

**FITNESS TO PRACTISE PANEL
29 NOVEMBER 2011**

7th Floor, St James's Buildings, 79 Oxford Street, Manchester, M1 6FQ

Name of Respondent Doctor: Dr Sunil Chandubhai PATEL

Registered Qualifications: MB ChB 1970

Area of Registered Address: Surrey

Reference Number: 2204686

Type of Case: Review case of impairment by reason of:
misconduct; a conviction or caution

Panel Members: Dr J Mitton, Chairman (Lay)
Mr I Spafford (Lay)
Dr D Moederle-Lumb (Medical)

Legal Assessor: Mr G Tobin

Secretary to the Panel: Miss J Kramer

Representation:
GMC: Mr Nick Clarke, QC, instructed by GMC Legal.

Doctor: Not present or represented.

Determination on impaired fitness to practise

"Mr Clarke

Service and Procedure

Dr Patel is neither present nor represented at these proceedings. You submitted that, in accordance with Rules 20(1) and 40(1) of The General Medical Council (Fitness to Practise) Rules Order of Council 2004, notice of these proceedings had been properly served upon Dr Patel.

The Notice of Hearing in respect of this review hearing, dated 20 October 2011, was sent to Dr Patel's registered address by Special Delivery. A Royal Mail electronic 'Track & Trace' document stated that the notice was delivered back to the sender on 14 November 2011 as Royal Mail had been unable to deliver the item. The Notice of Hearing was also sent as an attachment to an email address provided to the GMC by Dr Patel.

In the light of the GMC's efforts to serve notice upon Dr Patel, the Panel was satisfied that notice of these proceedings has been properly served upon him.

The Panel went on to consider, under Rule 31, whether to proceed with this hearing in Dr Patel's absence.

You submitted that the Panel is able to exercise its discretion to proceed in his absence as all reasonable efforts have been made to serve notice in accordance with the rules. You told the Panel that Dr Patel had not attended his original Fitness to Practise Panel in November 2010, nor the first review Panel in May 2011. He has not engaged with the GMC in relation to these proceedings. You submitted that Dr Patel has demonstrated by his absence that he has no interest in being involved in these proceedings. You further submitted that it would be in the interests of fairness to proceed in Dr Patel's absence today.

The Legal Assessor referred the Panel to the decision of the Privy Council in *Tait v Royal College of Veterinary Surgeons* and the case of *Adeyemi v GMC*, in particular, to the factors that are relevant in considering whether to proceed in the absence of a doctor. He also advised the Panel that there is an obligation upon registered doctors to maintain an accurate registered address with the GMC.

In considering whether to proceed with the hearing in Dr Patel's absence the Panel has borne in mind all the factors above, and that the discretion to proceed in the absence of the practitioner should be exercised with the utmost caution and with close regard to the overall fairness of the proceedings. The Panel has balanced the need for fairness to the doctor against the desirability that, in the public interest, a hearing should proceed within a reasonable time.

The Panel notes that Dr Patel attended neither his previous review hearing nor his original Fitness to Practise hearing and has not at any stage engaged with the GMC and its fitness to practise procedures. He has chosen not to instruct legal representation. In the circumstances the Panel does not consider that an adjournment would resolve matters and that it is in the public interest to proceed with the hearing in Dr Patel's absence.

Impairment

In the period April 2008 to April 2009, whilst employed as a doctor at the Tonbridge Community Mental Health Team, Dr Patel wrote three prescriptions for XXX and five prescriptions for XXX on prescription pads for patients under the care of the Tonbridge Mental Health Team. Dr Patel did not inform XXX General Practitioner that he had prescribed for her. He was investigated under the Kent and Medway NHS Trust Counter Fraud Policy and on 30 October 2009 was administered a simple caution for the offence of Fraud by Abuse of Position contrary to the Fraud Act 2006. Dr Patel accepted that it was inappropriate to use the Trust's resources to treat XXX and he subsequently repaid the cost of the medications.

The original Fitness to Practise Panel in 2010 found that Dr Patel's fraudulent use of the Trust's prescription pads was dishonest. However, it considered that Dr Patel had demonstrated some insight into his dishonest conduct by co-operating with the Counter Fraud investigation and repaying the costs incurred by the Trust. It found that his fitness to practise was impaired by reason of his misconduct and caution and determined to suspend his registration for 6 months. The Panel directed a review and Dr Patel was informed that the review Panel would be assisted by receiving the following:

- Testimonial evidence as to his character and conduct from persons of good standing including professionals he has worked with;
- Evidence of his continuing professional development.

The first reviewing Fitness to Practise Panel in May 2011 noted that Dr Patel had not provided the evidence referred to above and nor had he engaged with the GMC in respect of these proceedings. It concluded that it could not be satisfied that Dr Patel's fitness to practise was no longer impaired. It determined to suspend his registration for a further period of six months, and also directed a review of his case. Dr Patel was informed that the reviewing Panel would wish to see:

- Evidence that he has gained insight into his behaviour;
- Testimonial evidence as to his character and conduct during the period of suspension from persons of good standing;
- Evidence that he has kept his medical knowledge up to date;
- Evidence of his Continuing Professional Development.

Today this Panel has reviewed Dr Patel's case and has considered whether his fitness to practise is impaired by reason of his misconduct and his caution. In making its decision the Panel has given consideration to the evidence adduced and has exercised its own independent judgement. It has considered your submissions on behalf of the GMC and it has heard and accepted the advice of the Legal Assessor.

Dr Patel is not present, nor is he legally represented at today's hearing. You told the Panel that he has not engaged with the GMC in respect of these fitness to practise proceedings since the last occasion on which his case was reviewed and neither has he provided the evidence requested by the last reviewing Panel (referred to above).

You reminded the Panel that an adverse finding had been made in respect of Dr Patel's fitness to practise, that he had been given the opportunity to address that finding and had chosen not to. You submitted that, in the absence of any testimonial evidence or evidence that he has gained insight or kept his medical knowledge up to date, his fitness to practise remains impaired.

The Panel has a duty to protect the public interest which includes the protection of patients, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. It must determine whether

the misconduct is remediable; whether Dr Patel has remedied the impairment of his fitness to practise; and whether he is likely to repeat the offence and misconduct.

The Panel notes that Dr Patel, once again, has not engaged with the GMC in respect of these fitness to practise procedures. It is in a similar position to the previous Panel in May 2011, although now a period of 12 months has elapsed since Dr Patel was suspended from the medical register. In the light of that period out of medical practise, the Panel is particularly concerned by the absence of evidence of any efforts on Dr Patel's part in relation to his continuing professional development or keeping his medical knowledge up to date.

The Panel considers that it is difficult for any doctor to demonstrate that he or she has remedied a finding of dishonest conduct. A Panel can only rely upon any evidence a doctor presents to it. In the absence of such evidence, it cannot be satisfied that Dr Patel has remedied his misconduct. Furthermore, his lack of engagement with his regulator suggests to the Panel that he has no insight into the effect of his actions upon public confidence in the medical profession.

In the circumstances, the Panel has concluded that Dr Patel's fitness to practise remains impaired by reason of his misconduct and his caution.

The Panel now invites further submissions as to the appropriate sanction, if any, to be imposed on Dr Patel's registration. Submissions on sanction should include reference to the Indicative Sanctions Guidance (revised August 2009), using the criteria as set out in the guidance to draw attention to the issues which appear relevant to this case."

Determination on sanction

"Mr Clarke

Having determined that Dr Patel's fitness to practise is impaired by reason of his misconduct and his caution, the Panel has now considered what action, if any, it should take with regard to his registration.

It has given careful consideration to all the evidence adduced, together with your submissions on behalf of the General Medical Council (GMC). It has also accepted the advice of the Legal Assessor.

You submitted that, in the light of Dr Patel's consistent failure to engage with these fitness to practise proceedings and the fact that he has now voluntarily absented himself from all three of the hearings which have considered his case, he has sent the clearest possible indication that he has no insight into the effect of his behaviour upon public confidence in the medical profession. You submitted that in those circumstances the appropriate sanction is one of erasure.

Whilst the Panel has borne in mind the submissions made, the issue of sanction is one for it to determine exercising its own judgement.

The Panel has applied the principle of proportionality, weighing the public interest with Dr Patel's own interests. It has also had regard to the guidelines set out in the GMC's document, *'Indicative Sanctions Guidance'* (ISG) (April 2009 with August 2009 revisions).

The Panel has a duty to protect the public interest. This includes the protection of patients, the maintenance of public confidence in the medical profession, and the declaring and upholding of proper standards of conduct and behaviour as set out in Good Medical Practice. The Panel recognises that the purpose of sanctions is not to be punitive, although they may have a punitive effect.

In coming to its decision as to the appropriate sanction, if any, to impose in Dr Patel's case, the Panel first considered whether to conclude the case by taking no action. The Panel determined that in the absence of any evidence that Dr Patel has remedied his dishonest conduct, demonstrated insight into the effect of those dishonest actions upon public confidence in the medical profession or kept his medical knowledge up to date, it would be wholly inadequate to conclude this case by taking no action.

The Panel next considered whether it would be sufficient to impose conditions on Dr Patel's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

Throughout the history of these proceedings, Dr Patel has failed to engage with the GMC. In particular, he has failed to provide evidence which previous Panels considered would assist subsequent reviewing Panels. This Panel is of the opinion that Dr Patel's failure to engage means that it can have no confidence that he would comply with any conditions imposed. Furthermore, it has no information with regard to any intention Dr Patel may have to practise medicine. It would not be possible to formulate, nor appropriate to direct, the imposition of conditions on his registration.

The Panel then went on to consider whether it would be appropriate and proportionate to suspend Dr Patel's registration.

Throughout the course of Dr Patel's original Fitness to Practise Panel hearing, and in the two subsequent periods of suspension, he has wholly failed to engage with the GMC. He has been asked to produce evidence to assist Fitness to Practise Panels in fulfilling their role to assess his fitness to practise, thereby protecting the public interest; he has failed to do so.

The Panel acknowledges the mitigating factors taken into account at the original hearing. It considers that, whilst they were relevant to the Fitness to Practise Panel in November 2010, in the light of Dr Patel's lack of co-operation and in the absence

of any evidence of remediation or continuing professional development, they are of little relevance today.

The Panel has inferred that, given Dr Patel's history of a lack of co-operation with his regulator, the likelihood of any co-operation in the future is low. He has been given a number of opportunities to demonstrate remorse, insight and continuing professional development. He has not done so and the Panel considers it unlikely that he will do so in the future. In all the circumstances, the Panel has determined that imposing a further period of suspension would not fulfil its responsibility to protect the public interest, in particular the maintenance of confidence in the medical profession. The Panel has determined, therefore, that it is neither appropriate nor proportionate to impose a further period of suspension on Dr Patel's registration.

The ISG states:

"Erasure may well be appropriate when the behaviour involves **any** of the following factors (this list is not exhaustive):

...

- Persistent lack of insight into seriousness of actions or consequences."
(Paragraph 82)

The ISG also indicates that, irrespective of whether a doctor presents a risk to patients, erasure is appropriate where:

"...the appellant's behaviour demonstrated a blatant disregard for the system of registration which is designed to safeguard the interests of patients and to maintain high standards within the profession".

(Dr Prabha Gupta v GMC (Privy Council Appeal No. 44 of 2001))

The Panel considers that Dr Patel's failure to engage with the GMC's fitness to practise procedures demonstrates that he has no understanding that his actions had the potential to harm public confidence in the medical profession. The absence of any co-operation demonstrates a lack of respect towards the GMC as his professional regulator and a flagrant disregard for the role of professional medical regulation in maintaining the confidence of the public in its doctors.

In all the circumstances, the Panel has determined that the only means of maintaining the public's trust in the medical profession is to erase Dr Patel's name from the medical register. It is satisfied that this is a necessary and proportionate response in this case.

Dr Patel has 28 days from the date on which notification of this decision is deemed to have been served upon him to lodge an appeal against this decision. In the meantime his registration remains suspended by virtue of the order for suspension made in November 2010 and extended in May 2011. In accordance with Schedule 4(11)(1) of the Medical Act 1983, as amended, in the event of an appeal, Dr Patel's

registration will remain suspended until such time as any appeal has been determined.

That concludes this case.”

Confirmed

29 November 2011

Chairman