

**DETERMINATION: Impairment
FITNESS TO PRACTISE PANEL HEARING: Commencing 24 March 2014,
reconvened 21 August 2014 and 4 December 2014
Dr Julian Norman KENYON (1467655)**

Dr Kenyon:

1 The Panel has considered under Rule 17(2)(j) of the General Medical Council (GMC) (Fitness to Practise) Rules Order of Council 2004 whether, on the basis of the facts found proved, your fitness to practise is impaired. It has taken account of all of the evidence adduced. It has also taken account of Mr FitzGerald's submissions on behalf of the GMC and Mr Kennedy's submissions on your behalf.

Counsel's submissions

2 Mr FitzGerald submitted that your actions constituted misconduct and that your fitness to practise is impaired as a result. He submitted that your behaviour in making misleading statements about the effectiveness of Sono Photo Dynamic Therapy (SPDT) to a terminally ill patient and to someone who you believed to be the husband of a terminally ill patient, constituted serious departures from the GMC's guidance *Good Medical Practice (2006)*, specifically paragraphs 1, 20, 57 and 61. He reminded the Panel that you denied that the statements you made were misleading and that you have not demonstrated any insight or remediation.

3 Mr Kennedy told the Panel that your position on impairment is neutral. He stated that in this case the Panel has no evidence of remediation. However, he reminded the Panel that there is no evidence of patient harm or patient disadvantage. He told the Panel that you acknowledge the importance of presenting a balanced picture, particularly in circumstances such as these where the treatment is experimental and the patients are vulnerable. He stated that in a number of respects you failed in your duty to be balanced. He also stated that the views you hold about SPDT are genuine and shared with others.

The Panel's Approach

4 In relation to impairment, the Panel accepted the advice of the Legal Assessor and undertook a two stage process. It considered whether the facts found proved amounted to misconduct which was serious and secondly, whether as a result, your fitness to practise is currently impaired.

5 The Panel has borne in mind that its findings are a matter for itself alone exercising its judgment. The Panel took into account the public interest which includes, amongst other things, the protection of patients, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

Misconduct

6 The Panel found that you made highly significant misleading statements to a vulnerable and terminally ill patient and also to someone who you believed at the time to be the husband of another vulnerable patient. You did so on two separate occasions.

7 The Panel found that at the time of the consultations you knew that SPDT was experimental and you should have given a more balanced view. You were dealing with a gravely ill patient and a relative of such a patient and it was your duty to state the effectiveness of proposed treatment and resultant prognosis with great caution and to be realistic about outcomes. It was your responsibility to provide information that the majority of mainstream medical practitioners did not necessarily share your views regarding SPDT and that your practice was at one end of the spectrum of medical opinion. You presented yourself as a 'leader in the science' of SPDT, which would have increased the impact your misleading statements had on vulnerable patients.

8 The Panel has seen the "Evidence Base Document" which you give to patients. In your oral evidence you told the Panel that you had been advised by four oncologist colleagues that the most you could state in this document was that SPDT was palliative and that it 'may be' effective. However, this was not the impression that you gave during the consultations.

9 The Panel considers that your conduct in making misleading statements regarding SPDT to vulnerable patients or relatives of vulnerable patients, on two separate occasions, amounted to misconduct which was serious.

Impairment in relation to misconduct

10 Paragraphs 22 and 61 of *Good Medical Practice (2006)* state:

'22. To communicate effectively you must...

b. share with patients, in a way they can understand, the information they want or need to know about their condition, its likely progression, and the treatment options available to them, including associated risks and uncertainties

'61. You must not make unjustifiable claims about the quality or outcomes of your services in any information you provide to patients. It must not offer guarantees of cures, nor exploit patients' vulnerability or lack of medical knowledge.'

11 In making the misleading statements on two occasions you failed to give a balanced view of SPDT, you made unjustifiable claims about SPDT and failed to explain the associated uncertainties. The Panel also considers that you exploited patients' vulnerability and lack of medical knowledge. The Panel considers that you

have demonstrated a departure from the principles set out in Good Medical Practice on two separate occasions.

12 The Panel considers that your misconduct may be remediable were you to adopt the right attitude. However, the Panel has not been provided with any evidence of your remediation, despite your misconduct occurring in 2012. The Panel considers that you have shown some limited insight, but at this time it cannot be satisfied that your misconduct might not be repeated in the future.

13 The Panel finds that your misconduct has brought the profession into disrepute. In making misleading statements on two separate occasions to two persons, one of them being a patient with terminal cancer and the other being the spouse of a fictitious patient suffering with advanced cancer, you failed to uphold proper professional standards. The Panel is of the view that public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of this case.

14 Therefore, the Panel has determined that your fitness to practise is currently impaired by reason of your misconduct pursuant to Section 35C(2)(a) of the Medical Act 1983, as amended.