

RCN Policy Unit

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The legal and policy issues for a PCT in England to have a nurse at Board level and consideration of Board nurse competencies

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The issues

This paper sets out a summary of the legal and policy issues:

- the legal requirements for a PCT to have a nurse at Board level;
- the policy requirements for a PCT to have a nurse at Board level
- the core competencies for a nurse at PCT Board level

Is there a legal requirement to have an Executive Nurse at the Board of a PCT?

The NHS Reform and Health Care Professions Act 2002 created Primary Care Trusts to take over the role of the previous Health Authorities. Health Authorities were not required to have a nurse post on the Board. There is no requirement in the NHS Reform and Health Care Professions Act 2002 for a nurse to be part of the Board of a Primary Care Trust.

Secondary legislation was introduced which gave precise instructions about the make up of a PCT Board and its governance functions (The Primary Care Trusts (Membership Procedure and Administration Arrangements) Regulations 2000 (SI 2000 no 89)).

Regulation 2 sets out the requirements for membership of a Primary Care Trust. A PCT shall have between 8-14 members with no more than seven officer members and the remaining non-officer members being appointed by the Secretary of State. The officer members must include the Chief Executive and the Director of Finance, the Chair of the Executive Committee, and between 1-4 persons nominated by the Executive Committee. The Executive Committee must include at least one doctor and a nurse. (Reg 2(6)).

The result is that there is a legal requirement for a nurse to be a member of the Executive Committee of a PCT. Any one from the Executive Committee can be nominated to be a Board member of the PCT, so it is possible for a nurse to be on the Board of a PCT. However, there is no legal requirement for the Board membership of the PCT to include a nurse as a matter of legal right.

By contrast, the Health and Social Care (Communities Health and Standards) Act 2003 which creates **Foundation Trusts** does require that there must be an executive director who is a registered nurse or a registered midwife on the Board of Directors (Schedule 1 para 16(2)).

Is there a policy requirement to have an Executive Nurse at the Board of a PCT?

The Judicial Review Settlement between the RCN and the Secretary of State for Health contained an agreed published letter (dated 8 December 2005, DH website). In this the Secretary of State for Health states:

“I would reiterate my commitment to the important role that nursing has to play in taking the reform agenda forward and as you are aware Sir Nigel Crisp has already confirmed that nursing will be represented on new SHA and PCT boards.”

The policy commitment was expanded upon when the Chief Nurse for England sent a letter to the Chief Executives of SHAs in London dated 30 January 2007 in which she states:

“I am writing to you as I have become aware that some PCTs in London are planning to change their senior nursing leadership arrangements. It seems inappropriate to make changes at this juncture (unless there is a pressing performance or other similar issue) before the “Fitness for Purpose” exercise is carried out. As you will be aware both the Secretary of State and Sir Nigel Crisp announced in November of last year that they expected each new PCT to have a Director level nurse on the Board. This commitment was also re-emphasised to the RCN when an agreement was reached on the Judicial Review on Commissioning a Patient Led NHS. There is work in progress on the core competencies needed for a Board level PCT nurse (see attachment). Clearly, this may well be part of a much wider portfolio of responsibility.”

Sir Nigel Crisp stated in his speech at the CNO conference on 10 November 2005 that :

“It is in recognition of the key role that nurses have to play in delivering the next stage of reforms that the new SHAs and PCTs will be expected to have a nurse director on their boards. This will ensure that clinical experience and knowledge is integral to shaping and delivery of local services and that that clinical practice reflects patients' priorities/choice and that delivery is sustainable”.

As a result, there is a policy commitment that the Establishment Orders for new PCTs will require a nurse director on the Board. This is a policy commitment which, even though not required in legislative terms, can be checked against the Establishment Order for each PCT created since November 2005. This commitment does not apply retrospectively.

Note- the Judicial Review Settlement Letter did not refer to the post of a *nurse* at Board level, rather *nursing* representation, although both the CNO and Sir Nigel Crisp state they intend this policy to mean the post holder.

In addition, the CPLNHS Human Resources Framework for SHAs and PCTs December 2005 (NHS Employers, Gateway Reference 5832) lists the portfolios necessary for members of the executive team- Directors of SHAs and PCTs in section 59 and this includes nursing. This guidance also confirms that as a matter of policy, all PCTs should have a doctor and a nurse on the Board. It is not clear whether these portfolios were developed as it appears each SHA are developed different criteria:

“59. In designing structures and making appointments, SHA and PCT chief executives should ensure that the following essential portfolios are held by members of the executive team:

- Commissioning and performance
- Finance
- Information management and technology
- Medical
- Nursing
- Provider development
- Public health
- Workforce

National standard portfolio descriptions will be made available for all of the above. This does not imply that there should be a separate post for each portfolio area. Indeed, PCTs may wish to collaborate by appointing shared directors where it makes sense to do so. However, all SHAs and PCTs should have a doctor and a nurse on the board.”

What are the core competencies for an Executive Nurse at the PCT Board?

The Chief Nurse letter dated 30 January 2007 refers to a process called “Fit for Purpose” and it appears from the context that a review of nursing advice at Board level may have been a part of this nationally driven exercise. It appears that this “Fit for Purpose” exercise may have been the lever from which the CNO decided that a national set of core competencies for a Board level nurse were needed. Her letter indicates

that as at January 2007 there was no national agreement of the core competencies for a Board Nurse Executive.

The RCN may want to consider its role in the national design of the core competencies for the nurse at Board level. It may be useful to assess whether the RCN would require different core competencies depending on whether the Board nurse had either a commissioning or a provider remit.

The RCN may also want to consider a fully developed set of criteria for the role of the *nurse* at Board level, or separately, the manner in which *nursing* is influential at Board level (these may or may not amount to the same thing).

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