

Fitness to Practise Determination

The following case was heard by a Fitness to Practise Panel. It is presented here to give an example of one possible outcome of breaching a principle in *Good Medical Practice*. It is not intended to give a clear threshold between acceptable and unacceptable behaviour. Each case which comes before a Fitness to Practise Panel is judged on its own merits and assessed on the particular circumstances of the case.

Summary

The doctor, having recently referred a female patient (a family friend) to the mental health team, visited her at home (after her father contacted him, concerned about her welfare) and engaged in sexual activity with her.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Relationships with patients* section of GMP, specifically paragraph 32 on maintaining trust in the profession, and paragraphs 21b and 21d on the doctor-patient partnership. It also relates to paragraph 57 of the *Probity* section on being honest and trustworthy.

Determination on impaired fitness to practise

Dr X is not present or represented at this hearing. The Panel has previously announced its findings on the facts. It has heard the submissions made by you and has considered the evidence of the witnesses called on behalf of the GMC. The Panel notes that Dr X gave no instructions to his solicitors in relation to any of the allegations. The Panel accepts the Legal Assessor's advice not to draw any inference from Dr X's decision not to participate in these proceedings.

The Panel found the following facts proved: At all material times Dr X was a General Practitioner principal practising from the XXXX Medical Centre ("the practice"). At all material times Ms A was a registered patient at the practice and he was her General Practitioner. In [date removed] Dr X referred Ms A to the Mental Health Team because he was concerned about her general mental health.

In [date removed] Ms A's father contacted Dr X expressing concerns about his daughter's welfare. Dr X attended at Ms A's home where he let himself in with a key previously provided to him by Ms A. During the visit Dr X engaged in sexual activities with Ms A in her bed in that he put his hands inside Ms A's shorts and touched her under her clothing and put his hands on her breasts. Dr X remained in

bed with Ms A until about 6:00 hours the following morning. On [date removed], Ms A made a complaint to Dr B. As a result of that complaint Dr X was contacted by Dr C. On [date removed], Dr C told Dr X not to discuss the matter with Ms A. Dr X subsequently contacted Ms A on her mobile telephone.

The Panel found that Dr X's actions were sexually motivated and were inappropriate, an abuse of his professional position and not in the best interests of Ms A.

The Panel has considered, on the basis of the allegations found proved, whether Dr X's fitness to practise is impaired by reason of his misconduct.

In doing so, it has taken into account the written evidence before it, in particular the witness statement of Ms A and the oral evidence of the witnesses called on behalf of the GMC.

The Panel has heard that at the relevant time, Ms A was a registered patient of Dr X. He was also a close family friend and their families had socialised together. Dr X was given a key to her front door so he could let himself in to take her dog out. Dr X knew of her personal problems and had referred her for counselling when she was suffering from depression in late [date removed]. In relation to the incident in question, Ms A states that in [date removed], Dr X telephoned her at home and asked her if she was okay as her father was concerned about her. She said she was okay and that she was going to bed. She acknowledged that she was on anti-depressants at the time and had consumed alcohol. She recalls that at some point she woke up and became aware that Dr X was present in the room. She realised that he must have used the key she had given to him to let himself into her home. He climbed into bed with her and started cuddling her. He got undressed, save for his t-shirt and boxer shorts. Dr X then proceeded to put his hands inside her shorts, touching her pubic area and made a comment that he thought she would have shaved. She responded "well I don't" and he then put his hands on her breasts. She stated that she didn't know what to do about what was happening and "brushed him off, moved away from him and curled up". She stated that Dr X did not touch her again but stayed in bed with her until around 6am when he got up and left to go to work. She states that shortly after this incident, she had an appointment with Dr B, Psychiatrist who asked why she was upset and so told her of the incident with Dr X.

The Panel heard evidence from Dr B who confirmed that Ms A was seen in the out patient clinic on [date removed] following an urgent referral by Dr X for a mental health assessment to be conducted. Dr B told the Panel that Ms A came with her parents who provided a history and were then asked to leave the room. Ms A then confided to her the incident with Dr X. Dr B stated that although she could smell alcohol on Ms A's breath, she did not appear to be intoxicated. Dr B concluded that Ms A was neither fantasising nor deluded.

Ms A did not want to make a formal complaint but was told that due to the nature of the allegation the matter would have to be referred to the PCT. Dr B's line manager contacted Ms E, Internal Governance Manager at the PCT. Ms A was called to a meeting with Ms E to give her version of the events and a statement was taken.

Ms E initiated an investigation into the complaint by asking Dr C, the then Chairman of the Professional Executive Committee to conduct a preliminary investigation.

Dr C told the Panel that after speaking to Ms E on [date removed], he spoke to the psychiatric team who had seen Ms A and then telephoned Dr X. A meeting was arranged for the same day. Dr X told Dr C that he had cuddled Ms A on occasions but denied that any sexual activity had taken place between them. Dr C advised Dr X not to contact Ms A. However, he was told later that same day that Dr X had indeed contacted the patient.

Ms A in her statement also confirms that about a week after the incident, Dr X contacted her on her mobile. He told her that he was being accused of having sex with her, to which she replied that she had only told the truth and that he had upset her. He apologised to her but she said it was too late as he had “destroyed her trust”.

The Panel also heard the evidence of Dr D, Dr X’s partner at the practice. Dr D told the Panel that he saw Ms A in consultation on [dates removed] and that at both these consultations Ms A informed him of the incident in question. Dr D stated that Ms A had not wanted to make a formal complaint against Dr X. Dr D stated that as he felt out of his depth he contacted the MDU for advice. He also contacted Dr B and the PCT and spoke to Dr C who told him that Dr X had been told to explain the events to him. A practice meeting was then held where Dr X admitted going to Ms A’s house, kissing and cuddling her and staying the night. Dr X told him that allegations made against him were investigated by the PCT which had concluded the matter. Dr D told the Panel that he had, previous to this incident, provided 25 per cent of Ms A’s care but since then was now 100 per cent responsible for her care.

Following Dr C’s preliminary investigation, an oral hearing was held on [date removed] at the PCT, the purpose of which was to consider Dr X’s continued inclusion on the PCT’s Performer’s List. Ms E gave evidence that during the PCT hearing, Dr X’s explanation for his conduct was that after receiving a telephone call from Ms A’s father expressing his concerns regarding her excessive drinking, he rang Ms A who agreed that it was ok for him to visit her at home. He went on to state that when he arrived at Ms A’s house she suggested opening a bottle of wine, which he declined as he was driving. He claims that Ms A then said to him “I’m going to bed now are you coming?”. Dr X stated that he slipped into his underpants and they cuddled and kissed. He admitted putting his hand under her top and feeling her breasts and putting his hand inside her pyjama bottoms over her mons pubis area. He then said to her “you trust me completely don’t you”, to which she replied “yes or uh huh” at which point he removed his hand and they went to sleep.

As stated in the Panel’s determination on the facts the Panel found the evidence of Ms A to be consistent with the live witnesses as opposed to Dr X’s accounts to Dr C and Dr D and to the oral hearing which were not consistent.

The Panel has considered, on the basis of the allegations found proved, whether Dr X’s fitness to practise is impaired by reason of his misconduct bearing in mind that the question of Dr X’s impairment is a matter for this Panel exercising its own professional judgement.

The Panel has had regard to the advice provided in the GMC’s Indicative Sanctions Guidance. Paragraph 11 states that:

'Neither the Act nor the Rules define what is meant by impaired fitness to practise but for the reasons explained below, it is clear that the GMC's role in relation to fitness to practise is to consider concerns which are so serious as to raise the question whether the doctor concerned should continue to practise either with restrictions on registration or at all'.

The Panel has considered Good Medical Practice (May 2001 edition) applicable at the time, which states that:

"You must not allow your personal relationships to undermine the trust which patients place in you. In particular, you must not use your professional position to establish or pursue a sexual or improper emotional relationship with a patient".

It has also borne in mind the Indicative Sanctions Guidance and in particular, paragraph 54 states:

"... Doctors have a respected position in society and their work gives them privileged access to patients, some of whom may be very vulnerable. A doctor whose conduct has shown that he cannot justify the trust placed in him should not continue in unrestricted practice while that remains the case."

And Paragraph 58, which states that:

"A question of impaired fitness to practise is likely to arise if: A doctor has abused a patient's trust or violated a patient's autonomy or other fundamental rights."

The Panel has been informed that Dr X is an experienced GP and as well as being Ms A's GP for a period of 20 years, was also a close family friend. He was aware of Ms A's fragile state of health and was well placed to understand this vulnerability. Indeed he was sufficiently concerned about her health and wellbeing to refer her for counselling in late [date removed] and to make an urgent telephone referral to the Mental Health Team in [date removed]. Against this background, Dr X's behaviour, in engaging in sexual activity with Ms A in [date removed] and subsequently telephoning her after he was told that a complaint had been made, was wholly unprofessional. Although the Panel acknowledges that this was a single isolated incident of misconduct, it was a very serious breach of Ms A's trust. The Panel is greatly concerned at Dr X's poor judgement and failure to maintain the proper professional boundaries by behaving in a way which the Panel has found to be inappropriate, an abuse of his position of trust as a registered medical practitioner and not in the best interests of Ms A.

The Panel has accordingly, pursuant to Section 35C(2)(a) of The Medical Act 1983 as amended, determined that Dr X's fitness to practise is impaired by reason of his misconduct.