

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 behaved inappropriately towards female colleagues and students despite previous warnings.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Working with colleagues* section of GMP, specifically paragraphs 41 and 41b on working in teams and 46 on respect for colleagues. It also relates to the *Teaching and training* section, specifically paragraph 16, and to paragraph 57 of the *Probity* section.

Determination on impaired fitness to practise

“Dr X: At the outset of the hearing you admitted all of the factual allegations in the case. In considering whether your fitness to practise is impaired, the Panel has borne in mind these admissions, the documentary evidence submitted, Ms B's submissions on behalf of the GMC, and Mr P's submissions on your behalf.

You were appointed as a Consultant Anaesthetist by University Hospitals XXXX NHS Trust on [date removed], prior to which you were employed as a Specialist Registrar and locum Consultant Anaesthetist by the Trust. On [date removed], [date removed] and [date removed], you were given warnings about inappropriate behaviour towards female colleagues which included not making any physical contact, other than handshakes, with female colleagues and/or the making of crude and lewd comments towards or in the presence of female colleagues. Your attention was drawn to University Hospitals XXXX NHS Trust Policy Statement at Work No. 16 entitled Dignity at Work.

On [date removed] you were on duty in the operating theatre at XXXX Hospital, together with Theatre Sister A, Theatre Support Worker B and Operating Theatre Practitioner C. Whilst you were waiting for patient X to awaken from anaesthetic prior to transfer to the recovery room, you walked up behind Theatre Sister A, placed your

arms around her and placed your hands on her breast. You then walked up behind Theatre Support Worker B, placed your arms around her and placed your hands on her breasts. When you were asked what you were doing by Theatre Support Worker B you replied that, "I am a leg man myself, but you are growing on me".

On a date prior to the matters set out below, you were appointed as a teacher at the XXXX Medical School at the University of XXXX. On [date removed] you attended a meeting with Professor D, Head of Medical Education and Associate Dean (Teaching). At this meeting Professor informed you that concerns had been raised by students concerning inappropriate comments you had made during lessons. He warned you that you should exercise care and ensure that your dialogue with students in the future was appropriate. You told him that you were ill and struggling with marital breakdown, but assured him that in the future your relationship with students, especially females, would be professional.

On [date removed] you were teaching a Respiratory System group work session at the XXXX Medical School which was attended by students including Student A and Student B. At the end of the session you asked Student A whether she had noticed that men either loved her or hated her and whether she would like to know why. When she said that she would like to know why, you explained to her that redheads' body secretions were more acidic and tasted nicer. This conversation was overheard by other students.

You have admitted that your actions in relation to the incidents above were inappropriate, unprofessional, likely to bring the profession into disrepute, below the standards reasonably expected of a registered medical practitioner and amounted to sexual harassment.

The Panel has considered the University Hospitals XXXX NHS Trust Policy Statement at Work No. 16 entitled Dignity at Work which was provided to you following the disciplinary hearing which took place in [date removed] regarding conduct towards Sister A and Theatre Support Worker B in [date removed]. This document states:

"Employees at work are expected to be able to enjoy a working environment in which the dignity of individuals is respected. Harassment and bullying at work in any form is wholly unacceptable. Any harassment or bullying will be viewed as a very serious matter and will not be permitted or condoned in the workplace... Sexual harassment is unreasonable conduct related to a person's gender which the person might find offensive... Examples of action that can constitute sexual harassment include (*inter alia*) unnecessary touching, patting or pinching, of another person's body; unwelcome sexual advances or propositions; offensive flirtations; suggestive remarks, innuendos or lewd comments; sexual assault; and sexist patronising behaviour."

Good Medical Practice (May 2001) states that you must always treat your colleagues fairly. In particular, it states that you must respect your colleagues and maintain professional relationships by communicating effectively with them. Good Medical Practice further states that, if you have responsibilities for teaching, you must develop the skills, attitudes and practices of a competent teacher. The importance of teachers in providing a role model for their students is vital to the profession and

cannot be underestimated. The Panel considers that you clearly failed your students in this regard.

The Panel has borne in mind the advice of the Legal Assessor with regard to the judgment in *Harry v GMC* 2006 EWHC3050(Admin) in which Mr Justice Goldring stated that in reaching its determination on impairment, the Panel must first determine whether there has been misconduct. Further, he stated that, in deciding whether there has been misconduct, it was not possible to ignore the public interest in the wider sense. That interest is an integral aspect when deciding whether the particular facts proved have passed the threshold and amount to misconduct. The Panel considers that the wider public interest includes the maintenance of public confidence in the profession. The Panel is in no doubt that you have risked bringing the profession into disrepute and that your behaviour has amounted to misconduct.

In considering the matter of impairment, the Panel has borne in mind the guidance provided by the Indicative Sanctions Guidance, which states at paragraph 11 (S1-2):

“Neither the Act nor the Rules define what is meant by impaired fitness to practice but .. 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.”

In view of the repeated nature of serious instances of sexual harassment, the Panel has found that your fitness to practise is impaired by reason of your misconduct.