

Fitness to Practice Panel  
General Medical Council  
Regent's Place  
350 Euston Road  
London  
NW1 3JN

12<sup>th</sup> May 2007

Dear Sirs,

**Re: Working Time Directive and breaches of monitoring hours**

In May 2006 the Association of Surgeons in Training (ASiT) published a report on the impact of the Working Time Directive (WTD) in Surgery. This report aimed to assess the impact of the introduction of the WTD on surgical training, worker health, worker lifestyle, and, importantly, patient care. I have enclosed a copy of this report for your information.

We seek specific, and urgent, guidance on some issues that have arisen out of the consultation surrounding the report, as well as findings from the PMETB survey, which we have been led to believe may actually be putting individuals in a position of vulnerability.

The ASiT report found that the exposure to operative surgical cases was decreased by some 21% in general, and repeated through several studies, with a reduction to 56 hours per week. The constraints of the WTD, in particular due to the SiMAP and Jaegar rulings has made it difficult to construct compliant rotas in any other format other than full-shift patterns of working. Combined with the New Deal and Junior Doctor's Contract, there has been an expedient move towards this pattern of working for health & safety, as well as financial reasons. This has been to the detriment of surgical training. Furthermore, and perhaps somewhat worryingly, due to the relatively low numbers of doctors comprising these rotas, the rota design has been constrained to the degree that the rota pattern may actually be more detrimental to worker health, and also has significant implications for patient safety and care.

With regards to the patient care issues in particular, the patterns of working instituted with seven consecutive night shifts has been shown to increase the incidence of adverse events and accidents occurring in the workplace, as well as accidents for those doctors driving home from a night-shift. The impact of the reduced training exposure on patient care cannot be fully evaluated at this stage, but is likely to have a significant impact on the standard of care offered to our patients both now, and in the future.

Surgery, as a craft specialty, along with several other procedure based specialties, has struggled to come to terms with the impact of the WTD on training. Efforts have been made

to try and conserve as much exposure to training episodes per individual as possible. In doing this, many trainees have opted, or in cases been encouraged, to try and compromise on rotas in order to be compliant but maximize exposure to the operative cases that determine the 'craft' of surgery. We believe that this has been achieved through a variety of means; by trainees opting to stay on after a rostered shift in order to gain theatre experience; declaring that the working pattern is non-resident whilst actually being resident on-call; or even by declaring one working pattern on monitoring forms whilst working a different pattern entirely.

As part of the contractual obligation, trainees are obliged to complete monitoring diaries in which all hours worked are recorded and the form signed as a true and accurate reflection of their working pattern.

It is clear that one aspect which significantly contributes to the 'compromises' outlined above is that many healthcare trusts are seeking to reduce the salaries paid to its junior staff by decreasing the banding payments for out-of-hours work. Therefore, surgeons-in-training are often faced with the situation of having to alter working patterns and compromising their training further, or agreeing to the pay-cut but continue working the same pattern and protecting training. Indeed the recent PMETB survey has noted that 10.4% of all surgical respondents have declared that they have been told to complete monitoring forms to declare that they are compliant when they are not. We believe that this figure may be even higher.

During the consultation following the issuing of the WTD report it was stated to us that doctors who are knowingly exceeding their monitored working hours could leave themselves open to reporting to the General Medical Council on issues of probity as they have signed monitoring forms to the effect that the hours declared are a true reflection of their work. This would be of particular concern if there were to be an adverse event at a time when the individual had declared that they were not working.

Given the potential severity of the implications of this suggestion, subsequent queries from our members, and the evidence that at least 10% of surgical trainees may be in this position, we feel the need to urgently clarify with you the implications with regards to the opinion and position of the GMC in the settings outlined below. When considering these we would be grateful if you could consider the likelihood of action against individuals, if there was an adverse clinical incident and the person was found to have breached their monitored hours, or in the setting where no adverse clinical incident has occurred but the individual is investigated or referred for professional matters:

1. Where the trainee has declared a compliant working pattern in terms of submitted rota and monitoring, but on occasions overruns their rostered shift due to genuine emergencies, therefore exceeding the hours limit for the working time directive, but does not declare the hours on monitoring forms.
2. Where the trainee declares that they are non-resident on-call but is actually resident in the workplace for the entirety of their rostered shift.
3. Where the trainee has declared a compliant working pattern in terms of submitted rota and monitoring, but routinely stays behind after completion of a night-shift to attend a theatre list at which they may operate supervised or unsupervised, but does not declare the hours on monitoring forms.
4. Where the individual has declared a compliant working pattern in terms of submitted rota and hours monitoring, but is knowingly working a different working pattern

entirely which exceeds WTD regulations, yet has failed to declare this on monitoring forms.

We would also like to explore the implications for trainers who apply pressure, or try to influence trainees to falsely declare their actual hours worked on monitoring forms in the settings above.

We would be grateful to know what the likely course of investigation would be, and the potential outcome of disciplinary action if this was deemed an offence of professional misconduct.

I look forward to receiving your response in order that we can inform our members as a matter of urgency so that doctors in training are not unwittingly putting themselves in a position of vulnerability.

Yours Sincerely,

A handwritten signature in black ink that reads "Conor Marron". The signature is written in a cursive style with a large initial 'C'.

Conor Marron  
*Past-President & Honorary Treasurer, ASiT*