

## Response from British Medical Association

10 July 2009

### BMA response to the Cooperation and Competition Panel's 'Notice of possible recommendations on consultants' non-contracted hours'

#### Option 1

7a – NHS consultants have as one of their primary duties the care of NHS patients. Current government and NHS policy in England supports the provision of this care by a number of providers and as such the BMA supports this recommendation.

7b – The BMA supports the NHS and believes that where there may be conflicts of interest it is appropriate for consultants to be informed of and consider the potential effects of their actions on the staff and services employed and provided by their main NHS employer. However, the BMA is concerned that to endorse an employing Trust's right to pressure staff over potential competitive conflicts may ultimately lead, in a small number of cases, to harassment and/or bullying of consultant staff. For this reason – to avoid the risk of unacceptable treatment of staff - the BMA supports recommendation 7b.

n.b. It should be noted that support is subject to amendment of the exceptions in clause 7c as discussed below

#### 7c

- i) We agree with this exception.
- ii) We have sympathy for this recommended exception but we are concerned about the potential for misunderstanding. Misunderstanding may occur (and has occurred in the past), for example, where a consultant may be named on a tender by an alternative provider since they are available to carry out the proposed clinical work; but where that consultant has had no significant strategic or managerial involvement in the preparation of the bid. This is unreasonable being a simple consequence of government policy. Accordingly we suggest the insertion of the words 'strategic or managerial' between 'any' and 'involvement' at the start of the clause. With these insertions we support this recommendation.
- iii) This clause is too widely drawn. We are very concerned that in its current format the clause will trawl many relationships that have been developed as a direct result of government and NHS policy in England. The nature of the financial interest is not completely specified. It may be that some consultants hold shares in private healthcare companies; it would be unusual (but not unheard of) for employers to completely prohibit share holdings in competing companies. Even in the case of government ministers share holdings have been placed in blind trusts during the period of office, the share holding is allowed to continue.

As further example, we are aware that some consultants have been encouraged to give specific advice to providers of pathology services. This has been an essential part of the competitive tendering environment in pathology which has developed over the last ten years. A similar consideration would apply to infection control services. This clause, if adopted, would have the effect of placing the appropriate interests of many consultants out-with this guidance. This in turn could lead to a destabilisation of the developing competitive environment and place consultants in jeopardy for having responded to the government's promotion of a new working environment.

If recommendations regarding financial and equitable interests are to be made then these could only be introduced after there has been a substantial notice period for consultants to become familiar with the recommendations and to take steps to resolve any conflicts. It is not reasonable to propose immediate or short-notice divestment, particularly in the current depressed market environment; individuals may otherwise incur substantial losses simply as a consequence of acting on government liberalisation of healthcare markets.

## **Option 2**

The BMA believes it would be helpful to clarify the extent of the freedom with which consultants may carry out paid work in their non-contracted hours for third party providers, through negotiation in the model consultant contract and associated terms and conditions of service in respect of recommendations 7a and 7b. To allow a successful and swift resolution to these negotiations the scope should be explicitly limited to those clauses which directly relate to this matter.

The complexities of the evolving relationships as described in the exceptions listed in recommendation 7c would require careful resolution before such exceptions could be incorporated into the terms and conditions of service.