

GENERAL MEDICAL COUNCIL

**PROFESSIONAL CONDUCT
AND DISCIPLINE**



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GENERAL MEDICAL COUNCIL

PROFESSIONAL CONDUCT AND DISCIPLINE

The first part of this pamphlet describes the statutory basis and machinery of the disciplinary jurisdiction of the Council. The second part of the pamphlet deals with various forms of misconduct which have led or may lead to disciplinary proceedings. The third part contains more specific and positive guidance in certain areas of professional conduct.

PART I

Statutory Provisions

Disciplinary powers were first conferred on the Council by the Medical Act 1858, which established the Council and the Register. The disciplinary jurisdiction of the Council is now regulated by sections 32–38 of the Medical Act 1956 as amended by sections 13–16 of the Medical Act 1969. These Acts provide that if any fully or provisionally registered practitioner

- (1) has been convicted in the United Kingdom or the Republic of Ireland or any of the Channel Islands or the Isle of Man of a criminal offence, or
- (2) is judged by the Disciplinary Committee of the Council to have been guilty of serious professional misconduct

the Committee may if they think fit direct that his name shall be erased from the Register, or that his registration shall be suspended for a period not exceeding 12 months. The power of erasure applies also to temporarily registered practitioners.

Convictions

The term “conviction”, used in this pamphlet, means a determination by a Criminal Court in the British Isles. A conviction

in itself gives the Disciplinary Committee jurisdiction even if the criminal offence did not involve professional misconduct. The Committee is however particularly concerned with convictions for offences which affect a doctor's fitness to practise.

In considering convictions the Council is bound to accept the determination of a court as conclusive evidence that the doctor was guilty of the offence of which he was convicted. Doctors who face a criminal charge should remember this if they are advised to plead guilty, or not to appeal against a conviction, in order to avoid publicity or a severe sentence. It is not open to a doctor who has been convicted of an offence to argue before the Disciplinary Committee that he was in fact innocent. *It is therefore unwise for a doctor to plead guilty in a court of law to a charge to which he believes that he has a defence.*

A finding or a decision of a Medical Service Committee or other authority under the National Health Service does not amount to a conviction for these purposes. A charge of serious professional misconduct may however, if the facts warrant, be made in respect of conduct which has previously been the subject of proceedings within the National Health Service or before an overseas court or medical council; or in respect of conduct of which a doctor has been found guilty by a British Criminal Court but placed on probation or discharged conditionally or absolutely.

The Meaning of "Serious Professional Misconduct"

The expression "serious professional misconduct" was substituted by the Medical Act 1969 for the phrase "infamous conduct in a professional respect" which was used in the Medical Act 1858. The phrase "infamous conduct in a professional respect" was defined in 1894 by Lord Justice Lopes as follows:

"If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect."

In another judgment delivered in 1930 Lord Justice Scrutton stated that:

“Infamous conduct in a professional respect means no more than serious misconduct judged according to the rules, written or unwritten, governing the profession.”

In proposing the substitution of the expression “serious professional misconduct” for the phrase “infamous conduct in a professional respect” the Council intended that both phrases should have the same significance.

The Disciplinary Committee and the Penal Cases Committee

The composition of the Disciplinary Committee is governed by the Medical Acts. The Committee is elected annually by the Council and consists of 19 members. These include at least two lay members and at least six of the elected members of the Council. In all proceedings the Disciplinary Committee is advised on questions of law by a Legal Assessor who is usually a Queen’s Counsel and must be a barrister, advocate or solicitor of not less than 10 years’ standing. The Committee normally sits in public and its procedure is closely akin to that of a court of law. Witnesses may be subpoenaed and evidence is given on oath. Doctors who appear before the Committee may be and usually are legally represented.

The Penal Cases Committee is a smaller committee, also elected annually. It sits in private and on the basis of written evidence and submissions determines which cases should be referred for inquiry by the Disciplinary Committee.

Rules of Procedure

All disciplinary proceedings are governed by rules of procedure made by the Disciplinary Committee, after consultation with representative medical organisations, and approved by the Privy Council. The current rules were made in 1970 and are printed by H.M. Stationery Office as Statutory Instrument 1970 No. 596. Other rules govern the functions of the Legal Assessor and the procedure for appeals to the Judicial Committee of the Privy Council.

Proceedings: The Earlier Stages

Disciplinary cases are of two kinds—those arising from a conviction of a doctor in the courts and those where a doctor is alleged to have done something which amounts to serious professional misconduct. In either kind of case the Council acts only when relevant matters have been brought to its notice.

Convictions of doctors are normally reported to the Council by the police. Unless the conviction is of a minor motoring or other trivial offence it is automatically referred to the Penal Cases Committee.

Information or complaints concerning behaviour which may be regarded as serious professional misconduct reach the Council from a number of sources. Frequently they concern matters which have already been investigated through some other procedure—for example a Medical Service Committee, or a Committee of Inquiry in the hospital service. Information or complaints received from individual doctors or members of the public, as distinct from public authorities, must be supported by evidence of the facts alleged in the form of one or more statutory declarations (that is statements declared in a prescribed form before a Commissioner for Oaths).

Every complaint and information received is scrutinised meticulously. Only a very small proportion is both found to relate to matters which could be regarded as raising a question of serious professional misconduct and is also supported, or capable of being supported, by adequate evidence. Where it appears from the allegations made that a question of serious professional misconduct may arise but the evidence initially received is insufficient or does not comply with the Rules, the Council's Solicitor may be asked to make inquiries to establish the facts. A decision whether action shall be taken on an allegation of serious professional misconduct is then taken by the President or by another member of the Council so authorised by the President. If it appears to the President that the matter is trivial, or irrelevant to the question of serious professional misconduct, he will normally decide that it shall proceed no further. In all cases where an allegation of serious professional misconduct is proceeded with, the doctor is informed of the allegations made against him and is invited to submit a written explanation. If the doctor responds to this invitation his explanation, which may include evidence in

answer to the allegations, is then placed before the Penal Cases Committee when they consider the case.

Warning Letters

Not every conviction or allegation of professional misconduct necessitates an immediate reference to the Disciplinary Committee for formal inquiry, although repeated offences may do so. It is the usual practice to send warning letters to a doctor who has been convicted for the first time of offences such as driving a motor car when under the influence of drink, or whose professional conduct appears to have fallen below the proper standards, in order that the doctor may reconsider his habits and conduct.

Inquiries before the Disciplinary Committee

As already mentioned the Disciplinary Committee is bound to accept the fact that a doctor has been convicted as conclusive evidence that he was guilty of the offence of which he was convicted. Provided therefore that a doctor admits a conviction, proceedings in cases of conviction are concerned only to establish the gravity of the offence and to take due account of any mitigating circumstances. In cases of conduct however the allegations, unless admitted by the doctor, must be *strictly proved by evidence*, and the doctor is free to dispute and rebut the evidence called. If the facts alleged in a conduct charge are found by the Committee to have been proved, the Committee must subsequently determine whether, in relation to those facts, the doctor has been guilty of serious professional misconduct. Before taking a final decision the Committee invites the doctor or his legal representative to call attention to any mitigating circumstances and to produce testimonials or other evidence as to character. The Committee takes account of the previous history of the doctor.

The primary duty of the Disciplinary Committee is to protect the public. In any case the Committee must therefore first consider whether the public interest requires it to remove the doctor's name from the Register, or to suspend his registration. Subject however to this overriding duty to the public the Committee considers what is in the best interests of the doctor himself. Largely for this reason the Council has evolved a

system of postponing judgment, especially in relation to offences arising from abuse of drink or drugs, in order that the doctor may satisfy the Disciplinary Committee that he is able to conduct himself properly and to overcome any addiction to alcohol or drugs. In severe cases of addiction, however, the Committee may consider it necessary to order suspension while the doctor undergoes treatment.

Powers of the Disciplinary Committee at the Conclusion of an Inquiry

At the conclusion of any inquiry in which a doctor has been proved to have been convicted of a criminal offence, or is judged to have been guilty of serious professional misconduct, the Disciplinary Committee must decide on one of the following alternative courses:

- (1) To admonish the doctor and conclude the case;
- (2) To place the doctor on probation by postponing judgment;
- (3) To direct that the doctor's registration shall be suspended for a period not exceeding 12 months; or
- (4) To direct erasure.

Postponement of Judgment

In any case where judgment is postponed, the doctor's name remains on the Register during the period of postponement. When postponing judgment to a later meeting the Committee normally intimates that the doctor will be expected before his next appearance to furnish the names of professional colleagues and other persons of standing to whom the Council may apply for information, to be given in confidence, concerning his habits and conduct since the previous hearing. The replies received from these referees, together with any other evidence as to the doctor's conduct, are then taken into account when the Committee resumes consideration of the case. If the information is satisfactory, the case will then normally be concluded. If however the evidence is not satisfactory, judgment may be postponed for a further period, or the Committee may direct suspension or erasure.

Suspension of Registration

If a doctor's registration is suspended, the doctor ceases to be entitled to practise as a registered medical practitioner during that period. When a doctor's registration has been suspended the Committee may, after notifying the doctor, resume consideration of his case before the end of the period of suspension and then if they think fit may extend the original period of suspension or order erasure. Before resuming consideration of the case in such circumstances the Committee may, as when postponing judgment, ask the doctor to give the names of referees from whom information may be sought as to his habits and conduct in the interval. This information will be taken into account when the Committee resumes consideration of the case, and only if there is evidence that the doctor has not conducted himself properly, or if he is addicted to drink or drugs and has not responded to treatment, is the Committee likely to order further suspension or to direct erasure.

Erasure

Whereas suspension can be ordered only for a specified period, a direction to erase remains effective unless and until the doctor makes a successful application for the restoration of his name to the Register. Such an application cannot be made until at least 10 months have elapsed since the original order took effect.

Appeal Procedure and Immediate Suspension

When the Committee has directed that a doctor's name shall be erased or that his registration shall be suspended, the doctor has 28 days in which to give notice of appeal against the direction to the Judicial Committee of the Privy Council. During that period, and, if he gives notice of appeal, until the appeal is heard, his registration is not affected unless the Disciplinary Committee have made a separate order that the doctor's registration shall be suspended forthwith. The Committee may make such an order if it is satisfied that to do so is necessary for the protection of members of the public or would be in the best interests of the doctor. There is a right of appeal against an order for immediate suspension to the High Court (in Scotland, the Court of Session), but such an appeal, whether successful or

not, does not affect the right of appeal to the Judicial Committee of the Privy Council referred to above.

Restoration to the Register after Disciplinary Erasure

Applications for restoration may legally be made at any time after 10 months from the date of erasure. If such an application is unsuccessful, a further period of at least 10 months must elapse before a further application may be made. The names of many doctors which have been erased have subsequently been restored to the Register, after an interval. An applicant may, and normally does, appear in person before the Disciplinary Committee, and may be legally represented. The Committee determines every application on its merits, having regard among other considerations to the nature and gravity of the original offence, the length of time since erasure, and the conduct of the applicant in the interval.

PART II

Convictions and Forms of Professional Misconduct which may lead to Disciplinary Proceedings

This part of the pamphlet mentions certain kinds of professional misconduct and of criminal offences which have in the past led to disciplinary proceedings or which in the opinion of the Council could give rise to a charge of serious professional misconduct. It does not pretend to be a complete code of professional ethics, or to specify all criminal offences or forms of professional misconduct which may lead to disciplinary action. To do this would be impossible, because from time to time with changing circumstances the Council's attention is drawn to new forms of professional misconduct. In discharging their respective duties the Penal Cases Committee and Disciplinary Committee must proceed as judicial bodies. Only after considering the evidence in each case can these Committees determine the gravity of a conviction or decide whether a doctor's behaviour amounts to serious professional misconduct. Doctors who seek detailed advice on professional conduct in particular circumstances should consult a medical defence society or professional association. The Council can rarely give such advice because of its judicial function.

In the following paragraphs the areas of professional conduct and personal behaviour which need to be considered have been grouped under four main headings, namely:

- (i) Neglect or disregard by doctors of their professional responsibilities to patients for their care and treatment;
- (ii) Abuse of professional privileges or skills;
- (iii) Personal behaviour: conduct derogatory to the reputation of the medical profession;
- (iv) Advertising, canvassing and related professional offences.

These headings have been adopted for convenience, but such classifications can only be approximate. In most cases the nature of the offence or misconduct will be readily apparent. In some cases such as those involving personal relationships between doctors and patients or questions of advertising, doctors may experience difficulty, in recognising the proper principles to apply in various circumstances. In relation to these matters Part III of this pamphlet gives further advice.

(i) Neglect or disregard of personal responsibilities to patients for their care and treatment

(a) Failure to treat or visit patients

The Council in pursuance of its primary duty to protect the public institutes disciplinary proceedings when a doctor appears seriously to have disregarded or neglected his professional duties to his patients, for example by failing to visit or to provide or arrange treatment for a patient when necessary. Many cases of this kind which are reported to the Council have already been investigated under the National Health Service machinery (see Part I above) but cases which have arisen in other ways may also be considered. The Council is not concerned with errors in diagnosis or treatment.

(b) Improper delegation of medical duties

The Council recognises and welcomes the growing contribution made to health care by nurses and other persons who have been trained to perform specialised functions, and it has no desire either to restrain the delegation to such persons of treatment or procedures falling within the proper scope of their skills or to hamper the training of medical and other health

students. But a doctor who delegates treatment or other procedures must be satisfied that the person to whom they are delegated is competent to carry them out. It is also important that the doctor should retain ultimate responsibility for the management of his patients because only the doctor has received the necessary training to undertake this responsibility.

For these reasons a doctor who improperly delegates to a person who is not a registered medical practitioner functions requiring the knowledge and skill of a medical practitioner is liable to disciplinary proceedings. Accordingly the Council has in the past proceeded against those doctors who employed assistants who were not medically qualified to conduct their practices. It has also proceeded against doctors who by signing certificates or prescriptions or in other ways have enabled persons who were not registered medical practitioners to treat patients as though they were so registered.

(ii) Abuse of professional privileges or skills

(a) Abuse of privileges conferred by law : Misuse of professional skills

(1) Prescribing of drugs

The prescription of controlled drugs is reserved to members of the medical profession and of certain other professions, and the prescribing of such drugs is subject to statutory restrictions. The Council has regarded as serious professional misconduct the prescription or supply of drugs of dependence otherwise than in the course of bona fide treatment. Disciplinary proceedings have also been taken against doctors convicted of offences against the laws which control drugs where such offences appear to have been committed in order to gratify the doctor's own addiction or the addiction of other persons.

(2) Medical certificates

A doctor's signature is required by statute on certificates for a variety of purposes on the presumption that the truth of any statement which a doctor may certify can be accepted without question. Doctors are accordingly expected to exercise care in issuing certificates and similar documents, and should not certify statements which they have not taken appropriate steps to verify. Any doctor who in his professional capacity signs any certificate or similar document containing statements which

are untrue, misleading or otherwise improper renders himself liable to disciplinary proceedings.

(3) *Termination of pregnancy*

The termination of pregnancy is regulated by the law and doctors must observe the law in relation to such matters. A criminal conviction in the British Isles for the termination of pregnancy in circumstances which contravene the law in itself affords grounds for a charge before the Disciplinary Committee.

(b) *Abuse of privileges conferred by custom*

Professional confidence : Undue influence :

Personal relationships between doctors and patients

Patients grant doctors privileged access to their homes and confidences, and some patients are liable to become emotionally dependent upon their doctors. Good medical practice depends upon the maintenance of trust between doctors and patients and their families, and the understanding by both that proper professional relationships will be strictly observed. In this situation doctors must exercise great care and discretion in order not to damage this crucial relationship. Any action by a doctor which breaches this trust may raise the question of serious professional misconduct.

Three particular areas may be identified in which this trust may be breached:—

- (1) A doctor may improperly disclose information which he obtained in confidence from or about a patient;
- (2) A doctor may exert improper influence upon a patient to lend him money or to alter the patient's will in his favour;
- (3) A doctor may enter into an emotional or sexual relationship with a patient (or with a member of a patient's family) which disrupts that patient's family life or otherwise damages, or causes distress to, the patient or his or her family.

Further advice is given in Part III of this pamphlet in relation to the first and last of these matters.

(iii) Personal behaviour : Conduct derogatory to the reputation of the profession

The public reputation of the medical profession requires that every member should observe proper standards of personal

behaviour, not only in his professional activities, but at all times. This is the reason why the conviction of a doctor for a criminal offence may lead to disciplinary proceedings even if the offence is not directly connected with the doctor's profession. In particular three areas of personal behaviour can be identified which may occasion disciplinary proceedings, namely:

- (a) Personal abuse of alcohol or other drugs;
- (b) Dishonest behaviour;
- (c) Indecent or violent behaviour.

(a) Personal misuse of alcohol or other drugs

In the opinion of the Council convictions for drunkenness or other offences arising from misuse of alcohol (such as driving a motor car when under the influence of drink) indicate habits which are discreditable to the profession and may be a source of danger to the doctor's patients. After a first conviction for drunkenness a doctor may expect to receive a warning letter. Further convictions may lead to an inquiry before the Disciplinary Committee.

A doctor who treats patients or performs other professional duties while he is under the influence of drink or drugs, or who is unable to perform his professional duties because he is under the influence of drink or drugs, is liable to disciplinary proceedings.

(b) Dishonesty: Improper financial transactions

A doctor is liable to disciplinary proceedings if he is convicted of criminal deception (obtaining money or goods by false pretences), forgery, fraud, theft or any other offence involving dishonesty.

The Council takes a particularly serious view of dishonest acts committed in the course of a doctor's professional duties or against his patients or colleagues. Disciplinary proceedings may accordingly be taken if a doctor improperly demands or accepts fees from patients in circumstances contrary to National Health Service regulations, or if he knowingly and improperly obtains from a Family Practitioner Committee or Health Authority any payment to which he is not entitled, or if he issues prescriptions improperly to patients on his dispensing list.

The Council has also regarded with concern (1) prescribing for commercial motives of drugs or appliances in which a doctor has a financial interest; (2) arrangements for fee splitting under which one doctor would receive part of a fee paid by a patient to

another doctor; and (3) the association of a medical practitioner with any commercial enterprise engaged in the manufacture or sale of any substance which is claimed to be of value in the prevention or treatment of disease but is of undisclosed nature or composition.

(c) Indecency and violence

Indecent behaviour to or a violent assault on a patient would be regarded as serious professional misconduct. Any conviction for assault or indecency would render a doctor liable to disciplinary proceedings, and would be regarded with particular gravity if the offence was committed in the course of a doctor's professional duties or against his patients or colleagues.

(iv) Advertising, canvassing and related professional offences

(a) Advertising

The medical profession in this country has long accepted the tradition that doctors should refrain from self-advertisement. In the Council's opinion advertising is not only incompatible with the principles which should govern relations between members of a profession but could be a source of danger to the public. A doctor successful at achieving publicity may not be the most appropriate doctor for a patient to consult. In extreme cases advertising may raise illusory hopes of a cure.

The publication in any form of matter commending or drawing attention to the professional attainments or services of one or more doctors can raise a question of advertising. This becomes a professional offence if the doctor or doctors concerned have either personally arranged for such publication or have instigated or sanctioned or acquiesced in such publication by others, and have done so for the purpose of obtaining patients or otherwise promoting their own professional advantage or financial benefit. Further advice is given in Part III of this pamphlet about the circumstances in which "advertising" may be deemed to have occurred.

(b) Depreciation of other doctors : Canvassing

The Council also regards as capable of amounting to serious professional misconduct:

- (i) the depreciation by a doctor of the professional skill, knowledge, qualifications or services of another doctor or doctors, and

- (ii) canvassing by a doctor for the purpose of obtaining patients whether the doctor does this directly or through an agent, or is associated with or employed by persons or organisations which canvass.

(c) *Improper arrangements to extend a doctor's practice*

Disciplinary proceedings may also result from other improper arrangements calculated to extend a doctor's practice. These include improper arrangements for the transfer of patients to a doctor's National Health Service list without the knowledge and consent of the patients or in a manner contrary to the National Health Service regulations (which have been agreed by the profession). Arrangements whereby a general practitioner issues National Health Service prescriptions for drugs ordered for a patient by another general practitioner who is treating that patient privately have also been regarded as serious professional misconduct.

PART III

Supplementary Guidance on Three Areas of Professional Conduct

Part II of the pamphlet sets out certain kinds of offence and of professional misconduct which have in the past led to disciplinary proceedings by the Council: it is related principally to previous decisions of the Penal Cases Committee or the Disciplinary Committee on actual cases. The Council believes that it would be helpful to amplify the information given in Part II, which is expressed in general terms, by giving more specific and positive guidance in certain areas of conduct. For this purpose the Council has approved the following paragraphs dealing with personal relationships between doctors and patients, with professional confidence, and with advertising.

(i) Personal relationships between doctors and patients

Section (b) on page 11 of this pamphlet, dealing with the abuse by doctors of certain privileges conferred on them by custom, explained why doctors must exercise great care and discretion not to damage the crucial relationship between doctors and patients and identified three areas in which

experience shows that this trust is liable to be breached. The following paragraphs relate to one of these areas—personal relationships between a doctor and a patient (or a member of the patient’s family) which disrupt the patient’s family life or otherwise damage the maintenance of trust between doctors and patients.

The Council has always taken a serious view of a doctor who uses his professional position in order to pursue a personal relationship of an emotional or sexual nature with a patient or the close relative of a patient. Such abuse of a doctor’s professional position may be aggravated in a number of ways. For example a doctor may use the pretext of a professional visit to a patient’s home to disguise his pursuit of the personal relationship with the patient (or where the patient is a child with the patient’s parent). Or he may use his knowledge, obtained in professional confidence, of the patient’s marital difficulties to take advantage of that situation. But these are merely examples of particular abuses.

The question is sometimes raised whether the Council will be concerned with such relationships between a doctor and a person for whose care the doctor is contractually responsible but has never actually treated, or between a doctor and a person whom the doctor has attended professionally in the distant past. In view of the great variety of circumstances which can arise in cases of this nature the Council’s judicial position has prevented it from offering specific advice on such matters. It can however be said that the Council is primarily concerned with behaviour which damages the crucial relationship between doctors and patients, and that this relationship normally implies actual consultation.

The trust which should exist between doctors and patients can be severely damaged when, as a result of an emotional relationship between a doctor and a patient, the family life of that patient is disrupted. This may occur without sexual misconduct between the doctor and the patient.

The foregoing paragraphs refer to personal relationships between doctors and patients or the close relatives of patients. The Council is not concerned with personal relationships between doctors and other persons.

Cases have been reported to the Council where a doctor when attending a patient professionally has indecently assaulted her or exposed himself to her. As will be clear from section

(iii) (c) on page 13 above, such behaviour may render the doctor liable to criminal proceedings: it may also in the absence of a criminal conviction be treated as serious professional misconduct.

For convenience these paragraphs describe a situation where the doctor is a man and the patient a woman. Similar principles would apply if the doctor were a woman and the patient a man or to a homosexual relationship.

Innocent doctors are sometimes caused anxiety by unsolicited declarations of affection by patients or threats that complaint will be made on the grounds of a relationship which existed only in the patient's imagination. As indicated on page 4 of this pamphlet, all complaints received by the Council are screened most carefully, and action is taken only when the evidence received is sufficient to require investigation.

(ii) Professional confidence

The following guidance¹ has been given on the principles which should govern the confidentiality of information relating to patients:

“(i) It is a doctor's duty (except as below) strictly to observe the rule of professional secrecy by refraining from disclosing voluntarily to any third party information which he has learned directly or indirectly in his professional relationship with the patient. The death of the patient does not absolve the doctor from the obligation to maintain secrecy.

(ii) There are some exceptions to this principle: if the doctor is in doubt before making any such exception in disclosing information he should seek advice . . . The exceptions to the general principle are: (a) the patient or his legal adviser gives valid consent; (b) the information is required by law; (c) the information regarding a patient's health is given in confidence to a relative or other appropriate person, in circumstances where the doctor believes it *undesirable on medical grounds* to seek the patient's consent; (d) rarely, the public interest may persuade the doctor that his duty to the community may override his duty to maintain his patient's confidence; (e) information may be disclosed for the purposes of a medical research project . . .” In such a case the project should have been approved by a recognised Ethical Committee appointed for such a purpose.

¹ Quoted from the British Medical Association's booklet. *Medical Ethics*, 1974, pages 13–14.

(iii) If, in the doctor's opinion, disclosure of confidential information to a third party is in the best interests of the patient, it is the doctor's duty to make every reasonable effort to persuade the patient to allow the information to be so given. If the patient still refuses, then only very exceptionally will the doctor feel entitled to overrule that refusal. Again if in doubt, he should seek advice.

(iv) A doctor should be prepared to justify his action in disclosing confidential information."

(iii) Advertising

Section (iv) (a) on page 13 of the pamphlet sets out the reasons why advertising by doctors is undesirable and may in some cases be regarded as amounting to serious professional misconduct. The following paragraphs discuss various circumstances in which questions of advertising most commonly arise.

(a) Notices or announcements by doctors

Advertising may arise from notices or announcements displayed, circulated or made public by a doctor in connection with his own practice if such notices or announcements materially exceed the limits customarily observed by the profession in this country.

(b) Questions of advertising arising from relationships between doctors and organisations providing clinical, diagnostic, or medical advisory services

There are in operation at the present time a number of family planning and vasectomy clinics, health check and screening centres, pregnancy advisory bureaux, and nursing homes, including those providing facilities for the termination of pregnancy. Some of these organisations are owned or directed by non-medical persons and regularly advertise their services to the public in the ordinary course of their business. Others advertise their services only to the medical profession. It is not a function of the Council by the exercise of its disciplinary jurisdiction to hamper such organisations in fulfilling their purposes, but the maintenance of proper professional standards requires that doctors connected with them should observe certain principles of behaviour. A connection or relationship may occur where a doctor has a financial interest in such an organisation, or is concerned with its management, or is employed by it to perform clinical services, or accepts for

examination or treatment patients referred to him by the organisation. The principles of behaviour which the Council commends are set out below. Section (1) applies to doctors in relationship with organisations which advertise their services *to the lay public*: Section (2) applies to doctors in relationship with organisations which advertise *only to the profession*.

(1) *Doctors in relationship with organisations which advertise their services to the lay public*

(a) If a doctor owns or holds shares in an organisation which advertises diagnostic or clinical services to the lay public:

- (i) the doctor should not also work for it in a clinical capacity;
- (ii) the doctor should not in communications addressed to the lay public use or permit the use of his professional qualifications as an advertisement for the organisation or be personally involved in advertising its services, for example by public speaking or writing articles or signing circulars;
- (iii) the doctor should ensure that any advertisements issued by the organisation are factual, do not advertise the personal qualifications, qualities or services of individual doctors connected with the organisation, and do not make invidious comparisons with the services of other organisations.

(b) Doctors who manage or direct such organisations, or who are paid by them to examine, to advise or to treat patients, must be remunerated on a regular sessional basis and not on a basis related directly to the number of patients whom the organisation attracts or whom the doctor sees.

(c) Doctors who are not themselves engaged in the management or direction of such organisations, and do not own or hold shares in the organisations, may accept patients referred to them by other doctors who are employed by the organisations, but they should not offer any financial or other inducement for the referral of such patients.

(2) *Doctors in relationship with organisations which advertise to the medical profession but not to the lay public*

A doctor who owns or holds shares in or manages or directs any nursing home, private hospital, clinic or screening service which advertises to the medical profession (but not to the lay

public) should ensure that the advertisements are sent under sealed cover, are factual, do not advertise the personal qualities or services of individual doctors, and do not make invidious comparisons with the services of other organisations. The same principles should apply to advertisements placed in medical journals.

(c) *Public references to doctors by other companies or organisations*

Questions of advertising may also arise in regard to reports or notices or notepaper issued by companies or organisations with which a doctor is associated or by which he is employed even if the business of the company or organisation is not connected with medical practice. There can be no objection to showing on the notepaper of a company the name of a doctor who is a director of it, since this is a statutory requirement. But questions of advertising can arise if reports, notices or notepaper issued by a company or organisation draw attention to or mention the professional attainments of the doctor in a way likely to promote his professional advantage. Doctors accordingly should take steps to avoid the publication of such references.

(d) *Questions of advertising arising from articles or books, broadcasting or television appearances by doctors*

Publicity in newspapers or books or on the radio and television, mentioning a practitioner's name, qualifications and appointments or publications, has frequently attracted uninformed criticism of the doctors concerned, but in most instances has appeared on examination to be harmless. The Council agrees that "professional men may be amply justified in publishing books and articles and in publishing them in their own names"¹ and that "The public has a legitimate interest in the advances made in the science and art of medicine", and that "medical practitioners who possess the necessary knowledge and talent may properly participate in the presentation and discussion of medical or semi-medical topics" in newspapers or on radio and television.² The Council also agrees that readers,

¹Quoted from a judgment of the Judicial Committee of the Privy Council on an appeal by L. E. Gardiner in 1960.

²Quoted from the British Medical Association's booklet *Medical Ethics*, 1974, page 39.

listeners and viewers are entitled to be given information as to the professional standing of a doctor who writes a book or article or gives a talk, provided that this information is not given in a way which implies that he is the only or the best person practising in his particular field. There can be no objection to mentioning in the relevant context a doctor's name, his current appointment and whichever qualification held by him is most relevant to his particular interest. References to other publications by the doctor, whether forthcoming or past, should be factual, and not presented in a way which suggests that he is the only authority in a particular area and more experienced than other specialists in his field.

The episodes in this area which raise a substantial question of advertising usually arise either from *matter included* in talks given, or in articles or books written, by doctors, or from matter included in material introducing, accompanying or advertising a talk, article or book where the matter "directs attention to the personal and unique performances and abilities of the writer"¹ or speaker. Moreover "There is a clear distinction to be made between discussions solely of general principles of medicine, where no objection would be made to the naming of the doctor involved, and those discussions which result in any particular reference by that named doctor to the way in which he approached clinical problems. . . . Anonymity is particularly important in circumstances where the doctor refers to his personal management of individual clinical matters".²

Particular problems arise in relation to the few doctors in clinical practice who *regularly write*, in magazines or journals addressed to the lay public, articles or columns which offer advice on common medical conditions or problems, or who are involved in a *regular series* of television or radio programmes dealing with such matters. Such doctors would be well advised to remain anonymous, and it should be stated explicitly that they cannot offer individual advice or see patients as a result of the articles.

¹ Quoted from a judgment of the Judicial Committee of the Privy Council on an appeal by L. E. Gardiner in 1960.

² Quoted from the British Medical Association's booklet *Medical Ethics*, 1974, page 39.

(e) *Signposts or noticeboards relating to health centres or medical centres: Choice of titles for such centres or for group practices*

Paragraph (iii) (a) on page 17 above says that “Advertising may arise from notices or announcements displayed, circulated or made public by a doctor in connection with his own practice, if such notices or announcements materially exceed the limits customary in the profession”. The customary limits are well established in relation to door plates used by individual practitioners although the acceptable limits vary in different areas and parts of the country according to local circumstances. Questions however have from time to time been raised as to what is acceptable in relation to medical centres provided by group practices or to health centres provided by Area Health Authorities (or, in Scotland, Health Boards): and indeed such authorities have on occasion sought to erect signs without consulting the doctors who will use the centre.

The Council accepts that it is important that the public should be informed of the location of such premises and that no objection should be made to signs which are necessary for this purpose. In choosing the wording and size of such notices considerations applying generally to professional doorplates should be borne in mind: in this connection the Council endorses the view that doorplates “should be unostentatious in size and form”.¹ In deciding what is acceptable it is also necessary to take into account the nature of the area. What may be necessary to indicate the position of premises in large towns could be unsuitable and unnecessary for doctors practising in small villages. It is desirable that no notices or signposts should be larger or repeated more frequently than is necessary to indicate to patients the location of the premises in question. Notices or signposts should not be used to draw public attention to the services of one practice at the expense of others.

In selecting a name for a health centre or a medical centre or indeed a collective title for a group or partnership it is desirable to avoid a name which could be interpreted as implying that the services provided in that centre or by that partnership have received some official recognition not extended to other local doctors. For this reason terms such as “Medical Centre” or

¹ Quoted from the British Medical Association’s booklet *Medical Ethics*, 1974, page 22.

“Health Centre” should not be used in a manner which might imply that doctors using the centre or practising in the partnership enjoy some special status in a particular place or area.

CONCLUSION

As stated on page 8 of this pamphlet the question whether any particular course of conduct amounts to serious professional misconduct is a matter which falls to be determined by the Disciplinary Committee after considering the evidence in each individual case. This applies equally to the categories of misconduct described in Part II and to the situations contemplated in Part III. Further it must be emphasised that the categories of misconduct described in Part II cannot be regarded as exhaustive. Any abuse by a doctor of any of the privileges and opportunities afforded to him, or any grave dereliction of professional duty or serious breach of medical ethics, may give rise to a charge of serious professional misconduct.