

The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015

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The British Medical Association (BMA) is an apolitical professional association representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 154,000, which continues to grow every year.

Introduction

Part 3 of the General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 provides for a new over-arching objective for the General Medical Council (GMC) of the protection of the public. The pursuit of this over-arching objective is said to involve the pursuit of three further objectives. The BMA has concerns about these further objectives which we have raised with the Department of Health. We are seeking reassurance that these concerns will be addressed in guidance for fitness to practise panels.

BMA position

We are concerned

- that the inclusion of promoting and maintaining public confidence in the profession as a stated objective could lead to 'trial by media'
- that the inclusion of the term 'well-being' in the objective of protecting, promoting and maintaining the health, safety and well-being of the public could import considerations not relevant to clinical care

We have raised these concerns with the Department of Health and are seeking reassurance that they will be addressed in guidance for fitness to practise panels that properly relates 'public confidence' and 'well-being' to public protection and reassurances about the issues this guidance will cover.

The guidance should make clear to panels that they should not assess public confidence on the basis of purely personal condemnation of the conduct found or the media's response to it and should not



assume too readily that considerations of public confidence are engaged (given that the relevant case law is focused on cases of serious misconduct).

The guidance should, in particular, make clear to panels that they should respect a doctor's right to a private life. A recent GMC consultation on changes to its sanctions guidance proposed that panels should be guided to consider more serious action where certain issues arise in a doctors' personal life.¹ We recognise that this might be appropriate in relation to some of the specific examples that were listed (e.g. "misconduct involving violence or offences of a sexual nature") but were concerned by the catch-all clause "any other behaviour that may undermine public confidence in doctors including issues resulting in criminal or civil proceedings". We were concerned that this formulation, which will now be removed, could have led panels to take more serious action against doctors on the basis of relatively minor issues unconnected to the health and safety of the public and could have undermined their right to respect for their private life under the European Convention on Human Rights. We note that the Law Commissions in their report on the regulation of health and social care professionals expressed concern about "the examples given which suggested that the regulators were inappropriately imposing moral judgments in essentially private matters under the guise of maintaining confidence".²

The guidance should make clear to panels that they should continue to ask whether a doctor's progress towards remediation satisfies any legitimate 'public confidence' concerns. The GMC sanctions consultation proposed that panels should be guided to consider taking action to maintain public confidence in doctors in some cases even when a doctor has remediated, i.e. when there is no threat to public safety.³ Our fear is that this proposal could lead to panels punishing doctors who pose no threat to the health and safety of the public on the basis that failure to do so might incur the disapproval of the public.

The guidance should make clear to panels that they should give proper weight to the requirement of proportionality. The GMC sanctions consultation proposed that where action is necessary to protect patients and maintain confidence in doctors panels should be guided to consider taking action "without being influenced by the personal consequences for the doctor".⁴ This formulation, which will now be dropped, appeared to conflict with the principle of proportionality in the current sanctions guidance (which requires panels to weigh the interests of the public with those of the practitioner). The impact of a sanction on the individual doctor, even if it is not the primary consideration, is always a relevant one.

Finally, with regard to the use of the term 'well-being', the term itself is broad enough to include matters that go well beyond a doctor's responsibility for providing safe and effective clinical treatment and potentially to include anything that could be said to affect quality of life and contentment. This problem should be addressed in guidance to panels that relates the term to public protection.

For further information, please contact:

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References

¹ General Medical Council (August 2014) [Reviewing how we deal with concerns about doctors](#) page 27.

² Law Commissions (April 2014) [Regulation of Health Care Professionals](#) para 3.15.

³ General Medical Council (August 2014) [Reviewing how we deal with concerns about doctors](#) page 19.

⁴ General Medical Council (August 2014) [Reviewing how we deal with concerns about doctors](#) page 17.