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**NHS CORBY CLINICAL  
COMMISSIONING GROUP**

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*Policy for Managing the Death of a Contractor*

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## Policy for Managing the Death of a Contractor

### 1. Introduction

- 1.1 The aim of this policy is to provide consistency when dealing with the death of a contractor, whether they are a single-handed contractor, in a partnership or a corporate organisation and includes consideration of GMS, PMS and APMS contracts.
- 1.2 This policy outlines the procedure to follow when the death of a contractor occurs. This is a rare occurrence, but there are certain steps to follow within agreed timescales that are laid down in legislation.

### 2. Individual - GMS Contract

- 2.1 Where a GMS contract is with an individual medical practitioner and that practitioner dies, the contract must terminate at the end of the period of 7 days after the date of the contractor's death unless, before the end of that period:
  - 2.1.1 the contractor's personal representatives have confirmed in writing to the Commissioner that they wish to employ or engage one or more general medical practitioners to assist in the continuation of the provision of clinical services under the contract; and
  - 2.1.2 the Commissioner agrees to provide reasonable support which would enable the provision of clinical services under the contract to continue; and
  - 2.1.3 the Commissioner and the personal representatives agree the terms upon which clinical services under the contract can continue to be provided; and
  - 2.1.4 the Commissioner and the personal representatives agree the period during which clinical services must continue to be provided and such a period must not exceed 28 days starting on the day after the end of 7 day period following the contractor's death.
- 2.2 The Commissioner should issue a confirmation letter setting out the timescales of the continuation. A template letter is provided in Annex 1.

### **3. Individual – PMS or APMS Contract**

- 3.1 Where the PMS or APMS contract is with a single individual and that individual dies, the contract shall terminate at the end of the period of seven days after the date of the contractor's death unless, before the end of that period, the Commissioner has agreed in writing with the contractor's personal representatives that the contract should continue for a further period, not exceeding 28 days after the end of the period of seven days.
- 3.2 The Commissioner should issue a confirmation letter setting out the timescales of the continuation. The template letter in Annex 1 can be used.

### **4. Partnership – GMS Contract**

- 4.1 The GMS Regulations state that where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted.
- 4.2 The default position in partnership law is that every partnership is dissolved as regards all the partners by the death of any partner. The partners can, however, change this position and agree between themselves that the partnership will not dissolve on the death of any partner. It is likely that most partnerships will have dealt with this issue in their partnership deed to avoid termination of their contract.
- 4.3 The GMS Regulations require GMS contracts to contain specific provisions relating to the dissolution of partnerships.
- 4.4 Where a partner dies, the GMS Regulations distinguish between GMS contracts that are entered into with a contractor that consists of only two individuals practising in partnership and those GMS contracts where the contractor consists of more than two individuals.

#### **Two individuals practising in partnership - GMS Contract**

- 4.5 Where the contractor consists of two individuals practising in partnership and the partnership is dissolved or terminated due to the death of one of the partners, the surviving partner must notify the Commissioner in writing as soon as is reasonably practicable of the death of their partner.
- 4.6 Where the Commissioner receives such a notice, it must acknowledge receipt of the notice in writing.

- 4.7 If the surviving partner is a general medical practitioner, the contract will continue with that individual. The Commissioner may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from a partnership to an individual medical practitioner. The Commissioner must notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.
- 4.8 A template Notification Letter is provided in Annex 2. A variation notice will need to be included with this letter.
- 4.9 To provide assurance that the individual is able to meet the contractual obligations, the Commissioner should discuss with the individual continued service delivery options bearing in mind the size of the practice, the range of services provided and any potential capacity issues.
- 4.10 If the surviving partner is not a general medical practitioner, the Commissioner must enter into discussions with the surviving partner and use reasonable endeavours to reach an agreement to enable the provision of clinical services to continue under the contract. The Commissioner may, if it considers it appropriate to enable clinical services under the contract to continue, offer the surviving partner reasonable support.
- 4.11 The Commissioner may choose to consult the relevant LMC, if it considers it appropriate or any other person that the Commissioner considers necessary.
- 4.12 Where the Commissioner reaches an agreement with a surviving partner who is not a general medical practitioner, the Commissioner must notify that individual confirming:
- 4.12.1 the terms upon which the Board agrees to the contract continuing with that individual;
  - 4.12.2 the interim period during which the contract is to continue which must not exceed six months;
  - 4.12.3 that the individual will employ or engage a general medical practitioner for the interim period to assist in the provision of clinical services under the contract; and
  - 4.12.4 the support, if any, which the Commissioner is to provide to enable clinical services under the contract to continue during the interim period.
- 4.13 A Template Notification Letter is provided in Annex 3. A variation notice will need to be included with this letter.

- 4.14 Where the Commissioner cannot reach an agreement with the surviving partner or if the surviving partner does not wish to employ or engage a medical practitioner, the Commissioner must terminate the contract immediately by serving notice in writing on the surviving partner.
- 4.15 The Commissioner must also terminate the contract in writing to the surviving partner if:
- 4.15.1 the surviving partner wishes to withdraw from the agreed arrangements at any stage during the interim period; or
  - 4.15.2 at the end of the interim period, the contractor has not entered into partnership with a general medical practitioner who is not a limited partner.
- 4.16 Where the Commissioner intends to terminate the contract, please refer to paragraph 0.
- 4.17 A template Termination Letter is set out in Annex 4.

More than two individuals practising in partnership - GMS contract

- 4.18 Where there are more than two individuals practising in partnership, the death of one of the partners may result in the partnership being dissolved. This may not always be the case as the partnership arrangements between the partners may state that the partnership will continue or make other provision on the death of a partner that does not result in the dissolution of the partnership.
- 4.19 Where the partnership is not dissolved or terminated, the contract will continue and the provisions below will not apply provided that the partnership remains eligible to hold the GMS contract. Please refer to chapter 5 (Which medical contract when?) for more information on eligibility requirements.
- 4.20 It is possible for the contract to continue where the partnership is dissolved or terminated for whatever reason (which may be due to the death of a partner) and the contractor consists of more than two individuals practising in partnership. The contract may continue with one of the former partners if the following conditions apply:
- 14.20.1 The former partner must be nominated by the contractor; and
  - 14.20.2 The former partner must be a medical practitioner that meets the condition in regulation 4(2)(a) of the GMS Regulations.
- 4.21 The nomination of the former partner by the contractor must be:

- 4.21.1 in writing and signed by all of the persons who are practising in partnership; and
  - 4.21.2 specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual medical practitioner; and
  - 4.21.3 be provided to the Commissioner at least 28 days in advance of the date on which the contractor proposes to change its status from that of a partnership to that of an individual medical practitioner; and
  - 4.21.4 specify the name of the medical practitioner with whom the contract will continue, which must be one of the partners.
- 4.22 Where the Commissioner receives such a nomination, it must acknowledge receipt of the notice in writing before the date specified in the nomination as the date on which the contractor proposes to change its status from that of a partnership to that of an individual medical practitioner.
- 4.23 The Commissioner may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from a partnership to an individual medical practitioner. The Commissioner must notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.
- 4.24 A template Notification Letter is provided in Annex 5. A variation notice will need to be included with this letter.

## **5. Two or More Signatories - PMS Agreement**

- 5.1 The PMS Regulations do not allow PMS agreements to be treated as made with a partnership. Where individuals are practising in partnership, the PMS agreement will be entered into with each individual (who may or may not be in partnership). The individual signatories to a PMS agreement collectively form the contractor. The PMS Regulations do not require a PMS agreement to define a specific process for any variation to the signatories. The Commissioner must, therefore, review the relevant PMS agreement to determine whether any provisions have been added relating to this and prior to following any process for variation.
- 5.2 Ideally, a surviving signatory to a PMS agreement will notify the Commissioner in writing as soon as reasonably practicable of the death of their co-signatory.

- 5.3 Upon receipt of the notification from the surviving co-signatory(ies), the Commissioner will need to consider the implications that the death of the co-signatory will have on the ongoing provision of services under the agreement.
- 5.4 Where the Commissioner is satisfied that the remaining signatory(ies) is eligible to hold the agreement and agrees that the agreement is to continue, the agreement will need to be varied to remove the deceased as a signatory.
- 5.5 The process above does not affect any right that the Commissioner may have to terminate the agreement under any terms of the agreement.

## **6. Two or More Signatories - APMS Contract**

- 6.1 The Commissioner must review the relevant APMS contract to determine whether any provisions relate to the death of a contractor prior to following any process for variation.
- 6.2 Where no provisions cover this scenario, paragraphs 0 to 0 are likely to be relevant.

## **7. Practical Issues Arising from Death of a Contractor**

### Request to form a partnership

- 7.1 Where a GMS contract is held by an individual (whether as a result of the death of a partner or otherwise), that individual may propose to practice in partnership with one or more persons during the existence of the contract. Please refer to the policy on contracts variations (chapter 6) for more information on the relevant process and obligations of the Commissioner.

### Procuring a new contract

- 7.2 Prior to the completion of the continuation, the Commissioner will need to decide whether to procure primary care medical services to replace the contract.

## Non-continuation or Termination of the Contract

- 7.3 Where the contract is not continued, the Commissioner will need to terminate the existing contract. Please refer to the policy on contract breaches and termination (chapter 7) for further information on considerations relating to terminating a contract.

## Annex 1

### Template Acknowledgement Letter

(Individual – GMS, PMS or APMS contract)

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for your recent letter informing us of the death of [insert name]. I would like to express the condolences of our staff.

I can confirm that the contract will terminate on [insert date (either 7 days after death or 28 days after the end of the 7-day period)]

I would also confirm the following arrangements for [cover during this period/collection of the NHS owned equipment]

- [insert any arrangements]

Yours sincerely

[name]

[title]

## Annex 2

### Template Notification Letter

[This letter should be used where the GMS contract is held by two individuals working in partnership and the surviving partner is a medical practitioner.]

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for your recent letter informing us of the death of your partner [insert name]. I would like to express the condolences of our staff.

I can confirm that we are satisfied that you meet the conditions to hold a GMS contract and, therefore, the contract will continue with you.

I have attached two copies of a variation document which I would be grateful if you could sign and return, after which we will sign and return a copy for you to retain for your records.

Yours sincerely

[name]

[title]

## Annex 3

### Template Notification Letter

[This letter should be used where the GMS contract is held by two individuals working in partnership and the surviving partner is not a medical practitioner but the Commissioner and the surviving partner have reached an agreement to enable the provision of clinical services to continue under the contract.]

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for your recent letter informing us of the death of your partner [insert name]. I would like to express the condolences of our staff.

I can confirm that we have reached an agreement to enable the provision of clinical services to continue under the contract.

I confirm that we have agreed that you will employ or engage a general medical practitioner for the interim period to assist in the provision of clinical services under the contract.

We have agreed that the contract will continue on the following terms:

- [insert the terms upon which the contract will continue];

We have agreed that the contract will continue until (insert date which must not exceed six months).

[We have agreed that we will provide the following support to enable clinical services under the contract to continue during this period:

- insert details of the support, if any, which the Commissioner is to provide].

I have attached two copies of a variation document which I would be grateful if you could sign and return, after which we will sign and return a copy for you to retain for your records.

Yours sincerely

[name]

[title]

## Annex 4

### Template Termination Letter

[This letter should be used where the GMS contract is held by two individuals working in partnership and the surviving partner does not intend to continue providing clinical services under the contract.]

[insert date]

Dear [name]

Contract details - [insert name of contract]

Following our discussion on [insert date], we write to inform you that we are terminating the contract with you forthwith.

We have terminated the contract because [insert one of the reasons below:

- we cannot reach an agreement with you to enable the provision of clinical services to continue under the contract.
- you do not wish to employ or engage a general medical practitioner to assist in the provision of clinical services under the contract.
- you wish to withdraw from the agreed arrangements to enable the provision of clinical services to continue under the contract.
- you have not entered into partnership with a general medical practitioner who is not a limited partner.]

[insert any arrangements relating to termination]

Yours sincerely

[name]

[title]

## Annex 5

### Template Notification Letter

[This letter should be used where the GMS contract is held by two or more individuals working in partnership, the partnership has dissolved and the contractor has nominated one of the former partners, who is a medical practitioner, to continue the contract.]

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for your recent letter informing us of the death of your partner [insert name]. I would like to express the condolences of our staff.

We note from your letter that you propose to change the status of the contractor under the contract from that of partnership to that of an individual medical practitioner from [insert date]. You have nominated one of the former partners, [insert name], to be the general medical practitioner with whom the contract will continue.

I can confirm that we are satisfied that [insert the nominated partner's name] meets the conditions to hold a GMS contract and, therefore, the contract will continue from [insert date].

I have attached two copies of a variation document which I would be grateful if you could return after being signed by all remaining partners who were signatories to

the contract. We will then sign the document and return a copy for you to retain for your records.

Yours sincerely

[name]

[title]