

Public Minutes of
the Investigation Committee

Date of hearing: 15 July 2021

Name of Doctor	Dr Nassif Mansour
Doctor's UID	4136956

Committee Members	Mr Pradeep Agrawal
	Dr Laleh Morgan
	Mr Geoff Baines

Legal Assessor	Mr Robin Hay
Panel Secretary	Ms Gemma Wolstenholme

Attendance and Representation

GMC Representative	Mr Ian Brook
Doctor's attendance	attended
Doctor's representative	Mr Chris Gillespie

Outcome	Warning
----------------	---------

Dr Nassif Mansour,

- 1 At today's hearing the Investigation Committee carefully considered all the material before it including the submissions made by **Chris Gillespie** on your behalf and those made on behalf of the GMC by **Ian Brook**. It has accepted the advice of the Legal Assessor.

Background

- 2 On 13 June 2017, you referred yourself to the GMC regarding your involvement in a police investigation. You advised the GMC that on 2 June 2017, you were interviewed under caution by the police regarding routine medical examinations at a school. This was whilst you were working as a general practitioner (GP) and your practice was responsible for conducting medical examinations on pupils at Shrewsbury House School. You advised that this was a longstanding arrangement of 22 years and that it was your responsibility to undertake these examinations on a regular basis.
- 3 In the referral you advised that concerns had been raised by one pupil in relation to whether the consent process for the medical examination was appropriate. You provided a full account in relation to the matters under consideration but had not been charged with any criminal offence.
- 4 Dr Payne from NHS England South London Area team discussed the situation with the GMC employer liaison adviser (ELA) on 12 June 2017. Dr Payne informed the ELA that the police had interviewed you following an allegation, made via Childline, by a ten year old boy at the school that he had been examined by *'an unqualified doctor without consent'* when he had his first school medical check.
- 5 On 19 January 2018 the police informed the GMC stating their investigation was ongoing following their interview with you. The police stated they would be seeking an expert report on the matter of the intimate examinations. On 19 December 2018 the police informed the GMC that the CPS had decided to take no further action on your case.
- 6 On 11 January 2019 the GMC received a complaint from Mr and Mrs N, the parents of (AN), a pupil at the school in question. In their complaint they said AN had called Childline following his examination with you. The parents said that you performed an

intimate examination *'during which we were led to believe would be a standard school medical (eyesight, weight etc).'*

- 7 The GMC instructed a GP expert who was asked to comment on whether you had appropriate consent to undertake an intimate examination of AN. He said that this was not the case because a seven year old boy would not *'understand why any intimate examination was necessary or what it might involve'*. The expert stated this aspect of care was seriously below the standard expected of a reasonably competent doctor because of the lack of consent and as there was no evidence to show you took steps to obtain or check for parental consent.
- 8 Overall, the expert's opinion was that your standard of care was seriously below the standard expected of a reasonably competent general practitioner acting as a school doctor regardless of whether your version or AN's version of events is accepted.
- 9 Following the conclusion of the investigation process, on 7 April 2021 the GMC informed you that the Case Examiners were minded to issue you with a warning.
- 10 Mr Ian Sadler, solicitor, replied on your behalf that if the Case Examiners maintained the decision to conclude your case with a warning, you wished to exercise your right to an oral hearing at the Investigation Committee.
- 11 On 01 June 2021, the GMC responded to acknowledge that you were not prepared to accept the warning and decided to refer the matter to the Investigation Committee.

GMC Submissions

- 12 Mr Brook, on behalf of the GMC, took the Committee through the history of the case as outlined above. He advised that you accepted that you conducted the examinations, however, mistakenly assumed parental consent was in place for the examinations to occur. Mr Brook submitted that you did not take any steps to ensure parental consent was in place before doing these medical check-ups. The issue of lack of parental consent for the intimate examination of a child is a serious one and is a failure to practise in accordance with our guidance, particularly, a clear and specific breach of Good Medical Practice (GMP) paragraphs 11 and 18.
- 13 Mr Brook said that this case invokes paragraphs 11 & 18 of GMP, namely: 11. You must be familiar with guidelines and developments that affect your work, 18. You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment.....
- 14 Mr Brook also referred to The Guidance on Intimate Examinations and Chaperones (2013) which states: 5. Before conducting an intimate examination, you should: e. If dealing with the child or young person: you must assess their capacity to consent to the examination; if they lack the capacity to consent, you should seek the parent's consent.

- 15** Mr Brook submitted that the allegations made against you are serious in that they relate to intimate examinations, without parental consent, over a period of many years — 1995 to 2017, the latter being the year in which your solicitors concede the examinations ceased. Mr Brook said that you accepted that you conducted these examinations, at the school, during this timeframe and that you did not seek to check that parental consent was in place, before doing the work, merely assumed that parental consent was in place, from the school. Mr Brook stated that *'There is a paucity of evidence to show that the school communicated to parents about intimate examinations, and there is no evidence to show consent was sought. However, you did not take any steps to ensure parental consent was in place, before doing these medical check-ups. As the treating doctor, it is your responsibility to ensure you had consent for any examinations or treatment performed and the GMC submit this responsibility was, and is, especially strong in relation to these intimate examinations performed on children, who are vulnerable people.'*
- 16** Mr Brook submitted that the lack of parental consent for the intimate examination of a child is serious and amounts to a failure to follow the GMC guidance (GMP). Further, this was not a single clinical incident, as examinations took place over many years.
- 17** Mr Brook stated that *'notwithstanding that you have provided remediation and reflection by way of professional development, training and discussion at your appraisal, and that you no longer work as a school Doctor, conducting intimate examinations, which the GMC acknowledges is relevant to the consideration of potential repetition, and that a decision has been taken that your fitness to practise is not impaired in relation to this matter, it is submitted that the case does warrant a formal response, because the allegations are serious, and they relate to a vulnerable group in an intimate examination.'* Mr Brook submitted that a member of the public would be concerned if no action were taken in relation to this serious matter and that a warning is proportionate and necessary in the interest of maintaining good professional standards and public confidence in doctors. This is because there has been a significant departure from GMC guidance (GMP).
- 18** Mr Brook reminded the Committee of the purpose of warnings, as per GMC guidance is, that "warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable". It was submitted by Mr Brook that this is particularly relevant as the allegations against you, as stated, relate to the intimate examination of a vulnerable group, without parental consent, over several years, which are serious allegations not arising out of an isolated single clinical incident. Mr Brook submitted that in all the circumstances, this is an appropriate case for a warning to be issued, and further that this would be proportionate.

Defence Submissions

- 19** At the outset, Mr Gillespie said that the warning itself is couched in terms leading a reader to conclude that you had demonstrated a serious failing in a fundamental area

of your practice rather than an unwitting failure in a *'very discrete part of it'* which would be *'misleading'* to the public. Mr Gillespie referred to the wording of the warning, commenting whether it was *'necessary'* to issue you with a warning today.

- 20** Mr Gillespie relied on the previous Rule 7 comments to the GMC and referred to the Rule 7 letter where your solicitor set out his understanding that the matron was always in the room where the examinations took place unless the parents were present. Mr Gillespie submitted that whilst it is accepted that this provides no answer to the issue of the failure to have robust procedures to obtain consent or parental consent, it does provide important factual context in relation to the allegation. The Committee confirmed with Mr Gillespie that there was one other documented concern, this was where a parent raised an issue in regard to the absence of a chaperone. Mr Gillespie said that you had no recollection of this examination. No formal complaint was raised.
- 21** Mr Gillespie referred to the overarching objective of the GMC in exercising its functions is the protection of the public: Medical Act 1983 s1(1A). The pursuit of that objective involves the protection, promotion and maintenance of the health, safety and welfare of the general public, the promotion and maintenance of public confidence in the medical profession and the promotion and maintenance of proper professional standards and conduct: Medical Act 1983 s1(1B).
- 22** Mr Gillespie said that the purpose of a warning is fully set out in paragraphs 11 and 14 of The General Medical Council's Guidance on Warnings (March 2021) further, that a warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC. A warning will therefore be appropriate where there has been a *'significant departure'* from Good Medical Practice.
- 23** Mr Gillespie submitted that as per the Guidance on Warnings, whereas a warning would be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise and that there would be a need to record formally the particular concerns (because additional action may be required in the event of any repetition). There is however *'absolutely no prospect of repetition in this case'*. Your conduct related to a very limited part of your practice, where you visited the school no more than three times a year. Since the various investigations began, you have not worked at this (or any other) school and have been working under an interim conditions of practice order.
- 24** Mr Gillespie referred to paragraph 26 of the Guidance and to the principle of proportionality. His submission was that given the length of time the investigations have taken and that a warning would be publicly available for a further two years, a member of the public would not be concerned or alarmed if this case were to be concluded with no action and that a warning would therefore be disproportionate.

- 25** Mr Gillespie then referred to your previous unblemished history. Mr Gillespie said that the investigation process has had a salutary effect on you and submitted that having been under investigation for over four years, the publicity generated and the negative effect on your wellbeing would address any public concerns.
- 26** Mr Gillespie submitted that you have demonstrated insight from the earliest stage and referred to your 2017/18 appraisal and reflections on completion of the BMJ Consent course. Mr Gillespie stated that you participated in a review of your practice's Consent Protocol and that you have been open throughout with the police, NHSE and the GMC.
- 27** Mr Gillespie submitted that this is not a case where you were oblivious to your obligations, but a situation, albeit one that persisted for a lengthy period of time, that arose from a misunderstanding of the steps the school had taken to obtain parental consent. Mr Gillespie submitted that *'it is accepted that you had your own responsibility to ensure that parental consent had been obtained but your failure to discharge that responsibility took place in the context of a wider systemic failure.'*
- 28** Mr Gillespie submitted that considering the other limbs of the public interest test, namely the reputation of the profession and the need to uphold professional standards, there is no *'necessity'* to make an example of you for the reasons that have been set out above. In determining these issues, the question is often posed: would a reasonably informed member of the public who had knowledge of the facts of this case be concerned if the Registrant did not receive a warning. Mr Gillespie submitted that a reasonable member of the public, having understood the facts of the case, would not feel that a warning was *'necessary'* in regard to this limited aspect of your practice.
- 29** Mr Gillespie said that you had not had the opportunity to apologise personally to the child who made the initial complaint or his parents and that you wished to do so today. Mr Gillespie further said that due to the Police investigation it would have been unwise for you to contact the patient. However, you wished to express your genuine regret that upset had been caused to patient AN.
- 30** In summary, Mr Gillespie's submission was that in all the circumstances, your conduct did not fall below the standard expected to a degree requiring a warning and further that a warning would be disproportionate.

Committee Determination

- 31** The Committee is aware that it must have in mind the GMC's role of protecting the public, which includes:
- a. Protecting, promoting and maintaining the health, safety and well-being of the public
 - b. Promoting and maintaining public confidence in the medical profession, and

- c. Promoting and maintaining proper professional standards and conduct for members of that profession.

- 32** The Committee has concluded that by your actions you were in breach of Paragraphs 11 and 18 of GMP. The Committee accepts, although there is no definition of 'significant' in the Medical Act or in the Fitness to Practice Rules, the GMC expert report concluded that your practice was indeed seriously below the standard expected of a reasonably competent Registered Practitioner. Although the Committee did not regard your failure to obtain proper consent to be *'deliberate'*, as a doctor, you are expected to understand and to follow the proper consent process. Therefore, the Committee concluded that your actions, when conducting intimate examinations of children was reckless. For these reasons the Committee determined that your failings represent significant departures from the requirements of paragraphs 11 and 18 of GMP.
- 33** The Committee did not accept that this behaviour has 'absolutely no prospect of repetition'. However, given your remediation and insight the Committee concluded that the risk of repetition of these failings was reduced.
- 34** The Committee must be satisfied that the particular conduct, behaviour or performance approaches, but falls just short of, the threshold for the realistic prospect test. The realistic prospect test requires a genuine possibility of a finding of impaired fitness to practise, justifying action on the doctor's registration. The Committee is satisfied that the realistic prospect test in this case is not met. However, the failures are sufficiently serious that if there were repetition, this could well result in a finding of impairment of your fitness to practice. Repetition of your behaviour could affect patient and public confidence in the profession and the reputation of the profession. Therefore, for the reasons above, the test for issuing a Warning is met.
- 35** In deciding whether to issue a warning the Committee must apply the principle of proportionality, and balance the interests of the public with those of the practitioner. The Committee considered the aggravating and mitigating factors and whether it would be proportionate to issue you with a warning today.
- 36** The Committee was aware you self-referred to the GMC.
- 37** In reaching its decision today, the Committee have considered the evidence before it, the information provided, together with the submissions made by Mr Brook and Mr Gillespie. It has concluded that in the light of the lengthy time (some 20 years) during which you have conducted medical examinations at the school, it determined that this was not an isolated incident.
- 38** The Committee accepted that you had assumed the school had obtained informed consent. However, as a registered and long experienced doctor, you should be aware that it is your responsibility to obtain informed consent, on an ongoing basis, especially as you have indicated you would always do this in your general clinical

practice. The Committee concluded that this underlined the fact you did understand the correct informed consent process.

- 39** The Committee has heard that you have been negatively impacted by the GMC investigation for a number of years insofar as you are no longer able to act as a GP trainer, an advisor to NICE, and GP appraiser, also that you cannot accept another position as a registered medical practitioner without informing the GMC as per your current interim conditions of practice order. The Committee had in mind that a warning would not restrict your current practice any further.
- 40** The Committee accepts your substantial mitigation. This includes your current insight, CPD/appraisal reflections, relevant training and the positive testimonials. Regarding a genuine expression of apology and remorse, the Committee heard that this was your first opportunity to apologise to the patient and his family.
- 41** Given the extensive timespan of your failings, the intimate nature of the examinations and the vulnerability of the group affected, the Committee concluded that the public would be concerned if the GMC did not issue a formal response. Despite the extensive mitigation, the Committee found that your failings outweigh the mitigation.
- 42** Balancing the interest and safety of the public with proportionality, the Committee has determined that your conduct did not uphold patient safety and the Committee cannot be satisfied that it would not be repeated. The Committee has determined that a warning would be appropriate to maintain public confidence in the profession and the regulatory process, to promote standards expected of a doctor and to send a message to the wider profession that this conduct is unacceptable.
- 43** The warning will be documented as follows:

'Between 1995 and January 2014 you carried out intimate examinations on children. You failed to obtain informed consent in that you proceeded without:

- a) Taking steps to check whether there had been parental consent*
- b) Parental consent'*

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good medical practice and associated guidance. In this case, paragraphs 11 and 18 of Good medical practice is particularly relevant:

'11 You must be familiar with guidelines and developments that affect your work'

'18 You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.'

Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning. This warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy

44 You will be notified of this decision in writing within the next two working days.

That concludes the determination of the Investigation Committee in this case.