Explaining how and why a nurse or midwife presents a regulatory concern

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Introduction

As we explain earlier in this section, we use ‘regulatory concerns’ to identify and explain what it is about a nurse or midwife’s conduct or practice that concerns us as a regulator. Because we may only have limited information when we are screening a case, or in the early part of our investigation, in those initial stages we usually explain regulatory concerns in fairly broad terms.

For example, if a nurse or midwife made a number of different kinds of dosing errors on different days, in the early stages of our fitness to practise process we would say our regulatory concern is that the nurse or midwife is unable to administer medication safely. We usually explain the concerns in more detail as we gather more information about what happened and how it could have put patients, members of the public, or public confidence in nurses and midwives at risk. Cases can be made up of more than one regulatory concern, and this can sometimes include concerns about the nurse or midwife’s motivation, or reasons for doing or not doing something.

As the case passes through the further stages of our investigations process and is ready to be considered by case examiners, we prepare a formal statement of regulatory concern. This explains our concerns about the nurse or midwife’s practice in more than detail than we will have given them when we were screening the case.

Identifying what causes us a regulatory concern

A regulatory concern will usually focus on one incident, or one series of closely related incidents. Often, problems in the nurse or midwife’s practice that might seem quite separate from each other can actually be explained as one concern. For example, if the nurse who made the series of dosing errors also failed to observe patients who needed to be supervised when taking their medication, and didn’t keep proper records of what medicines had and hadn’t been administered, there is still likely to be one regulatory concern about whether the nurse can safely manage how they administer medicines.

An allegation about a nurse or midwife’s overall fitness to practise can be made up of more than one regulatory concern. So one fitness to practise allegation could, for example, be based on three regulatory concerns: one about poor record-keeping, a second about neglecting patients, and a third concern about dishonesty based on false expense claims. If we uncover new and separate regulatory concerns as we are investigating a case, we will tell the nurse or midwife about this, and ask them to respond if they wish to. The latest we do this will be when we send them the information we’ve gathered at the end of the investigation.

Analysing evidence of regulatory concerns

Concerns about nurses and midwives need to be based on evidence. The way we describe the regulatory concern should always be informed by what the evidence we have tells us about possible risks to patients, or to the public’s trust in nurses and midwives.
For example, if a nurse or midwife is alleged to have been sleeping on duty, we wouldn’t simply assume doing this will automatically put patients at risk, or undermine public trust, and just describe the regulatory concern as ‘sleeping on duty’.

Rather, to properly consider and explain what regulatory concern the nurse or midwife presents, and what decision or action we need to take to protect the public in any particular case, we will need to carefully review the evidence and what it says about:

- what happened
- the particular setting where the incident occurred
- whether it was an isolated incident
- whether it was a conscious decision or an accident
- whether the nurse or midwife failed in their duty
- whether any background context factors influenced what happened
- whether there was a risk of patients or service users being harmed
- whether records were falsified or the nurse or midwife tried to cover up what happened

Each of these things will affect whether we there is a regulatory concern about a nurse or midwife’s practice, whether there may actually be more than one concern, and how we explain or describe what causes us concern.

**Regulatory concerns about motivation or intent**

Sometimes, the reason why the nurse or midwife did or failed to do something might itself be a regulatory concern, because it could suggest a further risk to patients, or to the public’s trust in nurses and midwives, over and above the risks the conduct itself involves.

A nurse or midwife who personally contacts a patient in their care will usually present a regulatory concern, because doing so will probably mean a breach of professional boundaries. However, if the nurse or midwife tried to contact the patient because they wanted to pursue a sexual relationship with them, we would need to address this kind of motivation as a separate regulatory concern in itself.

We need a clear foundation to suggest concerns about a nurse or midwife’s motives. For example, if the nurse who made the series of medication administration errors also signed the records before they began the medication round, we would need clear evidence that they had a dishonest reason for doing this before we accused them of acting dishonestly. Otherwise the concern would really still be about the management of medicines administration.

In contrast, if a midwife administered a controlled drug without anyone to act as a second checker, and later asked another midwife to sign to say that they had checked the drugs, there would be two concerns. One about the failing in administering controlled drugs, and a second, separate concern about the dishonest attempt to cover up the failing. Unlike the pre-signing of records, there is no realistic possibility of an innocent explanation for this.

**Statements of regulatory concern**

At the end of our investigation we will produce a statement of regulatory concern. This is a concise explanation of what we say has happened in a particular case. The statement of regulatory concern won’t necessarily need to be broken down into specific episodes on specific individual dates, but it should explain what happened, and over how long.

It’s important that the nurse or midwife is able to understand what we say happened, and why we say it means we may need to take regulatory action in their practice. The nurse or midwife needs to be able to tell us whether or not they accept that our concerns are well founded. Case examiners need enough detail for to make a clear and well reasoned decision about whether the nurse or midwife has a [case to answer](#), and also whether they should use their [powers to dispose of cases](#) by recommending [undertakings](#), issuing [warnings](#), or giving [advice](#).

During the investigation we sometimes receive new information which forms the basis of a further area of regulatory concern, separate from those previously identified at the screening stage. When this happens we will tell the nurse or midwife and invite them to respond.