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PRIVATE & CONFIDENTIAL
FAO
Peter Stonebridge (Acting Board Medical Director) & Annie Ingram (Deputy Chief Executive)

Date 16th November 2018
Your Ref
Our Ref 2018-IA-003
Enquiries to Dr Lee Jordan
Direct Dial [redacted]
Extension
Email

Eileen Gourlay
[redacted]

Dear Annie & Peter,

RE: FINAL OBSERVATIONS REGARDING THE COLLATED TIMELINE(S) RELATING TO PROFESSOR EL-JAMEL ('E')

Following my initial review of the complex timeline documentation and the related paperwork expertly compiled by Audrey Warden (Associate Director, Hospital Services) and Tracey Passway (Clinical Governance and Risk Management Team Lead), I produced a letter entitled 'Initial Observations' on 26th October 2018, in that letter I raised a series of further queries. Many parties have worked to answer those queries. Consequently, I would like to give my thanks to Tracey Passway, Lorraine Fraser (Head of HR Business Relations), Audrey Warden, Susan Wilson (Personal Assistant to the Medical Director) and Christopher Smith (Associate Director of HR) for their further assistance in this matter. As a consequence of the responses received, I am now in a position to update my initial observations, these are now presented herein.

Please note that the full list of the documentation reviewed is listed in Appendix A below.

As discussed before, it is my understanding that my role in this is to peruse the documentation provided to me to see if there are any questions to address as a consequence and/or to establish if any further data should be sought before presenting the material to Ms Tracey Gillies (Executive Medical Director, NHS Lothian). Once the paperwork is deemed final, Ms Gillies will then conduct the review and provide any report to NHS Tayside subsequent to that review. It is my understanding that I am NOT conducting that detailed review nor the reporting of that review in lieu of Ms Gillies.

Updated Observations Regarding Aggregated Paperwork to Date Incorporating Suggested Considerations

Relevant Timeline (SBAR from Audrey Warden, Complaints, Employment & Claims):

- Although the incidents of interest (highlighted by the complaints timeline from Audrey) begin c.2001 onwards in terms of surgery date, the timeline for the receipt of complaints begins in January 2012 only. What appears to happen is that a plethora of complaints follow publicity, or at least that is what I assume to be happening from the timeline data.
- The initial complaints (ID67 and ID797) appear to either relate to a typical complication or a service issue not related directly to surgery. I do not think these constitute a series and could be seen as 'typical' problems.
- **For consideration (1): David Mowle could advise on the above if so wished.**

- In my view the first significant event (ID1486) was raised on 5th December 2012. A holding letter was sent out on 7th January 2013 stating that there were delays within the Complaints Team. This was followed by a further letter sent on 26th February 2013, which advised the complainant that the service had carried out a full review and were currently preparing their response. This was then followed by a 'final' response letter to the patient on 20th March 2013 and then the complaint was reopened on 4th April 2013 due to the complainant having queries in relation to the response they had received. This reopening event was then closed again on 25th April 2013 with a letter advising that these issues could be discussed at an already agreed meeting. A SCEA was held on 12th May 2013 and a report generated dated 13th May 2013. A meeting with the complainant followed on 15th May 2013. This event was an incorrect site of surgery event underpinned by an unusual anatomical variance, this complicates matters and makes things less clear cut but there are operational process errors as detailed in the SCEA.
- Over May 2013, there are several more events (ID2073, ID2179 and ID 2207 - the latter two being the same patient) but independent review again shows no specific concern. Essentially the timeline gives the impression that matters appear to be in order or are complicated.
- On 3rd June 2013 in light of the May 2013 SCEA and subsequent events, a formal meeting takes place with 'E' along with the Clinical Director, the Clinical Lead and a supporting colleague for 'E'. 'E' stated that he would alter practice significantly (Audrey Warden's amendment to the employment timeline). That meeting concluded that there was no additional requirement and that these issues should be dealt with via the appraisal/revalidation system.
- Observational aside: An email from Tracey Passway (dated 5th October 2018) states that the Co-ordinator for Medical Appraisal & Revalidation holds information on one appraisal dated 27th March 2012. The Co-ordinator indicates that this is "highly confidential and not for sharing". However, the Co-ordinator subsequently stated that there was nothing of relevance within that documentation.
- **For consideration (2): Are there any circumstances where accesses to such appraisal data are possible? Is there any learning to be had from what appears to be a lack of engagement with the appraisal process? What was the expected timeline for a future appraisal based on the 3rd June 2013 meeting?**
- On 11th June 2013 another complaint regarding incorrect site surgery arises (ID2339), and then on 13th June 2013 a further complaint (ID2356) is received. Both are significant. Seven days later another meeting is held (20th June 2013) between the Clinical Director, the Medical Director and the General Manager. The organisation takes action in the form of an external review of practice request to the Royal College of Surgeons – London (RCS) sent the same day. Meanwhile restrictions are placed on the practice of 'E' by the Clinical Director and Clinical Lead. 'E' is informed of this by letter the following day (21st June 2013). The RCS responds on 24th June 2013. The Clinical Lead emails 'E' confirming restrictions (25th June 2013). The RCS review date is set for 16th & 17th September 2013. During this period no further complaints arise.
- Restrictions of practice placed on 'E' by the organisation are initially stated to include removal from the on-call rota/emergency service. However, Audrey Warden's employment timeline revision suggests no such removal but that these emergency cases were to be reviewed jointly during joint consultant ward rounds. Junior staff training was restricted, i.e. juniors were not to undertake activity under the supervision of 'E'. The Clinical Lead was to supervise 'E' via "reflective discussion" (Audrey Warden's employment timeline revision), this is not defined in the documentation provided. There was to be a review of theatre list structure and the number of cases to be undertaken. The Clinical Lead would take responsibility for patients under the care of 'E' during this period. Some of these aspects are covered in the letter from the AMD to 'E' (21st June 2013).
- **For consideration (3): For future events requiring the application of internal restrictions on practitioners – should we be more explicit and record the precise**

details (nature, meaning and definition) and operation of those restrictions within the Human Resources Personnel File?

- On 8th October 2013, the RCS provides interim comment. This was passed to the General Manager and the Clinical Director on the same day. On 21st October 2013 the Medical Director, Clinical Director and General Manager met to discuss. The delay between these two dates is a consequence of a full Medical Director's diary during the week commencing 14th October 2013.
- On 9th December 2013, the final RCS paper copy report is available (dated 6th October 2013); receipt is delayed due to non-electronic submission, i.e. it is received by standard mail.
- On 10th December 2013, there is a meeting between 'E' and organisational representatives; he is suspended (on full pay) pending GMC enquiry from that date. A formal letter is sent to 'E' on the same day. A letter provided by the Medical Director's Office indicates that the Board Medical Director wrote formally to the GMC on 20th December 2013 and sent a copy of the RCS report to them. This letter highlights concerns over probity and wrong site of surgery. Further it indicates that verbal discussions had been conducted with GMC representatives between the time of suspension and this letter.
- Following the RCS visit there is an increase in the number of recorded complaints (see Complaints Timeline).
- **For consideration (4): In the Complaints List file, there are a series of 'Not Complaints', there are no dates of surgery or dates of awareness around this – do these need clarification?**
- **For consideration (5): There are private patients mentioned in the Complaints List file and one of these private patients is an alert from the GMC. Do we need to establish timelines and details from his Private employer/host organisation as they may be more extensive? Was there a lack of action on the Private employer/host organisation's part, could they have done something sooner? Is there any information sharing with his Private employer/host organisation? Is that even possible?**
- **For consideration (6): As 'E' was a University of Dundee employee, do we need to review University of Dundee records? Is there any information sharing with his primary employer? Is that even possible?**

Post-suspension Actions:

- Looking at the employment time line following suspension; matters seem appropriate over the December 2013 to February 2014 period. 'E' chooses to retire (c. 13th February 2014) – I do not believe anyone has any powers to prevent or suspend retirement for the duration of a GMC investigation. 'E' has his termination form signed on 17th February 2014. The internal investigation is said to be stopped in light of retirement and the GMC is informed of that fact in a letter dated 17th February 2014.
- Regarding the concept of an 'Internal Investigation': Subsequent querying has identified that the Associate Medical Director letter of 10th December 2013 states that 'E' would be *"called to an investigatory meeting to explore the findings of the report"* (presumably the RCS report). Human Resources has a file note in the personnel file of 'E' that indicates that *"the Medical Director will identify a lead for a preliminary enquiry"*. A subsequent email (dated 31st December 2013) from Human Resources to the Medical Director states that *"In order to progress this matter we need to arrange a Preliminary Investigation"*. On 6th January 2014 the Medical Director emails another Associate Medical Director within the organisation asking *"Are you able to take this on?"*. Finally a letter dated 13th February 2014 from the Associate Medical Director overseeing Neurosurgery to 'E' states that "*...it has been determined not to proceed with an internal investigation*". On the basis of these details I can only assume that the 'Internal Investigation' never actually got started and that it was stood down on the basis of the retirement of 'E' and/or the expected outcome of the GMC

referral. All of this information is said to be within the Human Resources Personnel File for 'E'.

- **For consideration (7): In future, should an 'Internal Investigation' (and subsequent action if applicable) proceed regardless of circumstances such as retirement and/or a professional body referral?**
- The GMC reports on 26th February 2014 and 'E' is given conditions under which he must practice as detailed in their communication. In brief, 'E' is not to undertake any private practice or undertake spinal surgery (review the communication for further detail). The GMC do not remove the licence to practice.
- 'E' applies to the GMC for erasure from the medical register on 31st March 2014. Then retires on 31st May 2014.
- **For consideration (8): It may be worthwhile having a timeline of media events to correlate alongside these organisational timelines to assist with key points of activity inflection. This has been requested by Tracey Passway.** For reference, the first media inquiry is stated to have been April 2014.

Specific Considerations/Caveats from Audrey Warden Regarding Complaints Data:

- There are discrepancies in some of the closed dates recorded in Datix against the date of the response letter sent to the complainant. Audrey Warden has queried this and has been informed that this was because the Complaints Department recorded and coded the complaints when they received them, and sent them to David Mowle and Audrey Warden for a decision regarding how they would be handled. They closed the complaint in Datix on the date that they sent them out (!).
- Audrey Warden does not have all the exact dates of surgery, in some cases the health records have been destroyed and therefore she cannot check. She has used the date given by the complainant in those circumstances.
- For noting: the retention of medical records policy states that the minimum NHS record retention period is 6 years after the date of last entry or 3 years after death if earlier. Records can be retained for longer if required and in this circumstance the record is flagged for retention by means of a sticker.
- When a complaint is categorised as a query on receipt by the Complaint Department, the outcome code is always listed as enquiry.
- **For consideration (9): Should the organisation review the internal complaint timeline procedure?**

Conclusion

In my view, NHS Tayside responded rapidly on the basis of increasing intelligence, then restricted practice scope independently pre-external review, then actively engaged external review and then acted when that review was reported, i.e. within 24hrs of receipt of the RCS report. The organisation then applied a suspension and formal GMC referral. This seems fast compared with other events I have reviewed. However, it does not deflect from the suggested considerations stated as above and consolidated in Appendix B below.

Yours sincerely

CAT C

Dr Lee Jordan
Associate Medical Director
Access & Assurance

disability confident EMPLOYER

CC: Tracey Passway, Clinical Governance and Risk Management Team Lead

APPENDIX A – Documentation Reviewed (filename):

1. *20180801_SBAR-for-CE_August-2018_Neurosurgery-Consultant-Practice.doc*
2. *20181005_Tabular-timeline-employment_AW-Revision.doc*
3. *20181005_Timeline-Staffing-List.docx*
4. *20181011_Updated -S-Eljamel-Complaint-list_(AW-Amended).xls*
5. *20181005 Copy of Claims data.xlsx* (Not included)
6. *20181005_Adverse-Event-Management-Information.docx*
7. *20130104_Incident-Report-101404.pdf*
8. *20130513_FINAL-V1-SCEA-Report.pdf*
9. *20131220_Letter-to-the-GMC.pdf*
10. *20140228_Alert-from-the-GMC.pdf*
11. *2018-10-26_IA_E_Initial-Obs_DCE-MD-CG_plus-TP-response.docx (my original letter of 26th October with initial Tracey Passway comment)*
12. *20181106_IA_E_Initial-Obs_DCE-MD-CG_AKI_021118_plusTP.docx (my original letter of 26th October 2018 with Annie Ingram (Deputy Chief Executive) and Tracey Passway comment).*
13. *20130621_PMcL-Letter-to-Professor-Eljamel.pdf*
14. *Email communications from various parties.* (Not included)

Please note that the RCS report and direct Human Resources Personnel File(s) have not been reviewed.

APPENDIX B – List of Considerations:

1. *For consideration (1): David Mowle could advise on the* [complaints ID67 and ID 797] *if so wished.*
2. *For consideration (2): Are there any circumstances where accesses to such* [appraisal] *data are possible? Is there any learning to be had from what appears to be a lack of engagement with the appraisal process? What was the expected timeline for a future appraisal based on the 3rd June 2013 meeting?*
3. *For consideration (3): For future events requiring the application of internal restrictions on practitioners - should we be more explicit and record the precise details (nature, meaning and definition) and operation of those restrictions within the Human Resources Personnel File?*
4. *For consideration (4): In the Complaints List file, there are a series of 'Not Complaints', there are no dates of surgery or dates of awareness around this – do these need clarification?*
5. *For consideration (5): There are private patients mentioned in the Complaints List file and one of these private patients is an alert from the GMC. Do we need to establish timelines and details from his Private employer/host organisation as they may be more extensive? Was there a lack of action on the Private employer/host organisation's part, could they have done something sooner? Is there any information sharing with his Private employer/host organisation? Is that even possible?*
6. *For consideration (6): As 'E' was a University of Dundee employee, do we need to review University of Dundee records? Is there any information sharing with his primary employer? Is that even possible?*
7. *For consideration (7): In future, should an 'Internal Investigation' (and subsequent action if applicable) proceed regardless of circumstances such as retirement and a professional body referral?*

8. *For consideration (8): It may be worthwhile have a timeline of media events to correlate alongside these organisational timelines to assist with key points of activity inflection. This has been requested by Tracey Passway.*
9. *For consideration (9): Should the organisation review the internal complaint timeline procedure?*