

Fitness to Practise appeal

A doctor who sexually assaulted a nurse during a night shift

Background/context

This case involved appealing a decision by the Medical Practitioners Tribunal Service (MPTS) in relation to a senior doctor who sexually assaulted a nurse at 3 am 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.

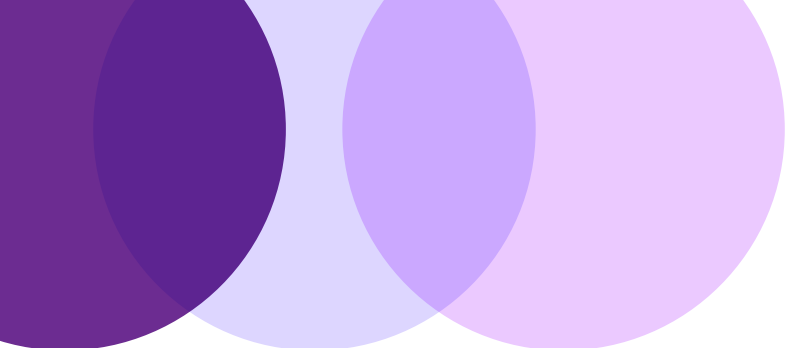
The tribunal decision

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





Fitness to Practise case study



A doctor who sexually assaulted a nurse during a night shift

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.

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.