To note

Updated guidance for case examiners for the revocation and variation of undertakings

Issue

1. We have updated guidance for case examiners and doctors on the evidence required before a decision can be made to revoke or vary a doctor’s undertakings under Rule 10 or Rule 37A(3).

Recommendation

2. The Strategy and Policy Board is asked to note the updated Guidance for decision makers on revocation and variation of undertakings under Rule 10 and Rule 37A(3), at Annex A.
Updated guidance for case examiners for the revocation and variation of undertakings

**Issue**

3 Undertakings can be applied to restrict or place requirements on a doctor’s practice and/or behaviour. Undertakings are agreed between the doctor and the GMC, (either at the end of an investigation or at a fitness to practise panel of the Medical Practitioners Tribunal Service) and remain in place until the concerns have been remediated.

4 A doctor may return to unrestricted practice following a case examiner decision to revoke their undertakings which may be triggered by a request from the registrar, the doctor themselves or their supervisors. Case examiners may also decide to vary the doctor’s undertakings to make them more or less restrictive depending on the circumstances of the case.

5 Revocation and variation decisions are challenging as they depend on each doctor’s situation and circumstances. Guidance is available for case examiners and doctors on our website which highlight general circumstances that may result in a revocation or variation decision and minimum timeframes as to how long undertakings should be in place, depending on the case type.

6 As part of the Lean review of the case review process in late 2013, we identified multiple improvements to the process of revoking or varying undertakings and have made a number of amendments to the guidance as follows:

   a The addition of evidence requirements which clarify the evidence that case examiners need when making variation or revocation decisions.

   b The removal of minimum timeframes that undertakings should be in effect for before a revocation decision would be considered. The proposed criteria contained in the revised guidance will be sufficiently robust to ensure case examiners are able to make an appropriate decision without the need for a minimum timeframe which proved to be a blunt instrument.

   c Clearer distinction between variation and revocation decisions.

   d An improvement to the overall layout of the guidance in keeping with GMC tone of voice to ensure the guidance is accessible to the public as well as GMC decision makers.
Supporting information

How this issue relates to the corporate strategy and business plan

8  This issue relates to Strategic Aim 3 of the Corporate Strategy: improve the level of engagement and efficiency in the handling of complaints and concerns about patient safety.

What engagement approach has been used to inform the work (and what further communication and engagement is needed)

9  We have worked closely with representatives from the case review team and case examiners in developing this guidance. Once this guidance is approved, these teams will attend a training session to ensure they are aware of the amendments to the guidance.

10  This guidance should also be republished on our website to replace the existing guidance.

If you have any questions about this paper please contact: Anna Rowland, Assistant Director - Policy and Planning, ARowland@gmc-uk.org, 020 7189 5077.
Guidance for Case Examiners
Guidance for decision makers on revocation and variation of undertakings under Rule 10 and Rule 37A(3)
Introduction

1 The purpose of this guidance for decision makers is to maintain consistency in the approach taken by the GMC when considering the revocation or variation of undertakings. It provides case examiners with a clear set of criteria to apply when considering such requests.

2 This guidance is designed to be used at the point the case examiners are considering revocation or variation.

3 Requests and recommendations for revocation or variation of undertakings are most commonly received from one of the doctor’s supervisors. However it may also be appropriate for the case examiner, case review team or the doctor to make this recommendation.

4 Revocation or variation of undertakings may take place with reference to the following Fitness to Practise rules:
   a Rule 10(7) for undertakings agreed with a case examiner; and
   b Rule 37A(2) for undertakings agreed with a panel.

5 To assist in the interpretation of this guidance, Appendix A contains process maps that set out the decision making process for the variation and revocation in health, performance and misconduct cases.

Thresholds for variation or revocation of undertakings

6 To revoke undertakings, the case examiners must be satisfied that the doctor’s fitness to practise is no longer impaired to a degree which would justify restrictions on the doctor’s registration, based on evidence as set out in this guidance.

7 To vary undertakings, the case examiners must be satisfied that:
   a while the doctor’s fitness to practise may still be impaired, the current level of restrictions is no longer necessary to protect the public and the undertakings may be relaxed; or
   b the information received indicates the doctor’s health or performance has deteriorated and the undertakings need to be varied to increase the level of protection; or
   c due to a change in the doctor’s circumstances, the undertakings are no longer effective and/or workable in their current format. Examples here include a change in the doctor’s contract or working environment. Undertakings may only be varied to take the change into account if the public can still be adequately protected.
Undertakings related to a doctor’s health

8  Undertakings may be agreed if the doctor is suffering ill health which impacts on their fitness to practise. The doctor’s ill health may be in relation to a variety of factors including the doctor’s mental health or substance misuse.

9  These undertakings should remain in place until they are no longer required in order to safeguard patients and to protect the doctor’s welfare. In most cases, the undertakings will be in place for a limited period of time following which the doctor will return to unrestricted practice. This return to practice may be triggered by a full recovery, but also by the doctor developing insight that enables them to recognise any warning signs and understand how to manage their health to ensure the public is protected.

10 Many doctors have remitting and relapsing illnesses. In such circumstances, case examiners need to be satisfied that:

  a  the doctor’s illness is being appropriately managed and addressed by the doctor and their supervisor(s); and

  b  there are no on-going patient safety risks as a result of the doctor’s ill health.

Evidence

11 A request to vary or revoke a doctor’s undertakings should be considered with reference to the following evidence.

<table>
<thead>
<tr>
<th>Evidence</th>
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<tbody>
<tr>
<td>Report from the medical supervisor</td>
<td>This evidence should show a documented, evidenced and sustained improvement in the doctor’s health, which should now be stable.</td>
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<td></td>
<td>In addition the doctor’s medical supervisor should formally advise on:</td>
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<td>a  the likelihood of the doctor relapsing - this must be judged as low.</td>
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<tr>
<td></td>
<td>b  whether the doctor has insight into their own health and the importance of appropriately limiting their practice if they are at risk of relapse.</td>
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<td></td>
<td>c  if the doctor suffers from a reoccurring illness, the Medical Supervisor should specifically comment on whether the doctor’s support network is adequate to manage the doctor’s illness.</td>
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<td>Evidence</td>
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<tr>
<td>Reports from other supervisors (where appropriate)</td>
<td>This evidence should show a documented, evidenced improvement in the doctor’s health, which should now be stable. These reports should be requested from the following where appropriate:</td>
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<td>− clinical and/or educational supervisor</td>
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<td></td>
<td>− treating psychiatrist</td>
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<tr>
<td></td>
<td>− general practitioner</td>
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<td></td>
<td>− occupational health physician.</td>
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<tr>
<td>Report from the workplace reporter</td>
<td>Where the doctor is working, the workplace reports should confirm that no further significant concerns have been raised in relation to the doctor’s clinical practice, general behaviour or state of health.</td>
</tr>
<tr>
<td>Testing reports</td>
<td>All tests over the period the undertakings were in place should demonstrate no prohibited substance use.</td>
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<tr>
<td>Doctors with substance misuse who continue to be prescribed drugs used in the prevention of relapse</td>
<td>For these doctors, whilst abstinence without the use of this agent is preferred, it is not essential. Case examiners should consider the doctor’s position in the round, taking account of their general condition, likelihood of relapse and insight into their substance misuse. Notwithstanding the doctor remaining on drugs used in the prevention of relapse, where they meet the other requirements for ceasing supervision, consideration can be given to revoking the undertakings.</td>
</tr>
<tr>
<td>Report from the doctor’s responsible officer (RO)</td>
<td>Where the doctor is working, their RO should confirm that, to their knowledge, no further concerns have been raised in relation to the doctor’s clinical practice, general behaviour or state of health.</td>
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</tbody>
</table>

**Revocation: Criteria for consideration**

12 Where a revocation request has been received and all evidence specified in paragraph 11 is accounted for and raises no concerns:
a the Assistant Registrar (AR) should request a health assessment under Rule 10(6) to establish if the practitioner is fit to practise. All the evidence should then be submitted to the case examiners for a decision.

b if the health assessment does not raise further concerns, the case examiners may revoke the doctor’s undertakings.

c if revocation is considered inappropriate or a reassessment finds the doctor’s fitness to practise is still impaired by virtue of ill health, the case examiners should consider whether a further period of the same or revised undertakings is needed or if, based on anything in the assessment report, referral to a panel is warranted.

Where a revocation request has been received and all evidence specified in paragraph 11 is accounted for but raises concerns:

a advice should be sought from a case examiner as to whether, given the evidence provided, it is appropriate to consider revocation of the doctor’s undertakings in this case.

b if in the case examiner’s view revocation may be appropriate because the concerns raised are not serious and do not raise questions about the doctor’s fitness to practise, the case examiner should advise the AR to request a health assessment under Rule 10(6) to establish whether the practitioner is fit to practise.

c if the health assessment does not raise further concerns, the case examiners may revoke the doctor’s undertakings.

d if revocation is considered inappropriate or a reassessment finds the doctor’s fitness to practise is still impaired by virtue of ill health, the case examiners should consider whether a further period of the same or revised undertakings is needed of if, based on the concerns raised or anything raised in the assessment report, there is considered to be a deterioration in the doctor’s health or other fitness to practise concerns which indicate that a referral to fitness to practise panel is warranted. In this case please see appropriate guidance regarding referral to panel.

In all such cases, case examiners must provide detailed reasoning for their decision.

Variation: Criteria for consideration

Variation to relax the requirement of an undertaking

Where a variation request has been received and relevant evidence specified in paragraph 11 is accounted for, the AR may refer the matter to the case examiners to
consider whether, given the evidence provided, it is appropriate to consider a variation of the doctor’s undertakings.

**Variation to tighten requirement of an undertaking**

1 Based on evidence received, it may be necessary to vary the doctor’s undertakings by tightening the requirements. This decision should be based on whether the evidence shows further concerns that call into question the doctor’s fitness to practise including any deterioration or where the doctor has breached their undertakings (where a referral to a Fitness to Practise Panel is not deemed appropriate).

**Where variation is inappropriate**

16 If the variation request is considered inappropriate the case examiners may suggest an alternative variation, decide to maintain the current undertakings or refer the doctor to a panel.

17 In all such cases, case examiners must provide detailed reasoning in considering the matter.
Undertakings related to a doctor’s performance

18 Undertakings may be agreed if the doctor’s fitness to practise is considered to be impaired by reason of deficient professional performance and these undertakings will remain in place until such time as they are no longer required in order to protect patients. The GMC expects in these cases that the doctor will take all necessary steps to improve in the areas of their practice identified as deficient, and keep up to date to demonstrate to the GMC that they are fit to return to unrestricted practice.

19 Undertakings are offered to doctors in the expectation that they will take responsibility for a structured approach to improvement over a limited period of time, as evidenced through the documentation listed in the table below. Where undertakings relate to clinical concerns, the doctor needs to be employed and in practice in order to remediate.

Evidence

20 A request to vary or revoke a doctor’s undertakings should be considered with reference to relevant available evidence which will vary depending on the doctors situation and undertakings. Examples of evidence are;

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Details</th>
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<tbody>
<tr>
<td>Report from the doctor’s clinical supervisor</td>
<td>This evidence should show a documented, evidenced and sustained improvement in the doctor’s performance. In addition, the doctor’s clinical supervisor should formally advise if the doctor has insight into their own performance and understands the importance of limiting their practice if appropriate.</td>
</tr>
</tbody>
</table>
| Reports from other people involved in the doctor’s supervision, training or remediation | This evidence should show a documented, evidenced and sustained improvement in the doctor’s performance. These reports should be requested from the following where appropriate:  
  - educational supervisor  
  - any other person involved in the doctor’s supervision or remediation.  
In addition, the doctor should submit:  
  - evidence of satisfactory annual appraisals  
  - their up to date personal development plan with evidence of reflective learning. |
Evidence

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Description</th>
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<tbody>
<tr>
<td>Workplace reports</td>
<td>Where the doctor is working, the workplace reports should confirm that no further concerns have been raised in relation to the doctor’s clinical practice or general behaviour.</td>
</tr>
<tr>
<td>Report from the doctor’s responsible officer (RO)</td>
<td>Where the doctor is working, their RO should confirm that to their knowledge, no further concerns have been raised in relation to the doctor’s clinical practice or general behaviour.</td>
</tr>
<tr>
<td>Report from a Post Sanction Performance Assessment or a Full Performance Assessment</td>
<td>Depending on the nature of the concerns and the evidence provided above, the Assistant Registrar may direct a performance assessment to establish whether the practitioner has remediated and is ready to return to unrestricted practice. The Assessment Team appointed will assess the scope of the deficiencies and will determine whether a full, or modular (Post Sanction) assessment is required. Regardless of the type of assessment completed, Assessors will provide an opinion on whether the doctor is fit to practise and (if appropriate) make recommendations on the future management of the case.</td>
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</table>

**Revocation: Criteria for consideration**

21 Where a revocation request has been received and all relevant evidence specified in paragraph 21 is accounted for and **raises no concerns** the case examiners should revoke the doctors undertakings.

22 Where a revocation request has been received and all relevant evidence specified in paragraph 21 is accounted for **but raises concerns**, case examiners will need to decide whether a further period of revised undertakings is needed, or whether the evidence indicates a deterioration in the doctor’s performance or raises other fitness to practise concerns which warrants referral to a Fitness to Practise Panel. In this case please see appropriate guidance regarding referral to panel. In all cases, case examiners must provide detailed reasoning for their decision.
Variation: Criteria for consideration

Variation to relax the requirement of an undertaking

23 Where a variation request has been received and relevant evidence specified in paragraph 21 is accounted for, the AR may refer the matter to the case examiners to consider whether, given the evidence provided, it is appropriate to consider a variation of the doctor’s undertakings.

Variation to tighten requirement of an undertaking

24 Based on evidence received, it may be necessary to vary the doctor’s undertakings by tightening the requirements. This decision should be based on whether the evidence shows further concerns that call into question the doctor’s fitness to practise including any deterioration or where the doctor has breached their undertakings (where this does not warrant a referral to a Fitness to Practise Panel).

Where variation is inappropriate

25 If variation is considered inappropriate, the case examiners need to decide whether a further period of the same/revised undertakings is needed or whether the evidence suggests a referral to a panel is necessary.

26 In all such cases, case examiners must provide detailed reasoning in considering the matter.
Undertakings related to a doctor’s misconduct

27 Undertakings may be agreed if the doctor’s fitness to practise is considered to be impaired through misconduct, usually related to clinical concerns, and these undertakings will remain in place until such time as they are no longer required in order to safeguard patient safety.

28 Doctors in this category have usually accepted responsibility for an identified practice failing or mistake, but there are not global performance concerns leading to a finding of deficient performance.

29 The GMC expects in these cases, as with those involving deficient professional performance, that the doctor will take all necessary steps to improve in the areas of their practice identified by the case examiners, and demonstrate to the GMC that they are fit to return to unrestricted practice.

Evidence

30 A request to vary or revoke a doctor’s undertakings should be considered with reference to the following evidence.

<table>
<thead>
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</table>
| Reports from supervisors | This documented evidence should show that the doctor has addressed the area(s) of concern, that he or she has put their learning into practice and has kept up to date. These reports should be requested from the following where appropriate:  
  - remedial or educational supervisor  
  - any other person involved in the doctor’s supervision or remediation.  
In addition, the doctor should submit:  
  - any relevant clinical audit reports  
  - their up to date personal development plan with evidence of reflective learning. |
| Workplace reports | Where the doctor is working, the workplace reports should confirm that no further concerns have been raised in relation to the doctor’s clinical practice or general behaviour. |
| Report from the doctor’s Responsible Officer (RO) | Where the doctor is working, their RO should confirm that to their knowledge, no further concerns have been raised in relation to the doctor’s clinical practice or general behaviour. |
Revocation: Criteria for consideration

31 Where a revocation request has been received and all evidence specified in paragraph 32 is accounted for and raises no concerns:

a advice should be sought from a case examiner as to whether, given the evidence provided, it is appropriate to consider a revocation of the doctor’s undertakings.

b if the advice confirms that it is appropriate, the case examiners may revoke the doctor’s undertakings.

c if advice suggests that revocation is inappropriate, the case examiners will need to consider whether a further period of revised undertakings is needed.

32 Where a revocation request has been received and all evidence specified in paragraph 32 is accounted for but raises concerns:

a advice should be sought from a case examiner as to whether, given the evidence provided, it is appropriate to consider revocation of the doctor’s undertakings.

b if in the case examiner’s view it is appropriate because the concerns raised are not serious and do not raise questions about the doctor’s fitness to practise, the case examiners may revoke the doctor’s undertakings.

c if advice suggests that revocation is inappropriate, the case examiners will need to consider whether a further period of revised undertakings is needed, or whether the concerns raised indicate that the doctor should be referred to a Fitness to Practise Panel. In this case please see appropriate guidance regarding referral to panel.

33 In all such cases, case examiners must provide detailed reasoning for their decision.

Variation: Criteria for consideration

Variation to relax the requirement of an undertaking

34 Where a variation request has been and relevant evidence specified in paragraph 32 is accounted for, the case examiners should consider whether given the evidence provided, it is appropriate to consider a variation of the doctor’s undertakings.
Variation to tighten requirement of an undertaking

35 Based on evidence received, it may be necessary to vary the doctor’s undertakings by tightening the requirements. This decision should be based on whether the evidence raised further fitness to practise concerns (which do not warrant referral to panel).

Where variation is inappropriate

36 If variation is considered inappropriate the case examiners need to decide whether a further period of the same/revised undertakings is needed or whether the evidence suggests a referral to panel is necessary.

37 In all such cases, case examiners must provide detailed reasoning in considering the matter.
Undertakings related to a doctor’s knowledge of English

38 Undertakings may be agreed if the doctor’s fitness to practise is considered to be impaired due to concerns about their knowledge of English and these undertakings will remain in place until such time as they are no longer required in order to protect the public.

39 It will usually be appropriate to consider revoking undertakings in such cases on receipt of information that a doctor has completed the International English Language Testing System (IELTS) test to the standard currently required of International Medical Graduate applicants to the medical register.

40 It may also be appropriate to consider varying undertakings relating to supervision of doctors who are subject to concerns about their knowledge of English if there is a change in circumstances. For example, if we receive new information about a doctor’s career plans or employment situation and they have not yet completed IELTS to a satisfactory standard, it may be appropriate to consider varying undertakings to ensure any requirements for supervision are proportionate and adequate to protect the public.

41 In multi-factorial cases where undertakings are intended to address issues in relation to a doctor’s knowledge of English and misconduct, health or performance, care should be taken to consider the public protection implications of varying or revoking undertakings for all areas of concern.