How the Falsification of QOF Data Almost Led to the Strike off of Two GP Partners

AUTHOR / KEY CONTACT

Nicole Ridgwell
Partner

nicole.ridgwell@la-law.com
020 7492 9834

It has recently been reported that two GP partners have been suspended for 12 months by the Medical Practitioners Tribunal Service (MPTS) following findings that they falsified their Quality and Outcomes Framework (QOF) records.

The MPTS Tribunal decided that the actions of the GP partners amounted to dishonesty and, therefore, serious misconduct. Their actions were found to be dishonest because they were "premeditated, repeated, prolonged and designed to mislead regulators".

It had long been held across the healthcare tribunals that if the fitness to practise panel found dishonesty, this would be more likely to lead to a striking-off order. Whilst recent case law has built more nuance into this, it remains the case that fitness to practise panels consider that dishonesty in any context (though particularly in a clinical context) is taken to be of the utmost seriousness because of the fundamental principle that the public must be able to rely on their healthcare professionals for honesty, openness and transparency.

The two GP partners in this example received a lesser sanction than that of strike-off, receiving a 12-month suspension order each. Evidently very serious outcomes for both individuals, but the reason for the lesser sanction likely relates to the specific findings in the case.

The MPTS Tribunal found that the GP partners had obtained an additional £44,000 of income between 2018 and 2019 through falsely backdating their QOF records.

Importantly, however, the Tribunal also found that their motivation was not financial. Instead, the Tribunal accepted the evidence that the GP partners were attempting to stop CQC from closing down their practice. In 2018, the practice had been rated Inadequate and placed in special measures (partially due to low QOF scores), and the GP partners decided that repeated low QOF scores would lead to the closure of the practice at a time when they had received an influx of patients from another surgery that had recently been closed. The Tribunal found that it was this concern for their patients which led the GP partners to act as they did.

The MPTS Tribunal outcome is a good reminder to all GPs of the interrelated nature of the various regulators within this space. It was, after all, CQC concerns that led directly to the referral of both GPs to the General

Medical Council (GMC), which was then escalated to the GMC's internal tribunal service to assess the allegations of misconduct independently.

As healthcare professionals within the sector will be well aware, such referrals to their regulators are equally possible for registered nurses (to their regulator, the Nursing & Midwifery Council) and even for the ostensibly 'non-regulated' healthcare workers in England who are nevertheless subject to referrals to the Disclosure and Barring Service.

Given the consequences for these two GPs (particularly in the context where the MPTS explicitly found that they were not motivated by financial gain), the question is why the GPs would risk their careers to falsify QOF records.

The QOF is described by NHS Digital as a "voluntary annual reward and incentive programme for all GP surgeries". It requires each GP surgery to accept various indicators (measures of performance) as part of its annual GP contract negotiations. The indicators vary slightly, as different aspects of care become more of an annual focus (for example, Covid vaccinations during the pandemic) but broadly encompass:

- management of some of the most common chronic conditions, for example, asthma and diabetes
- management of major public health concerns, for example, smoking and obesity
- providing preventative services such as screening or blood pressure checks

It is 'voluntary' in the respect that a GP practice can choose not to engage. That said, and evidenced by the Tribunal case highlighted, QOF scores are vital to demonstrate engagement with the NHS, compliance with their GP contracts, obtain the financial incentives attached to QOF scores and demonstrate compliance with the CQC's expectations of a GP practice.

Whilst the QOF scores cannot be used within themselves to rank GP practices against each other, CQC and the public are able to compare how GP surgeries perform against the indicators with which they are expected to comply. The QOF scores can also be used to identify the prevalence of certain conditions within a particular area and, correspondingly, what the data show on how a particular GP surgery is managing those conditions.

As with the NHS Digital data on winter preparedness, any available data sources, such as QOF scores, will influence the regulators. However, the concept of nuance required for identifying the appropriate Tribunal sanction is just as applicable to QOF scores. QOF 'achievement' is directly related to the local circumstances, list sizes, and unforeseen pressures.

It is, therefore, rarely suitable for comparative analysis between surgeries, and we would strongly recommend that GP surgeries are alive to the potential interpretations of their own QOF scores. The many nuances in QOF

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

scores should be identified by GP surgeries and thought should be given to how these scores should be discussed with CQC during the inspection process. It is, of course, never acceptable to falsify records. This Tribunal finding instead demonstrates how very important those scores can be to your NHS contract, but also to your wider surgery rating and ultimately to your own ability as a healthcare professional to be considered fit to practise.

We represent and advise GP practices through challenges to CQC reports and responses to enforcement action taken by CQC and with employment and commercial issues relevant to GP practices. We understand that every business is different. We work with you to understand your circumstances and explore your options to agree on the most appropriate strategy to achieve your aims. We can provide advice and representation throughout the CQC process, alongside support with ancillary issues such as safeguarding matters, inquests, employment advice and assistance dealing with banks, commissioners, families and the media.

If you have received a critical inspection report or alternative enforcement action from CQC, please get in touch with our health and social care lawyers to discuss how we can help at Nicole.Ridgwell@LA-Law.com.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com