

GENERAL MEDICAL COUNCIL



If you are concerned about the possibility of a drink driving conviction affecting your ability to practise within the medical profession, we recommend that you consult with the useful guide “Good Medical Practice” which is published by the GMC and sets out the standards that are expected of every doctor on the Register. The latest edition came into force on 22nd April 2013.

Reporting Requirements:

Good medical practice imposes a duty on doctors to “tell the GMC without delay if, anywhere in the world, [they]

- (a) have accepted a caution from the police or been criticised by an official inquiry;
- (b) been charged with or found guilty of a criminal offence; or
- (c) another professional body has made a finding against [their] registration as a result of fitness to practise procedures.” (Good medical practice paragraph 75).

Consequences of Pleading Guilty:

The Merrison Report stated that ‘the GMC should be able to take action in relation to the registration of a doctor...in the interests of the public’, and that the public interest had ‘two closely woven strands’, namely the particular need to protect the individual patient, and the collective need to maintain the confidence of the public in their doctors.

General Medical Council (Fitness to Practise) Rules Order of Council 2014:

s. 5 (1) Subject to rule 4(5), the Registrar shall refer an allegation falling within section 35C(2)(c) of the Medical Act relating to a conviction resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to a FTP Panel.

Section 5 of the General Medical Council (Fitness to Practise) Rules Order of Council 2014 states that the Registrar shall refer an allegation falling within section 35C(2)(c) of the **Medical Act** 1983 relating to a conviction resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to a FTP Panel.

(2) the Registrar shall refer any other allegation falling within section 35C(2)(c)

or (e) of the Act directly to a Fitness To Practise Panel, unless he is of the opinion that it ought to be referred to a medical and a lay Case Examiner for consideration under rule 8.

The Medical Act states that a person’s fitness to practise should be regarded as “impaired” should they be convicted or cautioned in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence (s. 35C (2) (c) Med Act)

After referral to the Fitness To Practise Panel the allegation will be investigated as such (s.7 Fitness to Practise Rules:

There will then be an investigation of the allegations as to whether or not the practitioner’s fitness to practise is impaired.

A criminal conviction such as drink driving will be considered by Case Examiners under rule 8 of the Fitness to Practise Rules.

Rule 8 (2) Upon consideration of an allegation, the Case Examiners may unanimously decide-

- (a) that the allegation should not proceed further;
- (b) to issue a warning to the practitioner in accordance with rule 11(2);
- (c) to refer the allegation to the Committee under rule 11(3) for determination under rule 11(6); or
- (d) to refer the allegation for determination by a FTP Panel.

S. 35 of the Medical Act sets out the Panel’s powers:

Where the Panel find that the person’s fitness to practise is impaired they may, if they think fit—

- (a) except in a health case, direct that the person’s name shall be erased from the register;
- (b) direct that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
- (c) direct that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Panel think fit to impose for the protection of members of the public or in his interests.

Raschid and Fatnani v The General Medical Council made it plain that the functions of a panel are quite different from those of “a court imposing retributive punishment”.

The Case examiners may also decide to recommend the practitioner complies with undertakings under rule 10 of the Fitness to Practise Rules. Undertakings are generally considered if it is believed that the practitioner suffers from some kind of physical or mental condition. This will encompass alcoholism – and may be something the panel will consider should the practitioner be convicted of drink driving.

Conclusion:

A guilty plea will result in a criminal conviction and therefore an investigation into the practitioner's ability to continue to practise or if his practice has been impaired. They will then decide if the practitioner should be removed from the register, suspended or remain on the register subject to his compliance with any undertaking thought necessary by the panel.

The consequences of pleading Not Guilty



Rule 75 of Good Medical Practise states that the practitioner still needs inform the GMC without delay if he has been charged with a criminal offence.

There will still be an investigation into the allegation of the offence as

listed above in particular the practitioner's fitness to practise and if this has been impaired.

There is a possibility that if a practitioner is charged with drink driving, but is pleading not guilty – he could be referred for an Interim Order Panel as he may be deemed to be a non-clinical risk to patients and his practise could be restricted or they could be suspended, however this generally relates to more serious offences such as someone that has been arrested for murder or sexual assault. The GMC will consider if an Interim Order Panel is necessary depending on the circumstances of the case (source: www.gmc.uk.org).

The guidance sheet for imposing interim orders states:

Where the allegations involve serious criminal charges the panel should consider recent case law in relation to the proportionality of their response.

'The statutory test is there, and that is the one to be applied. One would like, all the same, to think that in all these kinds of cases of potential interim suspension an interim orders panel would at least be asking itself, as part of its thought process, the following: will it be acceptable for us not to suspend in a case of this kind if at the end of the day the charges are proved and the guilt of the applicant is established?

That is one aspect. Another part of the thought process should be: will it be acceptable for us to suspend an applicant in a case of this kind if, at the end of the day, the applicant may be acquitted of all charges? Those considerations should form at least part of the thinking of an interim orders panel...' [Sosanya v GMC 2009]

In **Sosanya v GMC 2009** it was held that it was not in the public interest to suspend a doctor charged with money laundering as it was a disproportionate response to the charge.

Conclusion:

Although there is a risk that the GMC may restrict the doctor's ability to practise following an Interim Order Panel – it is unlikely this would occur in a drink driving case as it would likely not be serious enough to warrant suspension as per the decision in Sosanya.

Automatic reporting by the police/court

There is no automatic reporting system. However, the police will often refer cases to the council. The onus is on the practitioner to report a charge as soon as possible. (Good medical practise paragraph 75) and it is certainly advisable to self-report before the court beats you to it.

Specialist Lawyers:

If you wish to seek further advice from a solicitor specialising in the healthcare field, please get in touch and we can ensure a quick and smooth referral to a leading expert lawyer in this field.

Other Information:

Telegraph Article 24th November 2013: The General Medical Council (GMC) released the number of criminal records held by practising doctors in response to a Freedom of Information request. It showed 761 doctors were practising in October this year, despite accumulating 856 convictions between them:

We hope the information set out within this factsheet is useful and helps you to decide on the best way forwards with the prosecution you face.

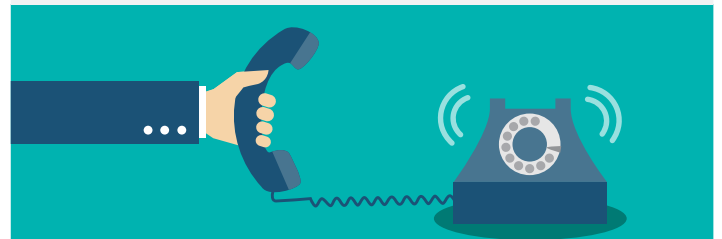
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