

# 1. Healthcare Professionals Crossing Borders Agreement (the Agreement)

## The Agreement of the European Consensus Conference held in Edinburgh, Scotland, on 13/14 October 2005 on the Exchange of Information on Healthcare Professionals Crossing Borders for Competent Authorities

### Agreement One

- a) The European Certificate of Current Professional Status will include all the categories of information detailed in Appendix 2. Member States should use this as a template for their Certificate.
- b) The Certificate will be issued on organisational headed paper that displays the name and registered address of the competent authority and that of the addressee. Where the Certificate is issued electronically, this too will display an organisational logo and registered address.
- c) The Certificate will contain a date and an original signature when issued in hard copy format. The Certificate will contain an electronic signature when being sent electronically following prior agreement with the recipient organisation.
- d) All Certificates, transmitted by any means, will be designed to reduce or avoid fraudulent production or reproduction.
- e) Where recipient competent authorities have further questions relating to a received Certificate, where a Certificate has not been issued, or where there is a need to authenticate its validity, the issuing competent authority will seek to make an effective response to enable the registration process to proceed efficiently and within a timeframe agreed between the host and home authorities.
- f) The Certificate will expire after three months of the issue date.

## Agreement Two

- a) The agreed scope of the European Certificate of Current Professional Status does not preclude the sharing of more detailed information within, or in addition to, the Certificate of Current Professional Status at the discretion of the issuing authority.
- b) In cases where there is a restriction to practise, including temporary measures (suspension), and on request from a competent authority in a host country, the competent authority of the home country should, as a minimum, respecting personal data protection legislation provided for in Directives 95/46/EC and 2002/58/EC and in the context of implementing Directive 2005/36/EC on the recognition of professional qualifications, communicate the relevant facts of a case.
- c) Relevant facts should be sufficient for the host competent authorities to make their own decisions, on a case-by-case basis, in the context of their own national laws and regulatory practices. Relevant facts should include at least the category of the problem, e.g. conduct, criminal activity etc and the sanction, but more details should be given when there is the potential for a different outcome due to a difference in national laws or regulatory practice.
- d) In the case of total or partial restriction on practice for health reasons, the decisions of one competent authority should not be questioned by another and no further questions should be asked.

## Agreement Three

Competent authorities should proactively exchange information when:

- a healthcare professional's right to practise has been restricted because of a serious performance, conduct, health or criminal issue; and/or
- the competent authority has objective reasons to believe that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.

In these serious circumstances, as a minimum, a rapid warning should be sent to:

- the individual's home country; and
- other Member States where the individual has previously been registered, is currently registered or where there are objective reasons to believe they may move in order to seek registration.

#### **Agreement Four**

Competent authorities working with their judicial systems should make full use of the Council Decision [Inter-Institutional File 2004/238/CNS; COM(2004) 664] on the exchange of information from the criminal record.

#### **Agreement Five**

Some Member States' competent authorities have the power to impose urgent and effective interim restrictions on, or removal from, practice pending full and final determination of a case. In these pending cases where the balance is that patients or healthcare systems are at risk, and especially where a temporary or interim sanction has been imposed pending an appeal or final decision, competent authorities should reactively, or proactively, exchange information with other competent authorities on a case-by-case basis.

#### **Agreement Six**

- a) All competent authorities should run a website and this should be signposted and accessed via the 'Health Regulation' website (developed and currently managed by the Health Professions Council UK – [www.healthregulation.org](http://www.healthregulation.org)).
- b) Each competent authority's website should contain agreed minimum information, and the competent authority should consider publishing information in more than one language.

#### **Agreement Seven**

- a) Competent authorities agree to work collaboratively and share best practice in innovation in information exchange. A start should be made by one or more competent authorities on piloting the sharing of electronic information (e.g. smart cards).
- b) Support from the European Commission should be sought for this pilot.

#### **Agreement Eight**

In the context of exchanging good practice, competent authorities should collaborate at a European level. The establishment of European associations of professional competent authorities should be investigated.

#### **Agreement Nine**

The Glossary of Terms in Appendix 1 should be updated and expanded to reflect the published Directive.

## 2. Background

### 2.1 EU Directives and Project Aims

- 2.1.1 The sectoral Directives currently in force<sup>1</sup> on healthcare professionals already contain provisions about the communication between competent authorities<sup>2</sup> concerning serious matters likely to affect a professional's right to practise. These include disciplinary action or criminal offences. These provisions have been strengthened by the new Directive<sup>3</sup> (2005/36/EC), which will replace the sectoral Directives in 2007.
- 2.1.2 Competent authorities are required to make full use of the existing provisions and, towards the end of 2007, to have implemented the new provisions.
- 2.1.3 This agreement has been developed by competent authorities across Europe and other stakeholders to ensure a common, coherent and effective approach to fulfil obligations resulting from the Directives.
- 2.1.4 In reaching an agreement, competent authorities have acknowledged that the vast majority of healthcare professionals, who migrate, are competent and conscientious practitioners who are keen to contribute positively to the provision of healthcare in their new country. Acknowledging the need to get rid of any anti-competitive regulatory restrictions, the competent authorities have therefore tried to facilitate the mobility of healthcare professionals across Europe by developing simple non-bureaucratic systems of information exchange. However, competent authorities have also sought to protect patients from the small number of professionals whose practice may put patients at risk.

---

1 Directive 93/16/EEC; Directives 77/452, 77/453; Directives 78/686/EEC, 78/687/EEC; Directives 78/1026/EEC, 78/1027/EEC; Directives 80/154/EEC, 80/155/EEC; Directives 85/432/EEC, 85/433/EEC.

2 Articles 11 (3) and (4); Article 12 of Directive 93/16/EEC.

3 Published on 30 September 2005, OJ L 255/22. Also, see Articles 56 and 8.

## **2.2 Developing the Recommendations for the European Consensus Conference and Reaching a Final Agreement**

2.2.1 The process of developing this agreement began during the Netherlands EU Presidency. At the 'Amsterdam Conference' in December 2004, the problems about the exchange of information between competent authorities were well defined. These problems included:

- the processes of data exchange;
- the identification and registration of data on professional misconduct; and
- data protection.

2.2.2 Following the 'Amsterdam Conference', and during the UK EU Presidency, a European-wide Working Group of competent authorities, government and European Commission (the Commission) officials have overseen a project to develop initial recommendations on the exchange of information. These recommendations were presented to the European Consensus Conference in Edinburgh, Scotland, in October 2005. At the Conference, the recommendations were modified, then endorsed by competent authorities and other stakeholders, resulting in this agreement.

2.2.3 The project has been managed by the English Department of Health and AURE (Alliance of UK Health Regulators on Europe).

## **2.3 Implementation**

2.3.1 Considerable progress has been made during the UK EU Presidency. This provides a strong foundation to further develop and to implement the Agreement.

2.3.2 The current project team, with relevant stakeholders, is developing plans for the implementation of the Agreement over the next two years. This includes seeking resources to manage the implementation phase of the project.

2.3.3 The Agreement should apply as soon as possible to all the sectoral health professions, but from the date of implementation of the new Directive (2005/36/EC), it could apply to all the other regulated health professions.

## 2.4 International Development

2.4.1 The Working Group and the European Consensus Conference took account of the fact that EU professional regulation should be seen in a global context. This is made all the more important when some Member States import considerable numbers of healthcare professionals from outside the EU. Indeed, the numbers from outside the EU registering in some Member States is considerably larger than migration between Member States. The Working Group and the European Consensus Conference have kept in mind developments outside of the EU in developing the initial recommendations and the final agreement. Members of the Working Group and the European Consensus Conference have brought ideas from the World Health Organization (WHO), developments in other countries, and from groups of health regulators such as the International Association of Medical Regulatory Authorities (IAMRA) and international bodies representing health professionals.

# 3. Key Principles Underpinning the Agreement

- 3.1 The Agreement has been developed in a spirit of mutual trust between competent authorities and the acknowledgement that all are aiming to protect patients from those professionals whose practice put patients at risk. In developing the initial recommendations and final agreement, the Working Group and, subsequently, the European Consensus Conference, agreed upon and used some key principles. These are:
- to ensure a high level of quality in healthcare and the security and protection of patients;
  - to facilitate professional mobility;
  - to ensure the public's confidence in healthcare professionals and their regulation;
  - to avoid unnecessary bureaucracy;
  - to presume innocence until found guilty in all cases of investigation into professional practice or allegations of criminal activity; and
  - to fully respect personal data protection legislation provided for in Directives<sup>4</sup> and in national legislation. This includes only exchanging information necessary for the protection of patients and for the registration of professionals or conferring the right to practise.

---

4 Directives 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with the regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No. 1882/2003) and 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communication sector [Directive on privacy and electronic communications] (OJ L 201, 31.07.2002, p.37).

# 4. The European Template for a Certificate of Current Professional Status

- 4.1 The most common mechanism for exchange of information on healthcare professionals between competent authorities is the issuing and receiving of Certificates of Good Standing (now to be renamed Certificate of Current Professional Status).
- 4.2 The change of name of the Certificate is based on the fact that some competent authorities are willing and able to extend the information in this certificate to include information on current regulatory status. This includes current restrictions on an individual's right to practise, including interim suspension during an investigation. The European Consensus Conference acknowledged that some competent authorities currently only issue Certificates of Good Standing when there is no restriction to practise including interim suspension, i.e. the absence of a Certificate means an individual is restricted in their practice.
- 4.3 Certificates of Current Professional Status should be issued in at least the language of the 'home' country (see Glossary).
- 4.4 The template for a European Certificate of Current Professional Status is attached as Appendix 2. The standardisation that is likely to flow from the use of the agreed template should also help in overcoming potential language barriers.
- 4.5 The following agreements relate to the use and content of these Certificates.

## Agreement One

- a) **The European Certificate of Current Professional Status will include all the categories of information detailed in Appendix 2. Member States should use this as a template for their Certificate.**
- b) **The Certificate will be issued on organisational headed paper that displays the name and registered address of the competent authority and that of the addressee. Where the Certificate is issued electronically, this too will display an organisational logo and registered address.**
- c) **The Certificate will contain a date and an original signature when issued in hard copy format. The Certificate will contain an electronic signature when being sent electronically following prior agreement with the recipient organisation.**

- d) All Certificates, transmitted by any means, will be designed to reduce or avoid fraudulent production or reproduction.**
- e) Where recipient competent authorities have further questions relating to a received Certificate, where a Certificate has not been issued, or where there is a need to authenticate its validity, the issuing competent authority will seek to make an effective response to enable the registration process to proceed efficiently and within a timeframe agreed between the host and home authorities.**
- f) The Certificate will expire after three months of the issue date.**

# 5. Dealing with Difficult Cases on a Case-by-Case Basis

## 5.1 Case-by-Case Exchange of Information

5.1.1 Competent authorities find themselves in a difficult situation when an individual has a restriction on their practice in one Member State and that individual seeks to register in another Member State without a Certificate of Good Standing (in future, the Certificate of Current Professional Status), or where a Certificate contains additional information which raises questions. This may include situations where an offence or misconduct would lead to a different outcome in terms of restrictions on practice in the home and 'host' country (see Glossary). This will create the need for competent authorities to share additional information.

5.1.2 One way to ensure that this information can be shared legitimately, and more freely, is for competent authorities to actively obtain consent for sharing information between authorities. This can be achieved through the use of privacy waivers. Competent authorities implementing these waivers would ask new entrants to agree to, or inform registrants that there will be, disclosure of information to other European competent authorities in the event that disciplinary action is taken against them. Where, due to national legislation, consent cannot be requested of all new entrants, then asking for consent when a Certificate is requested should be actively explored. When consent is being sought in order to share information, it will be explained clearly that this could have implications for a professional's right to practise in other European States. Personal health information would be an exception; here, the individual has a right to privacy. However, exchanging the fact that a restriction to practise for health reasons exists is seen as legitimate, on the basis that specific health reasons are to be kept confidential.

### Agreement Two

- a) **The agreed scope of the European Certificate of Current Professional Status does not preclude the sharing of more detailed information within, or in addition to, the Certificate of Current Professional Status at the discretion of the issuing authority.**
- b) **In cases where there is a restriction to practise, including temporary measures (suspension), and on request from a competent authority in a host country, the competent authority of the home country should, as a minimum, respecting personal data protection legislation provided for in Directives 95/46/EC and 2002/58/EC and in the context of implementing Directive 2005/36/EC on the recognition of professional qualifications, communicate the relevant facts of a case.**

- c) **Relevant facts should be sufficient for the host competent authorities to make their own decisions, on a case-by-case basis, in the context of their own national laws and regulatory practices. Relevant facts should include at least the category of the problem, e.g. conduct, criminal activity etc and the sanction, but more details should be given when there is the potential for a different outcome due to a difference in national laws or regulatory practice.**
- d) **In the case of total or partial restriction on practice for health reasons, the decisions of one competent authority should not be questioned by another and no further questions should be asked.**

## 5.2 Proactive Exchange of Information

5.2.1 Proactive exchange of information is competent authorities taking the initiative and circulating information to other competent authorities without a request. This becomes important for patient safety where individuals who pose a risk seek to evade regulatory procedures.

5.2.2 A difficult situation arises for competent authorities when:

- a healthcare professional has been restricted in their right to practise because of a serious performance, conduct, health or criminal issue; and
- the competent authority has evidence that this individual may move to another Member State to try to avoid restrictions on their practice.

This situation causes further difficulty where the competent authority has evidence that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.

5.2.3 The competent authority may have little or no information about where an individual intends to go. In these serious cases, they will have evidence that the individual puts patients or healthcare systems at risk.

5.2.4 It can be argued that, in these rare circumstances, competent authorities have a duty to warn other competent authorities in other Member States about these individuals. This amounts to a rapid alert system in exceptional cases. The competent authority is then faced with making a judgement about whether they should send information on the individual to all Member States (and/or non-EU countries), or to Member States where they have reasons to believe the individual is most likely to move.

5.2.5 Competent authorities seem to vary as to whether they ask and record information about multiple registrations. However, in the context of free movement it is

reasonable to expect that individuals will be registered simultaneously with more than one authority. It is important that competent authorities are able to assess the regulatory risk to other Member States. They might do this by collecting information from competent authorities, particularly the home competent authority, that will help them know where their registrants have practised previously, where they may still be registered and practising, and where they may seek to take up practice in the future.

### Agreement Three

**Competent authorities should proactively exchange information when:**

- **a healthcare professional's right to practise has been restricted because of a serious performance, conduct, health or criminal issue; and/or**
- **the competent authority has objective reasons to believe that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.**

**In these serious circumstances, as a minimum, a rapid warning should be sent to:**

- **the individual's home country; and**
- **other Member States where the individual has previously been registered, is currently registered or where there are objective reasons to believe they may move in order to seek registration.**

## 5.3 Criminal Records

5.3.1 Information extracted from the criminal record may be requested for a clear, defined purpose (e.g. in the context of a criminal proceeding or in order to have access to certain jobs or activities). There are two proposals from the Commission on organising exchanges of information between central authorities in charge of the criminal record. Access rights to information remain defined at national level.

5.3.2 The need to improve the quality of the information exchanged on criminal records<sup>5</sup> has become a priority for the EU, and the Commission has undertaken to work swiftly and vigorously by putting forward proposals for legislation in the short and medium term.

---

<sup>5</sup> Information on convictions handed down in other Member States is currently governed by the 1959 European Convention on Mutual Assistance in Criminal Matters (Council of Europe).

- On 13 October 2004, the Commission adopted a proposal for a Council Decision on the exchange of information extracted from the criminal record.<sup>6</sup> It aims at securing rapid improvements in the current mechanisms for exchanging information between Member States, mainly by providing: (i) time limits for the transmission of this information; and (ii) the use of a standard form for requests and for replies. It also provides that when the central authority of the criminal record is asked for information about a person's criminal record, it is entitled, in accordance with national law, to complete the information in its possession by addressing a request for information to the corresponding authority in another Member State. Political agreement was reached by Member States on 24 February 2005, and it should be adopted shortly.
- On 25 January 2005, the Commission presented a White Paper analysing the main difficulties in exchanging information on convictions and making proposals for a computerised information exchange system.<sup>7</sup> The Justice and Home Affairs Council of 14 April 2005 agreed on a way forward. On this basis, the Commission will table by the end of 2005 a legislative proposal setting forth an in-depth reform of the existing exchange mechanisms.

#### **Agreement Four**

**Competent authorities working with their judicial systems should make full use of the Council Decision [Inter-Institutional File 2004/238/CNS; COM(2004) 664] on the exchange of information from the criminal record.**

#### **5.4 Pending Cases**

- 5.4.1 Particular difficulties arise for competent authorities in cases where they are aware of serious information relating to a practitioner that indicates that the public may be at risk from that practitioner and where no final decision has been taken in the home country about the practitioner's continuing right to practise (so-called 'pending cases').
- 5.4.2 In some cases, the competent authority's decision to restrict or remove registration may be subject to appeal or practitioners may remove themselves from the home register and move to another jurisdiction.
- 5.4.3 The competent authority may have the ability in such cases to impose a temporary or interim sanction pending a final decision. The home competent authority in these circumstances needs to balance the presumption of innocence with the recognition of potential risk to patients.

---

<sup>6</sup> Inter-Institutional File 2004/238/CNS; COM(2004) 664.

<sup>7</sup> COM(2005) 10, 25.01.2005.

## **Agreement Five**

**Some Member States' competent authorities have the power to impose urgent and effective interim restrictions on, or removal from, practice pending full and final determination of a case. In these pending cases where the balance is that patients or healthcare systems are at risk, and especially where a temporary or interim sanction has been imposed pending an appeal or final decision, competent authorities should reactively, or proactively, exchange information with other competent authorities on a case-by-case basis.**

# 6. Supporting Information Exchange

## 6.1 Access to Information via Websites

- 6.1.1 Competent authorities, the public and employers frequently want to find out information about a competent authority, e.g. how they can seek information on individual practitioners or who is the correct individual to communicate with.
- 6.1.2 Most competent authorities have a website that contains this sort of information. In most authorities, these websites have some parts giving free access to the general public where competent authorities will post information they consider should be freely available, e.g. on how to make a complaint. It is technically possible to offer other levels of accessibility to employers and a level of accessibility restricted to competent authorities of the same profession in other countries. This last accessibility level could contain information on individual practitioners and probably should contain a description of the standards and processes by which individual practitioners are investigated. This information will be invaluable for host competent authorities making judgements on practitioners who have moved to their own country.
- 6.1.3 In future, these databases could be expanded to contain more information, e.g. digital photographs of individual practitioners.
- 6.1.4 The Health Professions Council UK has developed a website (Health Regulation Worldwide) giving access to competent authorities worldwide. The European section of this website has been further expanded during the course of the UK EU Presidency, building on the work that began during the Netherlands EU Presidency. The Health Professions Council has agreed to continue managing this site for Europe until, or if, alternative arrangements become available.

### Agreement Six

- a) **All competent authorities should run a website and this should be signposted and accessed via the 'Health Regulation' website (developed and currently managed by the Health Professions Council UK – [www.healthregulation.org](http://www.healthregulation.org)).**
- b) **Each competent authority's website should contain agreed minimum information, and the competent authority should consider publishing information in more than one language.**

## 6.2 Innovative Approaches to Information Sharing

6.2.1 Collaborative working gives the opportunity in the medium to longer term to trial innovative methods of information sharing, such as establishing personal identity and carrying personal information via smart cards (see Glossary). Competent authorities should begin to explore what such innovation may mean for professional registration and for the transfer of information between authorities.

### Agreement Seven

- a) **Competent authorities agree to work collaboratively and share best practice in innovation in information exchange. A start should be made by one or more competent authorities on piloting the sharing of electronic information (e.g. smart cards).**
- b) **Support from the European Commission should be sought for this pilot.**

## 6.3 Exchange of Good Practice

6.3.1 The relationships between competent authorities is developing, and associations of competent authorities or professional associations of one or more professions are beginning to be formed or already exist. These associations encourage the exchange of good practice and, through the development of close inter-authority relationships, the exchange of information.

### Agreement Eight

**In the context of exchanging good practice, competent authorities should collaborate at a European level. The establishment of European associations of professional competent authorities should be investigated.**

## 6.4 Definitions and Glossary of Terms

6.4.1 Definitions and terms used by competent authorities can vary in meaning across Europe. The Glossary of Terms attached to this agreement is to make the meaning of this document as plain as possible. It should not be taken as an attempt to harmonise meaning, but as a device to make a working document understandable by most readers.

### Agreement Nine

**The Glossary of Terms in Appendix 1 should be updated and expanded to reflect the published Directive.**