COUNCIL FOR HEALTHCARE REGULATORY EXCELLENCE
NOTE OF SECTION 29 CASE MEETING ON 29 NOVEMBER 2005 BY TELEPHONE

Re: Dr Dilip Kumar Chhotabhai Patel

PRESENT: Hew Mathewson (Chair)
Peter North
Frances Dow

IN ATTENDANCE: Professor Julie Stone (Deputy Director, CHRE)
Mike Andrews (Fitness to Practise Manager, CHRE)
Briony Mills (Fitness to Practise Officer, CHRE)
Len Murray (Associate, Baker & McKenzie, Legal Advisor)
Andrew Hill (Associate, Baker & McKenzie, Observer)
Ruth Tomlinson (Section 29 Legal Secondee, CHRE)

1. DEFINITIONS

In this note, the following abbreviations will apply:

"CHRE"	Council for Healthcare Regulatory Excellence
"Dr Patel"	Dr Dilip Kumar Chhotabhai Patel
"Dr Alexander"	Dr Rosemary Alexander
"SPM"	Serious Professional Misconduct
"The 2002 Act"	NHS Reform and Healthcare Professions Act 2002
"The Council"	CHRE as constituted for this Section 29 meeting
"The GMC"	The General Medical Council
"The FPP"	The Fitness to Practise Panel of the GMC
"*Ghosh*" case	Ghosh [1982] Q.B. 1053
"*Giele*" case	Giele v GMC [2005] EWHC 2143
"*Truscott/Ruscillo*" case	The Court of Appeal decision in the CHRE case of Truscott/Ruscillo [2005] 1 WLR 717

2. THE FPP'S DECISION

The meeting considered whether the decision of the FPP of the GMC on 8 October 2005, finding Dr Patel guilty of SPM and issuing him with a four month suspension with no resumed hearing, should be referred to the High Court under section 29 of the 2002 Act.

The charges which Dr Patel faced before the FPP concerned three different areas of his practice: substandard treatment (of two elderly patients); requesting the dispensing of drugs before issuing prescriptions; and claiming payments for contraceptive services that were not provided.

3. DOCUMENTS

The following documents were before the Council:

- Transcript of the hearing dated 25 July 2003 to 3 August 2005;
- Testimonials and a Petition of patients in defence of Dr Patel;
- Determination of the FPP dated 8 October 2005;
- The Report prepared by Baker & McKenzie dated 24 November 2005;
- Section 29 Case Meeting Manual;
- The GMC's Indicative Sanctions Guidance (April 2005);
- Section 29 Process and Guidelines (November 2004).
- Emails and correspondence from Dr Alexander to CHRE.

4. CONFLICTS OF INTEREST

The Chair asked whether the members had any apparent conflicts of interest. Peter North informed the meeting that he is a lay assessor for the GMC, but that he has had no involvement with the case of Dr Patel. No conflicts of interest were registered.

5. MATTERS NOTED BY THE COUNCIL

The Council noted the matters set out below:

5.1 The exhibits before the hearing

The Council was informed that the remaining exhibits had arrived from the GMC approximately an hour before the commencement of the meeting, but were advised that they did not contain anything that would have a material impact on the meeting. Included in the exhibits was the letter dated 18 February 2004 from Dr Patel's solicitors to the Fitness to Practise Directorate of the GMC. The letter refers to complaints as to Dr Patel's treatment of three patients, rather than two (as set out in the heads of charge against Dr Patel). The Council was informed, with reference to Dr Alexander's letter of 6 November 2001, that the complaint in relation to the third patient did not get through the Preliminary Proceedings Committee stage.

5.2 Jurisdiction

The Council was advised that it had jurisdiction to consider the case of Dr Patel under section 29 of the 2002 Act.

5.3 The FPP's findings of fact

Dr Patel is, and was at all material times, a practising General Practitioner, running his own practice at Civic Medical Centre. Dr Patel was also in charge of three care homes: Ogilvy Court Nursing Home ("Ogilvy Home"); Shivram Nursing Home ("Shivram Home"); and Shakti Nursing Home ("Shakti Home"). He also had patients within Kent House Residential Home ("Kent House") and Greenways Residential Home ("Greenways").

In 2000 Dr Patel entered into partnership with Dr Alexander, who also ran her own practice at Millfield Surgery. As a result of this partnership, Dr Patel took over administrative control of Millfield Surgery and Dr Alexander became a salaried partner. The Council was informed that Dr Alexander is the complainant in this case, and her initial complaint was made to the GMC after she discovered discrepancies in Dr Patel's claims for contraceptive services. Dr Alexander has also been in correspondence with CHRE and the members had been provided with copies of Dr Alexander's correspondence.

The Council considered the following outline of the FPP's findings of fact in the case:

(a) Substandard treatment

The FPP found that on 25 June 2001 Dr Patel failed to attend to an elderly patient of his, who was resident at Kent House (Patient A), at the request of the Kent House staff. Several days earlier, Dr Patel had diagnosed Patient A as having a possible urinary tract infection and prescribed antibiotics. Dr Patel had also prescribed an antihistamine for Patient A without having further seen her. When failing to attend to Patient A, on 25 June 2001, Dr Patel also failed to provide a diagnosis of Patient A to nursing staff at Kent House and to arrange for another medical practitioner to visit Patient A. Patient A was seen by Dr Alexander the following day, admitted to hospital, and died on 27 July 2001. There was no suggestion before the FPP that Patient A's death was a result of Dr Patel's treatment.

The FPP found that on 26 July 2001 Dr Patel visited an elderly patient of his at Greenways (Patient B), who had a history of diabetes. When attending to Patient B, Dr Patel did not carry out any blood tests or inform the staff of Greenways of any diagnosis. Dr Patel decided that it would be unfair to sent Patient B to hospital and that she should be given "tender, loving care." The implication was that Patient B did not have long to live. Blood tests taken by the district nurse shortly after Dr Patel's visit revealed that Patient B was going into a diabetic coma. Patient B was then admitted to hospital.

The FPP found that Dr Patel's actions in respect of both Patient A and Patient B fell seriously short of accepted standards.

(b) Requesting the dispensing of drugs before issuing prescriptions

The FPP found that in 2000, Dr Patel and his brother (a pharmacist) devised a system of supplying medications to the care homes that Dr Patel was in charge of: Ogilvy Home; Shivram Home; and Shakti Home. As a result of this system, Dr Patel authorised his brother's pharmacy to dispense drugs without issuing a prescription where: it was not an urgent case; and the prescription form was not supplied within 72 hours of the request to dispense the drug. Such actions were contrary to Dr Patel's NHS Terms of Service and the FPP found Dr

Patel's behaviour to be below, but not seriously below, accepted standards.

(c) Claiming payments for contraceptive services that were not provided

The FPP found that on a number of occasions between 2000 and 2002, Dr Patel (and/or his practice) claimed payments for the provision of contraceptive services to patients when contraceptive services had not in fact been provided. Such actions were contrary to the arrangement for Dr Patel to claim payments for services provided by his practice as set out in the Statement of Fees and Allowances. The FPP found that the majority of the claims made by Dr Patel and/or his practice were dishonest and fell seriously short of accepted standards.

5.4 The FPP's finding of SPM

As a result of the findings of fact, as set out in 5.3 above, Dr Patel was found guilty of SPM and the FPP imposed a suspension of 4 months with no resumed hearing. In its Determination the FPP stated that:

"…it would be proportionate to suspend your name from the medical register for a period of four months."

The Council considered the FPP's reasons for not imposing the maximum period of suspension of 12 months, set out in its Determination:

"It understands that [Dr Patel] repaid in full the monies obtained by [his] dishonesty and there has been no evidence of repetition of such behaviour.

[Dr Patel has], further taken steps to improve [his] practice through attendance on courses to improve [his] clinical skills.

It has further taken into account the impressive testimonials demonstrating high respect from both [Dr Patel's] colleagues and patients.

It takes into account the long passage of time since these events occurred and that there has been no evidence of further dishonesty or of poor clinical care since that time."

The Council also considered the FPP's reasons for not ordering a resumed hearing:

"The Panel considers that it would not be necessary to have a review hearing. The Panel consider that given the nature of the charge found proved against [Dr Patel] and the improvements that [Dr Patel has] made to [his] practice that [Dr Patel] will, following this relatively short period of suspension, be safe to resume unrestricted practice."

6. SECTION 29 OF THE 2002 ACT

6.1 Public protection

The Council did not consider that the public protection issues raised by the conduct of Dr Patel were sufficient to satisfy the criteria in section 29 of the 2002 Act. In coming to this decision, the Council considered the guidance in the *Truscott/Ruscillo* case, the matters set out in 5.3 and 5.4 above and the following matters:

(a) The FPP had to an extent adopted a compartmentalised approach to the issue of public protection, by considering each area of Dr Patel's practice separately. Such an approach might indicate that the FPP considered public protection with a narrow focus on separate matters, without also taking a broader view, i.e. at some stage also considering the overall effect that Dr Patel's conduct has in public protection terms. The Council considered public protection in respect of the separate matters and also considered the effect of looking at all three areas of Dr Patels's practice together.

(b) In relation to Dr Patel's performance in respect of his treatment of Patients A and B, the Council noted that the FPP found that Dr Patel had taken steps to improve his clinical skills and that there had been no evidence of poor clinical care since the incidents in question. Whilst the FPP might have explored these issues further in its reasons, these issues did not raise sufficient public protection concerns such that the case should be referred to the Court.

(c) The Council considered the possibility of dishonesty on Dr Patel's part, with specific reference to the test of dishonesty in the case of *Ghosh* including considering what "reasonable members of the public might think". The FPP had also applied the *Ghosh* test and found Dr Patel to be dishonest in claiming payments for contraceptive services that had not been provided. In light of this finding, the Council considered whether the FPP had adequately addressed public protection. The Council considered the factors that the FPP balanced against this finding of dishonesty, which were those set out at paragraph 5.4 above in addition to the following point made in the FPP's Determination:

"…the dishonesty related to a period of four years ago when [Dr Patel] and [his] practice staff seemed uninformed as to what constituted the provision of contraceptive services. The Panel has borne in mind the practice of [Dr Patel's] colleagues at that time and that the NHS authorities both nationally and locally have not taken any action against [Dr Patel]."

The Council agreed that the reasons given by the FPP could have been stronger. However, given that the FPP had found

that Dr Patel had not been dishonest since the incidents in question and had heard first hand the evidence given by Dr Patel, it would be difficult for CHRE to challenge the FPP's view on the appropriate sanction to reflect the dishonesty as one it could not have reasonably imposed.

(d) The FPP had considered the issue of proportionality, and had also attached weight to the testimonials from various practitioners and patients of Dr Patel. The Council expressed concern about the weight the FPP had placed on the testimonials and the petition in support of Dr Patel. Whilst the Council considered too much weight may have been put on these matters, the Council took account of the *Giele* case which allows the FPP to give substantial weight to testimonial evidence where it is appropriate to do so.

(e) The Council considered the likelihood of recurrence of similar behaviour by Dr Patel. The FPP, in its Determination, had focused on the offences that had occurred and how these had been addressed by administrative changes in Dr Patel's practice. In considering these administrative variations to Dr Patel's practice, the Council noted that the changes had occurred recently. Whilst the Council thought the FPP could have given more consideration to this issue, having heard Dr Patel and other witnesses first hand, and given the matters noted above, the FPP's view on the likelihood of repetition could not be challenged as being a view it could not have reasonably reached.

(f) The Council went through the Risk Factors (from CHRE's risk assessment document) that were relevant to the areas of Dr Patel's practice under review: dishonesty in relation to fraud/theft; inappropriate prescribing/dispensing of drugs and appliances; performance; and poor record keeping. The Council considered that each of the areas did not raise sufficient public protection issues to satisfy the section 29 criteria.

6.2 Resumed hearings

The Council considered whether it would have been appropriate for the FPP to have ordered a resumed hearing. The Council considered the FPP's reasoning for deciding not to make this direction, as set out at paragraph 5.4. The Council agreed that a resumed hearing would have been appropriate in this case but that given the matters noted above not ordering one did not raise sufficient public protection issues to satisfy the section 29 criteria.

6.3 Conditional registration

The Council considered conditions may have been appropriate in the case of Dr Patel. It might also have been appropriate to ask if Dr Patel would have

agreed to some form of performance assessment as this cannot be imposed under the GMC's previous rules which applied to this case. However, given the matters noted by the Council, the absence of these measures was not sufficient to satisfy the section 29 criteria.

6.4 Undue lenience

The Council accepted advice that, since they had concluded that the case did not raise sufficient concerns regarding public protection, it was not necessary to consider undue lenience of sanctino as a separate issue.

7. **CONCLUSION**

The Council concluded that, based on the matters set out in sections 5 and 6, they had not identified sufficient public protection issues to satisfy the section 29 criteria. The matter therefore could not be referred to the High Court.

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HEW MATHEWSON (Chair) DATE