The GMC makes a distinction between conduct that falls within the definition of “Misconduct” (known as Professional Misconduct (or a “serious” departure from expected standards)), and conduct that falls within the definition of “Deficient Professional Performance”. The distinction is an important one. A doctor who faces allegations of dishonesty, by way of example, is likely to face formal misconduct Charges. Whereas a doctor who it is alleged has failed in a clinical capacity on one or more occasions, particularly where there are similarities between the failings, the GMC is likely to bring allegations of deficient professional performance (a catch all phrase to cover incompetence or a serious lack of competence).

By way of example, a registered medical practitioner who practises as a general surgeon, and, who, on three occasions over a period of 18 months fails to recognise complications during abdominal surgery, may be found to be deficient. The pattern of failings may be suggestive that the doctor is in need of remedial training and supervision as a result of their Deficient Professional Performance. In such cases the GMC might impose Conditions of Practice on a doctor’s registration until they have remediated their shortcomings.

On occasions, the GMC may Charge an act or omission, or series of acts or omissions as being either Misconduct or Deficient Professional Performance, as alternatives. The Fitness to Practise Panel (FTPP) will, in each case, need to make a judgment as to which category a Charge fall into, by reference to the Medical Act 1983 (as amended) and regulatory case law.

The FTPP is assisted by a Legal Assessor, an independent legal adviser who directs the GMC panels as to the law. Panels
usually follow the advice and legal opinion of a Legal Assessor, but they may reject such advice. The parties – the barrister (Counsel) for the GMC, sometimes known as the case presenter, and the doctor or their defence lawyer – are invited to comment on the legal assessors legal advice and invite the panel to find a certain way.

There are a number of cases that a fitness to practise panel will be invited to consider. The case of Calhaem is the main authority on the distinction between Serious Professional Misconduct and Deficient Professional Performance. For further reading, see the Fifth Shipman report, on Seriously Deficient Performance. Additionally, see our definitions of ‘Fitness to Practise’ page.

If you seek advice and legal assistance in relation to an allegation of Seriously Deficient Professional Performance, call Doctors Defence Service on: 0800 10 88 739