

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 and his practice partner devised and implemented a system, which involved patients and practice staff, for obtaining dispensing fees they were not entitled to by providing misleading information to the Prescription Pricing Authority.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Probity* section of GMP, specifically paragraph 73 on financial and commercial dealings and paragraphs 63 and 65 on signing documents. It also relates to the *Relationships with patients* section, specifically paragraph 21a on the doctor-patient partnership.

Determination on impaired fitness to practise

At all material times you were a General Practitioner practising at XXXX Surgery, XXXX.

The Panel has found proved that on a date unknown in or about [*date removed*] you instructed your employees, Ms A and Ms B as follows:

- That when dispensing contraceptive pills to your patients they should dispense a three month supply of the pills on a single occasion, issue three separate prescriptions for a one month supply of the pills and post date two of the prescriptions; and
- That each of the post dated prescriptions should be kept and subsequently submitted to the Prescription Pricing Authority with the corresponding FP 34D forms.

You have admitted and the Panel has found proved that the said prescriptions and the FP 34D forms were required by the Prescription Pricing Authority for accounting

purposes which included the calculation of the dispensing fees that were due to be paid to your practice.

The Panel has found that on several dates between [*date removed*] and [*date removed*], you caused or permitted the said post dated prescription and FP 34D forms to be submitted to the Prescription Pricing Authority and you thereby induced the Prescription Pricing Authority's Staff to believe that the contraceptive pills stated in the post dated prescriptions had been dispensed during the period covered by the corresponding FP 34D form and to pay dispensing fees to your practice accordingly.

You thereby devised and implemented a system for obtaining dispensing fees and you participated in continuing the said system. You knew that dispensing fees were only payable in respect of drugs that were dispensed during the period covered by the FP 34D form and that you were not entitled to receive such fees in respect of the post dated prescriptions.

In devising, implementing and continuing the said system of obtaining dispensing fees the Panel has found that your conduct was inappropriate, irresponsible, an abuse of your position as a doctor, liable to bring the medical profession into disrepute and contrary to the principles of good medical practice.

The Panel is concerned that you abused your position as a registered medical practitioner in devising, implementing and knowingly continuing a system for obtaining dispensing fees that you were not entitled to. This is an abuse of the trust that members of the public place in the medical profession. The seriousness of your behaviour with respect to obtaining dispensing fees is compounded by the fact that you asked patients, who were unaware of your motives, to put their signatures to false declarations. You also involved your partner and other staff, who were responsible for prescribing and dispensing, in an inappropriate system.

Good Medical Practice (July 1998 edition, applicable at the time), states at paragraph 55:

“Registered medical practitioners have the authority to sign a variety of documents....on the assumption that they will only sign statements they believe to be true. This means that you must take reasonable steps to verify any statement before you sign a document. You must not sign documents which you believe to be false or misleading.”

Registered medical practitioners have certain prescribing privileges and it is expected that these privileges will be exercised with the utmost care and probity. You failed to exercise properly the prescribing privileges vested in you. Whilst the Panel acknowledges that the fees claimed were for relatively small amounts, nevertheless, you should have known that by your actions you were a party to the payment of dispensing fees to which you were not entitled.

The Panel disapproves of your behaviour which occurred in the course of your professional practice, and which was repeated over a substantial period of time. You have, by this behaviour, undermined the trust which members of the public place in the profession. The Panel is particularly concerned that these actions occurred at a time when you were a prescribing lead for your PCT and would have been expected

to demonstrate high standards in relation to dispensing and prescribing. The Panel is satisfied that your actions fell below the standards expected of a registered medical practitioner.

In deciding whether your fitness to practise is impaired, the Panel has had regard to the Indicative Sanctions Guidance. In particular page S1-2, paragraph 11, which states:

“...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 13 states:

“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”

Page S3-14, paragraph 57, states:

“All human beings make mistakes from time to time. Doctors are no different. While occasional one-off mistakes need to be thoroughly investigated by those immediately involved where the incident occurred and any harm put right, they are unlikely in themselves to indicate a fitness to practise problem. Good Medical Practice puts it this way: ‘serious or persistent failures to meet the standards in this booklet may put your registration at risk’.”

Page S3-14 and S3-15, paragraph 58, states:

“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;
- A doctor has behaved dishonestly, fraudulently or in a way designed to mislead or harm others.”

The Panel has considered the submissions from Mr D on your behalf. He submitted this was an error of judgement, not an act of dishonesty and all doctors make wrong judgements from time to time. He further submitted that you acted immediately to put things right and that you co-operated fully with the investigation carried out by the NHS Counter Fraud Service and that any monies owing to the NHS were repaid. He pointed out that you have an unblemished career with exemplary prescribing

practice, leading the field in primary care, which is not indicative of impaired fitness to practise. Whilst Mr D suggested that you acted immediately to put things right, the Panel notes that in fact you only did this when the matter was brought to light by the NHS Counter Fraud Service.

The Panel is satisfied that your conduct has undermined the confidence that members of the public place in the profession and that you have breached fundamental principles of Good Medical Practice.

The Panel is mindful of its role to declare and uphold standards and confidence in the profession. Whilst this is not a case of dishonesty, you did involve patients and colleagues in a system devised to facilitate the payment of dispensing fees to which you were not entitled. You abused your position as a doctor and have brought the profession into disrepute. The Panel has determined that your fitness to practise is impaired by reason of misconduct.