

GENERAL MEDICAL COUNCIL**FITNESS TO PRACTISE PANEL (SERIOUS PROFESSIONAL MISCONDUCT)**

Friday, 29 January 2010

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

Chairman: Mr Andrew Reid, LLB JP

Panel Members: Ms Joy Julien
Mrs Pamela Mansell
Mr William Payne
Dr Roger Smith

Legal Assessor: Mr Duncan Smith

CASE OF:

BARTON, Jane Ann

(DAY FIFTY-SEVEN)

MR TOM KARK of counsel and MR BEN FITZGERALD of counsel, instructed by Field Fisher Waterhouse, Solicitors, appeared on behalf of the General Medical Council.
(Mr Tom Kark was not in attendance for the Determination).

MR TIMOTHY LANGDALE QC and MR ALAN JENKINS of counsel, instructed by the Medical Defence Union, appeared on behalf of Dr Barton, who was not present.
(Mr Timothy Langdale QC was not in attendance for the Determination).

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

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A

STRANGERS HAVING BEEN READMITTED

DETERMINATION

THE CHAIRMAN: Good morning everybody.

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Mr Jenkins, the Panel has considered Dr Barton's case in accordance with the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988 (Old Rules). As a consequence, when determining whether the facts alleged had been proved, the Panel applied the criminal standard of proof. This means that it had to be satisfied beyond reasonable doubt of the facts alleged before it could find them proved.

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The Panel wishes to make clear at this stage that it is not a criminal court and that it is no part of its role to punish anyone in respect of any facts it may find proved.

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At the outset of the hearing Mr Langdale QC admitted a number of parts of the allegation on Dr Barton's behalf and the Panel found those facts proved. The Panel made further findings in relation to the un-admitted parts of the allegation and gave detailed reasons for those findings in its earlier determination on the facts.

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Serious Professional Misconduct

The task for the Panel at this stage of the hearing is first, to determine whether, on the basis of the facts found proved, Dr Barton has been guilty of Serious Professional Misconduct. If the Panel finds that she has been guilty of Serious Professional Misconduct it is then required to consider what action, if any, to take in respect of that misconduct.

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In making this first decision, the Panel has considered whether the actions and omissions found proved in relation to Dr Barton's care of the 12 patients who have featured in this case amounted to misconduct which offends against the professional standards of doctors. If it did, the Panel has then determined whether that misconduct was serious.

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The Panel has taken into account all the evidence it has heard and read throughout this hearing. It has referred to its determination on the facts found proved and the reasons for its findings, as well as the GMC's publication *Good Medical Practice* (1995 edition) which was

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A applicable at the time. Further, the Panel has had regard to the context and circumstances in which Dr Barton was then working.

B The Panel considered the submissions made by Mr Kark on behalf the General Medical Council (GMC) and by Mr Langdale and yourself on Dr Barton's behalf, and accepted the advice of the Legal Assessor.

C Mr Kark submitted that Serious Professional Misconduct should be viewed historically. He reminded the Panel that while there is no definition of serious professional misconduct the test to apply is whether, when looking at all the facts that have been admitted and found proved, Dr Barton's conduct amounts to a serious falling below the standard which might be expected of a doctor practising in the same field of medicine in similar circumstances.

D Mr Langdale concurred.

The Panel took account of the above and exercised its own judgment, having regard to the principle of proportionality and the need to balance the protection of patients, the public interest and Dr Barton's own interests.

E The Panel made multiple findings of fact which were critical of Dr Barton's acts and omissions. These included but were not limited to:

- F
- The issuing of prescriptions for drugs at levels which were excessive to patients' needs and which were inappropriate, potentially hazardous and not in the patients' best interests;
 - the issuing of prescriptions for drugs with dose ranges that were too wide and created a situation whereby drugs could be administered which were excessive to the patient's needs;
 - the issuing of prescriptions for opiates when there was insufficient clinical
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- acts and omissions in relation to the management of patients which were inadequate and not in their best interests. These included failure to conduct adequate assessments, examinations and/or investigations and failure to assess
- H
- appropriately patients' conditions before prescribing opiates;

- A
- failure to consult colleagues when appropriate;
 - acts and omissions in relation to keeping notes which were not in the best interests of patients, including failure to keep clear, accurate and contemporaneous notes in relation to patients, and in particular, in relation to examinations, assessments, decisions, and drug regimes.

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The Panel has concluded that Dr Barton failed to follow the relevant edition of ‘Good Medical Practice’ in relation to the following aspects of her practice:

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- Undertaking an adequate assessment of the patient’s condition based on the history and clinical signs, including where necessary, an appropriate examination;
 - providing or arranging investigations or treatment where necessary;
 - referring the patient to another practitioner where indicated;
 - enabling persons not registered with the GMC to carry out tasks that require the knowledge and skills of a doctor;
- D
- keeping clear accurate and contemporaneous patient records;
 - keeping colleagues well informed when sharing the care of patients;
 - ensure suitable arrangements are made for her patients’ medical care when she is off duty;
- E
- prescribing only the treatment, drugs or appliances that serve patients’ needs;
 - being competent when making diagnoses and when giving or arranging treatment;
 - keeping up to date;
 - maintaining trust by:
 - listening to patients and respecting their views;
 - treating patients politely and considerately;
 - giving patients the information they ask for or need about their condition, treatment and prognosis;
 - giving information to patients in a way they can understand;
- G
- respecting the right of patients to be fully informed in decisions about their care;
 - respecting the right of patients to refuse treatment;
 - respecting the right of patients to a second opinion;
- H
- abusing her professional position by deliberately withholding appropriate investigation, treatment or referral.

A Further, Dr Barton failed to recognise the limits of her professional competence.

B The Panel has already commented at length on Dr Barton’s defective prescribing practices, her inadequate note taking and her failures with regard to consultation, assessment, examination and investigation. It does not refrain from emphasising and holding her to account for creating the risks and dangers attendant upon such conduct and omissions.

C As a consequence of the Panel’s findings of fact as outlined above, Dr Barton’s departures from *Good Medical Practice* as outlined above, and the attendant risks and dangers previously commented on, the Panel has concluded that she has been guilty of multiple instances of Serious Professional Misconduct.

D The Panel then went on to consider, in the light of those findings, what, if any action, it should take. The Panel considered:

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- the submissions made by both counsel;
 - the advice of the Legal Assessor;
 - the facts found proved;
 - the aggravating and mitigating features of those facts;
 - the passage of time between the events giving rise to the complaint and the determination of the issues;
 - Dr Barton’s good character and other matters of personal mitigation including the bundle of testimonials submitted on her behalf.

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Punishment

The Panel accepted the advice of the Legal Assessor that it is neither the role of this Panel nor the purpose of sanctions to punish, though sanctions may have that effect.

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Proportionality

The Panel accepted the advice of the Legal Assessor that “This is a balancing exercise”, where Dr Barton’s interests must be weighed against the public interest in order to produce a fair and proportionate response.

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A **The public interest**

Both the Legal Assessor and Mr Kark addressed the Panel on the meaning to be ascribed to the phrase, “the public interest”. The Panel accepted that the public interest includes:

- the protection of patients;
- the maintenance of public confidence in the profession;
- the declaring and upholding of proper standards of conduct and behaviour;
- on occasions, the doctor’s safe return to work, but bearing in mind that neither the GMC nor the Panel has any responsibility for the rehabilitation of doctors.

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C **The ambit of enquiry**

The Panel accepted the Legal Assessor’s advice that its task is to make judgments in the case against Dr Barton alone. It is no part of this Panel’s role to make findings in respect of other persons who might have been the subject of criticism during the course of the evidence.

D The Panel further accepted the Legal Assessor’s advice that Dr Barton’s actions should not be judged in isolation. An injustice would occur were she to be judged the scapegoat for possible systemic failings beyond her control. Her actions must be judged in context. The Panel has had the benefit of hearing a great deal of evidence in that regard, and is well placed

E to define that context. This in no way detracts from Dr Barton’s own personal responsibilities as a medical practitioner however.

Looking to the future

F The Panel accepted the advice of the Legal Assessor that where the Panel has found Serious Professional Misconduct it must look forward when considering the appropriate response to those findings, and is open to the criticism that it is exercising retributive justice if it fails to do so.

G **Matters found proved**

As indicated above, the Panel made multiple adverse findings of fact in respect of Dr Barton’s prescribing practices, note keeping, consulting colleagues, assessments, examinations and investigations. Further, the Panel concluded that she had been guilty of multiple instances of Serious Professional Misconduct.

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A Aggravating and mitigating features

In accordance with the Legal Assessor's advice the Panel went on to consider both the aggravating and the mitigating features of the facts found proved. It took into account also the evidence contained in the testimonials and character evidence called.

B i. Aggravating (offence)

- Although Dr Barton conceded that, with hindsight, she should have refused to continue to work in a situation that was becoming increasingly dangerous for patients she insisted that, in the circumstances of the time, her actions had been correct.
- She told the Panel that were the situation and circumstances of the time to repeat themselves today, she would do nothing different.
- The Panel concluded that this response indicated a worrying lack of insight. It was particularly concerned by Dr Barton's intransigence over matters such as the issue of balancing the joint objectives of keeping a patient both pain-free and alert.
- This, combined with her denigration of senior colleagues and guidelines, produced an image of a doctor convinced that her way had been the right way and that there had been no need to entertain seriously the views of others.

F ii Mitigating (offence)

- The Panel noted that the nature and volume of Dr Barton's work and responsibilities increased greatly between the date of her appointment and the time with which this Panel is concerned.
- In particular, the Panel notes that increased and often inappropriate referrals from acute wards to her own put Dr Barton, her staff and resources under unreasonable pressure.

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- The Panel noted that Dr Barton was operating in a situation where she was denied the levels of supervision and safeguard, guidance, support, resources and training necessary to ensure that she was working within safe limits. Even when there was Consultant cover it was often of a calibre which gave rise to criticism during the course of evidence.

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- The Panel accepted Mr Langdale’s submission that the response of hospital management and senior colleagues to complaints against Dr Barton was such that she did, quite reasonably, feel that she was acting with the approval and sanction of her superiors.

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- Dr Barton’s practice of anticipatory prescribing of variable doses of diamorphine for delivery by syringe driver was validated by a protocol evidenced in a letter from Barbara Robinson, Senior Manager at Gosport War Memorial Hospital dated 27 October 1999.

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iii Personal mitigation

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- Over a period of ten years since the events in question Dr Barton has continued in safe practice as an NHS GP;

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- She has already been under what has been described by GMC counsel as her “own voluntary sanction” for eight years, and for the last two years under formal conditions imposed by the Interim Orders Panel of the GMC;

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- The bundle of testimonials from colleagues and patients as to her current working practices and her positive good character.

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The passing of time

In considering the appropriate response to its findings of Serious Professional Misconduct the Panel recognised that it was faced with a most unusual set of circumstances:

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- A
- There had been a gap of ten years between the events in question and the date of this hearing;
 - during that period Dr Barton had continued in safe practice as a GP in the community;
- B
- for the first eight of the ten years she practised under self-imposed conditions of her own devising; for the latter two years, under conditions directed by the GMC's Interim Orders Panel;
 - the Panel had received a large bundle of testimonials on Dr Barton's behalf which attested to details of her safe working practice in that period.

C

In the circumstances the Panel considered it to be important that it receive advice on the appropriate weight that should be attached to the issue of elapsed time, the principles to be applied to its consideration in these circumstances and whether any binding authority could be found. None was.

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Mr Kark submitted that the Panel should follow the *Indicative Sanctions Guidance* and that no party should be disadvantaged by reason of the delay.

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You submitted that:

- The Panel should consider the misconduct in the context of the guidance and standards applicable at the time.
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- Dr Barton's working conditions at the relevant time differed from any that a hospital doctor would be expected to accept today. You suggested that clinical governance has moved on dramatically since then and that the Panel could conclude that in that respect Dr Barton could no longer pose any risk to patients.

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The Legal Assessor advised that the passing of time served the Panel well in that it provides a context in which Dr Barton's attitudes and practices could be viewed and judged. It allowed the Panel to judge the efficacy of conditions as a workable sanction by opening a ten year window through which to view it.

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A **Response**

The Legal Assessor advised that in determining the appropriate response to Dr Barton's Serious Professional Misconduct the Panel should consider:

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- the aggravating and mitigating features of the facts found proved;
 - the passing of time between the events which gave rise to the findings against her and the date of this hearing;
 - her performance during that time;
 - the *Indicative Sanctions Guidance*;
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- the protection of patients and the public interest.

i. **No action or Reprimand**

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- Having found that Dr Barton has been guilty of multiple instances of Serious Professional Misconduct, the Panel considered whether in all the circumstances it would be sufficient, appropriate and proportionate either to take no action or to issue her with a reprimand.
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- The Panel had no hesitation in concluding that given the seriousness and multiple instances of her professional misconduct it would be insufficient, inappropriate and not proportionate either to take no action or to issue her with a reprimand.

ii. **Conditions**

F **The protection of patients**

Mr Kark submitted that Dr Barton has demonstrated neither remorse nor insight in respect of the matters found proved and that her departures from the principles set out in *Good Medical Practice* were particularly serious. He submitted that, in those circumstances she presented a continuing risk to patients, and urged the Panel to conclude that, despite the long delay, her case should be dealt with by way of erasure.

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Mr Langdale submitted that:

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- A
- Dr Barton presents no continuing risk to patients. He said this was proved by her safe practice as a GP throughout the ten years since her departure from the Gosport War Memorial Hospital.
- B
- This view was further supported by the many testimonials of both patients and professional colleagues who commented on her current working practices as well as her qualities as a GP.
- C
- The authors of the nearly 200 written testimonials were informed in that they were aware of the allegations against Dr Barton, the findings of the Panel, and indeed the adverse publicity this case has attracted.

The Panel accepted that it was unrealistic to consider that Dr Barton could ever again find herself in the situation she faced at the Gosport War Memorial Hospital.

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Given the seriousness of the Panel's multiple findings against Dr Barton and the aggravating features of those findings noted above, in particular her intransigence and lack of insight, the Panel was unable to accept that she no longer posed any risk to patients.

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However, the Panel did accept that in the light of the mitigating features listed above, and the fact that she has been in safe practice for ten years – with eight of them operating under conditions of her own devising and two under conditions imposed by the GMC's Interim Orders Panel – it might be possible to formulate conditions which would be sufficient for the protection of patients.

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The maintenance of public confidence in the profession.

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Mr Langdale submitted that public trust and confidence in the profession meant the trust and confidence of the informed public. He said that while the authors of the testimonials received by the Panel were informed members of the public, this case has attracted much media attention and that there have been ill-informed and unjustified media comparisons with an unrelated but infamous case involving a doctor accused of deliberately causing multiple patient deaths.

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A The Panel wishes to make it clear that this is not such a case. However, the GMC have alleged and the Panel has found proved that there have been instances when Dr Barton's acts and omissions have put patients at increased risk of premature death.

B The Panel takes an extremely serious view of any acts or omissions which put patients at risk. It had no hesitation in concluding that Dr Barton's Serious Professional Misconduct was such that it is necessary, even after ten years of safe and exemplary post-event practice, to take action against her registration in order to maintain public confidence in the profession.

C The Panel considered that taking action against Dr Barton's registration would send a message to the public that the profession will not tolerate Serious Professional Misconduct.

The declaring and upholding of proper standards of conduct and behaviour.

D For the same reasons and having carefully considered all the circumstances, the Panel is satisfied that it might be possible to formulate a series of conditions which would be sufficient both to maintain public confidence in the profession and uphold proper standards of conduct and behaviour.

E The public interest in preserving the services of a capable and popular GP.

F The Panel was greatly impressed by the many compelling testimonials which detailed Dr Barton's safe practice over the last ten years and the high regard in which she is held by numerous colleagues and patients.

G The Panel noted Mr Langdale's assurance that the authors of the testimonials were either colleagues and/or patients who were aware of the allegations against Dr Barton, this Panel's findings on facts, and the media coverage of the case.

H The Panel was mindful of the fact that neither the GMC nor the Panel has any responsibility for the rehabilitation of doctors. However, the Panel was satisfied that there is an informed body of public opinion which supports the contention that preserving Dr Barton's services as a GP is in the public interest.

A Order

The Panel has formulated a series of conditions. In all the circumstances, the Panel is satisfied that it is sufficient for the protection of patients and is appropriate and proportionate to direct that Dr Barton's registration be subject to conditions for a period of three years.

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The following conditions relate to Dr Barton's practice and will be published:

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1 She must notify the GMC promptly of any post she accepts for which registration with the GMC is required and provide the GMC with the contact details of her employer and the PCT on whose Medical Performers List she is included.

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2 At any time that she is providing medical services, which require her to be registered with the GMC, she must agree to the appointment of a workplace reporter nominated by her employer, or contracting body, and approved by the GMC.

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3 She must allow the GMC to exchange information with her employer or any contracting body for which she provides medical services.

4 She must inform the GMC of any formal disciplinary proceedings taken against her, from the date of this determination.

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5 She must inform the GMC if she applies for medical employment outside the UK.

6. (a) She must not prescribe or administer opiates by injection. If she prescribes opiates for administration by any other route she must maintain a log of all her prescriptions for opiates including clear written justification for her drug treatment. Her prescriptions must comply with the BNF guidelines for such drugs.

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(b) She must provide a copy of this log to the GMC on a six monthly basis or, alternatively, confirm that there have been no such cases.

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7. She must confine her medical practice to general practice posts in a group practice of at least four members (including herself).

A (There was a general outcry of disapproval from members of the public who then left the hearing chamber)

(The Chairman continued)

- B 8. She must obtain the approval of the GMC before accepting any post for which registration with the GMC is required.
- C 9. She must attend at least one CPD validated course on the use of prescribing guidelines within three months of the date from which these conditions become effective and forward evidence of her attendance to the GMC within one week of completion.
10. She must not undertake Palliative Care.
- D 11. She must inform the following parties that her registration is subject to the conditions, listed at (1) to (10), above:
- E (a) Any organisation or person employing or contracting with her to undertake medical work;
- (b) Any locum agency or out-of-hours service she is registered with or apply to be registered with (at the time of application);
- (c) Any prospective employer or contracting body (at the time of application);
- (d) The PCT in whose Medical Performers List she is included, or seeking
- F inclusion (at the time of application);
- (e) Her Regional Director of Public Health.

G In deciding on the length of conditional registration, the Panel took into account the fact that Dr Barton has been practising safely in general practice for the past ten years. During that time she has complied with the prescribing restrictions which she initiated and which were subsequently formalised by the GMC's Interim Orders Panel. This Panel is satisfied, looking forward, that the conditions it has directed provide further safeguards for the protection of patients, and therefore concluded that it was appropriate and proportionate to impose the

H conditions for the maximum period.

A | Shortly before the end of the period of conditional registration, Dr Barton's case will be reviewed by a Fitness to Practise Panel. A letter will be sent to her about the arrangements for that review hearing. Prior to the review hearing Dr Barton should provide the GMC with copies of her annual appraisals from the date of this hearing.

B | The effect of the foregoing direction is that unless Dr Barton exercises her right of appeal her registration will be made subject to conditions 28 days from the date on which written notice of this decision is deemed to have been served upon her.

C | Dr Barton is the subject of an interim order of conditions. The Panel proposes, subject to any submissions to the contrary, in accordance with Rule 33A of the 1988 Rules, to vary the existing order by substituting its conditions with the conditions contained in this determination.

D | Mr Fitzgerald, do you have any submissions on that subject?

MR FITZGERALD: No, sir.

THE CHAIRMAN: Mr Jenkins?

MR JENKINS: No I sir, thank you.

E | THE CHAIRMAN: That is what will happen and that concludes the case. Thank you all very much indeed for your attendance.

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