

TRUST-WIDE CLINICAL GUIDANCE DOCUMENT

Code of Guidance for Private Practice for Consultants and Speciality Doctors

Policy Number:	HR-G7
Scope of this Document:	Trust Employed Medical Consultants and Speciality Doctors
Recommending Committee:	Local Negotiation Committee
Approving Committee:	Executive Committee
Date Ratified:	March 2017
Next Review Date (by):	March 2019
Version Number:	2017 – Version 1
Lead Executive Director:	Executive Medical Director
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2017 – Version 1

Quality, recovery and wellbeing at the heart of everything we do

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Code of Guidance for private Practice for Consultants and Speciality Doctors

Further information about this document:

Document name	Code of Guidance for private Practice for Consultants and Speciality Doctors HR-G7
Document summary	This document provides guidance to cover the procedure to be followed in circumstances were Consultants undertake private practice whilst working at Mersey Care NHS Foundation Trust.
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Published by Copies of this document are available from the Author(s) and via the trust's website	Mersey Care NHS Foundation Trust V7 Building Kings Business Park Prescot Merseyside L34 1PJ Your Space Extranet: http://nww.portal.merseycare.nhs.uk Trust's Website www.merseycare.nhs.uk
To be read in conjunction with	Department of Health's Code of Conduct for Private Practice Terms and Conditions for Private Practice HR30 Revalidation and Medical Appraisal HR33 Job Planning
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
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Version Control:

Version History:		
Version 0.1	Circulated to Trust Medical Consultants and Medical Director	June 2016
Version 0.2	Circulated to JLNC	November 2016
Version 1	Policy Group	February 2017
Version 1	Executive Committee	March 2017

SUPPORTING STATEMENTS

This document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1. PURPOSE AND RATIONALE

- 1.1 This document sets out guidance to the Trust's Consultants and Speciality Doctors in order to ensure that the correct processes are carried out and best practice followed when completing private practice or medico-legal work outside of Mersey Care NHS Foundation Trust employment.
- 1.2 The NHS has long recognised that medical staff have a range of skills that are valuable to other providers and organisations, and the consultant contract allows private practice under certain circumstances to protect patients and staff (refer to NHS Consultant Contract guidance for private practice).
- 1.3 Medical Staff can offer:
- private medical services
 - undertake external investigations
 - offer advice to the pharmaceutical industry
 - provide expert testimony to the courts and prisons
 - offer medical advice to Local Authorities
 - offer advice to employers
 - provide teaching
 - speak at national and international conferences
- 1.4 Consultants and Speciality Doctors are often asked to undertake fee paying work for patients within their NHS care but outside their contracts. A reasonable and proportionate balance has to be struck to ensure consultants and speciality doctors are providing high quality care for their patients within Mersey Care, and that they are remunerated for additional work within the terms of their Contract.

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

- 2.1 The aim of this guidance is to provide direction to Consultants and Speciality Doctors when considering or completing private and medico-legal work.

3. SCOPE

- 3.1 This guidance applies to all Trust employed Consultants and Specialty Doctors who intend to or currently complete private practice or medico-legal work.

4. DEFINITIONS (Glossary of Terms)

- 4.1 The relevant terms and their definitions (within the context of this guidance document) are outlined below:

Glossary of Terms	Definition
Trust	Mersey Care NHS Foundation Trust
Medico-legal Work	Work that involves both medical and legal aspects

Private Practice	All work completed, whether in non-NHS or NHS Facilities, outside of a Consultants work for Mersey Care NHS Foundation Trust
Regular Private Practice	One or more programmed activity per month
Ad Hoc Private Practice	Any private practice work that occurs less frequently than one programmed activity per month

5. DUTIES

- 5.1 **Chief Executive** – The Chief Executive has delegated responsibility for ensuring compliance with this guidance to the Executive Medical Director.
- 5.2 **Executive Medical Director** – The Executive Medical Director has strategic responsibility for ensuring there is compliance with this guidance and that it is applied in a fair and consistent manner. The Executive Director will cascade relevant communication to all Executive Directors, Line Managers, Medical Staffing, Staff Side representatives, Consultants and Specialty Doctors so that they are fully aware of the Code of Guidance for private Practice for Consultants and Specialty Doctors and are aware of their responsibilities.
- 5.3 **Associate Medical Directors (Divisions)** – Associate Medical Directors will have the divisional responsibility for ensuring compliance with this guidance and ensure that it is applied in a fair and consistent manner.
- 5.4 **Line Managers** – Line Managers have a duty to ensure that all staff are aware of the guidance and ensure that all staff that completes private practice or medico-legal work adheres to the process.
- 5.5 **Consultants** – It is the ultimate responsibility for all Consultants to ensure that they understand the importance of the content of this guidance and adhere to the process.
- 5.6 **Specialty Doctors** – It is the ultimate responsibility for All Specialty Doctors to ensure that they understand the importance of the content of this guidance and adhere to the process.
- 5.7 **Joint Local Negotiating Committee** – JLNC representatives will work in partnership with the Trust to negotiate terms and conditions for doctors at local level.

6. PROCESS

- 6.1 Private practice /medico-legal work can be undertaken within job planned hours through time shifting up to a maximum of 2 hours (0.5 PA's) a week.
- 6.2 **Disclosure of Regular Private Practice or Medico-legal work – Job Plan**

Any private practice or medico-legal work exceeding 2 hours a week (as in 6.1 above) must be disclosed to the clinical manager undertaking job planning for that consultant. If it is thought to interfere with NHS work within the trust it will

have to be undertaken outside the job planned hours. In cases where this cannot be agreed, the Associate Medical Director for the division will be notified to resolve the dispute.

- 6.3 As part of the annual Job Planning Process, Consultants and Specialty Doctors must disclose details of regular private practice commitments, including the timing, location and broad time of activity, to facilitate effective planning of Trust work and out of hours cover.
- 6.4 In situations where the private practice commitments impacts on the Doctors contracted hours, a specific agreement should be built in to the job plan in order to clarify when the Consultant/Specialty Doctor will fulfill the contracted hours.
- 6.5 Consultants/Specialty Doctors will be appraised on all aspects of their medical practice; including regular private practice and so therefore must submit supporting information about any private practice or medico-legal work as part of their annual appraisal. There is guidance available in the trust policy for Revalidation about how best this supporting information can be submitted.

Disclosure of Ad Hoc Private Practice or Medico-legal work

- 6.6 Consultants/Specialty Doctors must agree with the lead consultant/Clinical Director any plans to undertake private practice or medico legal work above the limit in 6.1, and offer arrangements for working back their contractual hours if within job planned hours.
- 6.7 Responsibility for seeking such approval and arranging cover arrangements sits with the Consultant/Specialty Doctor and should not be delegated to their Medical Secretary.

Conflict of Private Practice or Medico-legal work with Trust duties

- 6.8 Consultants/Specialty Doctors have a responsibility to minimise any risk of conflicts of interest between their Trust work and private practice.
- 6.9 In circumstances where there is or could be a conflict of interest, programmed Trust work commitments should take precedence over private practice.
- 6.10 Consultants/Specialty Doctors should ensure that, except in emergencies, private commitments do not conflict with Trust activities included in their Trust Job Plan.
- 6.11 Consultants/Specialty Doctors have the responsibility to ensure that:
 - 6.11.1 Private practice, including on-call duties, are not scheduled during times at which they are scheduled to work for the Trust (subject to point 6.15)
 - 6.11.2 There are clear arrangements to prevent any significant risk of private commitments disrupting Trust commitments, e.g. by causing Trust activities to be late or to be cancelled
 - 6.11.3 Private practice commitments are rearranged where there is a regular disruption of this kind to Trust work

- 6.11.4 Private practice commitments do not prevent them from being able to attend a Trust emergency while they are on call for the Trust, including any emergency cover that they agree to provide for Trust colleagues. In particular, private practice commitments that prevent an immediate response should not be undertaken at these times.
- 6.12 There may be circumstances in which Consultants/Specialty Doctors may be reasonably required to complete emergency private practice during times when they are scheduled to be working or are on call for the Trust. Consultants/Specialty Doctors should make alternative arrangements to provide cover where emergency work of this kind regularly impacts on Trust commitments.
- 6.13 Where there is a proposed change in the scheduling of Trust work, the Trust will allow for a reasonable period for Consultants/Specialty Doctors to rearrange any private practice, taking into account any binding commitments entered into (e.g. leases).

Scenario 1: medico-legal work directly related to or arising out of NHS care

e.g.: expert testimony to the courts and/or OH advice to employers on Mersey Care NHS Foundation Trust patients

An example would be:

A Mersey Care patient with an open episode to a Consultant Psychiatrist is charged with a criminal offence. The patient notifies their solicitor that they suffer from a mental disorder and are receiving treatment. As per Ministry of Justice good practice guidance, the patients' solicitor contacts the patient's usual Consultant Psychiatrist who knows them best, to request an expert court report to assist the court with the process of justice, including sentencing.

This request will usually be made by a letter of formal letter of instruction and the Consultant agrees a separate fee for the work directly with the instructing solicitor.

For the purposes of this policy (and in line with medical defence unions' guidance), this work, exclusively for patients who already have an open NHS episode to a Consultant will be classified as "fee paying work arising directly out of NHS care", and not as "private practice". This is to ensure a reasonable and proportionate balance is struck to enable consultants to do this work, as in almost all cases, it will be in the interests of the patient's NHS care that their usual Consultant Psychiatrist completes the report. It is also extremely unlikely that this work will ever amount to 2 or more hours per week on average over any 12 month period for patients under their care.

Although the Consultant will usually undertake an interview of the patient as part of, or alongside their usual clinical review on Trust premises and using Trust resources, the Trust will not seek to make a charge for the use of its services, accommodation or facilities.

An entirely different situation would be a Consultant contacted directly by a solicitor to complete a medico-legal report for a patient not under their direct Mersey Care NHS Foundation Trust care. This is classified as Private Practice and all relevant guidance within the policy would apply (including if providing an expert report privately on a Mersey Care NHS Foundation Trust patient not under their direct care).

More generally please note that Consultants are not obliged to accept instructions for full

expert reports on their patients unless

1) formally ordered to do so by the Court, or 2) when asked to provide a short summary of the patient's mental disorder and treatment not amounting to an expert report (i.e.: a professional statement). A fee may still be payable however and this should be checked with the instructing court officer or solicitor. In all cases, signed consent should be provided first by the patient via their solicitor or OH department as appropriate.

Undertaking of Private Practice with the use of Trust facilities

- 6.14 There may be circumstances where the Trust may, at discretion, allow some private practice to be undertaken alongside a Consultant/Specialty Doctors scheduled Trust work, provided that they are satisfied that there will be no disruptions to Trust services. In these circumstances, the Consultant/Specialty Doctor should ensure that any private services are provided with the explicit knowledge and agreement of the Trust and that there is no detriment to the quality or timeliness of services for Trust service users.
- 6.15 Whilst completing Trust duties and responsibilities, Consultants/Specialty Doctors should not initiate discussions about providing private services for Trust patients, nor should they ask other Trust employees to initiate such discussions on their behalf.
- 6.16 Where a Trust service user seeks information about the availability of, or waiting times for, Trust or private services, Consultants/Specialty Doctors should ensure that any information provided by them is accurate and up to date.
- 6.17 Consultants/Specialty Doctors may only see patients privately within the Trust facilities with the explicit agreement of the Trust. This applies whether private practice is carried out in the Consultants/Specialty Doctors own time or on annual or unpaid leave.
- 6.18 Where it is agreed by the Trust that a Consultant/Specialty Doctor may use Trust facilities for the provision of private practice the following may apply:
 - 6.18.1 The Trust may determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable
 - 6.18.2 A charge will take full account of any diagnostic procedures used, the cost of Trust employees that have been involved and the cost of any Trust equipment that may have been used
 - 6.18.3 Except in emergencies, Consultants/Specialty Doctors should not initiate private practice that involves the use of Trust employees or facilities unless an undertaking to pay for those facilities has been obtained from, or on behalf of, the patient.
- 6.19 The use of any other Trust employees is not permitted without the agreement of Mersey Care NHS Foundation Trust.

Administrative Management of Private Practice or Medico-legal work

- 6.20 All private practice work must be recorded within the Consultants/Specialty Doctors electronic calendar; their secretary made aware and appropriate cover arrangements put in place.
- 6.21 In situations where Consultants/Specialty Doctors have a private secretary based at the Trust, it is accepted that the secretarial staff may have to take occasional phone calls within normal working hours, but this should be kept to a minimum. Other secretarial work should be undertaken outside of normal working hours.
- 6.22 Information and correspondence for private practice must not be stored on Trust network/servers. Any typing of this nature performed by Trust secretaries must be stored on an encrypted laptop or memory stick belonging to the Consultant/Specialty Doctor
- 6.23 Consultants/Specialty Doctors must ensure that any private practice patients are aware of the provisions of the Data Protection Act for storing data on Trust systems.
- 6.24 Guidance on registering information with the Information Commissioners Office can be obtained from the Information Governance Manager or the Caldicott Guardian.

7. CONSULTATION

- 7.1 This guidance document has been considered and recommended through consultation at the Trusts Joint Local Negotiation Committee. (JLNC).

8. MONITORING

- 8.1 Adherence to this guidance will be monitored through the annual Consultant /Specialty Doctors job planning and appraisal processes.

Equality and Human Rights Analysis

Title: Code of Guidance for Private practice for Consultants and Speciality Doctors

Area covered: Trust employed Consultants and Speciality Doctors

What are the intended outcomes of this work?

This document set out guidance to Trust Consultants and Speciality Doctors in order to ensure that the correct processes are carried out and best practice followed when completing private practice or medico-legal work outside of the Mersey Care NHS Foundation Trust employment.

The aim of this guidance is to provide direction to Consultants and Speciality Doctors when considering or completing private and medico-legal work.

Who will be affected?

Trust employed Consultants and Speciality Doctors

Evidence

What evidence have you considered?

The guidance

Disability (including learning disability)

No issues identified

Sex

No issues identified

Race

It has been noted that there is research which has found BME Doctors are more likely to be disciplined. Recommend that annual monitoring regarding protected characteristics happens to ensure no direct or indirect discrimination is occurring within the trust.

Age

No issues identified

Gender reassignment (including transgender)

No issues identified

Sexual orientation

No issues identified

Religion or belief

No issues identified

Pregnancy and maternity

No issues identified

Carers

No issues identified

Other identified groups No issues identified
Cross Cutting No issues identified

Human Rights	Is there an impact? How this right could be protected?
Right to life (Article 2)	No issues identified
Right of freedom from inhuman and degrading treatment (Article 3)	No issues identified
Right to liberty (Article 5)	No issues identified
Right to a fair trial (Article 6)	No issues identified
Right to private and family life (Article 8)	No issues identified
Right of freedom of religion or belief (Article 9)	No issues identified
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	No issues identified
Right freedom from discrimination (Article 14)	No issues identified

Engagement and Involvement.
The Trust's Medical Director, Executive Director of Workforce and Joint Local Negotiation Committee has been consulted regarding the agreement of this guidance document

Summary of Analysis

Eliminate discrimination, harassment and victimisation

N/A

Advance equality of opportunity

N/A

Promote good relations between groups

N/A

What is the overall impact?

N/A

Addressing the impact on equalities

N/A

Action planning for improvement

N/A

For the record

Name of persons who carried out this assessment:

Pauline Copland, Acting Strategic HR Business Partner, Corporate Division and Medical Staffing
Meryl Cuzak,

Date assessment completed:

23.2.17

Name of responsible Director:

David Fearnley, Medical Director

Date assessment was signed:

23.2.17