



*A Code of Conduct for  
Private Practice*

Recommended Standards of Practice  
for NHS Consultants

January 2004

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# Part I

# Introduction

## Scope of Code

- 1.1 This document sets out recommended standards of best practice for NHS consultants in England about their conduct in relation to private practice<sup>1</sup>. The standards are designed to apply equally to honorary contract holders in respect of their work for the NHS. The Code covers all private work, whether undertaken in non-NHS or NHS facilities.
- 1.2 Adherence to the standards in the Code will form part of the eligibility criteria for Clinical Excellence Awards.
- 1.3 This Code should be used at the annual Job Plan review as the basis for reviewing the relationship between NHS duties and any private practice.

## Key Principles

- 1.4 The Code is based on the following key principles:
  - NHS consultants and NHS employing organisations should work on a partnership basis to prevent any conflict of interest between private practice and NHS work. It is also important that NHS consultants and NHS organisations minimise the risk of any perceived conflicts of interest; although no consultant should suffer any penalty (under the code) simply because of a perception;
  - the provision of services for private patients should not prejudice the interest of NHS patients or disrupt NHS services;
  - with the exception of the need to provide emergency care, agreed NHS commitments should take precedence over private work; and
  - NHS facilities, staff and services may only be used for private practice with the prior agreement of the NHS employer.

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<sup>1</sup> The expression “private practice” in this Code of Conduct includes:  
a the diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under section 65(2) of the National Health Service Act 1977), excluding fee paying services as described in Schedule 10 of the Terms and Conditions.  
b work in the general medical, dental or ophthalmic services under Part II of the National Health Service Act 1977 (except in respect of patients for whom a hospital medical officer is allowed a limited “list”, e.g. members of the hospital staff).

# Standards of Best Practice

## Disclosure of Information about Private Practice

- 2.1 Consultants should declare any private practice, which may give rise to any actual or perceived conflict of interest, or which is otherwise relevant to the practitioner's proper performance of his/her contractual duties. As part of the annual Job Planning process, consultants should disclose details of regular private practice commitments, including the timing, location and broad type of activity, to facilitate effective planning of NHS work and out-of-hours cover.
- 2.2 Under the appraisal guidelines agreed in 2001, NHS consultants should be appraised on all aspects of their medical practice, including private practice. In line with the requirements of revalidation, consultants should submit evidence of private practice to their appraiser.

## Scheduling of Work and On-Call Duties

- 2.3 In circumstances where there is or could be a conflict of interest, programmed NHS commitments should take precedence over private work. Consultants should ensure that, except in emergencies, private commitments do not conflict with NHS activities included in their NHS Job Plan.
- 2.4 Consultants should ensure in particular that:
- private commitments, including on-call duties, are not scheduled during times at which they are scheduled to be working for the NHS (subject to paragraph 2.8 below);
  - there are clear arrangements to prevent any significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late or to be cancelled;
  - private commitments are rearranged where there is regular disruption of this kind to NHS work; and

- private commitments do not prevent them from being able to attend a NHS emergency while they are on call for the NHS, including any emergency cover that they agree to provide for NHS colleagues. In particular, private commitments that prevent an immediate response should not be undertaken at these times.
- 2.5 Effective Job Planning should minimise the potential for conflicts of interests between different commitments. Regular private commitments should be noted in a consultant's Job Plan, to ensure that planning is as effective as possible.
- 2.6 There will be circumstances in which consultants may reasonably provide emergency treatment for private patients during time when they are scheduled to be working or are on call for the NHS. Consultants should make alternative arrangements to provide cover where emergency work of this kind regularly impacts on NHS commitments.
- 2.7 Where there is a proposed change to the scheduling of NHS work, the employer should allow a reasonable period for consultants to rearrange any private sessions, taking into account any binding commitments entered into (e.g. leases).

### Provision of Private Services alongside NHS Duties

- 2.8 In some circumstances NHS employers may at their discretion allow some private practice to be undertaken alongside a consultant's scheduled NHS duties, provided that they are satisfied that there will be no disruption to NHS services. In these circumstances, the consultants should ensure that any private services are provided with the explicit knowledge and agreement of the employer and that there is no detriment to the quality or timeliness of services for NHS patients.

### Information for NHS Patients about Private Treatment

- 2.9 In the course of their NHS duties and responsibilities consultants should not initiate discussions about providing private services for NHS patients, nor should they ask other NHS staff to initiate such discussions on their behalf.

- 2.10 Where a NHS patient seeks information about the availability of, or waiting times for, NHS and/or private services, consultants should ensure that any information provided by them, is accurate and up-to-date and conforms with any local guidelines.
- 2.11 Except where immediate care is justified on clinical grounds, consultants should not, in the course of their NHS duties and responsibilities, make arrangements to provide private services, nor should they ask any other NHS staff to make such arrangements on their behalf unless the patient is to be treated as a private patient of the NHS facility concerned.

### Referral of Private Patients to NHS Lists

- 2.12 Patients who choose to be treated privately are entitled to NHS services on exactly the same basis of clinical need as any other patient.
- 2.13 Where a patient wishes to change from private to NHS status, consultants should help ensure that the following principles apply:
- ~~a patient cannot be both a private and a NHS patient for the treatment of one condition during a single visit to a NHS organisation;~~<sup>1</sup>
  - any patient seen privately is entitled to subsequently change his or her status and seek treatment as a NHS patient;
  - any patient changing their status after having been provided with private services should not be treated on a different basis to other NHS patients as a result of having previously held private status;
  - patients referred for an NHS service following a private consultation or private treatment should join any NHS waiting list at the same point as if the consultation or treatment were an NHS service. Their priority on the waiting list should be determined by the same criteria applied to other NHS patients; and
  - should a patient be admitted to an NHS hospital as a private inpatient, but subsequently decide to change to NHS status before having received treatment, there should be an assessment to determine the patient's priority for NHS care.

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1 - This bullet point has been removed to reflect changes brought into effect by virtue of the "Guidance on NHS patients who wish to pay for additional private care" published by the Department of Health, following consultation, on 23 March 2009.

## **Promoting Improved Patient Access to NHS Care and increasing NHS Capacity**

- 2.14 Subject to clinical considerations, consultants should be expected to contribute as fully as possible to maintaining a high quality service to patients, including reducing waiting times and improving access and choice for NHS patients. This should include co-operating to make sure that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will maintain or improve their quality of care, such as by reducing their waiting time.
- 2.15 Consultants should make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff.



# Managing Private Patients in NHS Facilities

- 3.1 Consultants may only see patients privately within NHS facilities with the explicit agreement of the responsible NHS organisation. It is for NHS organisations to decide to what extent, if any, their facilities, staff and equipment may be used for private patient services and to ensure that any such services do not interfere with the organisation's obligations to NHS patients.
- 3.2 Consultants who practise privately within NHS facilities must comply with the responsible NHS organisation's policies and procedures for private practice. The NHS organisation should consult with all consultants or their representatives, when adopting or reviewing such policies.

## Use of NHS Facilities

- 3.3 NHS consultants may not use NHS facilities for the provision of private services without the agreement of their NHS employer. This applies whether private services are carried out in their own time, in annual or unpaid leave, or – subject to the criteria in paragraph 2.8 – alongside NHS duties.
- 3.4 Where the employer has agreed that a consultant may use NHS facilities for the provision of private services:
  - the employer will determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable;
  - any charge will be collected by the employer, either from the patient or a relevant third party; and
  - a charge will take full account of any diagnostic procedures used, the cost of any laboratory staff that have been involved and the cost of any NHS equipment that might have been used.
- 3.5 Except in emergencies, consultants should not initiate private patient services that involve the use of NHS staff or facilities unless an

undertaking to pay for those facilities has been obtained from (or on behalf of) the patient, in accordance with the NHS body's procedures.

- 3.6 In line with the standards in Part II, private patient services should take place at times that do not impact on normal services for NHS patients. Private patients should normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should an NHS patient's treatment be cancelled as a consequence of, or to enable, the treatment of a private patient.

### Use of NHS Staff

- 3.7 NHS consultants may not use NHS staff for the provision of private services without the agreement of their NHS employer.
- 3.8 The consultant responsible for admitting a private patient to NHS facilities must ensure, in accordance with local procedures, that the responsible manager and any other staff assisting in providing services are aware of the patient's private status.



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