be taken in regard to any complaint or concern about a MP certain principles must be applied as follows:

a) Health and Safety
The primary motivating concern must be the health and safety of consumers, the individual clinician, colleagues and other staff and the community.

b) Risk Management
The aim is to manage performance at the earliest stages of concern and to thereby reduce the risk of adverse outcomes.

c) Procedural Fairness
This means that the clinician has the right to be fully informed of issues under review or investigation at the start of the process, should be given a fair hearing and the opportunity to present their case, the right to have a decision made by an unbiased or impartial decision maker and the right to have that decision based only on material that is relevant to the case.

d) Standards
Standards against which judgments are to be made or are being made must be made explicit. In general this will be the standard reasonably expected of a clinician of an equal level of training and experience. Where authoritative written standards, codes of conduct and competencies are available these may be used.

e) Confidentiality
The matter must be dealt with confidentially. Details should only be disclosed on a need to know basis unless there are statutory or other reporting obligations.

f) Conflicts of Interest
These must be disclosed. There must be no relationship between the reviewer / investigator and the clinician concerned or other significant party that could reasonably be perceived to bias the investigation.

g) Statutory Obligations
These principles do not negate and should not be read to stand in place of any statutory obligation in relation to reporting, investigating or otherwise dealing with a matter; e.g. reports to the Coroner.

1.5 Key Elements

The following elements are relevant to all levels of action:

a) Notification can be by any medium but must be formally documented in writing.
b) Anyone can notify; e.g. patients, family or advocates, junior or senior staff, medical nursing, allied health or other practitioners, managers and supervisors, professional associations.

c) Anonymous complaints should not generally be accepted.

d) Frivolous, vexatious and trivial complaints should be dismissed after appropriate enquiries are made to substantiate or otherwise fairly deal with the matter before further action is taken.

e) Records are to be kept and the outcome documented.

f) Advocacy. The clinician has a right to be accompanied by a support person or advocate if required. Legal representation would not normally be appropriate unless the matter is being dealt with as formal disciplinary proceedings.

g) Relevant parties should be notified of the outcome.

h) Review of decisions. It is appropriate that an avenue of appeal be available where a clinician's role is significantly altered upon the basis of perceived unsatisfactory performance. The MOU sets out the appropriate process.

i) Appropriate outcomes. Outcomes must be supported by the findings of the review and investigation.

j) Timeliness. Procedures must be timely and commensurate with the potential or actual risk to the health and safety of people.

k) Impairment. At any level of investigation enquiries may uncover personal impairment as a major contributor to performance concerns. In this case the matter must be referred to the Medical Board.

2. PROCEDURES

Procedures are applied at three levels. The selection of an appropriate level must be made in consultation with the Regional Director or their nominee.

2.1 Level 1 – Review

This level is applicable where there is an emerging concern about the performance of practices of or clinical outcomes achieved by an individual clinician, but where there has not been any event involving unexpected mortality or serious morbidity. This level involves a review of that clinician's performance.

Who is Responsible

Anyone who has a concern or receives a complaint must report this to his or her supervisor. At this level of concern it is the responsibility of the District Manager / local Health Services Manager to discuss the basis of concern with the Regional Medical Director and/or the Regional Director for a decision to be made on the method of review and the personnel to be involved.

Action Required

Any formal review of the clinician's performance must be undertaken in accordance with the MOU. However, minor issues may be able to be dealt with less formally. Nonetheless:

1. the clinician must be advised of the concern, its nature and the proposed course of action.
2. the scope and methodology of a review must be determined and advised to the clinician.

3. the method used may vary from a less structured investigation, observation of clinical performance, review of records, clinical practice / indicator data and variation reports or a combination of these.
4. the information collected must be analysed to identify any clinical performance or system deficiencies and recommendations are to be framed to strengthen clinical or system performance and safety.
5. recommendations for further action or monitoring must include timeframes.
6. the clinician must be given an opportunity to respond to the findings and to any proposed action.
7. a report is then prepared for the Regional Director, who, in consultation with the Regional Medical Director, is to determine what further action may be required.

Completion of the review process should be as expeditious as possible bearing in mind the timelines outlined in the MOU.

Possible Outcomes:

a) No further action
b) Identification and referral of systems issues
c) Remedial action including training and education, peer support or supervision
d) A decision to undertake investigations in greater depth or
e) Further action in the event of no improvement.

2.2 Level 2 - Investigation

This level encompasses a more general or more serious level of concern about the performance, practices or outcomes of an MP which warrants an investigation and must always be formal using the processes of the MOU.

Definition

General concern about the performance of an individual clinician occasioned by:

- one or more events involving unexpected mortality of serious morbidity or
- complaint or expression of concern of a serious nature or
- concern by colleagues regarding health and safety of patients or pictures emerging of a pattern of variation in performance outcomes, practices, etc. or
- little insight into problems with own performance.

Who is Responsible

Anyone who has a concern or receives a complaint must report this to their manager, the Medical Director, or the Regional Director. The concern or complaint must be advised by the person receiving the information to the Regional Director who is to determine whether the Chief Executive of WACHS is to be advised.

The Regional Director is to consult with the Medical Director and the Executive Director Medical Services on the conduct of an investigation and determine the approach to be adopted taking into account the requirements of the MOU.

Actions Required
A formal investigation is to take place. The process of investigation is to follow the following stages and conform with the MOU:

1. Advise the MP and refer the matter to a Review Panel as provided in the MOU.
2. Analyse the complaint or expression of concern.

   This means obtaining additional information from the complainant to clarify the scope of concerns and to identify and analyse the issues. Potential system issues must be considered at this stage.
3. Planning
   For each issue, the information required to test each element must be identified and the best method and timeframes to ensure this is corrected in a timely manner are to be set. Appropriate service standards should be defined at this point.
4. Information Collection
   This may include statements from, or interviews with, relevant parties, site inspection, record review, clinical practice or indicator data, variation report, clinical reviews, physical evidence and other relevant material.
   To ensure an investigation is free from bias and any conclusions are drawn on an objective analysis of the evidence at times it is essential or highly desirable to obtain an independent expert opinion on the issues under investigation or to have the investigation conducted by an independent third party.
5. Analysis
   Analysis is an ongoing process through the investigation and is a critical component of an adequate investigation. After information has been gathered it must be evaluated and tested.
6. Advise MP
   When all of the relevant information has been collected and analysed, the clinician is to respond to the matter.
7. Findings and Recommendations
   The Review Panel is to review all the information and formulate its views. Any deficiencies in service standards or systems are identified and recommendation framed to strengthen clinical or system performance and safety. The clinician should be provided with a copy of the findings and recommendations and given an opportunity to respond to any adverse findings.
   Recommendations are to be based on the evidence and informed by the principles of public interest and good governance.
8. Report
   A report to the Regional Director is to be submitted by the Panel at the completion of the investigation.

Timetable
Determination of the matter must be completed within a reasonable timeframe.

Possible Outcomes
The investigation report should include, but not be limited to one or more of the following;

a) Recommendations
   - No further action
   - Remedial action including training and education, mentoring and supervision
   - Reassessment arrangements and timeframes
   - Referral to other authorities or
   - Employment arrangements such as suspension and termination.

b) Identification and referral of systems issues.

c) Decision that the matter warrants further investigation and communication under Level 3 procedures.

d) If clinician performance does not improve within the set timeframes consideration should be given to additional action.

2.3 Level 3 – Investigation and Communication with Relevant Statutory Bodies

This level is required when there is significant concern about the performance of an individual MP.

Definition
Significant concern about the performance of an individual MP occasioned by:

- one or more serious events involving unexpected mortality or serious morbidity
- complaint or expression of concern of a serious nature
- poor insight into gaps in own performance
- external event related to performance e.g. criminal conviction, termination of employment in another facility
- serious concern by colleagues regarding health and safety of patients or
- poor response to remedial action arising from Level 1 or 2 interventions.

Who is Responsible
Anyone who has a concern or receives a complaint must report this to their Manager, the Regional Medical Director, or the Regional Director. The Regional Director is to then determine the way in which the matter is to be handled.

Action Required
The Regional Director must be notified without delay. In consultation with the Regional Medical Director and/or the Executive Director Medical Services, the Regional Director is to determine what further notification is required including advice to the Chief Executive, the Chief Medical Officer, the Medical Board, professional associations or any other external body.

Consideration must be given at this point as to whether the alleged incident(s) may constitute a criminal offence requiring reporting of the matter to the Police and/or the Corruption and Crime Commission (CCC).

Action taken by the WACHS authorities should reflect the obligation to ensure appropriate care and treatment at an adequate standard is provided to patients and clients. This may involve immediately limiting clinical privileges, suspension, or termination.

Where any issue remains about the ongoing care and treatment of patients and clients, the Region is to take appropriate action which may include its own investigations to address these issues in a timely manner. Care should be taken in undertaking such investigations not to compromise any parallel enquiry or investigation by other authorities.

Timeframe
Immediate action must be taken to protect the interests of patients, staff and the community and to ensure that relevant external bodies are advised without delay.

Possible Outcomes
The investigation should lead to one or more of the following:

a) Identification of systems issues and actions to rectify these
b) Remedial action and timeframes
c) Reassessment arrangement and timeframes
d) Referral to other authorities or
e) Engagement arrangements, e.g. suspension, limitation of clinical privileges, mentoring, supervision, or termination.

3. FLOWCHART

See following page.

4. DEFINITIONS

MOU Memorandum of Understanding between the Minister for Health and Boards of Management and the Australian Medical Association (Western Australia) Incorporated in respect of clinical privileges, conduct and governance in Western Australian Government hospitals and health services 2012.

5. REFERENCES / SOURCE DOCUMENTS

Memorandum of Understanding between the Minister for Health and Boards of Management and the Australian Medical Association (Western Australia) Incorporated in respect of clinical privileges, conduct and governance in Western Australian Government hospitals and health services 2012.

MANAGEMENT OR CONCERN ABOUT THE PERFORMANCE OF A MEDICAL PRACTITIONER FLOWCHART