

GENERAL MEDICAL COUNCIL

FITNESS TO PRACTISE PANEL (PROFESSIONAL CONDUCT)

Tuesday 20 February 2007

Regent's Place, 350 Euston Road, London NW1 3JN

Chairman: Mr Richard Kyle

Panel Members: Ms Joy Julien
Dr Ronald MacWalter
Dr Sheila Willatts

Legal Assessor: Mr Nigel Seed QC

CASE OF:

EDEN, Julian Christopher Paul

(DAY SEVEN)

MR DAFYDD ENOCH of counsel, instructed by Messrs Field Fisher Waterhouse, Solicitors, appeared on behalf of the General Medical Council.

MR ALAN JENKINS of counsel, instructed by Messrs RadcliffesLeBrasseur, Solicitors, appeared on behalf of Dr Eden, who was present.

(Transcript of the shorthand notes of T. A. Reed & Co.
Tel No: 01992 465900)

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DETERMINATION ON SANCTION

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THE CHAIRMAN: Dr Eden, having regard to the facts proved, the Panel has already announced that it finds your fitness to practise to be impaired by reason of your misconduct.

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The Panel has considered the submissions made by Mr Enoch and Mr Jenkins as to the appropriate sanction to take against your registration. It has also paid due regard to the General Medical Council's *Indicative Sanctions Guidance (April 2005)*. The Panel has accepted the Legal Assessor's advice that any sanction must be proportionate and its purpose is not to be punitive, but to protect patients and the public interest. The public interest includes not only the protection of patients but also the maintenance of public confidence in the profession, and the declaring and upholding of proper standards.

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In considering what action, if any, to take against your registration, the Panel has also weighed your own interests against its duty to protect the wider public interest. The Panel has already found that your actions included significant failings, which led to serious breaches of the principles that are central to *Good Medical Practice*. Because of this, the Panel has determined that taking no action in this case would be inappropriate.

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In determining the appropriate sanction in your case, the Panel has first considered whether it would be sufficient to place conditions on your registration. Any conditions would need to be appropriate, proportionate, workable and measurable. You prescribed potentially dangerous quantities of medication over an extended period of time to two patients, and behaved irresponsibly in relation to prescribing for a very vulnerable young man. Two other instances demonstrated misconduct that was not in your notional patients' best interests. In view of these wide-ranging failures, the Panel could not identify any particular aspect of your practice that would be suitable for retraining, and concluded that the imposition of conditions would neither be appropriate nor sufficient in this case.

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The Panel then went on to consider whether the suspension of your registration would be sufficient. The Panel has had regard to the advice in section 1, paragraph 27, of the *Indicative Sanctions Guidance*, which states that –

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A *“Suspension can be used to send a signal to the doctor, the profession and public about what is regarded as unacceptable behaviour....It is likely to be appropriate for misconduct that is serious, but not so serious as to justify erasure (for example, where there may have been acknowledgement of fault and where the Panel is satisfied that the behaviour or incident is unlikely to be repeated)”.*

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The Panel needed to be satisfied that you had learnt from your mistakes, that you posed no significant risk of repeating your misconduct and that you had some insight into the seriousness of your failings, before concluding that suspension would be sufficient. With this in mind, it noted the *Indicative Sanctions Guidance* in relation to erasure, as follows:

C *“The Panel may erase a doctor from the Register in any case...where this is the only means of protecting patients and the wider public interest”.*

D The Panel accepted that it had heard evidence to confirm that you were otherwise a useful and competent doctor and that it should not be necessary to sacrifice your career to satisfy a demand for blame and punishment. The Panel, in considering which sanction would be appropriate in this case, bore in mind, without feeling bound by it, Mr Enoch’s submission that he was not seeking erasure in this case.

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The Panel considered very carefully whether a period of suspension would be sufficient to protect the public interest, and send a strong message to the medical profession and the public, that innovative ways of treating patients should never compromise good standards of care and should always adhere to the clear guidelines as set out in *Good Medical Practice*. The separate guidance issued by the GMC in November 1998 about the provision of on-line medical services states:

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“The use of e-mail should not diminish the quality of care patients receive. Consultations and prescribing by e-mail may seriously compromise standards of care where:

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- *the patient is not previously known to the doctor, and*
 - *no examination can be provided, and*
 - *there is little or no provision for appropriate monitoring of the patient or follow-up care...”.*

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The Panel considers the guidance to be as relevant today as it was then, and notes that further guidance has been included in the GMC's document, *Good Practice in Prescribing Medicines (2006)*.

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The Panel has borne in mind your expressions of regret and noted that you considered yourself to be naïve in your dealings with some of these patients. However, the Panel also considered that you demonstrated limited insight when defending your decision to treat

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Patient A, to whom you prescribed propranolol. You said in evidence that you did not think that propranolol was a very dangerous drug and that patient A could obtain more harmful medication elsewhere, thereby seeking to minimise your own responsibility and duty as a doctor. You should have been aware, that when you are not the treating GP, of the need to assess the risk and benefits of any medication before prescribing. The Panel was particularly concerned about your reluctance to inform or involve other medical professionals who might be caring for any of the five patients.

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The Panel was also not impressed by your insistence that Oliver Hardy, to whom you prescribed Reductil, and Severin Carrel, for whom you authorised a prescription for erectile dysfunction medication, were not real patients because they were later revealed to be

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investigative journalists. At the time of prescribing, you had no idea of the true identity of either of these patients but you had entered into a doctor-patient relationship with both of them.

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The Panel has read the testimonials submitted on your behalf, noting that some indicate that you have refused to prescribe hypnotic or analgesic medication since these events came to light. It has also noted that you have made improvements to the internet site, e-med. It has therefore determined that you have shown some insight and that you do not pose a significant risk of repeating the behaviour. The Panel has seen no evidence of deep-seated personality or

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attitudinal problems and accepts that you have now responded positively to guidance in respect of internet medical practice. The Panel further considered that your behaviour is not fundamentally incompatible with your continuing to be a registered doctor.

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A Taking account of all these factors, the Panel is satisfied that, in order to send a signal to you, the profession and the public that your conduct was unacceptable, it is appropriate and proportionate to direct the Registrar to suspend your registration.

B In considering the length of suspension, the Panel has taken account of all the mitigating factors in this case, including the testimonials that attest to your being an otherwise useful and competent doctor, not least in the field of diving medicine. Moreover, the Panel accepted that there was little risk of your repeating the same mistakes. It has also taken into account the extensive admissions you made at the start of this hearing. It considers that you have learnt a salutary lesson from these proceedings. Nevertheless, these incidents of misconduct were serious and the Panel has borne that in mind when balancing your interest against the wider public interest. Therefore, the Panel finds it appropriate and proportionate to direct that your registration be suspended for a period of nine months.

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D A Fitness to Practise Panel will review your case at a hearing to be held before the end of the period of suspension. It will then consider whether it is necessary to take further action in relation to your registration. You will be informed of the date of that hearing, which you will be expected to attend. The reviewing Panel would be assisted by evidence of your continued professional development, including details of your attendance on courses. You will be expected to furnish the GMC, in advance of the hearing, with the names and addresses of professional colleagues and other persons of standing to whom the GMC may apply for information as to your conduct during the period of suspension. You should also provide details of medical reading undertaken and written evidence that you have taken steps to maintain your skills and knowledge. If you decide to return to internet medicine, the Panel would expect to see that you have kept up to date with clinical care, including the regulatory framework within which to practise safely, in accordance with *Good Medical Practice*.

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G The effect of the foregoing direction is that, unless you exercise your right of appeal, your registration will be suspended for a period of nine months beginning 28 days from today.

H Having concluded that your name should be suspended from the Register, the Panel will now go on to determine whether it is necessary for the protection of members of the public or in your own interests to order that your registration be suspended forthwith. The Panel will now invite submissions from both counsel on this matter.

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MR ENOCH: I have no submissions to make on this issue. It is a matter for the Panel.

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MR JENKINS: I say that you should not. You have decided that the correct period of suspension is one of nine months. If you suspend immediately, that extends it to ten months and that would therefore go beyond what you have decided. If there were evidence that the doctor posed a threat to his patients, then plainly it would be entirely appropriate to suspend with immediate effect. You have said that he does not pose a threat and has found some insight in what he does.

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You know that if any of the patients or pseudo patients were to approach him or his practice today, they would not be treated in those circumstances. You would not be meeting a perceived threat to patients by suspending him with immediate effect; indeed, you would be going beyond what is appropriate or necessary.

THE CHAIRMAN: Does the Legal Assessor have any further guidance for us?

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THE LEGAL ASSESSOR: Yes. I just direct you to the statutory provision, which is s.38 of the Medical Act as amended, which provides that, on giving a direction for suspension in respect of any person, the Fitness to Practise Panel,

“...if satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the Register shall be suspended forthwith, in accordance with this section”.

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In other words, sir, the test is one that you have to be satisfied that it is necessary, either for the protection of members of the public or is otherwise in the public interest or the best interests of the practitioner and, even if you are satisfied of those things, you still have a discretion as to whether or not to impose immediate suspension.

THE CHAIRMAN: Thank you very much indeed. The Panel will go into private to consider this. I should emphasise that we are intent upon concluding this today.

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STRANGERS WITHDREW BY DIRECTION FROM THE CHAIR AND THE PANEL
DELIBERATED IN CAMERA

STRANGERS HAVING BEEN READMITTED:

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THE CHAIRMAN: Before I read the determination, Mr Enoch, we are proceeding on the assumption that the Interim Orders Panel has not made any interim ruling regarding Mr Eden's practice in the run-up to this hearing.

MR ENOCH: No, sir.

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DETERMINATION ON IMMEDIATE SUSPENSION

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THE CHAIRMAN: Dr Eden, the Panel has noted that Mr Enoch has no submission to make on the issue of imposing an immediate sanction. It also notes that Mr Jenkins considers that to impose an immediate sanction would be unnecessary and disproportionate. It has also had due regard to the relevant paragraphs in *Indicative Sanctions Guidance* when considering whether to impose an immediate order of suspension in your case, and has balanced carefully your interests against the need to protect patients and the public interest. It has borne in mind the advice of the Legal Assessor that in a case where the Panel has found that there is no risk to patients it must be very careful in considering whether it is necessary to impose an immediate order of suspension.

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The Panel has noted that you have practised medicine for a substantial period of time since these matters came to light and have already taken significant steps to address those issues which led to these proceedings. Furthermore, there has been no repetition of your behaviour. The Panel is not satisfied that it is in the public interest to order your immediate suspension. On the contrary, it considers that the public interest is for you to have a period of time to make suitable arrangements for the handover of care of your patients.

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The Panel has therefore decided not to impose an immediate order.

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That concludes the case.

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