

This case is being considered by a Fitness to Practise Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988

Date: 24 May 2010

Professor (formerly Dr) Simon Harry MURCH

Determination on Serious Professional Misconduct (SPM) and sanction:

The Panel has already given its findings on the facts and its reasons for determining that the facts as found proved could amount to serious professional misconduct.

It then went on to consider and determine whether, under Rule 29(1) of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1988, the facts as admitted or found proved do amount to serious professional misconduct and if so, what, if any sanction it should impose. It has accepted the Legal Assessor's advice in full as to the approach to be taken in this case, and has looked at each doctors' case separately but when considering whether Professor Murch is guilty of serious professional misconduct, has looked at the heads of charge found proved against him as a whole. It has not confined its consideration to the heads of charge; it has also had regard to the evidence that has been adduced and the submissions made by Ms Smith on behalf of the General Medical Council. On behalf of Professor Murch, it was submitted although he made errors of judgement, that not every error of judgment is misconduct, or wilful misconduct and as such, could and should not be considered to be serious professional misconduct.

Serious professional misconduct has no specific definition but in *Roylance v General Medical Council* [1999] Lloyd's Rep. Med. 139 at 149 Lord Clyde, in giving the reasons of the Privy Council, said:

"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required by a medical practitioner in the particular circumstances..."

Lord Clyde went on to say:

“The misconduct is qualified in two respects. First, it is qualified by the word ‘professional’ which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word ‘serious’. It is not any professional misconduct which will qualify. The professional misconduct must be serious.”

The Panel has acted as an independent and impartial tribunal and exercised its own judgement on these matters. It has borne in mind the relevant GMC guidance at the time, namely the 1995 Good Medical Practice and, in so far as the findings relate to events after 1998, the 1998 Good Medical Practice. It has considered what has been adduced and submitted on behalf of Professor Murch about the standards and procedures prevailing at that time. The Panel has borne in mind the principles guiding a doctor as set out in the relevant paragraphs of 1995 Good Medical Practice which relate to providing a good standard of practice and care; good clinical care; keeping up to date; abuse of professional position; and the provisions as to research.

When determining whether the relevant conduct amounts to serious professional misconduct, the Panel considered all the evidence including issues of probity, honesty, medical ethics, the clinical interests of patients, the approach to research, appropriate clinical standards, Professor Murch’s attitudes to those issues in his practice generally and the views of the other experienced practitioners in the relevant field.

The Panel has borne in mind the Legal Assessor’s advice that Professor Murch is a man of good character, not just in the sense that he has no previous findings recorded against him by the GMC, but also in that he was professionally competent and highly regarded in his chosen field of practice at that time. It has taken into account his qualifications, experience and standing within the profession, with patients and the parents of patients, together with the testimonials submitted by colleagues, patients, and associates, relevant to the question of serious professional misconduct, and in the knowledge of the findings made by this Panel against him. In accordance with the Legal Assessor’s advice it has taken into account his own evidence and submissions made on his behalf about why he did what he did, or omitted to do whatever it is said he should have done, as well as the testimonial and other relevant mitigating evidence. The Panel heard positive evidence of Professor Murch’s clinical ability, integrity and the respect in which he is held, by witnesses called by the GMC at the fact finding stage. The Panel also heard further evidence of his good character in oral and written testimonials. He was described as a leader in his field with international recognition of his skill in paediatric gastroenterology in general and performing colonoscopies on children in particular. He has been Professor of Paediatrics and Child Health at the Clinical Sciences Research Institute at Warwick Medical School in Coventry since 2005.

In considering Professor Murch’s case, the Panel has also taken into account the passage of time before these matters were brought before it and the length of time this case has taken. It noted that the multiple sittings were for a

variety of reasons including professional commitments of the Panel and requests from Counsel for reasons such as illnesses, accidents, unavailability of witnesses and preparation time.

The Panel considered the conduct of Professor Murch whilst he was registered as a medical practitioner and employed by the Royal Free Hospital Medical School as a senior lecturer and held an honorary consultant contract with the Royal Free Hampstead NHS Trust. Having completed his training under Professor Walker-Smith, he had become senior lecturer and an honorary consultant in March 1995, first at Queen Elizabeth Hospital for Children in Hackney and the Medical College of St Bartholomew's, then in September 1995 at the Royal Free Hospital. The Panel acknowledges that at the material times he was at the beginning of his consultant career. Professor Murch's academic work involved research projects relating to paediatric gastroenterology, and his clinical work involved advice and treatment relating to sick children. The Panel also noted that he and another colleague were responsible for undertaking colonoscopies on children at the Royal Free Hospital.

The children described in the Lancet paper were admitted for research purposes under a programme of investigations for Project 172-96, the purpose of which was to investigate a postulated new syndrome following vaccination. The Panel rejected the contention that Project 172-96 was never undertaken. It found that Professor Murch was, along with Dr Wakefield and Professor Walker-Smith, named as a Responsible Consultant in the application for Project 172-96, to the Royal Free Hospital Ethics Committee, and thereby took on the shared responsibility for the research governance of the application; for ensuring that only children meeting the inclusion criteria would be admitted; that conditions attached to the Ethics Committee approval would be complied with; and that the children would be treated in accordance with the terms of the approval given.

The Panel also accepted the expert evidence that Responsible Consultants who sign up to research are individually responsible and have a duty to ensure such research governance. The principles of research ethics and governance and in particular, the guiding principles with regard to children, require a doctor to conduct research within ethical constraints. An ethics committee, in performing its regulatory function, has a right to expect probity from applicant doctors. The Panel is aware of Professor Murch's membership of the Ethics Committee at the material time. It noted that he had only been a committee member for a few months and had not received any formal training but nonetheless concluded that he would have been aware of such responsibility.

In relation to what became known as Project 172-96, Professor Murch had concerns about its nature from an early stage. He said he was surprised to find a copy of Dr Wakefield's Proposed Clinical and Scientific Study paper in his pigeon-hole, on returning from holiday in July 1996. He said this:

“The document was produced by Dr Wakefield... and ...he took from [a planning meeting in May 1996] the clinical plan and inserted it into a document of his own.”

It prompted Professor Murch to consider if this altered the nature of the proposed investigation of the children:

“... this document caused some discussion ...we also then wondered whether that changed the essential nature of what we were intending to do from clinical to research, and therefore we asked Professor Walker-Smith, and he was utterly clear about this ... that at some stage Dr Wakefield may be wishing to do his research when he was in a position to do so, but that the investigation of the children was entirely a clinical matter, so he very clearly differentiated these two strands. This is a document that was written by a researcher that effectively picked up on a clinical approach that we were doing and appended to that a large superstructure of speculation based around something we had not discussed.”

He further stated in his evidence:

“I discussed with Professor Walker-Smith the nature of what we were to do and he was entirely clear on this: that ...these were clinical admissions ...I made my decisions in entire good faith ...If the Panel decide we made an error of judgment, then we made an error of judgment.”

The Panel considered that his evidence on this matter went to the issue of insight.

The Panel found that all eleven of the Lancet children underwent a programme of investigations for research purposes without Ethics Committee approval and that Professor Murch failed to comply with his duties as a Responsible Consultant, to ensure adequate research governance. However it attached significant weight to the fact that Professor Murch demonstrated that he took the responsibilities of a Responsible Consultant seriously when he brought to an end, in or around late February 1997, the practice of undertaking lumbar punctures for the group of children as a whole because he could not draw any clear inference that a child might have a regressive neurological disorder of sufficient severity or clinical suspicion to make such a procedure reasonable on clinical grounds. He stated in evidence:

“...I took the steps which ... led to the termination of 172-96. I felt that on the first occasion I had been called upon to act in my capacity as Responsible Consultant I had indeed acted responsibly, and this had the consequences of preventing the study going ahead.”

Professor Murch's involvement with the project was subsidiary to, and more limited than, that of Dr Wakefield and Professor Walker-Smith. He had sought and obtained guidance and reassurance as to the nature of the study from two senior respected colleagues: Professor Walker-Smith and Dame Sheila Sherlock, Emeritus Professor of Medicine at the Royal Free Hospital, eminent

in her field, whom, the Panel heard, “many senior academics would turn to for guidance and advice.” Further, Professor Murch knew that Professor Walker-Smith had confirmed his view on the clinical justification for the investigations in a letter dated 11 November 1996 to Dr Pegg, Chairman of the Ethics Committee.

The Panel accepts that in all the circumstances, Professor Murch’s actions in respect of research governance could not amount to serious professional misconduct.

Regarding the clinical care of the children, the Panel has found that Professor Murch undertook colonoscopies which were carried out in pursuance of a programme of investigations for research purposes on Child 2, 1, 4, 5, 12 and 10. In all but Child 10 this investigation was not clinically indicated. However, notwithstanding that he had a responsibility to ensure that the procedure he carried out was indeed clinically indicated, the Panel acknowledge that in respect of five of the children, 2, 1, 5, 12 and 10, the initial decision to colonoscope had been made by Professor Walker-Smith. The Panel noted that in the case of Child 4, Professor Murch was not the consultant responsible for the child’s admission and therefore his responsibility remained that of a colonoscopist only.

In respect of five of the children upon whom he performed colonoscopies, Child 2, 1, 4, 5 and 12, his conduct was contrary to the clinical interests of that child. He has fully acknowledged his responsibilities as a colonoscopist and said this about what he perceived to be the purpose behind the investigations:

“I think our whole ethos was to try to determine what was causing the illness in the child and to see whether we could do anything about it.”

Professor Murch’s first opportunity to see the children was after they had been admitted into hospital for about ten minutes on the morning of the colonoscopy procedure itself, for which the children had already been rigorously prepared. The Panel accepted Professor Murch’s evidence that, “time for decision making is inevitably pretty limited” and that it would have been impractical to undertake a full assessment of each child again before the colonoscopy. The Panel accepted Professor Murch’s evidence that the pre-colonoscopy assessment would usually involve assessing whether the child was clinically well on the day, that his or her condition had not changed since admission to hospital, and assessing whether the bowel preparation had been administered satisfactorily.

The Panel took into account that Professor Murch had, along with his colleagues, received information from Dr Wakefield of the purported histories of regression and significant bowel problems of the children. They all agreed that colonoscopies were appropriate in the circumstances. Professor Walker-Smith saw a number of the Lancet children in outpatients and took the decisions that they should be admitted into hospital for further investigation whilst Professor Murch did not see any of these children in outpatients nor

decide that they should be admitted. He relied on the expertise and judgment of Professor Walker-Smith:

“I had complete faith in Professor Walker-Smith’s diagnostic ability. He was the paediatricians’ paediatric gastroenterologist.”

The reassurance that Professor Walker-Smith gave about the clinical basis for the investigations was also expressed in the application of Project 172-96:

“... in view of the symptoms and signs manifested by these patients, all of the procedures and the majority of the samples are clinically indicated.”

The Panel acknowledged that Professor Murch’s status within the department at the time of events in 1996, was that of a relatively junior consultant and that he would attach significant weight to the opinion he was given by Professor Walker-Smith.

The Panel accepted the expert evidence of Professor Booth, that a colonoscopist would have a low threshold for carrying out a colonoscopy that had been requested by a more senior colleague who had many more years of experience in assessing children. The Panel also accepted that it could not criticise Professor Murch for making an assumption that an investigation was clinically indicated if ordered by Professor Walker-Smith as it is appropriate to “respect the skills and contributions of your colleagues”, as indicated in the 1995 edition of *Good Medical Practice*.

The Panel concluded Professor Murch acted in good faith albeit it has found he was in error. His actions, although comparable to professional misconduct in respect of undertaking procedures which were not clinically indicated, were mitigated by the fact that he was under a false impression that they were clinically indicated and this could not reach the threshold of serious professional misconduct.

In relation to the Lancet paper, Panel has found that Professor Murch was not a senior author of that paper.

The Panel noted that in the press briefing held at the Royal Free Hospital immediately prior to publication of the Lancet Paper, Professor Murch spoke to the findings. Professor Zuckerman, the Dean of the Royal Free hospital at the time, in giving evidence to the Panel, testified that Professor Murch vigorously presented the view that the findings in this research were not sufficient to advise discontinuation of the MMR vaccine. Professor Murch was also instrumental in the retraction of the interpretation that had been placed on The Lancet article by the media. In dealing with the repercussions of the Lancet paper and their possible impact on public health policy, the Panel considered that Professor Murch behaved professionally and responsibly.

The Panel wishes to point out that it did not use personal mitigation to downgrade what would otherwise amount to serious professional misconduct to some lesser form of misconduct. Nevertheless, the Legal Assessor advised

that evidence of potential mitigation might be relevant to the seriousness of the misconduct under examination; and that in this case there is an overlap. The Panel accepted that advice. When considering the issues of probity, honesty, medical ethics, the clinical interests of patients, the approach to research and appropriate clinical standards, the Panel noted from the evidence as a whole, including some of the testimonial evidence, that Professor Murch was regarded as a very cautious, gentle endoscopist. Furthermore, it was not out of the ordinary for him to be involved in a comprehensive set of investigations of complex conditions using an extensive protocol, which was a common method of working within the Department at the Royal Free Hospital.

Taking all of the above into account, the Panel concluded that Professor Murch demonstrated errors of judgement but had acted in good faith and that any professional misconduct on his part, such as his failing in duties of research governance and performing colonoscopies that were not clinically indicated, could not reach the threshold of serious professional misconduct because of the circumstances in which he found himself.

Accordingly the Panel found that Professor Murch is not guilty of serious professional misconduct.

In these circumstances it was therefore not necessary to consider a sanction and Professor Murch is free to continue unrestricted medical practice.