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.

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, too 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.

A doctor has a responsibility under the code of conduct (Good Medical Practice) to act professionally and appropriately in both their working and private life. The answer is therefore one based on the degree of failure to live up to the code and the general conduct and demeanor of the doctor, more widely. If the doctor swears all of the time then a number of occasions might lead to a finding of professional misconduct that is also serious.
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.