

PUBLIC RECORD

Dates: 11/12/2015

Medical Practitioner's name: Dr Julian KENYON

GMC reference number: 1467655

Primary medical qualification: MB ChB 1970 University of Liverpool

Type of case **Outcome on impairment**

Review - Misconduct Not Impaired

Summary of outcome

Conditions revoked

Panel:

Lay Panellist (Chair):	Mr Sean Ell
Lay Panellist:	Mrs Joy Hamilton
Medical Panellist:	Dr Andrew John Heeps

Legal Assessor:	Mrs Judith Walker
Panel Secretary:	Mr Alex Jackson

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	Mr Andrew Kennedy, Counsel, instructed by RLB
GMC Representative:	Mr Nick Walker, Counsel

Attendance of Press / Public

The hearing was all heard in public.

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Determination on Impairment

Dr Kenyon:

Background

1. The Panel has heard the background to your case. In September 2012, Patient A consulted you at the Dove Clinic, Wimpole Street, London, (the Dove Clinic), in relation to your treatment of him involving the use of Sono Photo Dynamic Therapy (SPDT). Patient A's brother, Mr A, also attended the consultation. At the time, Patient A was suffering from mediastinal germ cell tumour with significant metastases for which he had received chemotherapy. Following the consultation, you emailed Patient A, on 13 September 2012, in relation to your proposed treatment of him involving the use of SPDT. You stated: *"I am not claiming we can cure you, but there is a strong possibility that we would be able to increase your median survival time with the relatively low-risk approaches described here."*
2. On 18 December 2012, Mr B, an undercover journalist from the Sunday Times newspaper, visited you at the Dove Clinic posing as the husband of a fictitious female patient who had been diagnosed with breast cancer with metastases in her hip. You were not aware that Mr B was a journalist. During that consultation you told Mr B that SPDT is able to achieve tumour cell death in 80% of cases involving deep-seated tumours and that there is a slightly less than 10% complete response rate in cancer patients treated with SPDT. You also told him that caution had to be taken with cancer patients treated with SPDT because it tended to produce too much tumour cell death, or words to that effect.
3. On 20 December 2012, Mr B contacted you by telephone and identified himself as a journalist. Half way through the conversation Mr B revealed that he had posed as the husband of a fictitious patient. During the conversation you stated that 80% of SPDT patients show clinical evidence of tumour cell death, cancer immunotherapies have a 10% complete response rate, and that you had achieved a complete response equating to a cure using SPDT in patients with late stage cancers, or words to that effect. In an email to Mr B on the same date, 20 December 2012, you stated that 80% of SPDT patients show clinical evidence of tumour cell death or words to that effect.
4. The 2014 Panel considered that you had made misleading statements to patient A and to Mr B in that you had failed to give a balanced view of SPDT, made unjustifiable claims about SPDT and you had failed to explain the uncertainties associated with the treatment. The 2014 Panel considered you to have shown some limited insight and it did not consider you to have demonstrated any evidence of remediation. The Panel therefore could not be satisfied that your misconduct would not be repeated in the future, and it found that your fitness to practise was impaired by reason of your misconduct.

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5. The 2014 Panel determined that it would be possible to impose appropriate and workable conditions for a period of twelve months upon your registration.

6. The 2014 Panel stated that a future review Panel may be assisted by the following:

- A reflective statement detailing your understanding of this Panel's findings and how you have applied that understanding to your practice, with specific reference to consultations with potential SPDT patients, if any;
- Testimonials from medical practitioners who have referred patients for SPDT, if any.

7. This Panel has met to review your case. It has considered, under Rule 22(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004 (the Rules), whether your fitness to practise remains impaired by reason of your misconduct. In doing so, it has taken into account all the evidence presented to it, which includes:

Evidence

8. A workplace report, dated 5 March 2015, from Mr C, Medical Director of the Dove Clinic. In this he confirmed there had been a single complaint about your practice since the restrictions had been placed on your registration. He reported that this had related to an email that had been partially answered and this had been quickly dealt with through the complaints procedure at the Dove Clinic. Mr C confirmed that you had received very positive feedback in both the revalidation and the annual patient surveys that had been conducted by the Dove Clinic. He reported that the Dove Clinic had a procedure in place which would not allow SPDT treatment to commence without a referral having initially been made and then checked by colleagues. He concluded by confirming that you had complied with your conditions and that it was his view that you had: *"taken on board the outcomes of the investigation"* and were *"taking steps to remedy/act on the restrictions."*

9. In his workplace report, dated 27 August 2015, Mr C confirmed there had been no complaints or concerns surrounding your practice, on the contrary, he reported that the feedback that you had received from patients had been positive. He confirmed that you had taken an active role in the CQC in house training organised by the clinic and he considered that the communications course that you had attended had been of benefit to you.

10. In his most recent workplace report, dated 23 November 2015, Mr C reported that there were no concerns regarding your practice. Indeed, any feedback letters that you had received had been positive. He also confirmed that your feedback from the annual patient survey (which was still underway) had been very positive.

11. The Panel had regard to your reflective statement, dated 18 November 2015. In this you advised that you had been directed to attend a medical communication

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course to assist your reflection by the 2014 Panel. However, you have since attended three relevant medical communication courses run by the Medical Protection Society (MPS). These courses have allowed you to reflect upon your communication with patients, and re-think the methods that you use, in your interactions with your patients. You advised that the courses have encouraged you to actively include any relative or friend of a patient, should they bring them along, in the discussions on treatment of the patient.

12. You confirmed that the courses had also encouraged you to reflect upon the Dove Clinic as a whole and its management of patients. You have therefore implemented in house training sessions with other colleagues, improving the clinic's effectiveness to communicate more clearly with patients.

13. You describe how you have adapted your communication methods in more sensitive cases, such as late stage cancer patients, where standard treatment approaches have not been effective in treating their condition. You advised that many of them feel that they have been misled by their Consultants and therefore they can often have misconceptions about alternate treatment options available to them. You state how you researched a series of ten cases and after you have seen the patients you emailed them to detail exactly what you could do for them. However, even after this contact from you, you found some patients would exaggerate the potential effectiveness of your therapeutic suggestions. You confirmed that you understand that this could lead to potentially misleading patients. You have therefore been arranging second communication to ensure that they have a clear understanding of what you can and cannot offer them.

14. You advised recent public endorsements of Cancer Immunotherapy, as well as your specialization in this area, has led to you treating an increasing number of cancer patients who are convinced their condition can be cured through Cancer Immunotherapies. You describe this as being challenging, but also as a helpful exercise in moderating your enthusiasm for these approaches.

15. The Panel also had regard to your Continuing Professional Development (CPD) evidence, highlighting your attendance on relevant courses.

Submissions

16. The Panel has considered the submissions of Mr Nick Walker on behalf of the GMC and of Mr Andrew Kennedy on behalf of you.

17. Mr Walker submitted that Dr Kenyon has complied with the conditions on his registration, and any complaints against him have now been concluded. In light of this Mr Walker concluded that it is the GMC's submission that there is no evidence of impairment.

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18. Mr Kennedy submitted that current impairment should be determined by considering two individual strands. Firstly, has public confidence been satisfied by your period of conditional registration, and secondly have you now developed relevant insight and remediation which satisfies the concerns of the previous Panel?

19. Mr Kennedy submitted that the basis of the finding of impairment which existed in 2014, no longer exists. He submitted that the issue of public confidence has now been addressed and that it would be wrong and disproportionate for the Panel to make a finding on that basis.

20. Mr Kennedy further submitted that the 2014 Panel's concerns over your levels of insight and remediation had also now been addressed. He submitted that it had been the view of the 2014 Panel that your conduct was remediable and he reminded this Panel that there had been no repetition of such behaviour. He submitted that you have reflected on the previous Panel's findings, particularly in relation to your communication skills, and that you have implemented changes to your day to day practice resulting in a considerable improvement in that particular area of your practice.

21. He therefore submitted that your fitness to practise is no longer impaired by reason of your misconduct.

The Panel's Decision

22. The Panel is aware of its responsibility to protect the public interest, in particular, to protect patients, maintain public confidence in the profession and declare and uphold the proper standards of conduct and behaviour. In reaching its decision the Panel has taken into account its statutory overarching objective for the protection of the public. This includes:

- a. Protecting the health, safety and wellbeing of the public;
- b. Maintaining public confidence in the profession;
- c. Promoting and maintaining proper professional standards and conduct for members of the profession.

23. In considering the question of your impairment, the Panel has asked itself whether your failings are remediable, whether they have been remedied, and the likelihood of repetition of such behaviour.

24. The Panel considered the feedback from your workplace reports to have been positive and to provide a good indication as to your clinical competence and your compliance with your conditions. In terms of your clinical conduct, although the Panel heard that one complaint had been made against you prior to the conclusion of the previous hearing, it accepted that this had been investigated and closed with advice.

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25. The Panel therefore considered that the reports had raised no related concerns about your conduct towards patients and you appear to have worked well under supervision. It was therefore satisfied that you have complied fully with your conditions.
26. The Panel noted the 2014 Panel had found your misconduct as being remediable were you to "*adopt the right attitude*", but that you had demonstrated "*limited insight*" consequently it could not be satisfied that your misconduct might not be repeated in the future.
27. You provided the Panel with evidence of your attendance at three workshops directly related to your misconduct. These were undertaken shortly after the 2014 substantive hearing and you have been able to demonstrate having incorporated your learnings from the workshops into your interactions with your patients.
28. The Panel considered your reflective statement to be detailed and impressive. It noted that this demonstrated your greater insight into how your misconduct had been misleading and the impact that this could have potentially had on your vulnerable patients. The Panel was satisfied that you have targeted the previous communication issues which were identified by the 2014 Panel. It also considered you to have made significant changes in your practice, incorporating new and more effective strategies of communicating with your patients into your everyday practice. The Panel was reassured by your statement that you are aware that this will require constant vigilance and that you now use your regular monthly practice meetings to discuss such issues further.
29. You recognised yourself how your own enthusiasm for SPDT as well as cancer immunotherapies might be misinterpreted. The 2014 Panel did not consider that your misleading statements had been deliberately intended to deceive patients. Having identified the potential problems your enthusiasm may cause, you have taken steps to address this.
30. In relation to SPDT, the Panel noted that you now recommend patients use an independent medical reader who can assist them in further understanding the evidence behind potential treatment options. As identified by the 2014 Panel, you have amended the Dove Clinics document on SPDT to make reference to mainstream medical criticism of SPDT. The Panel has therefore been reassured that you are committed to ensuring your patients are fully informed of all the effects of the treatment, including the side effects.
31. The Panel was further encouraged by the active role that you have played in the CQC in-house training at the Dove Clinic, where you have encouraged other colleagues to improve their own communication with patients.
32. The Panel noted that you have provided testimonials/referral documents as recommended by the previous Panel from doctors who have referred patients to you

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for SPDT. The Panel also noted that the 360 feedback that you have received from patients and colleagues has been positive as has any feedback returned that has been generated from the annual patient surveys at the Dove Clinic.

33. Having considered all the evidence, this Panel was satisfied that you have achieved everything that has been expected of you by the 2014 Panel in relation to your remediation and insight. It is evident to the Panel that you have proactively engaged with the regulatory process and targeted the areas that were a cause for concern. The Panel is also satisfied that you have kept your knowledge and skills up to date during this time.

34. There have been no further concerns about your conduct and behaviour since your previous hearing. In light of your increased insight and remediation the Panel considers that the risk of you repeating your misconduct and misleading your patients is now minimal. In addressing any risk to patient safety from you being allowed to return to unrestricted practice, the Panel referred to the 2014 Panel's determination where it had stated: *"there has been no criticism that patients were either directly or indirectly at risk."* The Panel was also satisfied that the wider public interest, in maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct, has now been served by the 2014 Panel's decision to impose a 12 month period of conditions on your registration and by your remediation.

35. In all the circumstances, the Panel has determined that your fitness to practise is not impaired by reason of your misconduct.

36. In accordance with Section 35D (12), the Panel revokes the direction of conditional registration for the remainder of its current period.

37. That concludes your case.

Confirmed

Date 11 December 2015

Mr Sean Ell, Chair