

A doctor who sexually assaulted a nurse during a night shift



PROTECTING THE PUBLIC: SECTION 29 POWERS IN PRACTICE

Background

This case involved a senior doctor who sexually assaulted a nurse at 3am on an isolated hospital ward knowing that she was working alone. He followed the nurse, grabbed her and directed her into an empty office and amongst other things, grabbed her hips, clamped his knees around her legs, put his hands on her hips/bottom, asking her when he would see her again. Even though the nurse had told him that what he was doing was inappropriate and attempted to push him away, he persisted with this behaviour.

The tribunal decision

Though the panel found the nurse to be truthful and reliable and accepted her version of what had happened that night, they decided to suspend the doctor for 10 months.

Why we decided to appeal

Our concern was with the sanction. The tribunal had recognised the seriousness of the doctor's behaviour, concluding that his conduct was sexually motivated. It had also noted what impact the incident would have had on the nurse's wellbeing – not only on the night itself but in the longer term and concluded that the doctor would have known, or should have known, that he was putting the nurse through a very frightening experience. But there were

other relevant aggravating factors that the tribunal did not consider when deciding what sanction to impose. These included:

- ▶ the power imbalance in their professional roles
- ▶ the difference in their age and physical stature
- ▶ that the assault took place at night when he knew that the nurse would be alone
- ▶ that he persisted with touching and grabbing her, even after the nurse had asked him to stop and pushed him away.

We also took the view that there were factors that the tribunal had taken into account as mitigation (information that reduced the seriousness of the behaviour) which were not relevant to this case, for example they referred to the assault as a single isolated incident of relatively short duration when this did not represent what had happened that night.

Also, the doctor had not engaged with the fitness to practise process and was not represented at the hearing before the High Court. The panel had no information before it to reach any conclusions about his insight into his actions and the risk of him repeating this type of behaviour: however, they still went ahead and did this.

A doctor who sexually assaulted a nurse during a night shift (continued)



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In one of our previous appeals the Court had described this as ‘[wishful thinking](#)’.

The result

The Court upheld our appeal – referring to his actions as “a calculated and deliberate abuse of power which foreseeably caused real harm to a fellow healthcare professional. Someone who has engaged in conduct of this kind poses a danger to the ‘health, safety and wellbeing of the public’ (which includes co-workers), unless there is a proper basis for concluding that the conduct is unlikely to be repeated. The Tribunal should have focused on the question whether there was such a basis.”

The Court quashed the suspension order and substituted an erasure order. This means the doctor was removed from the GMC’s register.

It should also be noted that the Court held that suspension might potentially have been appropriate if there had been strong mitigation providing a basis for concluding that repetition was unlikely. But no such basis was advanced or apparent.



Find out more

Read the advice and research we have produced on sexual misconduct and sexual boundaries:

- ▶ We produced [guidance for fitness to practise panels](#) on clear sexual boundaries between healthcare professionals and patients
- ▶ Research published on [Sexual behaviours between health and care practitioners: where does the boundary lie?](#) (This research was a result of a theme we noticed emerging as part of our oversight of final fitness to practise panel decisions - that panels were treating sexual misconduct between colleagues less seriously than when boundaries with patients were overstepped in the belief that it would have no/little impact on patient/public safety - the research found otherwise)
- ▶ You can find all our work on sexual misconduct [here](#) or go to www.professionalstandards.org.uk/sexual-misconduct