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10 October 2007

Dear Sir/Madam

I am writing to you further to your letter of September 5th in which you requested a copy of the investigation file compiled by the Commission for Health Improvement (CHI) into the Portsmouth Healthcare NHS Trust and the Gosport War Memorial Hospital. I am sorry that it has taken so long to get back to you on this.

You raised the statutory powers of the GMC to request disclosure of these documents. I would like to point out that we have previously shared information with the GMC on such cases but these powers have never been mentioned to us before. Indeed, for reasons that I shall explain, I think that there are preferable ways for us to share relevant information.

Section 35A (4)-(5) provides that information cannot be required where such is prohibited under any enactment. You may be aware that, under section 136 of the Health and Social Care (Community Health and Standards) Act 2003, it is a criminal offence for Healthcare Commission staff to 'knowingly or recklessly' disclose confidential personal information, punishable by a fine of up to £5000 and/or up to two years' imprisonment.

The Medical Act 2003 does provide that information required under section 35A whose disclosure is prohibited in this manner can be disclosed in an anonymised form. However, I would anticipate that this would be of limited use under the circumstances.

However, we do have a mechanism by which information of this type can be lawfully disclosed if it is necessary. There are some defences against the offence mentioned above and one of these is where the information is required by a body in order for them to carry out their function under any enactment. In order to proceed we will therefore need you to specify the legislation under which this investigation is being carried out.

I would also like to take this opportunity to see if you can be any more specific in your request for information. You have requested the entire investigation file, which contains a great deal of information, much of which will not be relevant to your investigation into the fitness to practice of an individual doctor. It is unlikely that we would be able to release all

Page 2 of 2

this information. It would therefore be very helpful if you could assist us in narrowing your request to information that is relevant to this case.

If it would be helpful to discuss the specific nature of the information you request with one of the Healthcare Commission's staff, you may wish to telephone **Code A** on: 020 7448 4517.

Yours sincerely

Nigel Ellis
Head of Investigations