

FITNESS TO PRACTISE PANEL

9 SEPTEMBER 2011

Regent's Place, 350 Euston Road, London NW1 3JN

Name of Respondent Doctor: Dr Stephen CARR-BAINS

Registered Qualifications: MB BChir 1978 University of Cambridge

Area of Registered Address: Surrey

Reference Number: 2434504

Type of Case: Review case of impairment by reason of:
misconduct;

Panel Members: Prof. B Gomes da Costa, Chairman (Lay)
Dr K Bhanumathi (Medical)
Mrs S Dean (Lay)

Legal Assessor: Mr S Bate

Secretary to the Panel: Ms L Rudd

Representation:

GMC: Mr Stephen Brassington, Counsel, instructed by GMC Legal, represented the GMC.

Doctor: Dr Carr-Bains was present and represented by Mr Richard Booth, Counsel, instructed by the MDU.

Determination on impaired fitness to practise

"The following determination will be read in private, but a public version will be published at the end of this case, with appropriate matters XXX.

Dr Carr-Bains: This is a review hearing of your case following a determination by a Fitness to Practise Panel in September 2010 that your fitness to practise was impaired by reason of your misconduct. That Panel suspended your registration for a period of 12 months and determined that there should be a review, shortly before the period expired.

The background to your case is as follows:

Between 1987 and 2006, you practised as a General Practitioner at Guildowns Group Practice, Surrey.

During the academic year 1988 to 1989, Miss SH was a registered patient of the Practice and you provided medical care to her. In December 1995/January 1996 you entered into a sexual relationship with Miss SH.

In February 1996, Miss SH registered as your patient at the Practice. In 1999 Miss SH became pregnant by you; you provided medical care to Miss SH in relation to a termination of the pregnancy; you failed to file a discharge letter from the British Pregnancy Advisory Service in Miss SH's medical records; you failed to make any record of Miss SH's termination of pregnancy in her medical records; and you failed to refer Miss SH for post-termination counselling.

In 2005 and 2006 you questioned Miss SH about her counselling and you also pressurised Miss SH not to reveal your relationship with her to her Counsellor;

From 1988 onwards you knew, or ought reasonably to have known, that Miss SH was a vulnerable patient suffering from mental health problems.

In February 2003 Miss AG became a patient of the Practice. In June 2003 you entered into a sexual relationship with Miss AG.

From February 2003 onwards you knew, or ought reasonably to have known, that Miss AG was a vulnerable patient and suffering from mental health problems.

In September of last year, the Panel stated that it was in no doubt that fellow practitioners would have viewed your conduct as deplorable; that you had demonstrated a complete lack of understanding of appropriate boundaries; that you had abused your position as a doctor, and you had damaged the public confidence in the profession. That Panel therefore determined that your actions amounted to serious misconduct.

That Panel was in no doubt that your misconduct represented a serious and repeated failure to uphold proper standards of conduct and behaviour expected of a registered medical practitioner. It stated that you had shown a flagrant disregard of the very essence of the doctor-patient relationship and that your misconduct had brought the profession into disrepute. In all the circumstances that Panel determined that your fitness to practice was impaired by reason of your misconduct and suspended your registration for a period of 12 months.

The September 2010 Panel indicated that a Panel reviewing your case might be assisted by receiving evidence that you have reflected on the matters that have brought you before that Fitness to Practise Panel, including steps you have taken to address these. Such evidence might include XXX, and training on maintaining ethical medical boundaries. It would also be assisted by evidence that you had kept your medical knowledge and skills up-to-date during your period of suspension.

This Panel has today reviewed your case and has considered, in accordance with Rule 22(f), of the General Medical Council (Fitness to Practise) Rules Order of Council 2004, whether your fitness to practise is impaired.

Mr Brassington, on behalf of the GMC, outlined your case, including the findings of the September 2010 Panel and more recent developments. He told the Panel that on the material it has before it the Panel should conclude that your 'journey' towards

remediation is not at an end. They, therefore, should have serious concerns about the likelihood of you repeating the behaviour which brought you before your regulator.

In your evidence, you stated that you have come to recognise that you had been deflecting the blame for your past behaviour onto others. You stated that you have now come to accept the seriousness of your situation and the findings of the last Panel.

You told the Panel about your pending divorce proceedings and your current stable relationship. You stated that your process of remediation has been ongoing and that you have used the last year to reflect. You told the Panel that you have been able to grasp the fact that your conduct was misguided and are now able to accept full responsibility for your mistakes.

You told the Panel that, initially, you did not feel you could keep going over past events but that, as time has gone on, you have been more able to talk to people about your misconduct; and that XXX and informal mentoring from Dr M have been very helpful. You suggested that your efforts at remediation had not 'taken off' until sometime after the FTP hearing in September 2010.

You told the Panel about the courses that you have attended and about the knowledge, understanding and insight that you have gained from them. You also told the Panel that the issue of progress was "live and current" and you accepted that the Panel might see that there was a risk of repetition. You said that you now have the necessary insight and professional support and would thus not repeat the behaviours which gave rise to your original misconduct.

You told the Panel that you would like to continue to travel, and, if restored to the register, return to work, initially on a part time basis. You stated that you have no plans to work with a student health service and that you have not made any firm plans for the future. However, you are pleased to have received certain current offers of employment in two group practices.

Mr Brassington submitted that your fitness to practice remains impaired and that aspects of your evidence were of concern. You blamed your misconduct on your unhappy marriage. Mr Brassington said that the misconduct was very difficult, if not impossible, to remediate over such a short time, particularly in view of your personality traits. It was not yet sufficiently remediated and there was a likelihood of repetition. He relied upon the letter from PW, dated 19 July 2011 and the report from Dr A in August 2011.

Mr Booth submitted on your behalf that you fully appreciate the gravity of your offence. There had been no repetition of the offending behaviour in the last five years. Between 2006 and the Fitness to Practise Panel last year, you continued to practise without any further questions as to your conduct and that, prior to the events leading to your suspension, your career had been unblemished. Mr Booth also made reference to highly supportive references in relation to your clinical competence and skill.

Mr Booth told the Panel that you have reflected on your misconduct and that you have been frank about your requirement for continuing support. He reminded the Panel that you have submitted both positive and negative documents for the Panel to consider. This frankness and openness was a significant indication that the Panel could find that you have shown significant insight into your errant behaviour.

Mr Booth stated that it was commendable that you have insight into your need for ongoing support, rather than relying on the course on boundaries as some kind of guarantor of your future conduct. He told the Panel that there was evidence before it today that you have done everything you reasonably could have done to remediate the conduct that brought you before a Fitness to Practise Panel. Mr Booth stated that the Panel can consider that your fitness to practise is no longer impaired.

The Panel has taken into account your evidence, all the documents made available to it, all the submissions on behalf of the GMC and on your behalf, as well as the advice of the Legal Assessor.

In a letter dated 28 July 2011, XXX:

“Presuming that I am correct that Dr Carr-Bains has learnt to remain within correct professional boundaries I do not have any concerns about his fitness to practise as a doctor”.

The Panel has also had regard to the letters from PW, XXX, dated 19 July 2011, in which she states that she expects a positive outcome to the ongoing XXX, albeit that there remained a XXX, still to be completed and that of Dr VJ, dated 22 August 2011.

The Panel has noted your development plan, your detailed log of remedial work undertaken and the details of the “Maintaining Proper Boundaries” course which you completed in August 2011.

In an undated letter, Dr A, XXX from the Clinic for Boundaries Studies gave the results of the questionnaire you completed during your course. She suggested that the results of the screening test were to be viewed as “amber lights”, rather than as diagnostic. The Panel has noted your reply to Dr A, dated 5 September 2011, in which you accept the majority of her feedback and seek permission to discuss it with PW.

In his letter dated 17 August 2011, Dr M, Director of Wellbeing for the University of Surrey, stated:

“I have been in contact with Stephen on a frequent basis since last August and have held a number of conversations with him on both the outcome of the GMC decision and the resultant impact on him professionally and personally. Despite this being an extraordinarily difficult time for him I have been impressed with the extent to which he has engaged with these difficulties. The temporary withdrawal of his professional identity had a major impact on him,

but despite this he has been able to reflect on what happened in his practise and his private life. Whilst not attempting to be a psychotherapist to Stephen, I have been taken by the extent to which he has showed a capacity to explore the complex dynamics of his private and professional lives, and to gradually understand how and why he arrived at the position he did last year. Reviewing one's life is neither an easy or straightforward process, but in my conversations with Stephen, he has demonstrated both a deeper sense of awareness of a number of significant life events and how these shaped his identity as a doctor and husband.

I know that Stephen has also engaged in reflection and discussion with other professionals and XXX and found these very helpful in understanding the impact of his actions, his sense of regret at various decision he has taken in his life and, importantly, how he can now rebuild he professional and public identities. In my roles as XXX and management consultant over the years I have worked with numerous professionals (and there families) and recognize the pattern of life events that can lead to such difficulties. I believe that Stephen also sees these patterns, as now a much better appreciation of the complex emotional pressures that being a GP generates and showing a capacity to reflect meaningfully on his relational world, in a way that perhaps was not so readily possible in the past. As I noted in my last letter to you in support of Stephen in August 2010, I have considerable respect for him as a clinician and as an individual and my view has not changed”.

In a letter dated 17 August 2011, Dr B of the New Inn Surgery stated:

“I hope he will be fully restored unconditionally to the register as he remains a respected doctor with the local community and now more fully understands the risks that the doctor-patient relationship can present.”

And

“He fully accepts the validity of the GMC’s action and the essential need not to stray outside strict GMC ethical guidelines...”

The Panel has had regard to the letter from Dr GB, Senior Partner of Forrest & Badgerswood Surgeries, dated 17 July 2011. Dr GB stated that he would be very keen to offer you employment. He stated that you had worked for the practice for many years and that he and his colleagues have every confidence in your clinical skills.

The issue of impairment is one for the Panel to determine, exercising its own professional judgement. It has taken into account relevant parts of the judgments in the following cases, as referred to by counsel and the Legal Assessor; *Abrahaem v GMC* [2008] EWHC183 (Admin); *Cohen v GMC* [2008] EWHC 581 (Admin); *Meadow v GMC* [2007] QB462; and *CHRE v NMC & Grant* [2011] EWHC 927 (Admin). The Panel has considered the need to protect patients and the public, to maintain public confidence in the profession, and to declare and uphold proper standards of conduct and behaviour.

In all the circumstances, the Panel has determined that you have spent time reflecting on your behaviour and have addressed these matters appropriately. It was encouraged by the evidence you gave and the information before it about the XXX you have received, which the Panel notes was a recommendation, rather than a pre-requisite, set by the previous Panel.

The Panel was also encouraged by your recognition of your potential risk factors and it has borne in mind the substantial length of time since the last act of misconduct occurred. In the intervening period there has been no repetition of the offending behaviour.

The Panel has taken the view that you have been honest and frank with the evidence that you have given today. It notes with satisfaction that you have good support mechanisms in place and has been encouraged by the fact that professionals who are aware of your past are keen to re-employ you.

The Panel is of the view that you have shown contrition for, and insight into, your actions and are highly unlikely to repeat them. In drawing this later conclusion, the Panel has taken into account Dr A's report and the fact that you have further XXX to complete with PW. However, these matters are outweighed by your contrition and depth of insight, the lack of repetition of your offending behaviour and the fact that the original misconduct took place several years ago in the context of an otherwise unblemished record. Taking into account these matters and all of the public interests at stake, it has, therefore, determined that your fitness to practise is no longer impaired by reason of your misconduct.

The effect of this direction is that the current order of suspension imposed on your registration will run until it is due to expire on 8 October 2011.

That concludes this case.

Confirmed

Date 9 September 2011

Professor B Gomes da Costa, Chairman