

### **Dishonesty: Improper financial transactions**

52. Doctors are liable to disciplinary proceedings if they are convicted of criminal deception (obtaining money or goods by false pretences), forgery, fraud, theft or any other offence involving dishonesty.

53. The Council takes a particularly serious view of dishonest acts committed in the course of a doctor's professional practice (whether under the National Health Service or otherwise), or against patients or colleagues. Such acts, if reported to the Council, may result in disciplinary proceedings. Among the circumstances which may have this result are the improper demand or acceptance of fees from patients contrary to the statutory provisions which regulate the conduct of the National Health Service and, in particular:

- (a) the charging of fees to in-patients or out-patients treated at National Health Service hospitals, when the proper steps have not been taken to ensure that such patients enjoy the status of resident or non-resident private patients, as required by statute;
- (b) knowingly and improperly seeking to obtain from a Family Practitioner Committee or other health authority any payment to which the doctor is not entitled, including the improper issue of National Health Service prescriptions either to patients on the doctor's dispensing list or to patients whom the doctor, or another member of the practice, is treating under private contract.

54. Disciplinary proceedings may also result from other improper arrangements calculated to extend, or otherwise benefit, a doctor's practice, whether in relation to the provision of specialist services or in general practice. These include, for example, pressure by a specialist to persuade a patient to accept private treatment by reliance upon representations about the comparative availability of treatment under the National Health Service and privately. Improper arrangements made for the transfer of patients to a general practitioner's National Health Service list without the knowledge and consent of the patient, or in a manner contrary to the National Health Service regulations, have also in the past led to disciplinary proceedings.

55. The Council also takes a serious view of the prescribing or dispensing of drugs or appliances for improper motives. The motivation of doctors may be regarded as improper if they have prescribed a drug or appliance in which they have a direct financial interest or if they have prescribed a product manufactured or marketed by an organisation from which they have accepted an improper inducement. Further guidance on this matter is contained in paragraphs 110-114 of this pamphlet.

56. The Council has also regarded with concern arrangements for fee-splitting under which one doctor would receive part of a fee paid by a patient to another doctor and the association of a medical practitioner with any commercial enterprise engaged in the manufacture or sale of any substance

which is claimed to be of value in the prevention or treatment of disease but is of undisclosed nature or composition.

57. Doctors, like lay members or officers of any health authority, have a duty to declare an interest before participating in discussion which could lead to the purchase by a public authority of goods or services in which they, or a member of their immediate family, have a direct or indirect pecuniary interest. Non-disclosure of such information may, under certain circumstances, amount to serious professional misconduct.

### **Indecency and violence**

58. Indecent behaviour to or a violent assault on a patient would be regarded as serious professional misconduct. Any conviction for assault or indecency would render a doctor liable to disciplinary proceedings, and would be regarded with particular gravity if the offence were committed in the course of a doctor's professional duties or against his patients or colleagues.

### **The advertising of doctors' services**

59. The Council encourages doctors to provide factual information about their qualifications and services. The provision of information of this kind is nonetheless a sensitive matter. It is the duty of all doctors to satisfy themselves that the content and presentation of any material published about their services, and the manner in which it is distributed, conform with the guidance given both in this section and in paragraphs 89-107 of this booklet. This applies whether a doctor personally arranges for such publication or permits or acquiesces in its publication by others. Failure to abide by the Council's guidance may call a doctor's professional conduct into question.

60. In no circumstances should the distribution of advertising material be undertaken so frequently or in such a manner as to put recipients, including prospective patients, under pressure. Such a course of action is not in the interest of patients or of the medical profession.

### **Disparagement of professional colleagues**

61. It is improper for a doctor to disparage, whether directly or by implication, the professional skill, knowledge, qualifications or services of any other doctor, irrespective of whether this may result in his own professional advantage, and such disparagement may raise a question of serious professional misconduct.

62. It is however entirely proper for a doctor, having carefully considered the advice and treatment offered to a patient by a colleague, in good faith to express a different opinion and to advise and assist the patient to seek an alternative source of medical care. The doctor must however always be able to

justify such action as being in the patient's best medical interests.

63. Furthermore, a doctor has a duty, where the circumstances so warrant, to inform an appropriate body about a professional colleague whose behaviour may have raised a question of serious professional misconduct, or whose fitness to practise may be seriously impaired by reason of a physical or mental condition. Similarly, a doctor may also comment on the professional performance of a colleague in respect of whom he acts as a referee.

## CONCLUSION

### **The nature of serious professional misconduct**

64. As stated in paragraph 32 of this pamphlet the question whether any particular course of conduct amounts to serious professional misconduct is a matter which falls to be determined by the Professional Conduct Committee after considering the evidence in each individual case. This applies equally to the categories of misconduct described in Part II and to the situations contemplated in Part III. Further, it must be emphasised that the categories of misconduct described in Part II cannot be regarded as exhaustive. Any abuse by a doctor of any of the privileges and the opportunities afforded to him, or any grave dereliction of professional duty or serious breach of medical ethics, may give rise to a charge of serious professional misconduct.

## PART III

### **ADVICE ON STANDARDS OF PROFESSIONAL CONDUCT AND ON MEDICAL ETHICS**

65. Section 35 of the Medical Act 1983 provides that the powers of the Council shall include that of providing, in such manner as the Council thinks fit, advice for members of the medical profession on standards of professional conduct or on medical ethics. The Council has approved the following paragraphs giving general advice on personal relationships between doctors and patients, on professional confidence, on the reference of patients to and acceptance of patients by specialists, on circumstances in which difficulties in relation to self-promotion most commonly arise and on relationships between the medical profession and the pharmaceutical and allied industries.

66. The Council will also respond to inquiries from individual doctors about questions of professional conduct, although many of these doctors are advised to consult their medical defence society or professional association. The Council will also provide advice to individual doctors concerning their own professional conduct if, after receiving a complaint against them and seeking the doctor's observations on the complaint, it appears that such advice is necessary.

### **Personal relationships between doctors and patients**

67. Paragraphs 47-48 of this pamphlet, dealing with the abuse by doctors of certain privileges conferred on them by custom, explain why doctors must exercise great care and discretion not to damage the crucial relationship between doctors and patients, and identify three areas in which experience shows that this trust is liable to be breached. The following paragraphs relate to one of these areas - personal relationships between a doctor and a patient (or a member of the patient's family) which disrupt the patient's family life or otherwise damage the maintenance of trust between doctors and patients.

68. The Council has always taken a serious view of a doctor who uses his professional position in order to pursue a personal relationship of an emotional or sexual nature with a patient or the close relative of a patient. Such abuse of a doctor's professional position may be aggravated in a number of ways. For example, a doctor may use the pretext of a professional visit to a patient's home to disguise his pursuit of the personal relationship with the patient (or, where the patient is a child, with the patient's parent). Or he may use his knowledge, obtained in professional confidence, of the patient's marital difficulties to take advantage of that situation. But these are merely examples of particular abuses.

69. The question is sometimes raised whether the Council will be concerned with such relationships between a doctor and a person for whose care the doctor is contractually responsible but whom he has never actually treated, or