

## **Medical Practitioners (Registration) (Jersey) Law 1960**

### **Strengthening Medical Practitioner Regulation in Jersey**

#### **Professional Consultation Responses**

##### **1. Introduction**

1.1 The need to strengthen medical regulation was identified in 2008 following a meeting and discussions with the General Medical Council (GMC) about the future revalidation of Jersey doctors. The GMC's view was that, at that time, no medical practitioner working in Jersey would be eligible to be considered for revalidation of their GMC Licence to Practise. This was because:

- No doctors in Jersey were undergoing regular appraisals
- There were no local legal powers to create an equivalent statutory Responsible Officer function
- There were inadequate powers to ensure that all doctors working in Jersey were subject to any conditions on their practise imposed by the GMC
- Doctors working in primary care were operating in an unregulated environment without any clinical governance framework underpinning practice.

1.2 To enable Jersey doctors to be considered for revalidation, the GMC advised Jersey to bring about and implement changes in our legislation that, as far as possible, was equivalent to the situation in UK jurisdictions. On the basis of regular meetings and progress to date, the GMC has confirmed that it will accept that Jersey's system and laws are UK equivalent and, as such, will accept revalidation recommendations from Jersey ROs

1.3 The necessary legal reforms required two separate and quite distinctive statutory functions to be developed, initially through amendments to the Medical Practitioners Registration (Jersey) Law.

1.4 The first was an amendment to the Medical Practitioners Registration (Jersey) Law which was unanimously adopted by the States Assembly in 2011. This amendment is already approved by Privy Council and its content did not form part of the present consultation.

1.5 The amendment enabled the Minister to draft Orders ensuring that the register of all medical practitioners is 'live', that only doctors with a licence to practise with the GMC are included on the Jersey register and that any conditions applied to a doctor's GMC registration are automatically applied to the Jersey registration with appropriate sanctions in place for non compliance.

1.6 The amendment also empowered the Minister to draft Orders replicating the UK Responsible Officer functions in order to satisfy the GMC's expectation of UK equivalence, in order for it to accept Jersey RO recommendations.

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- 1.7 A separate framework was required to satisfy the GMC to ensure that General Practitioners in Primary Care work within a regulated environment with appropriate clinical governance processes in place, essentially reflecting the equivalent functions and duties of a designated body in the UK. To achieve this, an amendment to the Health Insurance Law was approved by the States Assembly enabling the establishment of a performers list with, as similar functions as possible within the Jersey context, to the UK Performers List regulations.
- 1.8 Representatives from the GMC have indicated that they are satisfied with Jersey's proposed legislative changes and if implemented the GMC will be happy to accept revalidation recommendations from responsible officers appointed under the aforementioned legislation.

## **2. The Consultation**

- 2.1 The consultation took place between 6 January and 17 February 2014.
- 2.2 The purpose of the consultation was to inform Jersey medical practitioners that the Orders drafted under the amendment to the Medical Practitioners (Registration) (Jersey) Law 1960 approved by the States in 2011, were completed and offered for consideration.
- 2.3 The consultation also included circulating the draft Performers List Regulations for consideration by General Practitioners.
- 2.4 A copy of the two Medical Practitioner Registration Orders and a report outlining the background to the consultation was sent by email to all doctors (other than F1s) employed by H&SSD and to five known independent practitioners. All general practitioners known to the primary care governance team were sent the same information as well as a copy of the draft Performers List Regulations and a report explaining the background. A press release was issued and the documents placed on the States of Jersey website.
- 2.5 In addition to the written material, three briefing sessions were arranged, one for GPs that included a briefing on the Performer's List regulations and two for hospital doctors and independent practitioners. The primary care governance team also offered a further three consultation drop-in sessions for GPs.
- 2.6 Approximately 16 people attended the GP briefing session and four people attended the first and ten people attended the second hospital doctors and independent practitioners briefing sessions. No GPs attended the drop-in sessions.

## **3. Medical Practitioner Registration Orders**

- 3.1 Three written submissions were received in response to the Orders drafted under the Medical Practitioners Registration Law. Copies of these responses are in Appendix 1
- 3.2 Additionally comments made and issues raised at the briefing sessions were captured and taken together with the written submission a number of themes emerged
- 3.3 These included questions and concerns about discrimination of doctors without a licence to practise with the GMC being unable to be registered in Jersey, for example doctors from the EU or other jurisdictions and retired local doctors and if not why not.

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And equally questions about whether the new legislation provide a way to prevent doctors with a license to practise from the GMC from registering in the island.

*Comment*

*All doctors who wish to work in Jersey already require full registration and licence to practise with the GMC. This is not discriminating against a doctor's geographical location, but is selective in preventing doctors who do not meet GMC standards practising in the island. Medical practitioner registration in Jersey is essentially a secondary registration scheme and contingent on meeting GMC standards according to the GMC making assessments and decisions about the requirements and standards for medical education and training and to manage fitness to practise issues.*

*If Jersey were to set up its own regulatory standards and processes, it would require a comprehensive infrastructure to support this process with disproportionate costs to the island.*

*The Jersey registration is primarily to reassure and provide assurance to the public that doctors who are working in Jersey are fit to practise and so that there are legal powers locally to take action where necessary. Retired doctors can continue to keep a simple GMC registration without a licence to practise and they can still call themselves 'doctor'.*

*Under the new legislation any doctor with a licence to practise will be able to register in Jersey. This is no different to what is currently in place.*

3.4 Other comments referred to whether the registration process needed to be changed, why under the new system doctors will be required to complete a return and why this is every two years, whether the new registration system will delay doctors coming to the island being able to start work and is this going to cost more. There was also concern that a doctor could be removed from the register due to technical problems associated with making the biennial return.

*Comment*

*The changes in the legislation gives an opportunity to improve the registration process and ensure that the local register remains 'live' with only doctors who are practising or intend to practise in Jersey.*

*The current register includes the name of all doctors registered since 1906 with no mechanism to remove the name of someone who has ceased to practise.*

*The two yearly cycle was chosen to ensure that the register remains current, other registered professionals are required to re register every year, although it is intended in future change this to biennial in line with medical practitioner registration.*

*The new registration system should not delay doctors starting work in Jersey. The intention is to have an electronic application process which will facilitate the process.*

*The cost to all doctors to register (even those coming for a short period as a locum) will be the same as the present fee of £150. The Professional and Care Regulation service already has in place systems to manage registration, and the registration fees will offset the costs of running the scheme.*

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*No doctor will be removed from the register before having an opportunity to appeal or make representation, therefore a doctor will not 'inadvertently' be removed due to technical issues.*

3.5 The comments also included reference to the terminology in particular the use of the term 'sex' rather than 'gender' and questions as to whether such details were necessary and mechanisms for registering changes in gender.

*Comment*

*It's agreed that the term will be changed from 'sex' to 'gender'; this information is a necessary aspect of checking the identity of applicants. Any change in a registrant's gender must be notified to the Minister under the mandatory conditions of registration, and should be accompanied by evidence of name change.*

3.6 It was raised that the proposed legislation should have a policy and structured guidance about how the various provisions will be implemented.

*Comment*

*There will be detailed policy setting out the registration, return, suspension and cancellation procedures with a separate policy setting out the responsible officer processes. It is intended to establish a working party with appropriate representation to contribute to these policies.*

3.7 There were general and specific comments about how the legislation is structured and the relative roles and function of the Minister and Responsible officers, in particular concerns and a belief that there is no separation between the Minister functions in establishing and overseeing the regulatory scheme and the role of the Responsible Officer in administering the scheme. Related issues included the detail of information to be provided to the Minister by Responsible officers.

*Comment*

*The amendment to the Primary Law and the two Orders are designed to replicate as far as possible, within a local context and appropriate economies of scale, the framework in the UK.*

*The registration of medical practitioners is a function in Law of the Minister for H&SS, the registration processes that sit under the legislation will be set out in detail in policy. In practice the Ministerial registration functions will be delegated to the Medical Officer of Health as is already the case for other similar functions eg nurse registration.*

*Whilst the Minister also has responsibility for appointing responsible officers, their duties and responsibilities are, of necessity, equivalent to Responsible officers appointed in the UK by a designated body. The Order setting out the duties of the various classes of responsible officers has equivalence to corresponding regulations in the UK. These are quite separate and distinct from the statutory responsibility for registration, suspension and removal of registration.*

*The legislation structure, as set out, is necessary to satisfy the GMC that Jersey has statutory structures in place that are comparable to those in the UK and is a prerequisite to the GMC accepting revalidation recommendations for Jersey doctors.*

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*Under the responsible officers Order, there is no requirement for a responsible officer to refer all concerns to the Minister; the only concerns that would be referred would be in cases where implications for the registration of the practitioner are identified. Even in this case the matter would be referred to the Medical Officer of Health under delegated powers. How the Medical Officer of Health manages concerns about fitness to practise will be set out in detail in the accompanying policy.*

3.8 A suggestion was made that linking the Performers List to the HIF was inappropriate and that there should be a single register of medical practitioners and that register should identify whether the doctor was or was not a performer.

*Comment*

*As mentioned in the introduction, the Performers List regulations are required by the GMC to ensure that doctors working in Primary Care work within a regulated environment with appropriate clinical governance arrangements in place; in effect replicating the framework required in designated body under the UK regulations. This is quite distinct and separate from the registration of a professional practitioner.*

3.9 Concerns were raised related to information to be notified for registration purposes and information obtained as part of fitness to practise processes, in particular that there was no limitation on the categories of offences that were to be notified, the timeframe for notifying any changes in registration information should be extended and a responsible officers access to and exchange of information about a practitioners conduct and performance.

*Comment*

*It would not be appropriate to limit the categories of offences; all offences need to be disclosed which reveal a pattern of offending that might otherwise may be overlooked.*

*The timeframe of one month to notify the Minister of any changes in information supplied at registration is reasonable and consistent with similar requirements in other legislation, e.g. the Health Care (Registration) (Jersey) Law 1995.*

*All information accessed by responsible officers is subject to data protection safeguards; however the reference in the responsible officers Order is directly equivalent to the UK regulations and a necessary provision to satisfy the GMC.*

3.10 Comment was made that the existing register should be 'purged', before being transferred into a new registration scheme.

*Comment*

*There is no provision within the existing Law to 'purge' the current register, therefore by necessity any removal from the register of currently registered practitioners will need to be included in the transitional arrangements.*

3.11 A number of issues were raised about the responsibilities and duties of the responsible officer for Performers List Class. These will be picked up in Section 4 of this report, as they are directly linked to similar responses to the Performers List Regulations consultation.

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3.12 Concerns about investigation and inspection powers of the responsible officers was raised, in particular what is meant by 'appropriately qualified' investigators and 'an unfettered right of inspection' equivalent to a 'dawn raid' power.

*Comment*

*Guidance around investigation will be provided in the policy to support the implementation of the legislation, as it is difficult to define in Law for each and every eventuality where an investigator may need to be appointed.*

*In terms of inspection, the Order specifies that the responsible officer or inspector has power to enter at all reasonable times any premises. It is not disproportionate, where there are serious concerns about an individual's professional practise or conduct, to undertake an unannounced inspection.*

#### **4. Performers List Regulations**

4.1 Thirteen written submissions were received in response to the Regulations drafted under the Health Insurance Law. Copies of these responses are listed in Appendix 2.

4.2 Additionally, from the comments made and issues raised at the briefing sessions, taken together with the written submissions, a number of themes emerged.

4.3 These included whether GPs practising currently will automatically be included or whether they will have to apply and will there be an annual renewal requirement. Equally, questions were raised as to whether the proposed Regulations would delay or prevent a locum practising in Jersey either at short notice or for a short period of time.

*Comment*

*Locums may, from time to time, be required to work in Jersey either at short notice or for short periods of time. Such practitioners will not be required to provide all of the information necessary under a normal application. Temporary inclusions may be granted for a four week period only and shall expire at the end of that period unless the practitioner makes a full application within the temporary inclusion period. If a full application is made within the four week period and the determination on that application has not been made by the end of that period, the temporary inclusion will then continue until such time as the application has been determined. Should the application be refused through determination, the temporary inclusion shall expire on the date of refusal of the full application.*

*The arrangements for doctors registered in Jersey already are covered in Article 9 under transitional arrangements ( MPL) and regulation 45 PL*

4.4 Other comments referred to when the proposed Regulations will be debated in the States, the current position in Guernsey, how changes will be incorporated into the Regulations and how will GPs be able to view and comment on any changes made.

*Comment*

*The Regulations will be lodged by the end of March, to be debated by the States before the summer recess.*

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*Guernsey are developing similar legislation and policy in order to fulfil the GMC requirements and enable the appointment of a responsible officer. The GMC has therefore allowed recommendations for revalidation to begin in Guernsey on the same basis as that of Jersey.*

*This response is the mechanism by which GPs will be informed of changes and comments made. There will be no further opportunity to make suggested amendments to the Regulations. GPs, through the PCB, will be involved in the detailed development of the policy supporting the PL regulations.*

- 4.5 Additional questions were raised in relation to whether GPs registered on the Performers List in Jersey could work in the EU, similar to GPs from the UK and do the European rule and practices apply in Jersey.

*Comment*

*Please refer to Section 3.3 for response*

- 4.6 Similarly to section 3.7, there were also concerns expressed regarding the appointment of the Medical Director as Responsible Officer by the Minister, and the Minister also being responsible for appointing an Appeals Panel. In addition, comments were also made regarding the authority designated to the Medical Director for the purpose of suspension. Suggestions were made that a decision making panel should also be appointed for the purpose of suspension.

*Comment*

*Please refer to Section 3.7 for response.*

*With reference to the appointment of a decision making panel, the regulations only allow for a decision to be made and enforced by the Medical Director. It is understood that the appointment of a reference panel would give greater confidence to GPs and also support the medical director in demonstrating a consistency to suspension decisions. It is also paramount that this decision making panel recognises the overriding need to ensure patient safety as well as understanding that the standards that inform suspension decisions would be those laid down by the GMC.*

- 4.7 Further responses received were in reference to the process and financial recompense surrounding suspension and that, as it is currently legislated, this is not a neutral act. An enquiry was also made regarding how a GP would be reinstated if previously removed from the list.

*Comment*

*It is understood that suspension is perceived as neutral if the financial situation of the Performer is reasonably protected and discussions are underway with the Primary Care Body to explore options for ensuring this. This also allows objective patient safety decisions about suspension to be made without any influence caused by concern for the financial welfare of the practitioner.*

*The length of suspension is not fully within the power of Jersey policy as investigation by the GMC or other bodies will be constituted by the policies and processes determined by them. Similarly the accountability to the GMC is in accordance with GMC standards for both the responsible officer and individual doctors and it would not be appropriate, or indeed acceptable, to the GMC, to reinterpret or vary those standards.*

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*Local mechanisms detailed within the supporting policy enable a GP to be appropriately reinstated.*

- 4.8 References were also made to the implications of the potential for suspension on insurance policies as well as to remediation/training and support during periods of concern or suspension. Some GPs are not aware of all complaints made against them and this could also impact upon insurance.

*Comment*

*The implementation of a Performers List will give consistency to the existence governance structures for GPs practising in Jersey and, having been approved by the GMC, these structures should be notified to insurance providers. It is entirely the decision of those providers to amend any policies and/or premiums.*

*In terms of thresholds for suspension and referral for fitness to practise procedures with the General Medical Council and retraining then the standards are those of the GMC and the regulations are consistent with those standards.*

*Investigation of substantive issues would be by assessors who have appropriate experience and training, in accordance with GMC guidance, and would normally be sourced from NHS England.*

*Remediation and support processes are under development. Some will be sourced locally and some from NHS England or other bodies. These arrangements will be outlined in the supporting policy and would depend on the nature of each case. Whilst desirable to make local arrangements there may be a need to use expertise that is not available locally or to comply with GMC conditions*

*Local mechanisms will be established through the supporting policy for ensuring GPs are aware of all complaints made against them, and the outcome of such complaints.*

- 4.9 Finally, questions were asked regarding the position of the GMC: would all fraud investigations be referred immediately, for example. And would the implementation of the Performers List stop a retired GP carrying on as a specialist and claiming on the Health Insurance Fund.

*Comment*

*The Responsible Officer would determine the seriousness of any concern raised and, in accordance with GMC guidance, make appropriate referrals as required. The standards and thresholds for those decisions would be those determined by the law and by the GMC.*



**Summary of comments from briefing sessions:**

- Why can non practising doctors with GMC registration without a licence to practise, not keep their registration status and registration in Jersey?
- Will there be an entry in the Jersey register for specialist registration and if not why not?
- Do we need to change the registration process, can't we keep the current system and just bring in the RO Order?
- Can we prevent doctors/ROs from registering in Jersey?
- Have non working doctors been consulted about the changes?
- Why do we need to send a return in and why was 2 years chosen?
- Will the new process delay doctors coming and being able to work on the island?
- Will doctors coming from outside the UK, e.g. South Africa be able to register and have a RO?
- Can anyone with a licence to practise with the GMC come to Jersey?
- What happens about ensuring standards and good practice, if an independent doctor has a Jersey RO allocated, but only practises for two days each year in the island and has a distant validation date?
- What is Guernsey doing?
- Is ROs, RO circular – i.e. they will have a UK prescribed connection to be revalidated?
- With the intended electronic verification process – if this goes missing somewhere in the system, e.g. server goes down, will the doctor's name be removed?
- How much is the registration going to cost H&SSD

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- Do locum doctors only here for a few days still need to pay £150?
- Do we need this? Can't Jersey go it alone?

**APPENDIX 2**

**Written Submissions: Medical Practitioners (Registration) (Jersey) Law 1960**

1. In general this looks fine. My initial comments are :-
  - (a) Have we dropped the previously mooted oppressive nonsense (as afflicts our Nursing colleagues) of annual re-registration for Doctors?
  - (b) The draft Law refers to providing a local registration number by an Applicant. I have no known "local registration number". Is this a potential Catch 22 story, where an applicant cannot apply for the very registration number that she/he lacks?
  - (c) Why does the draft Law use the term "sex" rather than gender?
  - (d) Why would we make it a requirement to register gender for each Doctor?
  - (e) If we persist with registering gender, then the Law ought to contain a mechanism for registering a change of gender.
  
2. How does this change in legislation affect how we may employ a locus from the UK to come and work for a short terms basis and (eg to cover illness) and what steps must we take when employing said locum

**JERSEY PRIMARY CARE BODY LIMITED'S  
RESPONSE TO CONSULTATION**

- **Draft Medical Practitioners (Registration) (General Provisions) (Jersey) Order 201-**
- **Draft Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 201-**

***Introduction***

1. Jersey Primary Care Body Limited ("**JPCBL**") is an incorporated body which represents the interests of General Practice in the island
2. There are at present approximately 90 GPs in the Island serving a population of some 95,000 people throughout several practices. It is the view of JPCBL that those GPs provide a good level of Primary Care and have done so for many years. Competition is present in the market as GP practices are essentially private businesses and the public are free to choose doctors based on amongst other things, the quality and effectiveness of the service provided. Competition is also a partial safeguard in relation to quality.
3. This Response to Consultation by the JPCBL represents the collective response of GPs in the island to the draft:-
  - (i) Medical Practitioners (Registration) (General Provisions) (Jersey) Order 201- (**the "General Provisions Order"**); and
  - (ii) Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 201- (**the "Responsible Officers Order"**)together **the "Proposed Legislation"**).
4. Provided separately with this Response is a copy of JPCBL's response to Consultation on the draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- (**the "Performers List Regulations"**). It is the view of JPCBL that the Proposed Legislation and the Performers List Regulations are inextricably linked and consideration of one necessarily involves

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consideration of the other. The two Responses should therefore be read in conjunction with one another.

**Statement of Position**

5. The framework to be implemented by the Proposed Legislation is broadly welcomed by GPs. In principle, that framework provides a robust, transparent and externally recognised regime which will ensure ongoing quality of care and patient safety through the revalidation process, maintain standards and facilitate the recruitment of GPs from outside the island, thereby allowing the provision of GP services within the island over the medium to long term.
6. However, JPCBL considers that:
  - (i) the Proposed Legislation should be, insofar as is possible "future-proof", so as to provide certainty and consistency for patients and GPs. It is for this reason that a robust policy and clear structured practical guidance on how the Proposed Legislation is to be implemented, managed and applied in practice is invited. Such policy and guidance is crucial<sup>1</sup>;
  - (i) the system should be fair<sup>2</sup> and must also strike a reasonable balance between patient safety and a practitioner's right to confidentiality<sup>3</sup>;
  - (ii) the system should not become too costly or burdensome for GPs<sup>4</sup>; and
  - (ii) it should not unfairly discriminate against groups or individuals<sup>5</sup>.
7. Against the background of JPCBL's general support for the Proposed Legislation, JPCBL has identified certain issues which it wishes to raise as part of this Response to Consultation. Those issues have been categorised as follows:-
  - (i) Structural; and
  - (ii) Key Provisions.

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<sup>1</sup> See paragraph 59.

<sup>2</sup> See for example paragraphs 11, 12, 48, 53.

<sup>3</sup> See paragraph 20.

<sup>4</sup> See paragraphs 22-25.

<sup>5</sup> See paragraph 11, 12, 35.

**Structural**

- (i) *Discriminating against GPs qualified outside the UK*
8. We note in the Consultation document, the express reference to the scheme being a *"secondary registration scheme...as long as a practitioner is authorised to practise in the UK, the practitioner is authorised to practise in Jersey, upon the same terms and under the same conditions applied to the GMC...registration"*<sup>6</sup>.
9. There is likely to be a significant increase in demand for health and social care services, with an increase in demand of 95% in the over 65 population predicted between 2010 and 2040, 35% of which is predicted over the next six years<sup>7</sup>.
10. The Proposed Legislation should not inadvertently limit the scope for expansion in the provision of GP services (and services generally) by discriminating against GPs qualified to practice in jurisdictions other than the UK.
11. There does not appear to be in any provision within the Proposed Legislation for the registration of GPs appropriately qualified in EU/EEA and non EU/EEA jurisdictions. The framework appears to require a GP to be registered in the UK before they can register in Jersey<sup>8</sup>. Such a restriction may limit the ability of GPs and/or their practices and/or the States to expand health services in the island sufficiently to meet the predicted increase in demand for GP and other health care services.
12. There should be provision for the recognition of GPs qualified and licensed to practice in other jurisdictions. We do not necessarily wish to open up the island to all-comers but we think that it may be unnecessarily prescriptive to require a doctor qualified in for example an EU/ EEA jurisdiction to have to register first in the UK in order to practise in Jersey. We seek clarification in the policy document as to how exactly non-UK GP qualified GPs will be accepted.
13. JPCBL notes that similar issues have arisen in relation to for example, qualifications for Jersey Advocates resulting in the implementation of piecemeal amendments (i.e. practitioner by practitioner) and insofar as may be possible, it should be avoided in relation to the Proposed Legislation.

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<sup>6</sup> Page 2 of the Consultation Document

<sup>7</sup> States of Jersey, Health and Social Services P82/2012: A New Way Forward, 11 September 2012

<sup>8</sup> Article 5 of the General Provisions Order

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(ii) *Relevant Roles*

14. The Proposed Legislation provides for significant amounts of information to be provided to the Minister for Health & Social Services (**the "Minister"**).
15. In our view, there should be a clear division of responsibility between the Minister (who should be responsible for the establishment and proper functioning of the scheme) and the Responsible Officer (who should be responsible for the administration of the scheme). Such a distinction would inform the operation of the scheme, avoid duplication and allow transparent governance. It is the structure adopted in for example, the Competition (Jersey) Law 2005 (between the Minister and the Authority) and the Telecommunications (Jersey) Law 2002. The proposed scheme blurs that distinction in that information must be provided to the Minister<sup>9</sup> (in an operational capacity) who then passes it on to the Responsible Officer (also in an operational capacity). This does not further transparency or accountability.
16. We think that the structure should involve:
  - (i) The Minister – responsible for the establishment and proper functioning of the scheme;
  - (ii) The Responsible Officer - responsible for the administration of the scheme;
  - (iii) A Decision Making Panel – responsible for decisions in relation to practitioners (and body to whom the Responsible Officer would make referrals) comprising local and external persons;
  - (iv) An Appeal Panel – which would sit in relation to appeals from the Decision Making Panel; and
  - (v) The Royal Court – which would provide an ultimate appeal tribunal.
17. This is a structure which is reflected in other legislation (the Law Society of Jersey Law; administrative appeal provisions in a variety of statutes; the decision making process adopted by the Jersey Financial Services Commission).
18. Under such a structure, the Minister would require more limited information.

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<sup>9</sup> Article 6(3) of the General Provisions Order

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19. As matters currently stand not only is there confusion between the roles of the Minister and the Responsible Officer but the Responsible Officer appears to have both an administrative and a decision making role which is inappropriate.

(iii) *Provision of Information to the Minister*

20. Insofar as the current structure is concerned, the Minister has responsibility for maintaining the register, JPCBL accepts the need for the Minister to be kept informed in respect of the mandatory conditions of registration provided for under the General Provisions Order. However JPCBL queries whether it is necessary or appropriate for the Responsible Officer to refer all concerns generally to the Minister to facilitate to performance of his or her functions under the Medical Practitioners (Registration) (Jersey) Law 1960, as amended from time to time (**the "1960 Law"**). Not only would this be administratively cumbersome, it would lead to duplication with the consequent data protection risks and issues. Moreover, it could also lead to a Practitioner becoming involved simultaneously in an investigation both locally and before the GMC. JPCBL is of the view that the Proposed Legislation should balance patient safety with respect for the Practitioner's right to confidentiality. Whilst concerns may legitimately be raised from time to time about a Practitioner, not all concerns are either valid or necessarily affect a Practitioner's registration. There should be a qualification on the material provided to the Minister.

21. JPCBL considers that the information shared with the Minister should be limited only to that information which a Practitioner is required to inform the Minister of under the Article 6(3)(c) of the General Provisions Order – mandatory conditions of registration.

(iv) *Retraining*

22. The Responsible Officers Order makes provision for requiring a Practitioner to undergo training or retraining to address concerns where appropriate<sup>10</sup>. The obligation is on the Responsible Officer to "*ensure*" that appropriate measures are taken and accordingly it is JPCBL's position that the Responsible Officer should meet the costs of those appropriate measures and the costs incurred by the practitioner in complying with those appropriate measures.

23. The Proposed Legislation is wholly silent on how or where such training and/or retraining for GPs is to be provided and/or supported and/or how GPs are to be supported through that process. Support should be provided locally where possible.

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<sup>10</sup> Schedule 3, Article 3(4)(h)(i) of the Responsible Officers Order



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Absent an identified and funded route for training or retraining and support in the same regard, it would be premature to implement the Proposed Legislation.

24. JPCBL is willing to engage constructively with the States in this regard and is currently investigating with the Wessex Local Medical Committee (with whom it is affiliated) the scope for establishing a recognised/accredited retraining programme for local GPs through The Wessex Deanary. As a basic principal, consideration should always be given first to establishing a local training package with local resources.
25. JPCBL's position is that funding for such training should be provided by the States and that States should support and fund GPs through it. However, there may be exceptions to this. There are also alternatives to direct funding (such as insurance) which should be considered.

(v) *Register*

26. There are no removal provisions in the Proposed Legislation. Once on the register it appears that a practitioner will always remain on the register. Conceptually, that cannot be right. There is a mechanism envisaged for removal in the Performers List Regulations. There needs to be a similar such mechanism in the Proposed Legislation.

**Key Provisions:      *General Provisions Order***

*Article 1*

27. No comments.

*Articles 2 to 3*

28. As noted in our response to the Performers List Regulations, the linking of the Performers List to the Health Insurance fund is wholly inappropriate. There should be a single register of medical practitioners and that register should identify whether a GP is or is not a performer.

*Article 4*

29. No comment.

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*Article 5*

30. See above in relation to discrimination against non-UK qualified doctors.

*Article 6*

31. See above in relation to the extent of notifications to the Minister. Notifications under Article 6(3) should be to the Responsible Officer and there should then be a separate gateway for onward notification from the Responsible Officer to the Minister for certain limited purposes and/or classes of information.
32. Article 6(3)(e) does not contain any *de minimis* provision. JPCBL is of the view that there should be some limitation on this provision namely to those offences which affect and/or may be considered to have a bearing on a practitioner's fitness to practice and right to hold a licence to practice. We note that the Performers List Regulations<sup>11</sup> are clearer as to the offences notifiable to the Primary Care Governance Team. The Proposed Legislation should mirror the clarity of the Performers List Regulations in this regard.
33. JPCBL considers that under Article 6(4) the timeframe for notifying any change in the information originally provided upon application for registration should be amended to 60 days.

*Article 7*

34. We think that this responsibility should lie with the Responsible Officer as part of their administrative role rather than the Minister.

*Article 8*

35. Restructuring the scheme would allow for all relevant information to be in the possession of the Responsible Officer without the need for onward transmission from the Minister.

*Article 9*

36. There is an inconsistency between Article 9(1) (i.e. all medical practitioners shall be registered) and 9(2) (providing that practitioners over the age of (say) 77 years need to notify the Minister before commencement that they wish to remain registered).

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<sup>11</sup> Schedule 2, Article 1(2).

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There should be a simple, single regime for all GPs irrespective of age. We appreciate the issue about the ever-increasing list maintained under the 1960 Law and we think that it would be preferable for that list to be purged (by application or otherwise) before being rolled over into the new scheme.

37. We repeat our comments about the involvement of the Minister under this Article.

*Article 10*

38. No comment.

*Schedule: Article 1(6)(d) and 1(7)(c) – Details of any offence*

39. These Articles provide for a practitioner to provide details of any offence of which the applicant has been (or may be) convicted in Jersey, or elsewhere, if the crime would be an offence in Jersey. JPCBL notes that there does not appear to be any *de minimis* requirement as regards the notification of offences.

**Key Provisions: Responsible Officers Order**

*Articles 1 to 11*

40. No comments.

*Schedules 1, 2, 4 and 5*

41. JPCBL makes no comments on these Schedules which are not directly relevant to GPs.

*Schedule 3*

*Article 2(2)*

42. As set out above, we are of the view that the structure proposed is inappropriate and the relevant responsibilities of those involved, insufficiently defined.

43. We think that the Responsible Officer should have the following options available under Article 2(2)(c):

- (i) referral to a Decision Making Panel; or

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- (ii) referral to the GMC (in circumstances of particular severity which should be identified in published guidance).
44. The power to make recommendations under Article 2(2)(e) should be reserved to the Decision Making Panel (a recommendation will inevitably have consequences whether in terms of expense, inconvenience or ability to practise and should therefore only be available following a prescribed process). In the event that the Responsible Officer has concerns and certain criteria are met, the practitioner could be referred to the GMC and it would then be a matter for the GMC to take such steps as it thought fit in accordance with its established processes.
45. On the basis of the scheme as currently drafted, we do not think it necessary or appropriate to refer all concerns to the Minister in order that he might discharge his functions under the Law. JPCBL proposes that this provision be deleted or otherwise qualified to clarify what type of concerns should be referred to the Minister.

*Article 3(3)(a)*

46. The phrase "*general performance information...held by an administration of the States*" should be clarified so as to ensure that patients and practitioners are clear as to the data that is held and mined. Social security information is in general subject to strict obligations of confidentiality and should not be accessed without a clear statutory route.

*Article 3(4)*

47. The sub-paragraphs (a) and (b) appear in the incorrect order.
48. There should be a sliding scale of intervention and this should be allocated between the Responsible Officer and the Decision Making Panel. For example, initiating investigations may be an appropriate action for the Responsible Officer whereas deciding how it should be addressed or requiring retraining should be a matter for the Decision Making Panel.
49. Please clarify what is meant by appropriately qualified investigators in Article 3(4)(a) and whether those investigators should be local or external. JPCBL considers that guidance needs to be produced providing clarity on who might constitute an appropriately qualified investigator in a given situation.

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50. JPCBL proposes that Article 3(4)(b) be amended as follows with the insertion of the words underlined:

*"ensure that concerns raised by any person regarding a performer are notified to the performer and addressed within 60 days".*

51. In relation to Article 3(4)(h)(i), please see JPCBL's observations at paragraphs 22 to 25 above.

*Article 4*

52. JPCBL notes that there is no provision under Article 4 for having regard to any guidance that may be produced locally. Such a provision should be included for clarity and such guidance should also be provided to reflect local market conditions.

*Schedule 6 – Inspection and Information Sharing:*

53. Article 2 provides an unfettered right of inspection alone. This is unusual (equivalent to a "dawn raid" power often found in regulatory statutes). The more usual quiver of investigatory powers includes for example, power to serve production notices, obtain evidence and other material, enter onto premises, inspect, interrogate or seize computer equipment (see for example, the Financial Services (Jersey) Law 1998. Such powers provide flexibility and can have inherent safeguards (for example, powers under the Investigation of Fraud (Jersey) Law 1991 require the Attorney General to consider and certify certain matters before the powers can be used). A similar scheme should be implemented in relation to this Schedule.
54. JPCBL is of the opinion that the powers of inspection and information sharing are too broad and that provision needs to be made for certain powers to be invoked only with the prior approval of a Decision Making Panel and/or alternatively restructured along the lines proposed hereunder.
55. Before invoking the power to enter at all reasonable (Article 2(5)) provision needs to be made for a period of time within which voluntary disclosure can be made e.g:-
- "...to provide to the Responsible Officer within such period as may reasonably be required in writing by the Responsible Officer, any information which the Responsible Officer may reasonably require for the purpose of performing his or her functions under this part;*

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*..the matters with respect to which the Responsible Officer may require information include \*\*;*

*...where a practitioner fails to comply with a request under this section within \*\* days, the Responsible Officer may [with the prior approval of the PLDP] [upon the giving of \* hours notice] enter at all reasonable times....".*

56. There should be greater clarification given or safeguards imposed in relation to the seizure of confidential and/or sensitive personal data concerning third parties. There is a typographical error in Article 2(6) ("date" should read "data").
57. Article 3(1) seems to allow wider disclosure that may have been intended in that material obtain by an inspector at the direction of "a responsible officer" (i.e. Responsible Officer A) must be passed to "a responsible officer" (which could be an entirely different Responsible Officer to that who directed the inspection).
58. Provision needs to be made under Schedule 6 which restricts the onward disclosure of any information obtained under this part and it may be that the restricted information provisions of the Financial Services (Jersey) Law 1998 would provide an appropriate model.

*Other Comments/Observations*

59. JPCBL has not seen any draft policy concerning implementation of the Proposed Legislation. A robust policy together with clear structured practical guidance on how the Proposed Legislation is to be implemented, managed and applied in practice is invited. Such policy and guidance can be referred to as an information resource where appropriate where doubts may arise as to the proposed manner in which it is intended the Proposed Legislation will apply in practice.

For any queries in respect of this Response, please contact \*\*.

Dated this \*\* day of February 2014.

**Written Submissions: Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations**

1. Health Insurance Performers List, the Medical Director seems to have been given authority over and above the GMC in that he (or she) can extend a suspension for 6 months once it has been resolved by the GMC: "after that decision is made, the Medical Director may decide that the performer shall remain suspended for an additional period, provided that the aggregate of the initial period of suspension and the additional period is not more than 6 months." (page 29 - 26 paragraph 3)

Furthermore he can remove practitioners from the Register rather than suspend them (page 30-31, Item 30) under specified conditions without reference to the GMC or other regulatory body - some with good cause but also if they are considered unsuitable - "The Medical Director may remove a performer from the performers list if the performer is unsuitable to be included in the list (an "unsuitability case")." I feel that this should be suspension pending onward referral to GMC and not removal.

Furthermore, whilst I understand that we are private practitioners in a public system with public regulation and part-funding through the Health Insurance law, I have not seen reference (although it may be hidden in part of the document which I have waded through) to financial recompense for loss of earnings or a mechanism for recovering loss of earnings should concerns be unproven. Whilst insurance is available for practitioners in this regard and larger practices may choose to accept this risk, I feel that some form of protection should be provided by the local regulatory authority. There could be a financial disincentive for practices to report concerns if this is not addressed. Suspension should be a neutral act (not just financially but also for professional credibility) for both the doctor involved, their practice and the governing body. Social Security should also arrange some sort of insurance policy so that they are not disincentivised to take appropriate action because of fear of litigation should concerns be unproven.

I'd be grateful, if it could be clarified as to how UK locums could be granted a temporary licence to practice in the Island as GPs and also how we are able to take GP Registrars (as I have been asked to in the past) in Primary Care as it is not always under contract from Health and Social Security as specified in the Medical Practitioners document.

2. Is the investigation of fraud referred straight to the GMC?
3. Do the European rule and practices apply to us? Can GPs from Jersey working in the EU like the UK GPs? In regard to complaints, some complaints the GP involved doesn't know about from an insurance perspective we need to know so they will cover us. What happens to paying through suspension? Do the PCB have an insurance policy?
4. For our own protection we should know when a complaint is received. How many remediation cases do you have?
5. For our own protection we should know when a complaint is received. How many remediation cases do you have?
6. Clause 18 discrepancy in whistle blowing policy, Need for remediation who pays? If you are suspended paid for the time you're off do you need to repay?

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7. Are you able to access to the HSS fund when retired however working continuing practice in some form eg specialist? Locums who are in the island for more than 4 week do they need a licence? And if they were to work 4 weeks then leave the island for a few days then come back how would it work?
8. Does your name have to be renewed every year on the Performers list?
9. Are you automatically placed on the Performers List or are there forms to fill out?
10. Please could you let us have the proposed 'cut off' date for responses to the Proposed legislation for Doctors in Jersey.

Also, how will changes we wish to see be incorporated into these orders?-  
When will we be able to view the amended changes and comment on these?  
When are draft orders to be debated in the States?



**JERSEY PRIMARY CARE BODY LIMITED'S**

**RESPONSE TO CONSULTATION**

- **Draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201-**
- **Draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- Implementation Policy**

***Introduction***

2. Jersey Primary Care Body Limited ("**JPCBL**") is an incorporated body which represents the interests of General Practice in the island.
3. There are at approximately 90 GPs in the Island serving a population of some 95,000 people through different sized practices. It is the view of JPCBL that those GPs provide a good level of Primary Care and have done so for many years. Competition is present in the market as GP practices are essentially private businesses and the public are free to choose doctors based on amongst other things, the quality and effectiveness of the service provided. Competition is also a partial safeguard in relation to quality.
4. This Response to Consultation by the JPCBL represents the collective response of GPs in the island to the draft Health Insurance (Performers List for General Practitioners) (Jersey) Regulations 201- (**the "Performers List Regulations"**).
5. Provided separately with this Response is JPCBL's response to Consultation on the draft Medical Practitioners (Registration) (General Provisions) (Jersey) Order 201- (**the "General Provisions Order"**) and the Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 201- (**the "Responsible Officers Order"**) (**the "Medical Practitioners Orders"**). It is the view of JPCBL that the Medical Practitioners Orders and the Performers List Regulations are inextricably linked and consideration of one necessarily involves consideration of the other. The two Responses should therefore be read in conjunction with one another.

***Statement of Position***

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6. The framework to be implemented by the Performers List Regulations are broadly welcomed by GPs. In principle, that framework provides a robust, transparent and externally recognised regime which will ensure ongoing quality of care and patient safety through the revalidation process, maintain standards and facilitate the recruitment of GPs from outside the island, thereby allowing the provision of GP services within the island over the medium to long term.
7. However, JPCBL considers that:
- (i) The Performers List Regulations should be, insofar as is possible *"future-proof"*, so as to provide certainty and consistency for patients and GPs. It is for this reason that a robust policy and clear structured practical guidance on how the proposed Regulations are to be implemented, managed and applied in practice is invited. Such policy and guidance is crucial<sup>12</sup>;
  - (ii) the system should be fair<sup>13</sup> and must also strike a reasonable balance between patient safety and a practitioner's right to confidentiality<sup>14</sup>;and
  - (iii) it should not unfairly discriminate against groups or individuals<sup>15</sup>.
8. Against the background of JPCBL's general support for the Performers List Regulations, JPCBL has identified certain issues which it wishes to raise as part of this Response to Consultation. Those issues have been categorised as follows:-
- (i) Structural; and
  - (ii) Key Provisions.
9. The Response concludes with some general observations in respect of the Draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- Implementation Policy (**the "Implementation Policy"**).

**Structural**

- (i) *The linking of the Performers List to Health Insurance*

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<sup>12</sup> See paragraphs 67-70.

<sup>13</sup> See for example paragraphs 17, 18, 22, 33, 34, 36, 40-46, 51.

<sup>14</sup> See paragraph 64.

<sup>15</sup> See paragraphs 21-22, 51.

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10. In our view the linking of the Performers List to the Health Insurance fund is wholly inappropriate. The Performer's List is not a way to protect the Health Insurance fund and public finances .
11. Simply put, if a GP is qualified to practice in England and wishes to come to the island to practise as a GP, they should be entitled to come and should be entitled to practise (as for example a performer or an independent practitioner). However, in order to ensure amongst other things, patient safety, the incoming GP should be on the Performers List (and thereby entitled to practise as a GP).
12. Whether they should be entitled to access the Health Insurance fund is however an entirely different question and should be addressed separately by way of separate legislation and separate criteria. Such an approach would give the States an ability to control the number of GPs accessing the Health Insurance fund without depriving a GP of his or her livelihood by removing them from the Performers List.
13. This elision of Performers List and Health Insurance creates conceptual confusion. For example, the functions under the Performers List Regulations are discharged by the Medical Director. Regulation 2(2) of the Performers List Regulations provides that the Responsible Officer is the Medical Director. In our view:
  - (i) the Responsible Officer should be responsible for the Performers List (i.e. entitlement to practise, concerns etc);
  - (ii) the Medical Director should be a functionary of the Health Insurance fund and should be responsible for allowing Performers to access the fund. The Medical Director should operate a separate list dealing with Performers' entitlement to claim under the Health Insurance fund.
14. As currently drafted there is patent duplication (for example the Performers List maintained under Regulation 3 of the Performers List Regulations appears to be identical to that maintained under the General Provisions Order) for no tangible benefit.
15. Absent clarity as to the mischief which the Performers List Regulations are designed to remedy (i.e. is it patient standards or protection of the Health Insurance fund?) it is impossible to provide anything other than generic comments.

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16. We assume that the focus of the Performers List Regulations is patient standards. If this be correct, then it should be implemented under the 1960 Law rather than the 1947 Law and it should contain no references to Health Insurance.

17. We reserve the right to provide more detailed comments once the purpose of the proposed legislation has been clarified.

*(ii) Decision Making*

18. There needs to be a balancing and sharing of responsibility in the decision making process to ensure fairness and equality for all practitioners. The proposed Regulations place too much responsibility in the hands of one person - the Medical Director.

19. We think that the structure for performers should be one under the General Provisions Order and involve:

(i) The Minister – responsible for the establishment and proper functioning of the scheme;

(ii) The Responsible Officer - responsible for the administration of the scheme;

(iii) A Decision Making Panel – responsible for decisions in relation to practitioners (and body to whom the Responsible Officer would make referrals) comprising local and external persons;

(iv) An Appeal Panel – which would sit in relation to appeals from the Decision Making Panel (in effect, the performers List Appeals Panel<sup>16</sup>); and

(v) The Royal Court – which would provide an ultimate appeal tribunal.

20. This is a structure which is reflected in other legislation (the Law Society of Jersey Law; administrative appeal provisions in a variety of statutes; the decision making process adopted by the Jersey Financial Services Commission).

*(iii) Regulations in England*

21. We have not in the time available carried out a line by line comparison of the proposed Jersey legislation with that implemented in England. As a matter of principle, we would however expect the proposed Jersey legislation to follow

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<sup>16</sup> See Regulation 39

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established English models save to the extent that local laws or circumstances prohibit this.

(iv) *Other practitioners*

22. The NHS (Performers Lists) Regulations 2004 in the UK cover medical, dental and ophthalmic practitioners.
23. In order to prevent unfair discrimination, a Performers List should be introduced for dental and ophthalmic practitioners in Jersey. If there are no such plans extant it would tend to suggest that the proposed legislation is more about controlling expenditure under the Health Insurance fund than maintaining standards and ensuing patient safety.

**Key Provisions**

*Regulations 1 to 3*

24. See above.

*Regulations 4 to 11*

25. These could and should be addressed under the General Provisions Order and were this to occur, Regulations 4(b) and 6(b) would be unnecessary.
26. Guidance needs to be given as regards what other "*information or documents*" might reasonably be required by a determining officer under Regulation 5(5) when a practitioner applies for inclusion in the list.
27. Regulation 7(2)(b) requires an objective standard to be imposed. Can we understand what that standard is likely to be
28. It is wholly inappropriate to use the Regulations to preserve the Health Insurance Fund or public finances. Regulations 7(1)(d) and 10(2)(b) should be deleted.

*Regulation 12*

29. No comment.

*Regulations 13 to 16*

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30. Regulation 13(2) is imprecise and there is no definition of a "*substantive issue*" (and all issues are "*substantive*" to someone). Consideration should be given to wording used in other regulatory statutes (for example, the Medical Director/ Responsible Officer should assess whether the complaint is frivolous or vexatious).
31. The Performer should be notified of all complaints (as the fact of the complaint may require the Performer to take special measures in relation to any continued contact with the complainant) and should be given an opportunity at that preliminary stage to make representations.
32. Regulation 13(2)(c) concerns the Health Insurance fund (given the reference to the Minister for Social Security) and should be deleted.

*Regulation 17*

33. This duplicates in part (and unsatisfactorily) Schedule 6 to the Responsible Officers Order.
34. Regulation 17(1)(a) provides for the referral of concerns to an inspector by the Medical Director but no direction is given as to the timeframe within which that referral should be made. JPCBL suggests that the referral of concerns under this provision should be done within seven working days.
35. Regulation 17(2) provides for the investigation of the facts to which the concern relates and for the investigator to report his or her findings to the Medical Director. JPCBL suggests that a timeframe be specified for completing the investigation and also for the period of time thereafter in which the investigator has to report to the Medical Director. Any report should be in writing.

*Regulation 18*

36. See above in relation to decision making.
37. Regulation 18 concerns the timeframe within which the Medical Director is to make a decision following receipt of a report under Regulation 17. Provision needs to be made for the timeframe within which such a decision should be made so as to ensure the process remains fair and is completed within a reasonable period of time, thereby limiting the impact or potential impact on the practitioner concerned.

*Regulations 19 and 20*

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38. Regulation 19(1) concerns the Health Insurance fund (given the reference to the Minister for Social Security) and should be deleted.
39. See above in relation to decision making.

*Regulations 21 to 26*

40. See above in relation to decision making.
41. JPCBL is concerned that any extension of a suspension under Regulation 26(7) beyond the six month period otherwise provided for under the Regulations must only be permitted in exceptional cases. Consideration needs to be given to what might constitute an exceptional case with a longstop date provided for beyond which a performer must either be removed or re-included in the list, with or without conditions.

*Regulation 27*

42. Suspension should be a neutral act preserving the reputation, employment and standing of a Performer. It is patently not; a suspended GP cannot practise and cannot earn a living. Detailed regulations and provisions are required to ensure that it is a neutral act.
43. JPCBL has sought a meeting with the Chief Executive of Health and Social Services and the Chief Executive of Employment and Social Security to discuss the issues related to the suspension of a practitioner. In the proposed Regulations, suspension is not the neutral act that it should be. There is no provision within the proposed Regulations for pay during suspension. In the UK, a practitioner has the choice to practice in a system where they are protected by a mechanism which provides for pay during a period of suspension. Although some in the UK choose to operate as totally independent practitioners, Jersey General Practice does not offer that choice.
44. In England, the Department of Health has made it clear that suspension should be a neutral act rather than a punitive one. Suspension without pay has a much more substantial impact on a practitioner and is a less neutral act.
45. Suspension must protect patients by taking the risk out of the system. However, the act of suspension itself must be fair and not damage the practitioner. Whilst the impact on the States of Jersey is small in the case of an act of suspension, the impact on the individual may be significant both in terms of potential reputational

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damage and financial loss. JPCBL is anxious that the implications of pay on suspensions are properly considered:

- (i) suspensions without pay, pending investigation, could inadvertently increase the threshold for raising concerns and/or the threshold for invoking a suspension far higher than the public might otherwise reasonably expect.
- (ii) Alternatively, if there is a provision for suspensions to be paid, there is a financial incentive for the investigations to be carried out expeditiously and the overall impact on the practitioner may be less.

46. JPCBL is wholly supportive of a system of governance that protects our patients. By becoming a part of that system and accepting that suspension is necessary in certain situations, JPCBL requests that the proposed Regulations are brought in line with the UK and that practitioners are provided with an appropriate level of protection from the impact suspension without pay, both during the initial period of suspension and any extended period of suspension will otherwise inevitably have.

47. The Draft Health Insurance (Medical Benefits) (Amendment No 3) (Jersey) Regulations 201- sets out provision for payment to a practice during the initial investigation of a suspension over a period of four weeks. Although a welcome start, this is insufficient.

*Regulations 28 to 29*

48. No comment save that the reference in Regulation 29(2) to Regulation 41 should be to Regulation 42.

*Regulations 30 to 34*

49. See above in relation to decision making.

50. A performer should not be susceptible to being removed from the list on the grounds of productivity (indeed, in England, the Performers List and practitioner's contracts for the provision of medical services, are wholly distinct). This may be a ground for removing a practitioner's entitlement to access the Health Insurance fund but should not be a reason for refusing them permission to practise as a GP.

51. Regulations 31(2)(d), 32(2)(d), and 33(2)(d) all concern the Health Insurance fund and should be deleted.



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52. In its current form, Regulation 30(5) provide the Medical Director with the discretion to remove a performer from the list if the performer cannot demonstrate that he or she has provided medical services in Jersey in during the preceding twelve months or the if the performer has been on the list for less than twelve months, during the period commencing with his or her inclusion on the list. JPCBL considers this minimum service requirement to be a complex issue which risks discriminating against part time practitioners and practitioners who have take leave because of ill health by way of example. Additionally, the proposals may impact on a practitioner's maternity rights/leave that might otherwise be agreed with the practitioner's employer. JPCBL is concerned as to how this minimum service requirement will be applied in practice. The system needs to be responsive to individual circumstances and not discriminate against any individual. Regulation 30(5) requires review.
53. Provision also needs to be made for the reinstatement of a practitioner, where appropriate, for example, following a career break. There is currently no such provision in the proposed Regulations.

*Regulation 35*

54. The inherent vacillation in this Regulation is unattractive but possibly unavoidable. As a primary option, it might be preferable to provide for suspension during the currency of any trial and/or appeal and for removal say 6 weeks after conviction if no appeal.

*Part 4*

55. In our view, the process of review, redetermination and appeals is unsatisfactory given the inherent unlikelihood of review or redetermination providing a substantive change to a decision previously reached.
56. We think that a hierarchical appeal structure provides greater independence and more transparency for both Performer and public.
57. In terms of composition of the Decision Making Panel, we suggest that consideration be given to selecting members from a pool of suitably local and external individuals who are trained and updated as appropriate, to include one locally qualified legal member; one locally qualified practitioner authorised to practice general medical practice in Jersey and one qualified practitioner authorised to practice general

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medical practice in England by the General Council with experience of similar decision making issues under the English framework.

58. The Wessex Local Medical Committee, with whom the JPCBL is affiliated, has indicated its willingness to provide suitable practitioners to sit on a Decision Making Panel although JPCBL recognises that there are other organisations who might provide suitably qualified practitioners.

*Regulation 39*

59. Members of the Decision Making Panel and the Performers List Appeals Panel should be appointed through a process overseen by the Jersey Appointments Commission rather than the Minister.

*Regulation 40*

60. The Decision Making Panel and the Performers List Appeals Panel should similar standards, rules and procedures to those applied in England in relation to decision making, appeals and hearings save insofar as those standards rules or procedures do not meet best practise.
61. Given advances in technology and the ease with which we are able to communicate with counterparts via technology, the Decision Making Panel at least could be convened virtually.

*Regulation 42*

62. This provides the route of appeal to the Royal Court. It is overly simplified (is it a review hearing or can new evidence be adduced?) and its powers are circumscribed (there is no power to remit). Regard should be had to for example the Financial Services (Jersey) Law 1998 (providing a right of appeal when the decision is unreasonable) or the Telecommunications (Jersey) Law 2002 providing a general right of appeal and extensive powers to the Court.

*Regulation 43*

63. No comments.

*Regulation 44*

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64. JPCBL has concerns over the extent to which information is to be shared with the Minister for Social Security and the Minister for Health and Social Services.
65. In the interests of striking the balance between achieving the objective the proposed Regulations, namely patient safety, and practitioner's right to confidentiality, the extent to which information is to be shared needs to be qualified.

*Regulations 45 and 46*

66. No comments.

***The Implementation Policy***

67. The Policy provides little if any guidance on how the Regulations are to be implemented. It appears to be a reiteration of what is set out in the draft Regulations and is of limited assistance in understanding how the Regulations will be implemented and applied in practice.
68. JPCBL invites a robust policy and guidance on application of the Regulations in practice and ensuring compliance with the Regulations.
69. The Jersey Financial Services Commission's AML/CFT Handbook by way of example is a useful resource which clearly explains and sets out the requirements of the primary and secondary legislation and provides guidance on compliance with the legislation.
70. JPCBL invites structured practical guidance on how the legislation is to be implemented, managed and applied in practice so that such guidance can be referred to as an information resource where appropriate where doubts may arise as to the proposed manner in which it is intended the Regulations will apply in practice.

For any queries in respect of this Response, please contact \*\*.

Dated this \*\* day of February 2014

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**Response from Bois Bois Solicitors is attached separately.**

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