

31 January 2011

In reply please quote: CM/C1-312069800

General
Medical
Council

Mrs Lesley O'Brien

Code A

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Dear Mrs O'Brien

Re: Dr Jane Barton

I refer to the Fitness to Practise Panel hearing for Dr Jane Barton which concluded in January 2010.

Dr Barton's case has now passed to the Case Review Team following the determination of the Fitness to Practise Panel. I am a member of the Case Review Team with responsibility for monitoring and managing Dr Barton's compliance with the conditions imposed on her registration.

I now write to inform you that Dr Barton has applied to have her name removed from the Register. If we grant her application, it would mean that Dr Barton would not be able to practise medicine in the UK.

Dr Barton's application to have her name removed from the Register will be considered by a medical and a lay case examiner. I enclose a copy of the guidance which explains the factors that the case examiners should take into account, when considering the application.

I am writing to give you an opportunity to let us have your views regarding Dr Barton's application to have her name removed from the register. If you wish to comment could you please let us have your comments by **15 February 2011**. If you do comment, your observations will be considered by the case examiners when they consider Dr Barton's application.

If Dr Barton made a subsequent application for restoration to the Register, the application would be referred to the case examiners for consideration. At that point, any previous evidence about her fitness to practise would be taken into account and a further investigation may be initiated before any decision is made in respect of her restoration application.

Yours sincerely

Code A

Mrs Claire McNally
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Enc: Guidance for decision makers on dealing with Voluntary Erasure applications

Guidance on making decisions on voluntary erasure applications

1. A doctor may submit an application for voluntary erasure (VE) at any point in the fitness to practise process. The procedures for dealing with such applications are set out in the Voluntary Erasure and Restoration Regulations 2004.
2. Applications for VE will be referred to a lay and medical case examiner in circumstances where an allegation is being investigated or a case has been referred to a FTP panel, but has not yet commenced. An application will also be considered by the case examiners if the practitioner has committed an act or omission that might render him liable to be referred to the GMC for investigation or consideration of his fitness to practise. Case examiners will also consider applications for VE in cases in which a doctor is currently suspended or subject to conditions or undertakings.
3. The case examiners will make a decision on whether to grant or refuse the application for voluntary erasure. If the case examiners fail to agree, the erasure application shall be referred to the Investigation Committee for determination. If an application for VE is received and a hearing before a FTP panel has commenced, the Registrar shall refer the application for determination by the FTP panel.
4. Decision-makers must bear in mind that there is a public interest in the ventilation before a FTP panel in public of serious allegations which have a realistic prospect of establishing impaired fitness to practise. Decision-makers should not generally consider any application for voluntary erasure until the investigation has concluded and all of the evidence has been gathered in relation to the allegations.
5. Decision-makers should be satisfied that it is right in all the circumstances to agree to voluntary erasure (and not to proceed with the inquiry proper) before any application is granted. 'All the circumstances' can be divided into three categories:
 - a. the public interest
 - b. the private interest of the complainant
 - c. the private interest of the doctor

The public interest

6. The public interest incorporates three elements:
 - a. the protection of patients and the public generally from doctors whose fitness to practise is impaired.
 - b. the maintenance and promotion of public confidence in the medical profession.
 - c. the maintenance and promotion of public confidence in the GMC's performance of its statutory functions.
 7. The first of these elements may appear to favour agreeing to voluntary erasure as the GMC's primary (although not sole) task is to protect the public from future harm at the hands of a doctor whose fitness to practise may be impaired. Voluntary erasure would appear to give the public the most immediate and the most effective form of protection at the GMC's disposal. Erasure fully satisfies the need for public protection, as the doctor will not be entitled to practise at all.
 8. However, decision makers need to bear in mind that voluntary erasure is not necessarily permanent. The (potential) threat posed by a doctor might be revived by his future restoration to the register. Of course, the Voluntary Erasure Regulations provide a safeguard in that such applications for restoration would not be granted automatically. Such an application would be referred once again for the case examiners to consider where any unresolved complaints would be taken into consideration.
 9. Nevertheless, the revival of an unresolved complaint may be easier said than done. During the interval, between the granting of VE and the application for restoration, evidence of any alleged misconduct might have disappeared or deteriorated, for example, because a witness's memory has faded or he has become uncontactable or even died. This raises the prospect of a doctor's name being restored to the register following VE where his name might not have been restored if the original complaint had been allowed to run its course.
 10. It is likely, therefore, to be safer to agree to VE in cases in which the doctor is willing to formally admit to the allegations against him or her. (In these circumstances, in the event of VE being granted, details of the allegations admitted should be made available to relevant enquirers (including potential employers and overseas medical authorities). The allegations admitted would also be considered if the doctor subsequently applies for restoration to the register.
 11. In addition, it is important to remember that there are two other elements to the public interest. There is a statutory scheme for dealing with doctors where impaired fitness to practise is alleged. This gives rise to a public interest in complaints against doctors being properly scrutinized (in public) and not evaded. When this happens, and is seen to happen, public confidence in the medical profession and in the GMC is better maintained and promoted. Voluntary erasure prevents this from happening.
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The private interest of the complainant

12. Where an application for VE is received, the decision-maker should first consider whether to contact the complainant/s, if any, to seek their views on whether such an application should be granted. Where the decision-maker does not feel that there is a realistic prospect of agreeing to the application for VE there is unlikely to be any benefit in contacting the complainant on that issue. Complainants may be satisfied that the doctor will no longer be able to practise and that they will be able to avoid giving evidence at a public hearing. On the other hand, complainants may be extremely unhappy with any suggestion that the doctor be allowed to remove his name from the register without having to face a public hearing. These views must be taken into account, together with all the other factors, when considering a VE application.

13. In most cases, the complainant's private interests will be the most telling factor against voluntary erasure. The complainant has a 'substantial and continuing interest in obtaining a proper investigation of his complaint'.¹

The private interest of the doctor

14. The features and strength of the doctor's private interest depend on the basis for the application but could legitimately include the following factors:

- a. the doctor's health
- b. the doctor's age
- c. the length of time since the doctor last practised
- d. the genuineness of the doctor's desire to cease to be registered
- e. any evidence that the doctor has no intention to practise in the UK or elsewhere in the future.

Dealing with applications for voluntary erasure

15. Case examiners should consider all aspects of the case, and all of the factors outlined above that are relevant, when considering applications for voluntary erasure in circumstances where there are outstanding fitness to practise issues in relation to the doctor.

16. In situations where the allegations and evidence relate exclusively to a doctor's health or performance and there are no outstanding conduct issues to consider, the decision-makers should generally grant the application as long as they are satisfied that the decision is in the public interest and there is little, if any,

¹ Toth No. 1, at page 2214H

likelihood that the doctor will make an application for restoration to the register in the future.

17. It will normally be appropriate to agree applications for VE from doctors who are subject to undertakings, following an assessment of their health or performance. However, in these circumstances, it will be particularly important to make clear to the doctor the implications of being granted VE. In particular, it will be important to explain that if they wish to be restored to the register, we cannot restore them with conditions. They will need to demonstrate when applying for restoration that they are fit to practise without any restrictions.

18. If the allegations are primarily about misconduct, a conviction or a determination concerning the doctor's conduct, there are more likely to be arguments in favour of refusing the application for VE and referring the doctor to a FTP panel hearing, if the realistic prospect test is met. This is particularly likely to be the case if the allegations fall within the categories for which there is a presumption of impaired fitness to practise in the event of the allegations being proven. In these particular circumstances, VE is only likely to be appropriate in exceptional circumstances. These might include situations in which medical evidence from an independent source gives a clear indication that the doctor is seriously ill and would be unfit to defend himself before a public hearing.

19. If the allegations are multifactorial, the case examiners will need to look at all the allegations and consider whether, in all the circumstances, VE may be appropriate. Again, if the allegations include some for which there is a presumption of impaired fitness to practise, the case will normally need to proceed to a FTP panel, unless there are exceptional circumstances.

20. It will normally be appropriate to agree applications for VE from doctors who are subject to undertakings, following an assessment of their health or performance. However, in these circumstances, it will be particularly important to make clear to the doctor the implications of being granted VE. In particular, it will be important to explain that if they wish to be restored to the register, we cannot restore them with conditions. They will need to demonstrate when applying for restoration that they are fit to practise without any restrictions.

21. If the application is granted, the letter informing the doctor of the decision must make it clear that any subsequent application for restoration to the register will be referred to the case examiners to consider. At this point, any previous evidence concerning the doctor's fitness to practise will be taken into account and a further investigation may be initiated before any decision is made in respect of the restoration application.'