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Should doctors be suspended for breaking the law?

Sarah Benn, a former GP, was suspended by the MPTS after an arrest for her involvement in climate protests, raising the question of when and whether doctors in such cases should be sanctioned

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The justness of a law is the business of parliament, not the regulator—Andrew Hoyle, General Medical Council

First, it's important to clarify that not all instances of a doctor breaking the law will result in referral to a tribunal by the General Medical Council (GMC).

However, if a doctor receives a custodial sentence following a criminal conviction, we must refer the case to the Medical Practitioners Tribunal Service for a hearing. This is required in law and is not something we at the GMC can exercise any discretion over.

There are other occasions when a doctor may have broken the law but we conclude that an investigation, or a referral to a tribunal, isn't necessary or in the public interest. The circumstances around each case are thoroughly considered before a decision is made as to how to proceed. We have a legal duty not only to protect, promote, and maintain the health, safety, and wellbeing of the public but also to promote and maintain professional standards and public confidence in doctors.

The recent case of Sarah Benn has sparked debate, partly because of a perception that the GMC referred her to a tribunal for taking part in peaceful protests. In reality the referral was made because she repeatedly breached an injunction order, was found to be in contempt of court, and received an immediate custodial sentence. In addition, Benn made it clear to the court that she would continue to take similar action and therefore showed minimal evidence of remediation.

Benn was referred to a tribunal because of those facts and circumstances, not because of the cause she chose to protest about. All doctors have a right to their personal opinions, and nothing in the GMC's *Good Medical Practice* prevents doctors from exercising their rights to lobby the government, campaign on issues close to their hearts, or take part in public protests. But when protesting involves breaking the law, doctors—in common with people in many other regulated professions—should understand that consequences may follow.

Risk to public confidence

It's been suggested that doctors who break the law in an act of civil disobedience should be exempt from sanction if the law is unjust. But consideration of the justness of a law is the business of parliament, not the regulator. It would be wholly inappropriate and a matter of grave concern if the GMC was claiming the moral authority to sit in judgment on this.

Some people believe strongly that an action carried out in personal time, away from work, shouldn't cross

the regulator's desk. But the law that governs what the GMC does says that because of the privileged and trusted role doctors have they must hold themselves to a higher standard than members of the general public, in both their professional and private lives. That's why some incidents are found to pose a risk to public confidence while also being found to have no effect on a doctor's professional practice.

It's been argued that doctors involved in climate change protests are acting in the public's interest, rather than against it, and that they have a moral imperative to protect patients and the public from climate harm. Without question, climate change poses a significant threat to health and wellbeing, and this is something the GMC has been much more explicit about in our updated version of *Good Medical Practice*.¹ But an erosion of the public's trust in doctors, and in the system that regulates them, could also have significant consequences for public health.

Doctors aren't above the law—and even the most strongly held convictions can't elevate them to that position. They must always consider how their actions may be perceived by the public and how they may affect wider confidence in the profession. Most of all, they should remember that if their conscience leads them to break the law it will be their conduct and its consequences—rather than their cause—that will be under scrutiny.

The GMC must avoid conflating the rule of law with rule by law—Rammina Yassaie, medical doctor and ethicist

The first question to ask is whether the law that has been broken is a just law. Recently the UK's medical regulator, the GMC, issued an apology for having suspended doctors convicted for homosexuality under homophobic laws, which have since been repealed and are now widely seen as unjust. The GMC admitted to having “compounded [the] harm” these doctors experienced by wrongly ending their careers.²

By suspending Sarah Benn after she peacefully protested outside an oil terminal, the GMC seems to be compounding the harm once again.³ Benn had broken a High Court injunction imposed by Valero, a US based oil company. But the use of privatised civil law to quash necessary and peaceful actions that sound the alarm on the existential threat of climate devastation can't reasonably be argued to be a moral or just use of the law—especially when fossil fuel companies continue to profit obscenely, while knowingly destroying the planet and in turn the health of those who live on it.⁴

Yet the GMC saw fit to suspend Benn—not because she engaged in climate activism but because she broke the law, which the regulator argued (without supporting evidence) erodes trust in the medical profession.⁵

Civil disobedience is a core part of political activism: the philosopher John Rawls argues that it strengthens democracy, either by breaking unjust laws themselves or by breaking minor laws to disrupt and draw attention to greater injustices.⁶ Indeed, history tells us that positive social change frequently occurs on the back of actions deemed unlawful at the time. Public transport segregation was written into US law when Rosa Parks notoriously refused to give up her seat on a bus. If Parks had been a doctor, should she have been suspended for this?

Medical history exudes examples where activism has led to profound change, including medical women imprisoned for suffrage activities—a cause we now all support.⁷ Arguably, patients' trust in doctors, based on their trust based moral relationships, is upheld and strengthened when doctors advocate for action on important causes, particularly when these relate to health.⁸ Moreover, doctors peacefully whistleblowing on climate inaction are acting in the name of health and well established science, not personal opinion. Expecting these doctors to undergo remediation suggests a failure by the regulator to appreciate the consequences that climate risks pose to the patients it exists to protect.

Context and motivations

Crucially, the GMC must avoid conflating the rule of law with rule by law—the latter being where those in power can arbitrarily agree and apply law as they choose, without accountability. Indeed, arrests for peaceful actions have become far more likely owing to recent draconian laws, attracting concern from the UN special rapporteur, Michel Forst.⁹ Forst warns that professional sanctions against doctors engaging in environmental protection “can definitely be considered as a form of ‘penalization, persecution or harassment’ and would therefore fall within the scope of my mandate.”¹⁰ Such stern criticism suggests that regulators are straying beyond their scope, imposing sanctions on activities that don't impinge on professional practice at all.

That's not to say that doctors have carte blanche to break the law, but decisions regarding suspension must acknowledge the context and motivations in which such actions are taken. I've already suggested the basis of an ethical defence of doctors facing suspension for cause related arrests in the *Journal of Medical Ethics*, published on the day Benn was found guilty of professional misconduct.¹¹ That piece notes that civil disobedience may be justifiable if: the cause is just; the action is taken as a last resort when lawful actions have led to minimal progress; it is proportionate; it has a realistic chance of success; it receives support from a legitimate authority. This final point has recently been strengthened by the BMA voting to protect doctors from sanctions for activism.¹²

Moreover, debating whether doctors should be suspended for breaking the law diverts attention from examining whether it's right for public money to be spent on prosecuting doctors for whistleblowing on climate inaction in the first place. In recent cases, juries have decided not to convict health professionals who were able to explain that their professional codes of conduct required them to raise the alarm about the health implications of the climate crisis.¹³ Shouldn't we instead demand that those responsible for climate devastation, and other social injustices, face legal consequences themselves?

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