Doctors’ Sexual Misconduct and the Law

The maintenance of professional boundaries is an important part of daily professional life for any medical doctor. Both patients and colleagues need to be able to trust the doctors that they come into contact with. Patients and colleagues should not be in fear of being the subject of unwarranted and unreciprocated sexual, amorous or romantic advances. Outside of work too, a doctor must act appropriately when coming into contact with others. Complaints of inappropriate conduct of a sexually harassing nature may be made to the General Medical Council (GMC) by anyone. Doctors must therefore take great care to be respectful of personal boundaries inside and outside of work.

It is obvious that doctors are going to have natural human attractions just like anyone else, including sexual or romantic feelings towards their colleagues, patients or others they come into contact with. However, the prohibition on doctors entering into emotional or sexual relationships with patients (and relatives of patients) is one that most people endorse and which has good public policy reasons for it to be strictly policed. Colleagues too ought to be able to go to work without being harassed and exposed to sexualised behaviour. And in the community in which a doctor lives,
people have a right not to be sexually harassed.

Each year, a number of doctors are charged by the police or the General Medical Council (GMC) with indecent assault or sexually motivated conduct toward patients, colleagues or members of the public. Where a doctor is found guilty of sexually motivated conduct they are frequently (though not always) struck off the medical register. Those doctors who are struck off the register are unlikely to practise again – being deemed unsuitable to work with vulnerable (or any) patients for the rest of their life. Where a doctor receives a criminal conviction for sexually inappropriate conduct, erasure from the medical register is very likely to occur.

The GMC receives a significant number of complaints against doctors each year which allege that a doctor has acted in a sexually inappropriate manner towards another person or a group of people. The GMC will always investigate such complaints.

A doctor must at all times comply with the code of conduct for doctors, as set out in Good Medical Practice. The code requires doctors to ensure that they at all times, whether in their public or private life, have regard to the importance of a doctor maintaining public confidence in the profession and themself. Good Medical Practice requires doctors to avoid situations that can easily be misunderstood by careful management of the situation. Chaperons are recommended for examinations that could lead to misunderstandings. Proper and verbal consent should also be obtained and documented. Respect for all persons is required. Relationships with patients (sexual or otherwise) are deemed to be inappropriate. Doctors are required to maintain the boundaries, as they are the professional. For further information on the guidance on maintaining professional boundaries, and avoiding inappropriate relationships, see also the GMC publication: Maintaining Professional Boundaries.
Where a doctor is considered to have deviated significantly from *Good Medical Practice* due to their sexually inappropriate conduct (sexually motivated misconduct), then formal professional misconduct charges will usually be laid against the doctor. Doctors who receive complaints are invited to provide a personal position statement in writing, in the first instance, but may later face a *fitness to practise hearing* before the Medical Practitioners Tribunal Service (MPTS) panels.

Where there appears to be a case to answer, the case may also be referred to an Interim Orders Tribunal, so that matters of public protection and public confidence can be considered. While not all doctors are suspended, there is always a risk of an interim suspension. Some doctors are given conditions of practice orders, which may require them to not care for certain vulnerable categories of patient, or not to perform any clinical examinations without a chaperone being present. Not all doctors who face allegations of *sexually inappropriate conduct* will have an interim order imposed, during the period of investigation or pre-FTP hearing. Each case will be assessed by the GMC cases examiners, to assess risk.

*Good Medical Practice* requires doctors to at all times respect the dignity of patients, patients’ relatives, professional colleagues, and members of the general public. Not all doctors manage to live by those standards, however. So what goes wrong? Why do doctors transgress?

The majority of complaints of sexually inappropriate conduct are made against men, which follows the general trend in society. Whatever the gender of the doctor, forensic psychologists who specialise in the treatment of sexual offending behaviour generally identify two types of offender: 1) those who offend because of emotional problems, 2) and those who offend out of personal disposition to pursue sexual
gratification to others’ cost. While there are recognised other categories and sub-categories, psychologists will seek to identify the cause of the sexual offending (crimes) or inappropriately sexualised behaviour (professional misconduct).

A number of case illustrations may assist in understanding these concepts in greater detail. The cases also assist us in coming to an understanding of the way in which such cases are disposed of by the GMC. The following cases are genuine cases but the doctors names have been anonymised. The cases have been in the public domain at some point.

Cases involving a sexually motivated element have included: a doctor (lawfully) masturbating online via webcam in a public forum adults only sex site (so undermining public confidence in the profession – a warning was issued by the case examiners at the GMC investigations stage); the random grabbing of a colleagues breast in the workplace (sexual conduct – but found to be emotionally motivated, with low risk of recurrence – leading to a suspension of several months being imposed upon the doctor); a doctor who repeatedly had sexual intercourse with his young vulnerable patient on the ward, in his consultation room (denied but found guilty – motivated by personal gratification – struck off); a doctor who was acquitted in the criminal courts of inappropriate conduct towards young men in his consultation rooms over a period of years (found guilty at the GMC – motivated by personal sexual gratification – struck off). Other cases have included doctors who have made inappropriate remarks to colleagues, with sexual overtones, leading to GMC proceedings.

Not all allegations are found proved. In one case, the GMC/MPTS panel found that a doctor’s rather clumsy and rushed approach toward a patient during an outpatients consultation had caused a patient to believe that he had been sexually interfered with, when he had not. It was held that the consultation had lacked the necessary usual explanation of why
a genital examination was necessary, so causing confusion on the part of the patient as to the purpose of the examination, that appeared to the patient to be unrelated to the reason he had attended for a consultation with the doctor. The patient was extremely traumatised by the incident and the lack of explanation. The panel found that the doctor, of previous good character, had acted with good intentions and had not been sexually motivated during the consultation. For further reading, see our Chaperones and Doctors article.

Rule 7 Stage of the GMC Investigation

The ‘Case Examiners’ at the Rule 7 stage are made up of two individuals: an independent lay member and an independent medical member. They alone will determine whether there is a case (for the doctor) to answer in the legal sense. For more information on that stage of the investigatory process, see our GMC Investigations page. The GMC has a screening policy to dispose of cases that do not meet the evidential threshold, and weak cases will generally not go past the investigation stage. Where there is a prima facie case that there is a reasonable prospect of establishing the alleged facts (if the complainant is believed over the doctor), along with findings of misconduct and impairment, the case is almost certain to be referred to a fitness to practise hearing. Within GMC policies that the GMC case examiners work to (at the GMC Rule 7 Stage), there is a presumption that a doctor’s fitness to practise will be impaired where allegations of a sexual nature appear to be well-founded.

The policy guidance to the Case Examiners is clear. Where there has been an acquittal of a doctor at a criminal trial (no criminal conviction), the GMC will generally bring professional misconduct charges against the doctor. The two cases examiners must agree about the route for disposal of the case. If they cannot agree, the matter will be referred to the Investigating Committee for a decision to be made.
The [GMC guidance to the case examiners](https://www.gmc-uk.org) states, at paragraph 24:

‘Presumption of impaired fitness to practise

There are certain categories of case where the allegations, if proven, would amount to such a serious failure to meet the standards required of doctors, that there will be a presumption of an issue of impaired fitness to practise. These tend to fall within four main headings:

a) sexual assault or indecency  
b) …  
c) improper sexual/emotional relationships’

In the case of a criminal conviction, the GMC’s Registrar will usually refer the doctor to a fitness to practise hearing, for further consideration. However, not all convictions are so referred, and so the case examiners may still be involved in making a decision on whether to close the case or refer the allegation to a fitness to practise hearing.

For more information on when then the GMC will bring a case against a doctor, in the event of a failed criminal prosecution, read our article: [GMC ‘Prosecutes’ Doctors Acquitted of Crimes](https://www.gmc-uk.org). The GMC additionally investigates allegations that have not been made to the police but which have instead been made directly to the GMC. The GMC will instruct its own solicitors to investigate the allegation, in order to obtain statements and relevant evidence. Expert witnesses will, on occasions, be instructed to provide an opinion on a matter within the case. The defence may well need to obtain a defence expert’s report, too.

**GMC CHARGES OF SEXUALLY MOTIVATED MISCONDUCT:**

The GMC will lay formal charges against a doctor. A GMC/MPTS misconduct charge might typically read as follows:
a) On 1 March 2012, you touched the breast of Patient A.

b) Your conduct was sexually motivated.

c) Your fitness to practise is impaired by reason of your misconduct.

In the event that a doctor is referred to a full fitness to practise hearing, to determine the issues, the allegations are tried on the balance of probabilities. This is a lower standard of proof than the criminal standard: beyond reasonable doubt. There is therefore a greater likelihood of a doctor being found guilty of the facts alleged in fitness to practise hearings, when comparing conviction rates in the criminal courts. For this reason, doctors should be cautious about responding to the GMC without taking legal advice.

It should be noted that all of the written submissions made by a doctor to the GMC at the investigations stage can be taken into account (whether as an admission or as a statement that is later found to be inconsistent with later testimony) at the fitness to practise stage. Doctors should therefore ensure that their statements are accurate before submitting them. Further, it is not always wise to make written submissions at the investigations stage because of the lack of sight of the full evidence against the doctor, beyond a mere allegation.

In cases of sexual contact with children, an erasure order is highly likely. Downloading or viewing child pornography often also leads to erasure, but not always. See our article: Doctors and Child Pornography

In some cases of inappropriate sexual conduct, doctors will admit that they have transgressed and they will present mitigation evidence of why it is that they should otherwise be seen as still fit to practise as a doctor. In such cases, the GMC/MPTS will carefully evaluate the level of risk posed to members of the public and patients, of a doctor continuing to
practise in the future as a registered medical practitioner.

Where a doctor has a criminal conviction for a sexually motivated offence, the MPTS will scrutinise the sentence imposed, and determined whether the doctor can remain on the register at all.

Assessing Risk and Public Policy Considerations

A key case in understanding the MPTS/GMC assessment of risks involved in permitting a doctor to remain on the register is the case of Council for the Regulation of Health Care Professionals v General Dental Council & Fleischmann [2005] EWHC 87 (Admin). This case is known as Fleischmann for short.

In Fleischmann (a child pornography related criminal conviction case) the appeal court determined that a 12 month suspension order, imposed by the panel, should be replaced with an erasure order, for the following reasons:

a) A suspension of 12 months would not cover the three year period of the Community Rehabilitation Order that had been imposed. b) A suspension of only 12 months would not cover the period in which the doctor had to attend a Sex Offender’s Treatment Programme, which would take more than 12 months to complete. c) The 12 month suspension did not appear to take into account the fact that the doctor would be on the sex offender’s register for a period of five years.

The appeal court judge held [at para 54] that:

“...I am satisfied the Committee did not sufficiently consider the significance of the sentence which had been imposed by the Crown Court. His duty of disclosure to his patients would require that patients were informed of the sentence and the conditions attached to it. I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be
permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.” per Newman J, (February 2005)

**Appeal Cases Concerning Sexual Misconduct:-**

**Finding of Sexually Motivated Conduct was Wrong**

In *Sait v General Medical Council [2018] EWHC 3160(Admin)* the appeal court held that the findings of fact (and consequential findings) should be set aside as (a) the GMC had not put its case to the doctor that certain conduct was “sexually motivated”, and, (b) the MPT tribunal’s reasoning was deficient. (27/11/18)

In *Angamuthu Arunkalaivanan v. General Medical Council [2014] EWHC 873 (Admin)* the appeal court held that the tribunal had acted correctly on the evidence in finding that Dr Arun, as he was known, had conducted a breast examination in an inappropriate manner. The judge quashed, however, the tribunal’s finding that the conduct had been sexually motivated. The case was remitted case for further consideration by a newly appointed tribunal, to consider whether a warning should have been imposed on the doctor, on the basis of a non-sexually motivated, inappropriate breast examination. (April 2014) Note: There is no reference to a warning against the doctor’s name on the GMC website, so it appears that a warning was not imposed.

**Assessing the Gravity of Misconduct, Insight and Sanction**

In *Ujam v General Medical Council [2012] EWHC 520 (Admin)* the
appeal court held that a course of sexually motivated conduct toward colleagues was capable of being misconduct. The MPTS/GMC panel’s decisions were upheld, including the imposition of a period of suspension of six months duration. (13 March 2012). See also the further judgment in the same case *Ujam v General Medical Council [2012] EWHC 683 (Admin)* (20 March 2012). Both cases usefully summarise the approach of a tribunal to assessing the gravity of misconduct, a doctor’s insight, and the appropriate sanction.

**Veracity of Complainants**

In *Yaacoub v General Medical Council (GMC) [2012] EWHC 2779 (Admin)* the appeal court set aside a fitness to practise panel’s determination for lack of adequate reasons, in a case concerning allegations of sexual misconduct, including an allegation of rape. It was clear that the complainant had changed her testimony over time to a significant extent; the panel had failed to properly assess those changes. The credibility of the complainant had to be assessed to a greater degree than had been indicated by the panel’s reasons. (October 2012)

**Impairment**

In *Yeong v The General Medical Council [2009] EWHC 1923 (Admin)* – it was held that there are a certain class of cases that require a finding of impairment, such as cases of sexual misconduct, even where the doctor shows insight and has remediated.

At [para 50]:

“...the FTPP (acting on behalf of the GMC) is entitled to have regard to the public interest in the form of maintaining public confidence in the medical profession generally and in the individual medical practitioner when determining whether particular misconduct on the part of that medical practitioner qualifies as misconduct which currently impairs
the fitness to practise of that practitioner. Where a medical practitioner violates such a fundamental rule governing the doctor/patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise may be impaired if the public is left with the impression that no steps have been taken by the GMC to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rule he has violated. The public may then, as a result of his misconduct and the absence of any regulatory action taken in respect of it, not have the confidence in engaging with him which is the necessary foundation of the doctor/patient relationship. The public’s confidence in engaging with him and with other medical practitioners may be undermined if there is a sense that such misconduct may be engaged in with impunity.”

At [para 51]:

“…where a FTPP considers that fitness to practise is impaired for such reasons, and that a firm declaration of professional standards so as to promote public confidence in that medical practitioner and the profession generally is required, the efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct in the future may be of far less significance than in other cases, such as those involving clinical errors or incompetence. In the former type of case, the fact that the medical practitioner in question has taken remedial action in relation to his own attitudes and behaviour will not meet the basis of justification on which the FTPP considers that a finding of impairment of fitness to practise should be made. This view is also supported to some degree by the judgment of McCombe J in Azzam at [51] (distinguishing the case before him, which involved clinical errors, in respect of which evidence of remedial steps and improvement was relevant, from a case involving “a rape or
misconduct of that kind”, in relation to which – by implication – such evidence might be less significant.”

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Interim Orders – Conditions of Practice where Sexual Allegations have been made

Chaperone Requirements are Lawful

In *Dr E.Y. v GMC* [2013] EWHC 860 (Admin) the appeal court upheld interim order of conditions of practice, which required the doctor to be chaperoned while undertaking certain procedures. The doctor had felt that the interim order was not workable and so essentially prevented him from obtaining suitable work. The court held that in light of nature of the substantive allegations, of sexual impropriety toward a patient, which were serious, and in light of the fact that the case was destined for a fitness to practise hearing, the interim order was reasonable. (April 2013)

For additional guidance, see the Professional Standards Authority (PSA) *Sexual Boundaries Policy Summary*. The PSA is the super-regulator of healthcare regulators such as the *GMC*, *NMC*, and *HCPC*.

Training and Remediation: A doctor who undergoes a tailored self-awareness course may find that they are assisted in coming to an understanding of what types of behaviours are considered inappropriate, inside and outside of work, so that they can change their style of interactions with others. Evidence of self-reflection and insight may be useful in demonstrating that the future risk of repetition is much reduced, in light of the steps the doctor has taken since being made aware of the allegations against them.
GMC Appeals

The GMC since 2015 has had the power to appeal sanctions considered to be inappropriate in light of the history. Pursuant to Section 40A(3) of the Medical Act 1983 (as amended), the GMC may appeal a sanction decision that ‘they consider...is not sufficient (whether as to a finding or a penalty or both) for the protection of the public’. ‘Protection of the public’ requires an analysis of the sanction to see whether it is sufficient:

(a) to protect the health, safety and well-being of the public;

(b) to maintain public confidence in the medical profession; and

(c) to maintain proper professional standards and conduct for members of that profession.

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Here are the judgments in a number of such appeal cases, where sexually motivated conduct has been found proved:

In General Medical Council v Stone [2017] EWHC 2534 (Admin) the GMC appealed a Medical Practitioners Tribunal decision. The MPT had imposed a sanction of suspension on a doctor who had had a sexual relationship with a vulnerable patient. The sanctions was overturned by the High Court and a sanction of erasure was imposed instead. This is an important judgment to understand the insight and remorse that a doctor will need to demonstrate if they are to remain on the register, following a serious departure from the standards expected of a doctor’s conduct. (October 2017)

Doctors Defence Service represents doctors who are facing
false allegations of indecent assault or rape in the criminal courts. Doctors Defence Service also represents doctors who have been found guilty in the criminal courts who face GMC proceedings, or whom wish to plead guilty at the GMC to inappropriate conduct. Doctors Defence Service also represents doctors who are facing GMC/MPTS proceedings in relation to allegations of sexually motivated conduct. Doctors Defence Service respects the confidentiality of all doctors and doctors can therefore rest assured that our lawyers will approach any allegations a doctor is facing with the utmost sensitivity. To speak in confidence with one of our specialist lawyers, call: 0800 10 88 739

Other Related Articles:

- Doctors and Child Pornography
- Can a doctor practise while on the Sex Offenders Register?