In reply please quote ref: E1-1103285179

17 September 2015

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General Medical Council

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Dear Mr Thomas

Complaint about Dr Manoj Kulshrestha and Dr Rajan Osmond Paul

You asked us to review our decision to close your complaint about Dr Kulshrestha and Dr Paul with no further action.

I am writing to inform you that, having carefully considered your request, the Assistant Registrar is of the view that the decision to close the complaints should not be reviewed. This letter sets out the reason for her decision.

Can we start by saying that we realise that it must seem rather insensitive that we refer to the law and our rules when we are dealing with a complaint about such personal clinical matters. We refer to these only so that we can fully explain what we can and cannot do and why we have made the decisions we have.

Rule 12

Any review of a decision must be carried out under Rule 12 of our Fitness to Practise Rules. This allows the Assistant Registrar, through authority delegated from the Registrar, to review all or part of certain specified decisions on her own initiative or on the application of any party.

There are two alternative grounds for such a review. Firstly, under Rule 12(2) (a), the Registrar has the power to undertake a review if he has reason to believe that the original decision '*may be materially flawed (for any reason) wholly or partly*'. Secondly, under Rule 12(2) (b), the Registrar has the power to undertake a review if he has reason to believe that *there is new information which may have led, wholly or partly, to a different decision*.

That said, even if the Registrar has reason to believe that a decision taken at the investigation stage of the GMC's Fitness to Practise procedures may be materially flawed

referred to, upon which you relied to ask your GP to prescribe steroids, has not been accepted by the ophthalmology community. The Assistant Registrar noted that if a doctor is of the view that steroids can cause danger to a patient, and the use of steroids for such treatment is not an accepted practice, then a doctor cannot be forced to prescribe at the request of a patient and such a refusal would not raise concerns about the doctor's fitness to practise. The Assistant Registrar is satisfied that Dr Kulshrestha was entitled to contact the GP, given his concerns, and it was open to you to seek a second opinion if you did not agree with the approach of the doctors in the eye clinic.

In relation to the length of time in the MRI scan, the Assistant Registrar noted that this was performed by a radiologist. Even if a doctor did request that a patient undergo a scan for a certain amount of time, it is the radiologist who is the expert in this area and who conducts the scan. As such, the Assistant Registrar is of the view that Dr Kulshrestha cannot be criticised for the time that it has taken for the radiologist to perform the scan and there is no potential material flaw with this aspect of the decision.

Taking all of the above into account, the Assistant Registrar is satisfied that there is no ground for a review under this part of the Rule as there is nothing to suggest that the decision may be materially flawed.

Whether there is new information which may have led to a different decision

The Assistant Registrar noted that in order to form a ground for review under this part of the Rule, any information must be new in that we were not aware of it previously, and it must also have the potential to alter the original decision.

The Assistant Registrar noted that since the decision to close your complaint you have provided further details of your concerns and have clarified your reasons as to why you think we should consider your allegation further.

The Assistant Registrar is of the view that although you have provided further details about your concerns, this relates to information which was contained in your original complaint. This does not alter the substance and character of your complaint which was considered by the decision maker at the time and so is not new information for the purposes of this part of the rule.

The Assistant Registrar noted that you have provided abstracts from journal articles in support of your view that the medical Case Examiner's view is incorrect. The Assistant Registrar noted that we do not have copies of the full articles and it is unclear from the information you have provided whether the articles have been critically reviewed or accepted by the ophthalmology community. As such, it is unclear whether the studies have been found to be reliable and whether the articles can be relied upon.

or that there is new information which may have led to a different decision, a review can only be undertaken if the Registrar is also of the view that one or more of the grounds specified in Rule 12(3) of the Rules are also satisfied, namely that such a review is *necessary for the protection of the public; necessary for the prevention of injustice to the practitioner; or otherwise necessary in the public interest.*

Whether the decision may be materially flawed

The Assistant Registrar noted that when we considered your complaints the decision maker applied the correct test that is whether the allegations, if proven, could call into question the doctor's fitness to practise. Or to put it another way, if the allegations are true would we need to put restrictions on the doctor or limit the way they work. The decision maker at triage concluded that this was not the case and nothing that therefore warranted investigation by us.

The Assistant Registrar noted that when we considered your complaint, we obtained advice from a medically qualified Case Examiner. The Case Examiner was satisfied that there was no risk in taking Lumigan eye drops at bedtime and advised that the eye drops could not cause NAION, that there are no treatment options currently for NAION, that steroids can be used to treat AION but not NAION, that there is no proven link between an MRI and headaches, and that an MRI is not ordered by length as it is dependent on how long the radiographer takes to complete the process.

The Assistant Registrar noted that you disagree with the decision to close your complaint, however she is satisfied that given the information available to us the decision is reasonable and one which the decision maker was entitled to reach.

The Assistant Registrar noted that you disagree with the Case Examiner's advice and she has carefully considered your concerns about the use of Lumigan drops at bedtime. However, when considering the evidence available to the decision-maker at triage, including the advice in the British National Formulary which states that one drop of Lumigan is to be instilled into the affected eye once daily in the evening, the Assistant Registrar is satisfied that there is nothing to suggest that decision may be materially flawed.

The Assistant Registrar noted that there is no evidence, aside from your assertion, that Lumigan must not be given at bedtime or that this can cause NAION. As such, she is not of the view that relying on the medical Case Examiners advise may render the decision materially flawed.

The Assistant Registrar noted that you have said that you were denied the use of steroids. However, she noted that the response from the Health Board states that the paper you

referred to, upon which you relied to ask your GP to prescribe steroids, has not been accepted by the ophthalmology community. The Assistant Registrar noted that if a doctor is of the view that steroids can cause danger to a patient, and the use of steroids for such treatment is not an accepted practice, then a doctor cannot be forced to prescribe at the request of a patient and such a refusal would not raise concerns about the doctor's fitness to practise. The Assistant Registrar is satisfied that Dr Kulshrestha was entitled to contact the GP, given his concerns, and it was open to you to seek a second opinion if you did not agree with the approach of the doctors in the eye clinic.

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As such, the Assistant Registrar is not of the view that this is new information which may have led to a different decision.

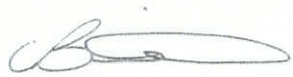
Although we accept that you disagree with the decision, the Assistant Registrar concluded that this ground for review is not met.

Conclusion

In light of the above the Assistant Registrar concluded that there are no grounds for a review under Rule 12 and the original decision must stand.

I appreciate that you are likely to be disappointed by the Assistant Registrar's conclusions but I would like to assure you that she has considered your request for a review including all of the information and the comments that you have made very carefully.

Yours sincerely



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