

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 used a patient's prescription to obtain medication for a colleague.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Relationships with patients* section of GMP, specifically paragraphs 21a and 21b on the doctor patient partnership. It also relates to the *Probity* section, specifically paragraphs 56 and 57 on being honest and trustworthy, and paragraph 73 on financial and commercial dealings. Finally, it relates to paragraph 3b on providing good clinical care.

Determination on impaired fitness to practise

“Dr X: This case has concerned allegations that relate to misconduct and deficient professional performance. It notes that you admitted all the allegations relating to performance and the misconduct in relation to patient BH. The alleged misconduct in relation to your breach of GMC undertakings was found not proved by this Panel.

The Panel has now considered whether your fitness to practise is impaired by reason of your misconduct and/ or your deficient professional performance. The Panel has been assisted by the evidence of Dr I, the Lead Assessor of the performance assessment team. Additionally, it has taken into account Mr A's submissions on behalf of the GMC and Mr H on your behalf. It has also borne in mind the advice of the Specialist Performance Adviser and the Legal Assessor.

The admitted facts are: At all material times you worked as a locum General Practitioner at the XXXX Medical Practice, XXXX. (“the Practice”). On [date removed] patient BH consulted you at the Practice. BH told you that he was suffering from arthritis in his thumbs. You wrote a prescription for Ibuprofen (40x400mg), Ranitidine (30x150mg) and Amoxicillin (15x250mg). In BH's medical notes you recorded that you had prescribed Ibuprofen and Ranitidine. You did not record in BH's medical notes that you had prescribed Amoxicillin. You told BH that when he

had collected the prescribed drugs from the pharmacist he should return to see you and you would explain how he should take them. BH collected the prescribed drugs and returned to see you. You told BH that he did not need the Amoxicillin and took it from him. BH offered to return the Amoxicillin to the Pharmacy. You said you would deal with it. You did not return the Amoxicillin to the Pharmacy. You intended to obtain the Amoxicillin for the purpose of treating another healthcare professional working at the Practice. Your conduct as set out above was, inappropriate, unprofessional, dishonest, not in the best interests of your patient and likely to bring the medical profession into disrepute.

The Panel heard the oral evidence of patient BH and has before it the written statement of Ms C, the practice nurse to whom you had given the medication. Ms C states that she was suffering from a severe sore throat. You examined her, diagnosed a throat infection and told her that you would provide a course of antibiotics and later that day she was given a five day course of Amoxicillin. Ms C in her statement stated that: *"I understand that he examined me and treated me in this way at my request as a favour to another healthcare professional"*.

Mr A on behalf of the GMC submitted that by writing a fraudulent prescription for BH and then lying to him in order to get him to return to the surgery to hand you the medication caused BH confusion and was both premeditated and dishonest. He further submitted that you could have given BH an explanation and an apology for your actions prior to this hearing, which would have demonstrated insight and remorse, but you did not do this. Mr H on your behalf conceded that you were wrong in how you obtained the medication but that it was an isolated incident which was not for personal gain, rather it was to help a fellow health professional and that patient BH suffered no harm as a result of your actions.

The Panel recognises that doctors sometimes see other healthcare professionals who are not their patients in emergency situations and that it is not unknown in those circumstances for doctors to prescribe for them. It accepts Mr H' submission that the reality is that healthcare professionals do help out each other if they are suffering from a common ailment. However, the Panel considers that the deceitful manner in which you betrayed the trust of patient BH in obtaining the prescription cannot be accepted. It is clear that both patient BH and his wife were concerned with several aspects of your prescribing. BH was further concerned that the name of the drug taken from him might appear in his medical records. Furthermore, by your admitted dishonest action you have defrauded the NHS of a prescription fee. You further admitted that your conduct was inappropriate, unprofessional, not in the best interests of your patient and likely to bring the medical profession into disrepute.

The Panel has carefully considered whether your fitness to practise is impaired by reason of your misconduct, in accordance with Section 35C (2) of the Medical Act 1983, as amended. In doing so it has had regard to the advice provided in the GMC's Indicative Sanctions Guidance. Paragraph 11 (S1-2) 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.'

Paragraph 12 states that:

'The Merrison Report stated that "the GMC should be able to take action in relation to the registration of a doctor... in the interests of the public", and that the public interest had "two closely woven strands", namely the particular need to protect the individual patient, and the collective need to maintain confidence of the public in their doctors.'

Paragraph 13 (S1-3) states that:

'The question of whether the Fitness to Practise Panels should consider only "the protection of members of the public", or whether they could also consider the wider "public interest" in determining sanctions arose in the 1998 Bristol case. Counsel for the GMC drew attention to a number of relevant Judgments by the Judicial Committee of the Privy Council which illustrate, that in addition to the protection of the public, the public interest includes, amongst other things:

- a. Protection of patients*
- b. Maintenance of public confidence in the profession*
- c. Declaring and upholding proper standards of conduct and behaviour.'*

The Panel also considered paragraph 58 (S3-15), which states:

"The question of impaired fitness to practise is likely to arise if..."

"...a doctor has behaved dishonestly, fraudulently, or in a way designed to mislead or harm others; The doctor's behaviour was such that public confidence in doctors generally might be undermined if the GMC did not take action."

Clearly it is for this Panel to apply such standards as it considers appropriate for the profession. The Panel has determined that your fitness to practise is impaired by reason of misconduct.

XXXXX

The Panel has determined that your fitness to practise is impaired by reason of your misconduct but not impaired by reason of deficient professional performance.