

Fitness to Practise Panel 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 this principle. 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 dishonestly obtained a quantity of controlled drugs from his employer and failed to keep an up to date controlled drugs register, in accordance with the relevant regulations.

The doctor also prescribed a quantity of controlled drugs for himself and his daughter. These drugs were intended for his partner who was not exempt from prescription charges, enabling them to avoid such charges. He failed to inform his partner's GP of the drugs that he had prescribed or keep an accurate record of the drugs prescribed. Furthermore it was found that it was not appropriate to prescribe those drugs for the condition in question.

Relevant paragraphs of *Good Medical Practice*

This case relates to the 'Good clinical care' section of *Good Medical Practice*, specifically paragraphs 3b, 3c and 3f on providing good clinical care, paragraph 5 on avoiding treating those close to you.

This case also relates to the 'Maintaining good medical practice' section of *Good Medical Practice*, specifically paragraph 13 on keeping up to date.

It also relates to the 'Working with Colleagues' section, specifically paragraph 52 on sharing information with colleagues.

This case also relates to the 'Probity' section of *Good Medical Practice*, specifically paragraph 56 and 57 on being honest and trustworthy and 63 and 65 on writing reports and CVs, giving evidence and signing documents.

It also relates to paragraph 77 in the 'Health' section.

Determination on impaired fitness to practise

“Dr X: At the start of these proceedings you admitted a number of the factual allegations, which were recorded as having been found proved. The Panel then made findings on the remaining allegations in the light of all of the evidence presented, the submissions of both Counsel, and the advice of the Legal Assessor.

Between [date removed] and [date removed], you were engaged by XXX Services Limited to provide GP deputising services. Between [date removed] and [date removed], you obtained the following drugs through XXX:

40 ampoules of morphine (15 mgs),
40 ampoules of pethidine (100 mgs),
10 ampoules of Cyclimorph (15 mgs),
30 tablets of buprenorphine (200 mcg);

XXX Police carried out a review of records relating to patients seen by you between [date removed] and [date removed], during the course of which you were asked to account for the controlled drugs that you had obtained during that period, as listed above. You were unable to account for at least 15 ampoules of morphine, and at least 12 ampoules of pethidine. This has been judged to be inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner.

Between [date removed] and [date removed], you obtained the following controlled drugs from the XXX Chemist, XXX:

5 ampoules of morphine (10 mgs),
5 ampoules of morphine (15 mgs),
10 ampoules of pethidine (100 mgs).

On [date removed], Detective Constable A of the XXX Police asked you to produce to him all of the controlled drugs in your possession. You did not give him the 5 ampoules of Morphine (10mgs) referred to above, which you subsequently provided to him on [date removed]. To have withheld these drugs when initially requested has been judged to be inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner.

Between [date removed] and [date removed], you did not maintain a register of controlled drugs obtained and administered by you, thereby failing to comply with your obligations under Regulation 19 of the Misuse of Drugs Regulations 2001. On [date removed] you were cautioned for the offence of failing to keep a controlled drugs register. In or about [date removed] you started to keep a controlled drugs register but failed to record in it, or in any other register, that you had obtained the 5 ampoules of morphine (10 mgs) which you had obtained from the XXX Chemist in XXX. This has been judged to be inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner.

On a day or days prior to XXX, you administered controlled drugs obtained through XXX to your partner Ms A. These were drugs which were in your possession for your use in treating patients whilst working for XXX and, as such, she was not entitled to receive them. This was inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner. You did not make any record of this nor did you inform her GP at the time. This was also inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner. The Panel notes that you have written to him subsequently.

Between approximately [date removed] and [date removed], you worked part-time as a Locum GP at the XXX Surgery, XXX, XXX. Between [date removed] and [date removed], whilst working there, you issued NHS prescriptions for yourself, your partner, and your daughter. Your prescribing for yourself, specifically in relation to the prescribing of XXX, and for your partner, has been found to be inappropriate, irresponsible and below the standards to be expected of a registered medical practitioner.

Some of the prescriptions which you issued in your name and/or that of your daughter were for drugs actually intended for your partner. The Panel considered carefully your explanation for this. At the time, both you and your daughter were legitimately entitled to claim exemption from charges. This happened on five separate occasions spread over a period of three months. The prescription forms were signed on the reverse by you in such a way as to enable the items dispensed to be exempt from charges. The Panel does not consider credible your explanation that this was a mistake and finds that you were knowingly attempting to assist your partner to avoid the payment of prescription charges. This was inappropriate, irresponsible, dishonest and below the standards to be expected of a registered medical practitioner.

At the time at which you issued the above prescriptions none of you were registered with the XXX Surgery. You did not, however, inform or cause to be informed, the GPs with whom you were each registered that you had issued the prescriptions. In relation to yourself and your partner this was found to be inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner. In relation to your daughter your actions were found to be no more than inappropriate as the nature, quantities and frequency of the drugs prescribed to her indicated treatment for acute conditions and the Panel did not have any evidence to show that the failure to provide information to her GP was irresponsible. You did not keep a record of the prescriptions you issued for yourself and your family, which was inappropriate, irresponsible, a breach of good medical practice and below the standards to be expected of a registered medical practitioner. The GMC guidance Good Medical Practice (published 2001), applicable at the time, states:

“Some parts of medical practice are governed by law or are regulated by other statutory bodies. You must observe and keep up to date with the laws and statutory codes of practice which affect your work”.

The importance of keeping proper records in relation to controlled drugs cannot be overstated. Such records should show clearly exactly what drugs have been obtained, held and provided to patients, and as such protect both patients and the doctor who provides them. By failing to hold an adequate Controlled Drugs Register you committed a criminal offence and, just as importantly, you failed to appreciate the reasons behind the need for such records and the great care required in the administration of such addictive and potentially dangerous drugs. The Panel has noted the contents of your letter dated [date removed] in which you informed the Medical Director of xxxxx that you were aware that you should have kept a record of the usage of controlled drugs. You stated to this Panel, however, that you were vaguely aware that a register should be kept, and the Panel is concerned that you appeared to think that this was merely a formality. You were under the impression that some doctors did not keep such records and felt that you were acting in a commonly accepted fashion.

However, the Panel notes that you have extensive clinical experience over some 35 years in various environments, both in hospital and in primary care, and consequently finds it difficult to comprehend that you were not aware of the specific requirements in this regard. The Panel is concerned that you appear to consider that, as you were not told by other professionals that a register should be kept, your responsibility was somehow abrogated in this regard. Good Medical Practice is clear that it is your personal responsibility to keep your knowledge up to date. Whilst it acknowledges that you have apologised for your failure to keep an adequate register, the Panel considers that, in view of comments made during your evidence, you continue to show insufficient insight into this issue.

In relation to your treatment of your partner and daughter, the Panel has had regard to the guidance published by the GMC in July 1998 on doctors' treatment of their family, which states:

"It is good practice for doctors and their families to be registered with a GP outside the family, who takes responsibility for their health care. This gives the doctor and family members ready access to objective advice and avoids the conflicts of interest that can arise when doctors treat themselves or those close to them... It is hard to lay down an absolute rule ... but doctors should avoid treating themselves or close family members whenever possible. This is a matter of common sense as well as good medical practice."

The Panel accepts that it can be appropriate, in some instances, for a doctor to treat himself or members of his family, for example in the treatment of acute self-limiting conditions. However, the Panel is clear that it is not appropriate for ongoing conditions, such as your partner's XXX, to be treated in this way. The Panel is particularly concerned that you considered it appropriate to treat her with controlled drugs. You have accepted in evidence to this Panel that the use of controlled drugs for the treatment of XXX is not generally accepted practice in the UK.

In addition, the Panel is concerned that you consider it appropriate to provide repeat prescriptions for yourself and your family if the medication concerned was initiated by another doctor. You should be aware that ongoing medication requires objective monitoring which, by definition, you were not in a position to provide for you and for

your partner. In all the circumstances, the Panel is clear that it was entirely inappropriate for you persistently to prescribe for yourself and your family. Good Medical Practice also states that in providing care doctors must:

“keep clear, accurate, legible and contemporaneous patient records which report the relevant clinical findings, the decisions made, the information given to patients and any drugs or other treatment prescribed.”

Records are particularly important when treating patients who are registered with a GP other than yourself. Having treated yourself and your partner it was your duty to ensure that a record of this treatment be forwarded to your respective GPs in order that proper and comprehensive records of care could be kept. This was essential in respect of the controlled drugs which you gave to your partner.

Good Medical Practice states that doctors must be honest and trustworthy. There have been a number of instances throughout this case where you have been dishonest:

- you misled the Medical Director of XXX;
- you misled the police officer investigating your use of controlled drugs;
- you knowingly withheld information from your PCT;
- you have been less than wholly truthful at this hearing.

Further, you have misappropriated drugs intended for patients of XXX by giving the drugs to your partner, and have defrauded the NHS by enabling her to avoid prescription charges. It has been suggested in your defence that, once you realised that you had acted inappropriately with regard to the controlled drugs, you were embarrassed by your behaviour and sought to “cover up” your actions. The Panel does not consider this to be an adequate explanation for your dishonesty which took place on a number of occasions, over a number of issues and over a significant period of time.

In deciding on whether your fitness to practise is impaired, the Panel has had regard to the Indicative Sanctions Guidance, and in particular paragraphs 57 and 58 to be found at S3-14, which states:

“A question of impaired fitness to practise is likely to arise if: A doctor has shown deliberate or reckless disregard of clinical responsibilities towards patients. An isolated lapse from high standards of conduct ... would not in itself suggest that the doctor’s fitness to practise is in question. But the sort of misconduct, whether criminal or not, which indicates a lack of integrity on the part of the doctor [or] an unwillingness to practise ethically or responsibly ... will bring a doctor’s registration into question. 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.

In the light of the clear breaches of the Council's guidance, and in particular the serious finding of dishonesty, the Panel has found that your fitness to practise is impaired by reason of your misconduct, pursuant to Section 35C (2) (a) of The Medical Act 1983 as amended.