‘Misconduct’ in GMC Cases

A definition of ‘misconduct’ is not set out in the Medical Act 1983 (the principle primary legislation that governs the GMC and MPTS). As a consequence, various appeal courts have been asked to set out their opinions on the scope of the definition of professional ‘misconduct’.

Prior to the Medical Act 1983 being amended, a doctor could only be found to have conducted misconduct if the act or omissions could be defined as ‘serious professional misconduct’. The amendment to the Act removed the word ‘serious’ from the statute.

It is not clear to this author why that was the case. It seems strikingly obvious that a regulator (such as the GMC) should only get involved where misconduct is considered to be serious, or, even if minor in nature, if it is persistent enough to be described as serious misconduct.

Indeed, regulatory case law has held that misconduct must be serious if regulatory disciplinary action is to be justified. See: Cheatle v GMC [2009] EWHC 645 (Admin); Mallon v General Medical Council [2007] ScotCS CSIH_17, and Remedy (see below). The appeal courts (tasked with adjudicating on disputes between doctors and the GMC on the scope of the definition) have held that conduct (whether by act or omission) must still be ‘serious’ if it is to be held fall within the definition of misconduct, as set out in the Medical Act 1983.
It is obvious to state that certain doctors misbehave or fail to uphold professional standards, in a number of ways, some commonplace and frequently occurring, some unique and novel or even sinister. A narrow definition of ‘misconduct’ might therefore lead to an unsafe situation whereby certain types of conduct would not be caught by the Medical Act – conduct that right-minded people would say should be caught by the Act. Alteratively, to broad a definition might catch conduct that right-minded people would consider should never fall within the definition of ‘misconduct’.

For these reasons there will be borderline cases where it is difficult to determine which side of the line the conduct falls.

Is it misconduct or not?

Not an easy question to answer in some cases. However, there are obvious examples of misconduct: theft, gross negligence manslaughter, indecent touching during a PV or PR examination, serious failures in the workplace (whether medical or managerial), improper conduct in one’s private life (for example domestic violence, using one’s registration for improper purposes), dishonesty, drug taking, abusive language in the workplace, faking CV work histories, harassment, not working to protocol. The list goes on.

But does a doctor commit misconduct if they make an error as a trustee of a charity, wholly unrelated to their practise of medicine, by way of example. The answer is not clear-cut and will be dependent on a number of variables. What if a doctor swears at a passenger on a bus, who accidentally bumps into the doctor on the way home from work, will they be held accountable by the GMC. Or, what if a doctor puts together a recruitment system that ultimately is found to be a failure in operation. There is some case law that assists us to understand the regulatory position of such a scenario, to some extent, such as: Remedy UK Ltd, R (on the application of) v
The General Medical Council [2010] EWHC 1245 (Admin) (28 May 2010). In that case a number of doctors brought an appeal against the GMC for closing a case against other doctors who had been involved in setting up a recruitment scheme for junior doctors, that eventually was said to be a failure.

The appeal judge that determined the issues in the Remedy case stated:

49. I agree with the GMC’s submissions. I accept that there is not a clear line mapping the boundary between conduct which is capable of rendering a doctor unfit to practise and conduct which is not. However, in my judgment, the allegations made here fall clearly into the latter category.

50. Plainly, as the authorities show, the concept of fitness to practise is not limited to clinical practice alone but may extend to other aspects of a doctor’s calling. I see no reason why a doctor who is seriously deficient in research, or who engages in teaching students and does so in a seriously incompetent manner could not properly be subject to the fitness to practise procedures for those failings, whether via the conduct or deficient performance route. The sanction would not necessarily be erasure from the register, but a condition might be imposed, for example, prohibiting a person from teaching for a period.

51. However, in all these examples the doctor is exercising functions which are part of his medical calling or, to put it another way, sufficiently closely linked to the practice of medicine. I do not consider that the administrative functions being exercised by these two doctors in this particular case can properly be so described. Their medical skills and experience may fit them better for the nature of the tasks they are required to undertake, but the essential skills they bring to bear are not medical. The making and implementation of government health policy is not a medical function, even
where the policies in issue directly relate to doctors and closely affect the medical profession.

Therefore, conduct that is not ‘sufficiently closely linked to the practice of medicine’ could fall outside of the scope of GMC inquiry.

The GMC’s Approach

The GMC holds that a medical doctor has a responsibility under the code of conduct (Good Medical Practice) to act professionally and appropriately in both their working and private life. Whether the GMC will proceed with an investigation into a doctor’s conduct outside of the workplace is therefore one based on the degree of failure of the doctor to live up to the code (GMP) and the general conduct and demeanor of the doctor, more widely.

If a doctor were to swear expletives and vulgarities all of the time then a number of occasions might lead to a finding that the doctor acted in a manner that constitutes professional misconduct that is also considered to be serious enough to engage the fitness to practise process.

On our case law pages we have summarised some relevant case law on the definition and scope of the statutory definition of the word ‘misconduct’, in GMC and MPTS proceedings.

If you are a doctor in need of guidance on the subject of misconduct and its scope, do give us a call in strict confidence on 0800 10 88 739 or use our Contact Form.