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 carried out a cosmetic procedure on a female patient. When the patient complained to him about the results, the doctor was available, and she subsequently complained to the GMC. The doctor then failed to respond to the GMC’s communications including a request for his employment details.

Relevant paragraphs of *Good Medical Practice*

The case relates to the *Good clinical care* section of GMP, specifically paragraphs 3b and 3h on providing good clinical care. It also relates to the *Relationships with patients* section, specifically paragraphs 22b and 22c on good communication and paragraph 31 on being open and honest with patients if things go wrong. Finally it relates to paragraph 68 in the *Probity* section on giving evidence.

Determination on impaired fitness to practise

The Panel has considered, on the basis of the facts found proved, whether Mr X’s fitness to practise is impaired by reason of his misconduct under Section 35C (2) (a) of the Medical Act 1983 (as amended). In doing so, it has taken account of all the evidence, as well as the submissions made by you on behalf of the GMC. You submitted that as all the allegations have been found proved Mr X’s fitness to practise is impaired.

The Panel has borne in mind the advice of the Legal Assessor that it has to be satisfied that there is misconduct. If there is misconduct then the panel must consider the degree of the misconduct and is it such that the practitioner’s fitness to practise is impaired. There is no definition of impairment in the legislation and the Panel has to use its own judgement. The Legal Assessor referred the Panel to Roylance v GMC [2001] 1AC311 p 331 B-C, where misconduct is defined as “some act or omission which falls short of what would be proper in the circumstances”. In Mallon v GMC [2007] CSIH17 XA100/05 the definition is given as a “wrongful or inadequate mode of performance of professional duty”.
The Panel has heard that between [date removed] and [date removed], Mr X undertook the provision of Isolagen treatments at “The XXXX Clinic at XXXX in XXXX.

During a consultation between [dates removed], Mr X advised Mrs I that she was suitable for Isolagen treatment. During a consultation on [date removed], Mr X gave Mrs I an Isolagen “Patient Consent Form” relating to this treatment, which stated that “As a means of documenting the results you receive from the Isolagen process your physician will take photographs ....” In fact, Mr X did not take any photographs of Mrs I’s face during this consultation.

On [date removed] and [date removed], Mrs I attended the Clinic for Isolagen treatments. During both treatments Mr X injected Mrs I’s face with approximately 40 injections. He did not take photographs of Mrs I’s face either before or after the injections had been applied, except on the [date removed] when he took a single photograph of Mrs I’s face, at her behest. The Panel found that his failure to take comparative photographs of her face was contrary to the protocol laid down by Isolagen Europe Limited and not in the best interests of Mrs I. However, the Panel guided by the expert witness, took the view that the lack of photographs did not constitute a breach of good clinical practice.

Mrs I was dissatisfied with the results of her treatment and attempted to contact Mr X on numerous occasions between [dates removed]. Mr X did not respond to Mrs I’s repeated attempts to contact him. As part of the agreed treatment process, Mr X was required to provide a follow-up consultation. He failed to do so and did not make himself available to Mrs I. The Panel has found that Mr X’s inaction was unprofessional and not in the best interests of his patient.

In May 2006 Mrs I made a complaint about Mr X to the GMC. The GMC wrote to Mr X on [date removed] requesting that he complete and return a form providing details about his employers by [date removed]. Mr X did not respond to this letter. The GMC wrote to Mr X on four further occasions requesting that he provide this information. Mr X did not respond to any of the communications from the GMC nor did he provide the GMC with his employer’s details as requested. The Panel has found that Mr X’s failure to respond or provide the information requested by the GMC was unprofessional and contrary to the principles of the GMC’s booklet Good Medical Practice (2001).

The GMC’s Indicative Sanctions Guidance states at page S1-2, paragraph 11, that:

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

The Panel considers there are three main themes which constitute this case. They are:
1. The failure of Mr X to take the required photographs of Mrs I, as set out in the signed patient consent form and in the protocol laid down by Isolagen Europe Limited;

2. Mr X’s failure to respond to Mrs I’s complaints and his failure to make himself available to Mrs I for follow up treatments or further comment;

3. Mr X’s repeated failure to respond to or otherwise engage with the GMC, and his apparent total disregard for the functions of his regulatory body.

With regard to Mr X’s overall management of Mrs I, the Panel noted Good Medical Practice (2001) which, at paragraph 19 states:

“Successful relationships between doctors and patients depend on trust. To establish and maintain that trust you must … be readily accessible to patients and colleagues when you are on duty.”

It further states at paragraph 21 that

“Good communication between patients and doctors is essential to effective care and relationships of trust. Good communication involves…giving the patients the information they ask for or need about their…treatment and prognosis…”

The Panel also considered the meaning of Fitness to Practise by reference to the Indicative Sanctions Guidance, which states at page S3-13, paragraph 53 that

“To practise safely, doctors must be competent in what they do. They must establish and maintain effective relationships with patients …”

The Panel concluded that in failing to make himself available to Mrs I for the agreed follow-up appointment and in order to answer her concerns, Mr X failed to maintain an effective relationship with her and is in breach of the principles of Good Medical Practice set out above.

In relation to Mr X’s failure to respond to Mrs I’s complaints, the Panel again noted Good Medical Practice which at paragraph 29 states that

“Patients who have complained about the care or treatment they have received have a right to expect a prompt, open, constructive and honest response. This will include an explanation of what has happened, and where appropriate, an apology.”

Mrs I informed the Panel that she has had no communication from Mr X since the complaint was made, and therefore no explanation or apology has been given.

The Panel has also heard that Mr X ignored all correspondence from the GMC requesting information relevant to its investigation. The Panel accepts that this is a positive, active disengagement from a regulatory process by which Mr X, being on the GMC register, has agreed to be bound.

As previously indicated Good Medical Practice (2001) states, at paragraph 30 that:
“...you must co-operate fully with any formal inquiry into the treatment of a patient and with any complaints procedure which applies to your work. You must give, to those who are entitled to it, any relevant information in connection with an investigation into your own, or another health care professional’s conduct, performance or health”

Section 35A of the Medical Act 1983 (as amended) places a legal duty on doctors to supply, on request from the GMC, any document or information which appears relevant to the discharge of the GMC’s professional conduct, professional performance or fitness to practise functions. In addition, where a decision has been taken to investigate a doctor’s conduct, performance or health through the GMC’s formal procedures, the Act requires the GMC to obtain from that doctor the names of his employers or bodies for whom he or she contracts to provide services.

The Panel has determined that Mr X’s persistent breaches of Good Medical Practice and the requirements under Section 35A of the Medical Act is evidence of misconduct. Pursuant to Section 35C (2) (a) of The Medical Act 1983 as amended, the Panel has concluded that Mr X’s fitness to practise is impaired, by reason of his misconduct.