

DETERMINATION: Sanction

FITNESS TO PRACTISE PANEL HEARING: Commencing 3 January 2012

Dr Iain STEPHENSON (4069256)

Dr Stephenson:

Having determined that your fitness to practise is impaired by reason of your misconduct, the Panel has now considered what sanction, if any, should be imposed upon your registration. It has borne in mind all of the evidence adduced in the case, including the further oral evidence given and presented by you at this stage, and has taken account of Ms Nicholls' submissions on behalf of the General Medical Council (GMC) and your own submissions.

In making her submissions on sanction, Ms Nicholls highlighted three aggravating features of your case. These were:

1. that although it was not your intention, your misconduct had the unfortunate consequence of dragging others into it;
2. that the misconduct could have had the consequence of jeopardising the status of the research undertaken; and
3. that although your misconduct spanned a relatively short period of time, it cannot be suggested that it was a spontaneous action.

Balancing these aggravating features, Ms Nicholls acknowledged that there is considerable mitigation in your case. She pointed out that you are a hard working doctor who, at the time of these events, was under considerable pressure. Professor Nicholson and Dr McNally have described you as a good clinician. Professor Nicholson also stated that, notwithstanding your failures, you have made a significant contribution to the research plan of the university. Ms Nicholls further reminded the Panel that, since this episode, you have had disciplinary hearings and both the university and the hospital were happy to maintain you as a doctor and that you are still highly regarded by both.

In respect of your dishonesty, Ms Nicholls stated that it is at the lower end of the spectrum. She pointed out that it did not affect the quality of the research itself and that you were concealing short cuts resulting from time pressures. She went on to state that, had you not forged the second signatures or tried to conceal the dual recruitment, you may not have been brought before the GMC at all.

Ms Nicholls submitted that, because this case involves dishonesty, the Panel ought to consider erasure as this is the sanction which usually follows dishonest conduct. However, she fairly pointed out that there is significant mitigation in your case and suggested that it may not be necessary to impose this most severe sanction.

In making your submission on the appropriate sanction to impose, you invited the Panel to consider your mitigation and the extent to which you have reflected on and now understand the gravity and consequences of your misconduct. You told the Panel that you have tried to remedy and correct the deficiencies that led to your misconduct. You stated that you are unreservedly sorry, that you have apologised face-to-face to those concerned and that you are truly sorry and ashamed of your actions. You further explained that, since these events, you have withdrawn from all advisory roles, which, previously, you found time consuming but gratifying. In addition, you have taken relevant courses on ethics to try to avoid future recurrence of your misconduct.

You have also told the Panel that you take pride in dealing with patients and that your love for the job in itself acts as a strong deterrent for future misconduct. You further stated that you will need to adopt a better approach in the future for any potential new research activities, such as improving your engagement with staff.

In addition, you stated that you have not stopped your teaching and training of foundation year students and have continued your educational and supervisory role. This, you submitted, affords you the opportunity to reflect and become more aware of the responsibilities of Good Medical Practice and to gain better insight.

You have also informed the Panel that this is your first offence and that you have previously had an unblemished career. You reminded the Panel of the testimonials and feedback which it has received from clinical and non-clinical colleagues as well as from students, some of which were unsolicited. You also explained that you have missed the rigour of research but that you have complied fully with the conditions imposed on you following the internal Tribunal hearing in December 2010. You stated that you have co-operated with all enquiries since the events came to light and that you openly admitted your dishonesty at the outset of this hearing. You have told the Panel that this fitness to practise process has itself been a powerful reflective tool.

You submitted that erasure would be the appropriate sanction if it is the only means of protecting patients and the wider public interest and that you hope the Panel would not find this to be the case. In respect of suspension, you submitted that it has a deterrent effect and may be imposed if there is potential to rehabilitate, which you suggest there is. In respect of the imposition of conditions on your registration, you submitted that a Panel may impose this sanction if there is willingness to comply with them, which again you suggest

there is and you referred to your compliance with the conditions resulting from the tribunal hearing.

In reaching its decision, the Panel has taken account of the GMC's Indicative Sanctions Guidance and has exercised its own professional judgement. It has borne in mind that the purpose of a sanction is not to be punitive, though it may have a punitive effect. It has applied the principle of proportionality and has balanced your interests with the interests of the public. The public interest includes the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

The Panel first considered whether it would be sufficient to conclude your case without taking any action on your registration. In its determination on impairment, the Panel found that your dishonest actions displayed significant breaches of Good Medical Practice and that your research fraud had the potential to damage the integrity of research as an important arm of medical science. In light of these findings, and given the fact that there are no exceptional circumstances in this case, the Panel has determined that to take no action would not be sufficient or proportionate.

The Panel then went on to consider whether a period of conditional registration would be sufficient. Any conditions would need to be appropriate, proportionate, workable and measurable. The Panel has concluded that conditions which would effectively address your dishonesty could not be formulated. In any event, the Panel considers that the imposition of conditions could not sufficiently or proportionately serve to restore and maintain the public's confidence in the profession which has been damaged by your misconduct.

The Panel then considered whether a period of suspension would be sufficient. In doing so, it had regard to paragraph 69, the Indicative Sanctions Guidance, which states that:

"Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered medical practitioner."

The Panel has to take as a starting point that the misconduct in this case is that of dishonesty. It has had regard to the aggravating features identified by Ms Nicholls in her submissions, in particular, your involvement of Nurse Parkinson into your misconduct. It does accept however that, as there was no financial gain or attempt to compromise the quality of the Study, your dishonesty can properly be described as coming at the lower end of the scale.

The Panel has also had regard to the mitigation in your case. You have admitted the facts of the misconduct and recognise the gravity of your actions. You have attempted to reduce the likelihood of offending again in the future by attending relevant courses and also seeking the help of mentors and Occupational Health. You are also remorseful and have apologised to those involved. There are mechanisms in place which reduce the likelihood of any future recurrence of your misconduct, in the form of an agreed job plan, mentoring by the Clinical Director, Dr McNally, and a structured appraisal process.

Furthermore, the Panel has noted the positive testimonials provided on your behalf. In particular, it noted a very recent reference from Dr Martin Wiselka, Consultant and Honorary Senior Lecturer in Infectious Diseases. He stated that he has the highest regard for your clinical skills and integrity. He went on to state that if your clinical role were to be curtailed, this would have a very significant effect on the workload and future development of the department.

The Panel has also found Nurse Parkinson's evidence to be powerful. Even though you initially sought to involve her into your misconduct, this was immediately reported by her, which in large measure is how your misconduct came to light. Despite this, she still values your skills as a doctor and respects you in her new role as an HIV community nurse, the speciality area with which you are now closely involved.

The Panel is of the view that dishonesty of any kind is a serious matter and usually leads to erasure. It also notes paragraph 108 of the ISG, which states that

"Dishonesty, even where it does not result in direct harm to patients but is for example related to matters outside the doctor's clinical responsibility, e.g. providing false statements or fraudulent claims for monies, is particularly serious because it can undermine the trust the public place in the profession. The Privy Council has emphasised that:

'...Health Authorities must be able to place complete reliance on the integrity of practitioners; and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole.'

Whilst the Panel does not condone or diminish your misconduct, it is of the opinion that, given the strong and powerful mitigation that exists in your case, erasure, as a sanction, would be a disproportionate response in your case. It considers that suspending your registration would send out a strong message to you, the profession and the wider public that such misconduct is not acceptable and, in light of all the circumstances set out above, would be sufficient to restore and maintain public confidence in the profession.

In considering what period of suspension to impose, the Panel has, again, taken all the relevant circumstances into account. It has put into the balance, on the one hand, the need to meet the public interest in having confidence in the profession and, on the other hand, the strong public interest in having the services of a very highly skilled and conscientious doctor. It has decided that the proper and proportionate balance of these matters is to suspend your registration for a period of four months.

The Panel then considered whether it should review your case. In so doing, the Panel noted paragraph 116 of the ISG which states

"In some misconduct cases it may be self-evident that following a short period of suspension, there will be no value in a review hearing. In most cases, however, where a period of suspension is imposed and in all cases where conditions have been

imposed the Panel will need to be reassured that the doctor is fit to resume practice either unrestricted or with conditions or further conditions. The Panel will also need to satisfy itself that the doctor has fully appreciated the gravity of the offence, has not re-offended, and has maintained his/her skills and knowledge and that patients will not be placed at risk by resumption of practice..."

In your case, there has been no suggestion that patients have been put at risk or that your clinical skills have been called in to question. The Panel considers that during the four month period of your suspension from the Medical Register, you would maintain your skills and knowledge. It is left in no doubt that you have appreciated the gravity of your misconduct. The Panel is satisfied that you will be fit to resume unrestricted practice following the period of suspension. Therefore, the Panel is of the view that a review of your case is not necessary and would serve no useful purpose.

The effect of this direction is that, unless you exercise your right of appeal, the period of suspension will take effect 28 days from when written notice of this determination has been served upon you. A note explaining your right of appeal will be sent to you.

The Panel will now invite any submissions on whether to impose an order for immediate suspension.