

**COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE**

**SECTION 29 CASE MEETING ON 9 AUGUST 2005**

**AT 11 THE STRAND, LONDON WC2**

**RE: DR TARUN KUMAR BISWAS AND THE DECISION OF THE FITNESS TO PRACTISE PANEL OF THE GENERAL MEDICAL COUNCIL MADE ON 15 JULY 2005**

PRESENT: Peter North (Lay Member, in the Chair)  
Frances Dow (Lay Member)  
Hew Mathewson (Regulatory Member)

IN ATTENDANCE: Michael Andrews (Fitness to Practise Manager)  
Briony Mills (Fitness to Practise Officer)  
Charles Atkins (Legal Adviser, Bevan Brittan)  
Edward Hooper (Legal Adviser, Bevan Brittan)

**The Fitness to Practice Panel's Decision**

- 1 Dr Biswas is a 78 year old registered medical practitioner. He appeared before the Fitness to Practise Panel ("the FPP") of the General Medical Council ("the GMC") between 11th and 15th July 2005 in relation to a charge of serious professional misconduct.
- 2 The FPP heard the case in accordance with transitional arrangements under the GMC's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988 ("the 1988 Rules"). The FPP gave their determination on 15<sup>th</sup> July 2005.
- 3 The heads of charge and their findings against Dr Biswas were:

	<b>Heads of Charge</b>	<b>Findings</b>
1.	At all material times you were working as a locum general practitioner at the Shah Jalal Medical Centre,	<b>Admitted and Found Proved</b>

Hessell Street, London E1;

2. On 4<sup>th</sup> September 2003 at about 10am you were consulted by AM who was suffering from constipation, vomiting and severe abdominal pain; **Admitted and Found Proved with the exception of the word "severe". Subsequently Found Proved in its entirety.**
3. During the consultation you failed to obtain an adequate history from:-
  - a. AM, **Found Proved**
  - b. The family members who had accompanied him, **Found Proved**
  - c. The medical records, **Found Proved**
  - d. Professor C or his team at the East London and the City Mental Health Trust despite being advised to do so by Dr H; **Found Proved**
4. During the consultation you failed to adequately examine Mr AM, in that you did not,
  - a. check his temperature, **Not Found Proved**
  - b. check his pulse, **Not Found Proved**
  - c. check his blood pressure, **Not Found Proved**
  - d. inspect his hands, tongue and mucous membranes, **Not Found Proved**
  - e. inspect, palpate, percuss or auscultate his abdomen, **Found Proved only in respect of inspect and auscultate**
  - f. perform a rectal examination, **Admitted and Found Proved**
  - g. test his urine; **Admitted and Found Proved**
5.
  - a. You failed to place yourself in a position to adequately assess Mr AM's condition and treatment needs, **Found Proved**
  - b. You made an inappropriate diagnosis of urinary tract infection, **Found Proved**
  - c. You made an inappropriate diagnosis of gastritis; **Found Proved**
6. You failed to give the patient and his family adequate information about the diagnosis, management and treatment; **Found Proved**

- |     |  |                                  |
|-----|--|----------------------------------|
| 7.  | You failed to refer Mr AM to hospital immediately;   | <b>Not Found Proved</b>          |
| 8.  | a. You considered the possibility of the patient's later admission to hospital,  | <b>Admitted and Found Proved</b> |
|     | b. You failed to provide the patient or his family with written information to present to the hospital, to assist the hospital with the management of the patient; | <b>Admitted and Found Proved</b> |
| 9.  | You failed to make any adequate contemporaneous record of the consultation;  | <b>Found Proved as amended</b>   |
| 10. | Your conduct as outlined in heads 3. to 9. above,  |                                  |
|     | a. Was inappropriate,  | <b>Found Proved</b>              |
|     | b. Failed to provide sufficient respect to the patient and his family,   | <b>Found Proved</b>              |
|     | c. Was not in the best interests of the patient;   | <b>Found Proved</b>              |
| 11. | Mr AM was declared dead at approximately 4.30pm the same day;  | <b>Admitted and Found Proved</b> |
| 12. | a. You later altered the medical records,  | <b>Found Proved</b>              |
|     | b. Your conduct in this regard was dishonest;  | <b>Not Found Proved</b>          |
| 4   | On the basis of the facts admitted and found proved, the FPP found Dr Biswas not guilty of serious professional misconduct.  |                                  |

## **Documents**

- 5 The following documents were before the meeting:
- (1) Determination of the FPP 15<sup>th</sup> July 2005
  - (2) Transcript of hearing 11<sup>th</sup> – 15<sup>th</sup> July 2005
  - (3) Exhibits before the FPP
  - (4) GMC publication *Indicative Sanction Guidance* April 2005
  - (5) GMC publication *Good Medical Practice* May 2001
  - (6) Letter from Moymona Begum to CHRE dated 19<sup>th</sup> July 2005
  - (7) Letter from Dr Douglas Russell to CHRE dated 2<sup>nd</sup> August 2005
  - (8) Report by Bevan Brittan LLP prepared 5<sup>th</sup> August 2005

The Council noted that it had seen the Third Party Correspondence. However, the Council was mindful that, in considering the FPP's determination, it should treat with caution any material which

was not before the FPP and which the parties had not seen. The Third Party Correspondence was therefore before the Council as background material, rather than forming part of its consideration of specific issues.

### **Conflicts of Interest**

- 6 Mr North declared that he is a lay assessor for the GMC but had no involvement in Dr Biswas' case. He also said that he had worked briefly with Dr Rhodes.
- 7 The members declared that they had no conflicts of interest and none was apparent.

### **Jurisdiction**

- 8 The members noted that the purpose of the meeting was to decide whether to exercise its statutory discretion to refer to the High Court under Section 29 of the NHS Reform and Health Care Professions Act 2002 ("the 2002 Act") the FPP's decision in respect of Dr Biswas.
- 9 It was agreed that the CHRE had the power to refer this case under Section 29(4)(b) of the 2002 Act if they considered that the decision of the FPP was unduly lenient and it was desirable so to refer for the protection of members of the public.
- 10 The CHRE's time for referring the matter under Section 29 will expire on 11<sup>th</sup> August 2005.

### **Matters noted by the meeting**

- 11 The members noted the Guidance note for members attending a case meeting of Council members.
- 12 At the time of matters alleged Dr Biswas was 76 years old and had been working as a locum general practitioner at the Shah Jalal Medical Centre, Hessel Street, London E1; a position he has held for approximately eight years.
- 13 The heads of charge against Dr Biswas were in summary that that on the morning of 4<sup>th</sup> September 2003 he was consulted by a patient (Mr AM) who was suffering from constipation, vomiting and severe abdominal pains.
- 14 During the consultation he failed to obtain an adequate history from Mr AM, his mother and wife, who were also present at the consultation, the medical records or the treating consultant, Dr Curtis at the East London and City Mental Health Trust despite being advised to do so by the GP Principal, Dr Hussein.

- 15** During the consultation there was a failure to examine adequately Mr AM and thereby Dr Biswas failed to place himself in a position to assess adequately Mr AM's condition and treatment needs such that he made an inappropriate diagnosis of urinary tract infection and gastritis.
- 16** It was alleged that there was a failure to give Mr AM and his family adequate information about his diagnosis, management and treatment and that although Dr Biswas considered the possibility of the patient's later admission to hospital, he failed to refer Mr AM to hospital immediately.
- 17** It was alleged that there was a failure to provide a referral note to take to the hospital and that Dr Biswas failed to make any adequate contemporaneous record of the consultation.
- 18** In the event Mr AM was declared dead at approximately 4.35pm the same day and a subsequent PM report gave the cause of death as being due to an ischaemic bowel due to impacted faeces.
- 19** It was alleged that Dr Biswas later altered the medical records of the consultation and that his conduct in this particular regard was dishonest.
- 20** It was not expressly alleged that Dr Biswas conduct was dishonest generally, but only in relation to the allegation that he altered the medical records.
- 21** The FPP received evidence on behalf of the GMC from:-
- Ms AB – deceased's mother
  - Ms SB – deceased's sister
  - Ms MoB (statement read) – deceased's sister
  - Ms MaB (statement read) – deceased's sister
  - Mr JM (statement read) – deceased's brother
  - Professor David Curtis (statement read) - treating Consultant Psychiatrist
  - Dr Derek Hicks (statement read) - treating Specialist Registrar in Emergency Medicine
  - Dr Ben Essex – the medical adviser to the North East London Strategic Health Authority
  - Professor Marc Winslet - Professor and Consultant Surgeon, expert witness
  - Hilary Pritchard (statement read) - handwriting expert
  - Dr Martin Rhodes - GP, expert witness

and on behalf of Dr Biswas from:

- Dr Binur Choudhry – character witness
- Dr Biswas himself

- 22** On 14<sup>th</sup> July the FPP Panel delivered their determination on findings of fact and on 15<sup>th</sup> July 2005 delivered their determination on serious professional misconduct. They found some but not all the heads of charge admitted or proved and determined that Dr Biswas was not guilty of serious professional misconduct.
- 23** The FPP in general terms preferred the evidence of Mrs AB and Dr Essex to that of Dr Biswas. It had a consistency and credibility that at times his evidence lacked. [Day 4/5].
- 24** The admission to Dr Essex [Day 1/54] (subsequently denied in evidence) that as a locum, Dr Biswas was not expected to, and did not, review the records.
- 25** That Mr AM had been suffering from severe abdominal pain, constipation and vomiting when he attended.
- 26** That although Dr Biswas knew Mr AM to be a schizophrenic patient and under the care of a Consultant Psychiatrist, he had not been able to obtain a proper history or ascertain the current medication of Mr AM from the records, Mr AM or his family, the hospital or Dr Biswas' principal, Dr Hussein.
- 27** The FPP found that as Dr Biswas had not obtained information from any other source as to the medication prescribed, he should have taken steps to contact the hospital before prescribing for Mr AM.
- 28** Mr AM was taking Clozapine, a potential side effect of which was accepted by Dr Biswas as causing constipation with risk of bowel obstruction. [Day 2/71]
- 29** On Dr Biswas' own evidence he was advised at the end of the consultation by Dr Hussein that Mr AM was on Clozapine. [Day 2/57]. It was also noted that on his own evidence Dr Biswas recognised that this required an immediate referral to hospital. [Day 2/58]
- 30** The members noted that the records contained several references to a prescription of Clozapine which should have been available to Dr Biswas with the information readily apparent.

- 31** The FPP found that Dr Biswas had failed to carry out an adequate examination of Mr AM in that he did not inspect, auscultate or even expose the abdomen, carry out a urine test or a rectal examination.
- 32** The FPP found that Dr Biswas had therefore failed to place himself in a position to assess adequately Mr AM's condition and treatment needs and went on to diagnose inappropriately a urinary tract infection without having tested the urine or elicited sufficient signs and symptoms.
- 33** The FPP found that the diagnosis of gastritis was not inappropriate as vomiting once, abdominal pain and slight epigastric tenderness could indicate a diagnosis of gastritis.
- 34** That Dr Rhodes had given evidence that if a patient was in severe abdominal pain with an uncertain cause then admission straightaway to hospital would be appropriate. [Day 2/22].
- 35** That Professor Winslet advised that the symptoms could be disproportionate to the physical signs and that it was possible that the physical signs may have been relatively subtle. [Day 2/7].
- 36** That Professor Winslet also advised that a practitioner would probably be able to feel the impacted faeces and gas upon palpation and percussion of the abdomen. [Day 2/6]
- 37** The FPP found that they could not be certain that the condition required immediate referral or that Dr Biswas could have been reasonably expected to diagnose Mr AM's illness or assess its potential severity at the time of the examination.
- 38** The FPP found that there was a failure to give Mr AM and his family adequate information about his diagnosis, management and treatment.
- 39** The FPP found that there had been no failure to refer Mr AM to hospital immediately on the grounds that they could not be certain that at the time of consultation the patient's condition required immediate referral, although they accepted that he had advised the family to take him to hospital "if necessary". [ Day 5/2 Paragraph G]
- 40** The FPP found that Dr Biswas had failed to provide the patient or his family with written information to present to the hospital to assist with the management of the patient.
- 41** The members noted that Dr Biswas had, as a matter of fact, failed to refer the patient to hospital immediately.

- 42** The FPP found that the record of the consultation made by Dr Biswas was not adequate because it was inaccurate rather than because it was not contemporaneous but made no finding as to when the record was made.
- 43** The FPP also found that the medical record had subsequently been altered by Dr Biswas in a minor inconsequential way, but could not be satisfied as to when this had taken place or that his actions in this regard were dishonest.
- 44** Mr AM returned home but his condition deteriorated that day, an ambulance was called and he was admitted to hospital at approximately 4.20pm. He died at approximately 4.35pm.
- 45** The FPP had found that there was no evidence that Dr Biswas' failings had caused any harm. [See Day 4/15 and 16]. The members noted that no evidence was sought on this aspect either in the report of Professor Winslet or in examination of the experts.
- 46** Dr Biswas, in an interview with Dr Essex on 22<sup>nd</sup> September 2003, had said that "there was nothing to be learned from this case, and he would not do anything different. He felt his performance was very good, maximum, could not have done better". [Day 1/54].
- 47** The members also noted that it was accepted on his behalf by his Counsel that he had been negligent in the care of Mr AM [Day 4/13].
- 48** That Dr Hussein did not give evidence when he could have given assistance on the Clozapine issue and the question of an immediate referral.
- 49** The FPP had wished to call evidence from the practice receptionist [Day 4/2 and 3] but in light of the practical difficulties in tracing her and accepting the legal assessors' concerns on natural justice and fairness, did not pursue the point.
- 50** That Dr Biswas had been suspended by the PCT since early October 2003 and then by the GMC Interim Orders Committee since November 2003, and had remained suspended until the determination was made on 15<sup>th</sup> July 2005.
- 51** The members noted that the Shah Jalal Medical Centre had been put on "special measures" by the PCT since 2001, and that Dr Biswas did not have his "own list" of patients as he claimed [Day 2/49]; although this information had not been before the FPP but was advised to the CHRE by Dr Douglas Russell, Medical Director of Tower Hamlets PCT by letter dated 2<sup>nd</sup> August 2005.

- 52 The members noted that Dr Biswas claimed that the Shah Jalal Medical Centre was well organised and a “well managed practice, one of the best practices in East London”. [Day 2/50]
- 53 The FPP were aware that it was in fact a “failing practice”, [Day 4/16] but made no enquiries about the extent to which it was unsatisfactory.
- 54 The members noted the evidence of Dr Choudhry and that this evidence had been given before the FPP considered the issue of serious professional misconduct, even though this went all or partly to mitigation only.
- 55 The FPP had found that his conduct, other than in relation to the alteration of the medical records, was inappropriate, failed to provide sufficient respect to Mr AM or his family, and was not in the best interests of the patient. They found that Dr Biswas had departed from the standards of Good Medical Practice.
- 56 The FPP found that Dr Biswas’ failings were insufficiently serious to amount to serious professional misconduct.
- 57 The members noted that in reaching their decision on serious professional misconduct, they had regard to the fact that this was a single isolated incident and also that it had been conceded that Dr Biswas’ care of Mr AM had been negligent.

### **Members’ Consideration**

- 58 Taking account of all the matters they noted above, the members considered that the case raised the issue of public protection in terms of :-
- (1) The extent to which Dr Biswas’ actions caused or could have caused direct or indirect harm to patients and members of the patient’s family.
  - (2) The extent to which Dr Biswas would be a risk to patients if he returns to practise without assessment and retraining to ensure that he is fit to practise.
  - (3) Maintaining the reputation of the profession and public confidence in regulation.
- 59 The FPP did not take proper account of Dr Biswas’ apparent lack of insight into his action in his response to Dr Essex and the general rejection of his evidence in favour of that by Mrs AB and Dr Essex, even though it was accepted through his Counsel that his actions would have amounted to negligence.

- 60** The members considered that the FPP were wrong to conclude that Dr Biswas failed to refer Mr AM to hospital immediately on the basis that his condition may not have required immediate referral.
- 61** In this regard the FPP did not take proper account of their finding that Mr AM had been in severe abdominal pain; there had been a failure to carry out an adequate examination; there had been a failure to elicit that he was on Clozapine; Dr Rhodes' evidence that a referral to hospital straightaway was necessary; and, that on Dr Biswas' own evidence he was aware that Mr AM was on Clozapine and therefore needed immediate referral.
- 62** The FPP did not properly assess the consequences of the inadequate abdominal examination by Dr Biswas who had not therefore put himself in a position to establish if the physical signs may have been "relatively subtle" as described by Professor Winslet, or if there were signs of impacted faeces or gas.
- 63** The FPP did not properly assess the cumulative effect of the failings by Dr Biswas in relation to Good Medical Practice when considering if his actions amounted to serious professional misconduct.
- 64** The members considered that by reference to the standards set out in Good Medical Practice, the evidence of Dr Essex, Professor Winslet and Dr Rhodes, the actions and omissions by Dr Biswas fell seriously below the standards to be expected of a practitioner.
- 65** The members considered that Dr Biswas had misled the FPP in his evidence that the Shah Jalal Medical was well managed when in fact it was a "failing practice" under "special measures".
- 66** In this regard the members considered that if the FPP had been aware of this fact it would have been mandatory to make further enquiries to see if there were issues that would give rise to a possible repetition of these events.
- 67** The members considered that the evidence given by Dr Biswas in relation to the immediate referral to hospital was wrong and was misleading.
- 68** The members considered that the FPP had failed to give reasons as to why they had found at head of charge 12b) that the later alteration to the record was not dishonest.
- 69** The members considered that there had been an alteration to Mr AM's medical records and that to represent this as contemporaneous was dishonest.

- 70** The members considered that the failings were sufficiently serious such that they should have amounted to serious professional misconduct.
- 71** The FPP were wrong to conclude that there had been no direct harm caused by the failures of Dr Biswas and thereby rely upon this in reaching a conclusion that there was no serious professional misconduct. An immediate referral would probably have meant that subsequent deterioration in Mr AM's condition would have occurred in hospital and therefore been much less distressing for Mr AM and his family. Further there were insufficient evidence available to reach a conclusion on the extent to which an earlier referral would have altered the timescale or extent of the deterioration.
- 72** The FPP were also wrong in failing to inquire of the experts the extent to which Dr Biswas' failings caused harm to Mr AM.
- 73** The members considered that the FPP was wrong to have allowed the evidence of Mr Choudhry which went to personal mitigation, before considering the issue of serious professional misconduct.
- 74** The FPP was wrong when stating that there had been no serious professional misconduct to rely upon the incident being "isolated" as well as accepting as relevant the concession that Dr Biswas' treatment had been negligent. Those were matters that should have been relevant to sanction only.
- 75** In light of the matters set out above the members considered that if a finding of serious professional misconduct had been made then a period of suspension with resumed consideration to determine his ongoing fitness to practise would have been appropriate.
- 76** It would be appropriate for the High Court to remit the case to a FPP for reconsideration of the case and, in accordance with the Indicative Sanctions Guidance, the FPP must ensure that the practitioner is safe to practice and that any identified failures in standards are remedied.

## **Conclusions**

- 77** The case raises issues of public protection. It is desirable for members of the public for the Council to refer the case to the High Court under section 29(4)(b) of the 2002 Act.
- 78** On the basis of the FPP's findings and the evidence before it, the FPP's decision to find Dr Biswas not guilty of serious professional misconduct was manifestly inappropriate and unduly lenient.

- 79 It would be appropriate for the High Court to remit the case to the FPP for a redetermination.
- 80 In light of his failures the members considered that an assessment of his competence would be desirable and in the absence of an assessment of Dr Biswas' risk to the public, the members considered that the only sanction sufficient to protect the public would be suspension with resumed consideration.
- 81 The Council should invite the GMC to agree that there was serious professional misconduct and the High Court should remit Dr Biswas' case to a FPP for redetermination. In the event that an alternative to remittal is recommended, the members reserved to themselves the decision whether or not to approve it.
- 82 The meeting concluded that the case should be referred to the High Court. If the GMC agrees that the FPP's decision was unduly lenient and that there was serious professional misconduct, then subject to the agreement of appropriate terms, it would be appropriate to invite the High Court to remit Dr Biswas' case for redetermination.

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**Peter North (Chair)**

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**Dated**

Time of commencement of meeting: 16.15

Time of conclusion of meeting: 17.35