A Code of Conduct for Private Practice

Guidance for NHS Medical Staff
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Key Points

- The provision of services for private patients should not prejudice the interest of NHS patients.

- Practitioners should disclose any business or professional interest, including private practice, which may give rise to – or be perceived to give rise to – any conflict of interest.

- Private services should not be scheduled during times at which a practitioner is scheduled to be working in the NHS. Exceptionally they may be undertaken alongside NHS duties with the NHS employer’s express permission.

- Private commitments should not prevent a practitioner from being able to attend a NHS emergency while they are on call for the NHS.

- Practitioners should not initiate discussions about providing private services for NHS patients, while they are working in a NHS capacity.

- Entitlement to use NHS facilities, staff and resources for private purposes is at the discretion of the responsible NHS body.

- Patients who choose to be treated privately are no more or less entitled to NHS services than anyone else, and patients are free to change their status from private to NHS and vice versa.

- Where the Code sets out proposed standards for consultants, adherence to those standards will form part of the criteria for awards under the Clinical Excellence Award (CEA) scheme and for NHS incentive payments.
Purpose of Code

1.1 This document sets standards for NHS medical practitioners (other than general practitioners) about their conduct in relation to private practice. It:

- ensures that clear standards are in place for managing the relationship between NHS work and private practice;
- covers private work both within and outside NHS facilities;
- offers guidance to individual medical practitioners; and

1.2 The provision of private services must not:

- result in detriment of NHS patients or services.
- diminish the public resources that are available for the NHS.

1.3 Where honorary contract holders undertake private practice on NHS premises they should observe NHS standards and should endeavour to conform with these guidelines as a matter of good practice at all times.

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1 In this code, private practice includes commitments in respect of arrangements under para 31 of the terms and conditions (services provided by employing authorities under section 7 of the Health and Medicines Act), where the practitioner has chosen to negotiate fees separately with the third party concerned. However, it does not include such arrangements where a sessional adjustment has been agreed within the practitioner’s NHS contract. Nor do private commitments include the diagnosis or treatment of private patients which forms part of the practitioner’s duties in relation to the services provided by the practitioner’s employing authority under paragraph 30a of the terms and conditions.

2 Although the legislative framework on which the Green Book was based has changed significantly, the principles it sets out about the management of private practice remain valid.
Criteria for Clinical Excellence Awards and NHS Incentive Payments

1.4 Where this code sets out standards of good practice for NHS Consultants, adherence to those standards will form part of the criteria for

- future awards under the Clinical Excellence Awards scheme. Any individual applying for an award, or the renewal of an award, under the CEA scheme will be required to demonstrate compliance with these standards.

- NHS incentive payments for consultants.

1.5 This code should be used at the annual job plan review as the basis for reviewing the relationship between a consultant’s NHS duties and any private practice.
2.1 The following set of key principles underpin the relationship between NHS employees, their NHS employer and private practice:

- The provision of services for private patients should not prejudice the interest of NHS patients or disrupt NHS services.

- There should be no real or perceived conflict of interest between private work and NHS work.

- With the exception of the need to provide emergency care, NHS commitments should take precedence over private work where there is a conflict, or potential conflict, of interests.

- Except in emergencies, practitioners should not provide private patient services that will involve the use of NHS staff or facilities, unless an undertaking to pay for those facilities has been obtained from (or on behalf of) the patient.
3.1 These standards apply to medical practitioners who are NHS employees and who undertake private practice:

- in NHS facilities,
- privately, or
- in independent facilities.

Disclosure of Information about Private Practice

3.2 Practitioners should declare any business or professional interest, including private practice or other non NHS work, which may directly or indirectly give rise to - or may reasonably be perceived to give rise to – any conflict of interest, or which is otherwise relevant to the practitioner’s proper performance of his/her contractual duties. It is recommended that practitioners share details of regular private practice commitments, including the timing, location and broad type of activity, to facilitate effective planning of NHS work and out of hours cover.

3.3 Relevant business or professional interests should be discussed at least annually as part of the job planning process (see “Job Planning” Paragraph 5.5).

3.4 Appraisal guidelines that were introduced from 2001 for NHS consultants, and agreed with the BMA and GMC, require a consultant to be appraised on all aspects of their medical practice, including private practice. In line with the requirements of revalidation a practitioner should submit evidence of private practice to an appraiser. Guidance for appraisal for non-consultant career grade doctors was issued on 24 October 2002 and guidance for appraisal of practitioners’ private practice is expected to follow shortly. It should be noted that for private practice, the appraiser may be different from the NHS appraiser.
Scheduling of Work and Job Planning

3.5 Where there would otherwise be a conflict or potential conflict of interest, NHS commitments should take precedence over private work. Subject to paragraph 3.11 below, medical practitioners should ensure that private commitments do not conflict with NHS activities scheduled as part of the NHS job plan (see also paragraph 3.12, below).

3.6 Effective job planning should minimise the potential for conflicts of interests between different commitments. It is recommended that regular private commitments are noted in a practitioner’s job plan, to ensure that planning is as effective as possible.

3.7 Medical practitioners engaging in private practice are expected to provide emergency treatment for their NHS patients, should the need arise. Circumstances may also arise in which medical practitioners need to provide emergency treatment for private patients during time when they are scheduled to be working for the NHS. Medical practitioners should make alternative arrangements to provide cover where emergency work of this kind regularly impacts on NHS commitments.

3.8 Medical practitioners should ensure that they have arrangements in place, such that there can be no significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late, or to be cancelled. In particular where providing private services is likely to result in the occurrence of emergency work, medical practitioners should ensure that there is sufficient time before the scheduled start of any NHS commitments for such emergency work to be carried out.

3.9 Where there is a proposed change to the scheduling of NHS work, the employer should allow a reasonable period for practitioners to rearrange any private sessions, taking into account any binding commitments entered into (e.g. leases). Three months should normally be considered a reasonable period. Where medical practitioners wish to reschedule private practice sessions to a time that is currently taken up by scheduled NHS work, they should raise the matter with their NHS employers at the earliest opportunity.
Scheduling Private Commitments Whilst On Call

3.10 NHS medical practitioners should never schedule private commitments that would prevent them from being able to attend a NHS emergency while they are on call for the NHS. In particular private surgical commitments should not be undertaken at these times.

3.11 Where practitioners are asked to provide emergency cover for a colleague at short notice, and they have previously arranged private commitments at the same time, they should only agree to do so if those commitments will not prevent them from returning to the relevant NHS site at short notice to attend an emergency. In such a situation, if the practitioner is unable, or unwilling to reschedule the private commitments, the employer should make alternative arrangements for cover.

3.12 Medical practitioners may exceptionally be required to provide emergency care for private patients at a time when they are on call for the NHS. Where medical practitioners find that they are regularly being required to provide emergency care for private patients whilst on call for the NHS, they should reschedule their private commitments to reduce such occurrences.

Provision of Private Services Alongside NHS Duties

3.13 Except with the prior agreement of the NHS employer and subject to paragraph 3.12 above, private commitments should not be scheduled during times at which a practitioner is scheduled to be working for the NHS.

3.14 In some circumstances NHS employers may allow some private practice to be undertaken alongside a medical practitioner’s scheduled NHS duties, provided that they are satisfied that there will be no disruption to NHS services. In these circumstances, the medical practitioner should ensure that any private services are provided with the explicit knowledge and agreement of the employer and that there is no detriment to the quality or timeliness of services for NHS patients. The medical practitioner should, in particular, adhere to the standards set out in Part IV of this Code and the Green Book for managing private patients in NHS facilities.
3.15 Where a patient pays privately for a procedure that takes place at a NHS hospital (or another NHS facility), that procedure should take place at a time that does not impact on normal services for NHS patients. Such procedures should occur only where the patient has given a signed undertaking to pay any charges to the relevant NHS organisation (or an undertaking has been given on the patient’s behalf).

**Patient Enquiries about Private Treatment**

3.16 Where a medical practitioner is in the course of their NHS duties approached by a patient and asked about the provision of private services the practitioner should provide only such standard advice as has been agreed with the NHS employer for such circumstances.

3.17 Medical practitioners should not, in the course of their NHS duties and responsibilities, make arrangements to provide private services, nor should they ask any other NHS staff to make such arrangements on their behalf unless the patient is to be treated as a private patient of the NHS facility concerned.

**Promotion of Private Services by Consultants**

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

3.19 Where a NHS patient seeks information about the availability, or waiting times, for NHS and/or private services, practitioners should ensure that any information provided by them, or provided by other NHS staff on their behalf, is accurate and up-to-date.

**Referral of Private Patients to NHS Lists**

3.20 Patients who choose to be treated privately are entitled to NHS services on exactly the same basis of clinical need as any other patient (see also paragraph 3.25).
3.21 Practitioners may, subject to any local monitoring arrangements or other procedures, refer a private patient to their NHS practice, or to another NHS practitioner. The patient should be accorded no more and no less priority than if the referral had been made by another practitioner and it is the practitioner's responsibility to ensure that the change of status is properly recorded.

**Change of Status**

3.22 Where a patient wishes to change from private to NHS status, the following principles apply:

- A patient cannot be both a private and a NHS patient for the treatment of one condition during a single visit to a NHS organisation.

- Any patient seen privately is entitled to subsequently change his or her status and seek treatment as a NHS patient.

- Any patient changing their status after having been provided with private services should not receive an unfair advantage over other patients.

- Patients referred for a NHS service following a private consultation or private treatment join any NHS waiting list at the same point as if the consultation or treatment were a NHS service. Their priority on the waiting list should be determined by the same criteria applied to other referrals.

- Should a patient be admitted to hospital as a private inpatient, but subsequently decides to change to NHS status before having received treatment, an assessment will be required to determine the patient's priority for NHS care.

- In some circumstances, unless it is clinically inappropriate to do so, it may be necessary to discharge such a patient and then readmit them only at such time as they would normally have been admitted should they have retained NHS status throughout.

3.23 As a matter of principle a patient must never be treated on a different basis to another NHS patient simply because they previously held private status.
Promoting Improved Patient Access to NHS Care

3.24 Subject to clinical considerations, medical practitioners should be expected to contribute as fully as possible to reducing waiting times and improving access and choice for NHS patients. This should include ensuring that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will reduce their waiting time and facilitating the transfer of such patients.

Increasing NHS Capacity

3.25 Medical practitioners should make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff.
4.1 Medical practitioners may only see patients privately within NHS facilities with the explicit agreement of the responsible NHS body. It is for NHS bodies to decide which, if any, of their facilities, staff and equipment may be used in the provision of private patient services, and to what extent. It is also their responsibility to ensure that any such private patient services do not interfere with the organisation’s obligations to NHS patients.

4.2 Medical practitioners who practice privately within NHS facilities must comply with the responsible NHS body’s policies and procedures for private practice. The NHS body should consult with such doctors when adopting or reviewing such policies.

Use of NHS Facilities

4.3 NHS staff may not use NHS facilities for the provision of private services without the agreement of their NHS employer. This applies whether private services are carried out in their own time, in annual or unpaid leave, or – subject to the criteria in paragraph 3.16 - alongside NHS duties.

4.4 Where the employer has agreed that a medical practitioner may use NHS facilities for the provision of private services:

   i) the employer will determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable.

   ii) any charge will be collected by the employer, either from the patient or a relevant third party.

   iii) a charge will take full account of any diagnostic procedures used, the cost of any laboratory staff that have been involved and the cost of any NHS equipment that might have been used.
4.5 Except in emergencies, practitioners should not initiate private patient services which involve the use of NHS staff or facilities unless an undertaking to pay for those facilities has been obtained from (or on behalf of) the patient, in accordance with the NHS body’s procedures.

4.6 Subject to 3.14 above, private patients should normally be seen separately from scheduled NHS patients. Under no circumstances should a practitioner cancel a NHS patient’s appointment to make way for a private patient.

4.7 Further guidance about the use of NHS resources and facilities and the costs that should be employed for the use of NHS resources can be found in the “Green Book”.

Use of NHS Staff

4.8 If NHS staff are asked to assist a medical practitioner in providing private services, or to provide private services on behalf of a medical practitioner, it is the practitioner's responsibility to ensure that other staff are aware that the patient or service user, on whose behalf the service is being provided, has private status.

Identification of Private Patients

4.9 Medical practitioners practising privately within NHS facilities must comply with the NHS body’s policies and procedures for private practice. This includes a personal obligation on any medical practitioner responsible for admitting a private patient (usually a consultant) to NHS facilities to ensure, in accordance with local procedures, that they identify that patient as private and that the responsible manager is aware of that patient’s status.
Summary

1. This Annex supplements the body of the Code of Conduct for Private Practice and provides guidance, designed for individual medical practitioners, for the management of fee-paying activities. These activities are defined in national terms and conditions of service\(^3\).

Principles

2. Under certain circumstances a practitioner may retain fees for the provision of private services. Fees should only be retained if a practitioner provides services for which he or she is not remunerated, as part of their basic salary. Under no circumstances should a medical practitioner be paid twice for the same work.

3. Work undertaken outside a practitioner’s contracted duties should not disrupt scheduled NHS work.

Services for Which a Practitioner May Not Retain Fees

4. A practitioner may not retain fees for work that has been agreed as part of his or her job plan, or work that is reasonably incidental to carrying out contractual duties, as agreed in the job plan. Work that is incidental to contractual duties, but not actually specified in the job plan is classified as category 1 work.

5. In certain cases, as described in paragraph 30 of the Terms and Conditions of Service, a practitioner may agree to provide services to private patients on behalf of a NHS employer as part of his or her job plan. If a sessional adjustment is made, these services will be remunerated as part of the practitioner’s NHS salary and no additional fee should be retained.

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\(^3\) National Health Service Hospital Medical and Dental staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales): Terms and Conditions of Service, September 2002
6. In certain circumstances, as described in paragraph 14 of the Terms and Conditions of Service, a practitioner may agree to take on additional NHS work and receive a temporary increase in his or her NHS salary. Such work should be included in the job plan.

Fee Paying Services

7. Fee paying services do not necessarily fall under the classification of private practice and may not count towards the 10% limit on private practice earnings that applies to consultants and associate specialists on whole-time contracts. Although fee-paying activities do not necessarily fall under the definition of private practice, the same principles, set out in the Code of Conduct on Private Practice, should be applied. Fee paying services should not disrupt scheduled NHS duties.

Category 2 Work

8. Category 2, or fee-paying work, is described in paragraphs 33 – 35 and paragraph 37 of the Terms and Conditions of Service. It is work that is not reasonably incidental to a practitioner’s contractual duties, as described in the job plan, but does not include work classified as private practice. An employing authority shall determine and make charges for the use of its services, accommodation and facilities as described at paragraph 34 of the Terms and Conditions of Service. Category 2 work should be either:

- Carried out in the consultant’s own time or in annual or unpaid leave;
- Carried out with the agreement of the consultant’s employer within time for personal management and development activities and with any fee remitted to the employer; or
- At the discretion of the employer, where the work causes minimal disruption, this work may be undertaken alongside NHS duties, as set out in the job plan, without the employer retaining the fee.
Work Performed on NHS Patients by Separate Arrangement

9. Work performed on NHS patients outside a practitioner’s principal contract of employment, through a separate arrangement with a NHS service provider, is described in paragraph 43 of the Terms and Conditions of Service. This work is sometimes referred to as category 3 work, although this term is not used in the Terms and Conditions of Service. Work of this type comes under the broad classification of private practice and should be included as private practice earnings for the purposes of calculating the 10% limit on private practice earnings that applies to consultants and associate specialists on whole-time contracts.

10. Work falling into this classification does not include the situation where a medical practitioner has entered into a separate contract with an employer for an additional temporary notional half day.

Private Practice

11. Private practice is defined at paragraph 40 of the terms and conditions of service and includes ‘the diagnosis and treatment of patients by private arrangement’. Consultants and Associate Specialists on whole time contracts are limited to private practice earnings of no more than 10% of their gross NHS salary.
Table 1. Classification of work: Consultants and Associate Specialists

The information given here is a general rule of thumb and medical practitioners should ensure that they are aware of the terms and conditions of the contract they hold.

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<th>Classification</th>
<th>Description</th>
<th>Retention of Fees</th>
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<tbody>
<tr>
<td>Standard NHS Work</td>
<td>Contractual work, normally scheduled in the job plan</td>
<td>No</td>
</tr>
<tr>
<td>Category 1 Work</td>
<td>Work that is incidental to contractual duties, but not actually specified in the job plan</td>
<td>No</td>
</tr>
<tr>
<td>Category 2 Work</td>
<td>Work that a practitioner undertakes on behalf of a third party that is not part of his or her contractual duties</td>
<td>Fees may be retained if work is carried out in the practitioners own time</td>
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<tr>
<td>Paragraph 43 work</td>
<td>Work undertaken on NHS patients outside principal contract of employment</td>
<td>Yes, counts towards 10% limit for whole-time contract holders</td>
</tr>
<tr>
<td>(Category 3 Work)</td>
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<td></td>
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<tr>
<td>Private Practice</td>
<td>The diagnosis or treatment of patients by private arrangement</td>
<td>Yes. Whole-time contract holders are limited to earnings amounting to 10% of NHS salary.</td>
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