AIHO
Association of
Independent Healthcare
Organisations

Practising Privileges Principles

Key Principles

November 2016

1. Objective

This document is intended to summarise the key legal and regulatory issues that arise when an independent provider is engaging staff through a practising privileges arrangement. The intention is to prompt and support AIHO member organisations into considering these key issues. AIHO members are encouraged to develop local, organisation specific policies to address the principles in this document.

2. Context – Overview of Practising Privileges

The granting of practising privileges is a well-established process within independent healthcare whereby a medical practitioner is granted permission to work in an independent hospital or clinic, in independent private practice, or within the provision of community services.

Although the definition set out in the legislation refers to practising privileges only applying to medical practitioners, the concept of practising privileges has also been applied to other staff working in an independent hospital / clinic, such as a specialist nurse or therapist. The legislation that refers to medical practitioners is the Health and Social Care Act 2008, Care Standards Act 2000 (Wales) and the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. In Scotland, the relevant regulations also include dentists.

Medical practitioners remain the majority group of professionals that work under practising privileges and therefore this document provides more detail with respect to doctors.

AIHO members should be able to demonstrate that their practising privileges policy and procedures are unambiguous in terms of the:

- Types of health or care professions who can be engaged in this manner
- Scope of the practising privileges with respect to an individual application where other forms of agreement are required e.g. other staff that may work with consultants from time to time.

3. Not covered under Practising Privileges

Where a health or care professional is carrying out activities which are subject to healthcare regulation, but is being undertaken independently of hospital or clinic provider's registration, this activity is not covered by practising privileges. The registered professional should seek advice on separate registration with the system regulator.

- **England:** Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (and as amended in 2015) and guidance from the Care Quality Commission (CQC)
- **Wales:** The Independent Health Care (Wales) Regulations 2011 and guidance from Healthcare Inspectorate Wales (HIW)
- **Scotland:** The Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011 and guidance from Healthcare Improvement Scotland (HIS), and

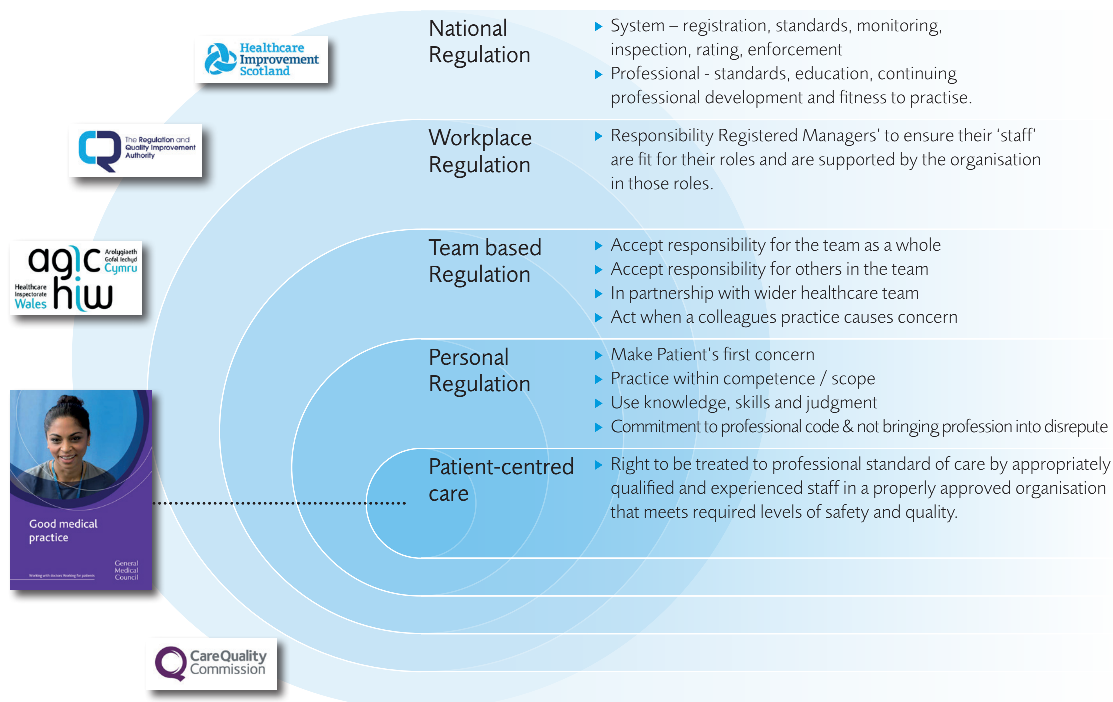
- Northern Ireland: The Independent Health Care Regulations (Northern Ireland) 2005 and guidance from Regulation and Quality Improvement Authority (RQIA for Northern Ireland).

If the boundary of responsibilities is left unclear the 'hosting' organisation could be found to be de facto responsible for activities being carried out on their premises. Examples may include contracts or service level agreements, where the health or care professionals are neither employed with a contract, nor engaged through practising privileges.

AIHO members should be able to demonstrate that:

- Arrangements, not covered under practising privileges, are managed separately and comply with good practice for contract management
- The accountabilities between the parties is set out unambiguously in any 'renting' or 'sub-contract' agreement with other service providers
- There is up to date evidence to show that relevant registrations are in place with the third party
- There is evidence that the contract arrangements are subject to quality and safety performance reviews and that these have been undertaken.

Figure 1: Four layer model of Regulation



4. Good Governance Model for Practising Privileges

Figure 1 shows the four-layer model of regulation first promoted by General Medical Council (GMC) in 2004, which is now used more generally to show the layers of regulation applicable to healthcare professionals and can be used as an evidence-based model for the framework of practising privileges.

The person-centred model underpins the patient/user's right to be treated with a professional standard of care, by appropriately qualified and experienced staff, in properly approved or registered organisation that meets required levels of quality and safety. The four-layer model of regulation starts with the patient/service user at the centre and defines four layers of assurance:

- Personal regulation
- Team-based regulation
- Workplace regulation
- National regulation.

AIHO members should be able to demonstrate that their practising privileges policy and procedures are:

- Developed within the organisational governance framework or quality system and against the context of the requirements of the relevant national 'system', 'professional' or 'other' regulators
- Implemented and managed within the operational governance framework and against the context of good practice human resource policy
- Monitored, reviewed and revised within the professional governance framework and against the context of person-centred safe and effective care.

5. Context – Overview of National 'System' Regulators

Practising Privileges policy and procedures should be developed within the context of relevant regulations and the standards of the system regulator for independent healthcare.

AIHO members should be able to demonstrate the relationship between the scope of the practising privileges policy and the registration documents, such as the 'Statement of Purpose' document, for example:

- What activity or type of service is registered?
- Locations are registered and if appropriate there is a process to grant of practising privileges across more than one location
- The persons accountable for the management of the regulated services within an organisation, the hospital or clinic are stated e.g. Nominated Individual and / or Registered Manager
- The responsibility of other relevant persons, named or referred to, in the policy with respect to the Registered Manager E.g. Medical Advisory Committee (MAC) Chair, Specialty leads are stated.

The system regulators have similar approaches to the meaning of practising privileges in the context of 'staff'. For the purposes of their guidance the granting of practising privileges is considered the same as being employed. It is not intended that practising privileges should have the same interpretation as an employee contract under employment law (including for example with respect to payments for annual leave, sickness absence and maternity / paternity leave). It is intended that those with practising privileges come within the meaning of 'employment' or 'staff' in term of compliance with the relevant regulations and guidance of the appropriate system regulator, for example in terms of consent, record keeping, hand hygiene etc.

AIHO members should be able to demonstrate that their practising privilege policy and procedure documentation clarifies the:

- Meaning of practising privileges in relation to 'employment law' and the use of the term 'staff'
- Requirements for ascertaining if staff are fit for the role and how they are supported in the role e.g. in England, reference to regulations 18 (Staffing) and 19 (Fit and Proper Persons Employed) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- The requirement for all 'staff' to work in accordance with the relevant regulations from the 'system' regulators.

6. Context – Overview of National 'Professional' Regulators

Practising Privileges are usually applied in order to engage medical practitioners who are not employed by the organisation. Engaging registered health and care professionals regulated by one of the regulators overseen by the Professional Standards Authority (PSA) provides a level of assurance to organisations (see section 10 Requirements of Individual Professionals).

The health and care regulators overseen by PSA, including GMC, do four things:

- Set standards of competence and conduct that health and care professionals must meet in order to be registered and practice
- Check the quality of education and training courses to make sure they give students the skills and knowledge to practice safely and competently
- Maintain a register that everyone can search
- Investigate complaints about people on their register and decide if they should be allowed to continue to practice or should be removed from the register - either because of problems with their conduct or their competence.

AIHO members should seek guidance before considering applying the Practising Privileges approach to any person who is not a regulated health or care professional.

AIHO members should be able to demonstrate that their practising privilege policy and procedure documentation:

- Makes reference to the codes of the relevant professional regulator, where professionals other than medical practitioners are engaged
- Includes the processes for on-going checks of the status of registration of the professionals.

Health and care professionals are required to demonstrate that they are up to date and fit to practise in their chosen field and able to provide a good level of care / service.

AIHO members should be able to demonstrate that their practising privilege policy and procedure documentation includes:

- Reference to the relevant professional regulator's standards for continuing fitness to practise, and any requirement for annual appraisal / declarations / submissions
- Where medical practitioners are engaged, the process for Whole Practise Appraisal and defining the Designated Body, and identifying the relevant Responsible Officer for revalidation[1]
- Reference to how the provider will support continuing fitness to practise, for example with nurse revalidation[2]

7. 'Other' Regulation is Relevant to Practising Privileges

The 'system' healthcare regulators have an interest in compliance with the Competition and Markets Authority (CMA) Order[3], for example with respect to improvements in transparency of information on performance and fees that would allow patients to compare services and make informed choices about their treatment. The Order states that it is the operator of a private healthcare facility, who as a condition of permitting a consultant to provide private healthcare services, ensures that the relevant consultant supplies private patients with information in writing.

AIHO members should be able to demonstrate that:

- Practicing privileges policy and procedures are unambiguous with respect to the CMA Order, and the requirement for consultants to comply with the provision of information on performance and fees
- Medical practitioners with practising privileges are informed about the requirements of the CMA Order and any updates.

8. Effective Operation of Practising Privileges in the Hospital

In the four-layer model of regulation, workplace regulation reflects the responsibility Registered Managers' have for ensuring their 'staff' (including those with practising privileges), are fit for their roles and are supported by the organisation in those roles. The accountability remains with the Registered Manager, who can delegate responsibility to appropriate persons or committees.

AIHO members should be able to demonstrate the operation of their practising privilege policy by:

- Leadership and culture reflecting the vision and values of the organisation and promote good quality care
- Clinical leadership operating through the line management structure, for example where Medical Director, Nursing Director have contracts of employment
- Clinical expertise supporting management through expert committees and other roles, for example Medical Advisory Committee (MAC), MAC Chair and Responsible Officer
- Staff having the skills, knowledge and experience to deliver effective care and treatment.

The implementation of policy into practice and monitoring through to effective performance and outcome is often integrated into the wider quality management system (QMS).

AIHO members should be able to demonstrate that the implementation of their practising privilege policy and procedures is consistent with the providers QMS:

- Standards are up-to-date, evidence-based, and set through policy at organisational level (the 'organisation' may be the same as 'local' level in smaller organisations)
- Policy and procedures are implemented at operational level in line with the relevant roles and responsibilities
- Monitoring / measurement of compliance to the policy is undertaken through audit and assurance (or risks) and reported through the quality governance line to the appropriate level
- Performance is continually improved and opportunities to learn lessons are fed back into revisions of the policy and procedure documents.

Historically, practising privileges policy and procedures have been created separately to other recruitment and retention policy, which is managed through human resources (HR). The model proposed in **figure 2** is related to the 'employee lifecycle' principles of HR policy, and is shown as being managed within an overarching governance framework.

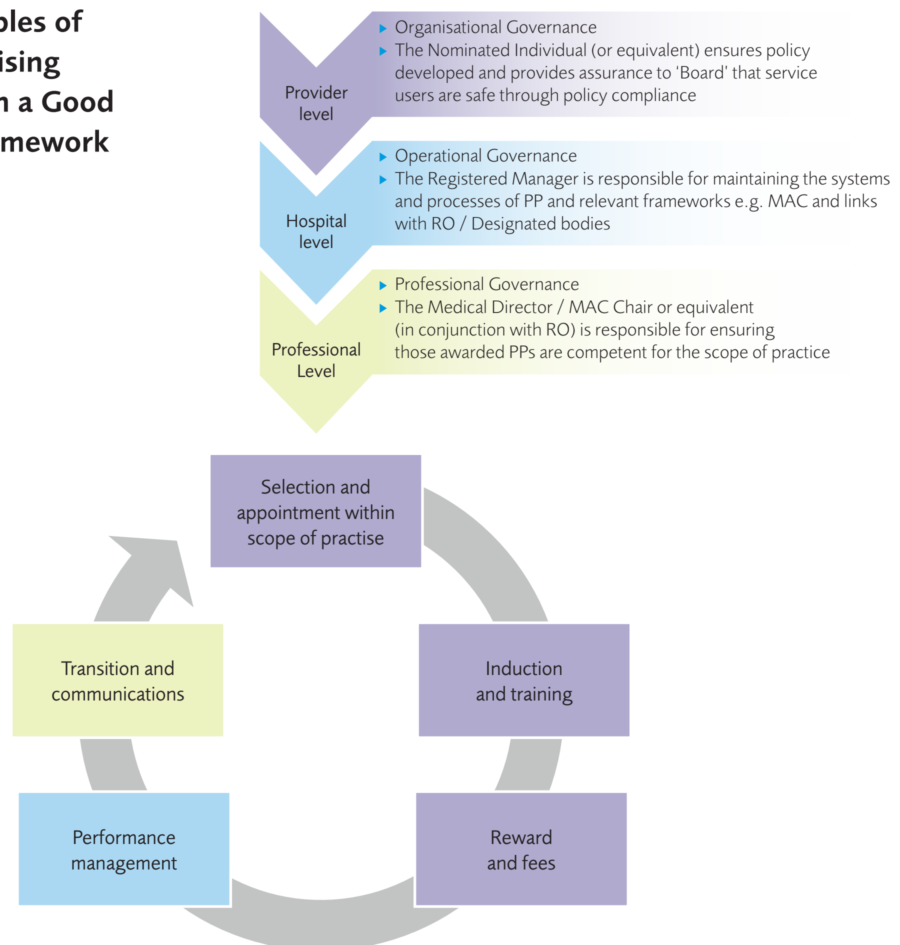
AIHO members should be able to demonstrate that the processes in relation to their practising privileges align with other aspects of staff management, including:

- **Selection and appointment:** The decision to award (or not award) practising privileges should be in writing and based on the eligibility criteria outlined in the policy. There should be an appeals process with defined criteria with input from HR professionals

  Prior to award of a license to practice there should be evidence of the pre-employment checks, relevant to the scope of practice (e.g. children) including, but not limited to; qualifications, professional registration, competence / experience, references, DBS checks, relevant occupational health checks (e.g. exposure prone procedures) and safeguarding training

  A written agreement should be provided outlining a description of the role (including requirements

Figure 2: Principles of Managing Practising Privileges within a Good Governance Framework



on attendance and on-call), the scope of practise, compliance with professional and other regulation (including revalidation and CMA Order), the requirement for compliance with the organisation's policies, and to hold the relevant professional indemnity insurance.

- **Induction and training:** The valid award, and on-going maintenance, of a practice privilege agreement is subject to individual professionals working in accordance with the organisations requirements for mandatory training and complying with local policies and procedures. These include, but are not limited to, health and safety / fire, infection prevention, information governance, consent, introduction of new techniques/ procedures, integrated records management (for outpatients and inpatients), medicines optimisation (including antimicrobial stewardship), medical device management (including personally owned equipment), patient feedback (satisfaction and complaints), adverse incident management, and duty of candour. Organisations may also define the need for attendance at workshops or training sessions related to organisational culture, cognitive, social and personal resource skills.

- **Reward:** Ensuring there is clarity on fees and charges to services users and that there is compliance with the CMA Order on transparency.

- **Performance Management:** Ensuring the number of professionals, areas of work and frequency of attendance of those with practising privileges is known and regularly monitored. Those who practise infrequently should be reviewed with the potential for suspension of practising privileges if they are unable to remain familiar with the provider's policies, procedures, equipment and processes. Ensuring there is an on-going process of reviewing the individual's compliance to all the aspects of the agreement and renewing the agreement prior to expiration. This process includes review of continuing professional development requirements e.g. whole practise appraisal and revalidation. Where there is non-compliance to the agreement, or other performance issue, the procedures to restrict, suspend or withdraw practising privileges should be invoked, with advice sought from the relevant persons e.g. MAC Chair or Responsible Officer. The process for escalated concerns should be documented, including where necessary referral to the professional regulator.

- **Transition and communication:** Ensuring there is an on-going communication during performance review and at other times, as well as feedback to individuals directly and through the MAC and/or specialty leads. Communication regarding changes to, or termination of practising privileges should be handled in a sensitive manner in accordance with good human resource practice.

9. Effective Operation of Practising Privileges within a Team

In the four-layer model of regulation, team-based regulation reflects the role of the team in complying with regulation, standards and guidance, and for taking responsibility to act if a colleague's conduct, performance or health is placing patients at risk.

It is recognised that while team members, including those with practising privileges, may have perfect technical skills to perform procedures, it is often failures in the non-technical skills that contribute to incidents. Non- technical skills such as the cognitive, social and personal resource skills that complement technical skills, contribute to safe and efficient task performance. These include the following areas, with examples, that impact on performance:

- **Situation awareness:** not gathering enough information; overlooking anomalies; not checking mental pictures with others; not recognising increased risks
- **Decision-making:** proceeding with the task rather than checking when uncertain; an over-reliance on assumptions or 'custom and practice'
- **Teamwork:** failures in the team to speak up when policy or procedures are not followed; inadequate exchange of information to ensure a shared understanding of what was to be done
- **Leadership:** not demonstrating procedural compliance; not ensuring the whole team had a shared awareness of the task
- **Coping with stress:** not dealing effectively with work pressures; requiring staff to work faster.

AIHO members should be able to demonstrate that performance within teams is not adversely impacted by the different models of staff engagement, for example through practising privileges, including evidence that:

- There is acceptance of team responsibility in partnership with the wider healthcare team
- There is compliance with national and local policy
- All staff feel able to act when a colleagues practice causes concern
- All staff know how to escalate concerns and are familiar with, and encouraged to use, the local whistleblowing / raising concerns policy.

10. Requirements of Individual Professionals

The four-layer model of regulation states personal regulation determines the way in which professionals regulate themselves based on their commitment to their professional codes. All health and social care professionals must make patients their first concern. Individual professionals are accountable for keeping professional knowledge and skills up to date, and for recognising and working within the limits of competence. Health and social care professionals use their knowledge and skills and are accountable for the judgements that they make. They are also accountable for not bringing their profession into disrepute.

Doctors are personally accountable for their professional practice and must always be prepared to justify their decisions and actions. Doctors are required to ensure that their practice meets the standards expected by the regulator under the following four domains:

- Knowledge, skills and performance
- Safety and quality
- Communication, partnership and team work
- Maintaining trust.

AIHO members should be able to demonstrate that their organisational and operational governance supports individual professionals in their practice, including:

- Emphasising the requirement for individual professionals to practice only within their scope of practice
- Emphasising the requirement for the individual to comply with the professional duty of candour and be open and honest when things go wrong
- Maintaining up-to-date policies and procedures that are accessible to those with practising privileges, for example from home-based office or on a mobile device
- Disseminating guidance and lessons learned using systems, which those with practising privileges can read in a timely manner, for example using smart phones
- Maximising the use of IT based solutions that provide links to support continuing professional development / revalidation.

References:

[1] **Medical Revalidation**
http://www.gmc-uk.org/doctors/revalidation.asp

[2] **Nurse Revalidation**
http://revalidation.nmc.org.uk/information-for-employers

[3] **Private healthcare market investigation**
https://www.gov.uk/cma-cases/private-healthcare-market-investigation

AIHO is the trade association for independent healthcare hospitals across the UK. It provides a voice for the sector to stakeholders, media and government.

AIHO represents over 250 hospitals that provide services to insured, self-pay and NHS funded patients. AIHO members are a wide range of private and charitable providers. Members vary from large hospital groups to smaller, specialist providers of specific surgeries and treatments.

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